

Template pursuant to Section 3 (a) of the
ICN Framework on Competition Agency Procedures

Federal Antimonopoly Service of Russia

The following template is submitted by **Federal Antimonopoly Service of Russian (FAS-Russia)** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).¹

I. Introduction

Please add brief presentation/link to agency website.

Federal Antimonopoly Service (hereinafter - the FAS Russia) is an authorized federal executive body, which is carrying out its functions with regard to the approval of the regulatory legal acts and control over compliance with the antimonopoly legislation, legislation in the field of natural monopolies’ activity, in the field of state regulation of prices (tariffs) for the goods (services), advertising, foreign investments in the business entities of strategic importance for the Russian national defence and state security, control in the field of state defence order, purchases of goods, works and services for the state and municipal needs and procurement of goods, works and services by certain legal entities, as well as with regard to the approval of closed methods for selection of suppliers (contractors, performers).

The FAS Russia was established in accordance with the Decree of the President of the Russian Federation № 314 of March 09, 2004² and directly subordinates to the Government of the Russian Federation, but is not a part of it.

Russian antimonopoly body exercises its functions in accordance with the Decree of the President of the Russian Federation “On the structure of the federal executive government bodies” (No.636 of May 21, 2012)³, the Decree of the Government of the Russian Federation “On Approving the Regulations on the Federal Antimonopoly Service” (No. 331 of June 30, 2004)⁴, the Rules of the Federal Antimonopoly Service⁵.

At present time, the FAS Russia is a multifunctional authority, which, along with its 84 Regional Offices, exercises a wide range of functions and has much broader competences than other competition authorities worldwide.

The web-site is <https://en.fas.gov.ru/>

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

¹ All English translations of legal provisions and regulations referred to below are unofficial. Some of the reference documents are available in Russian only.

² https://www.wto.org/english/thewto_e/acc_e/rus_e/WTACCRUS58_LEG_85.pdf

³ <http://www.rg.ru/2012/05/22/struktura-dok.html>

⁴ <http://www.rg.ru/2004/07/31/fas-doc.html>

⁵ http://www.fas.gov.ru/legislative-acts/legislativeacts_50641.html

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

The FAS Russia performs its state functions in accordance with the Federal Law "On Protection of Competition" (hereinafter – the Law "On Protection of Competition" (FZ-135 of 26.07.2006)⁶. The Law defines the functions of the FAS Russia, the subject and the execution of these functions are formulated in the separate Administrative regulations.

The Russian competition law is based on a number of other legal provisions, including:

The Constitution of the Russian Federation⁷, which has the highest legal force, direct effect and implementation the whole territory of the Russian Federation;

The Russian Civil Code⁸

The Code of the Russian Federation on Administrative Offenses⁹ and the Russian Criminal Code¹⁰, which stipulates administrative and criminal liability for violations of Antimonopoly legislation.

The Russian competition legislation observes generally recognized principles and norms of international law and international treaties of the Russian Federation, for example, the Treaty of May 29, 2014 "On the Establishment of the Eurasian Economic Union"¹¹

The competition legislation is related to a number of other federal laws, in particular, including: the Law on Federal contract system, the Law on procurement of goods, works and services by certain types of legal entities, Law on trade, Law on advertising, Law on foreign investment and the Law on natural monopolies, and industry-specific laws, regulating separate spheres of activity of subjects of natural monopoly such as the Federal Law on Electric Power Industry, the Federal Law on Communication, the Federal Law on Railway Transport, etc.

Additionally to that, the competition regulation include:

The Decree of the President of the Russian Federation of December 12, 2017 No. 618 "On State Competition Policy Guidelines"¹²

⁶[http://en.fas.gov.ru/upload/documents/Federal%20Law%20On%20Protection%20of%20Competition%20\(as%20amended%20in%202015\).pdf](http://en.fas.gov.ru/upload/documents/Federal%20Law%20On%20Protection%20of%20Competition%20(as%20amended%20in%202015).pdf)

⁷<http://archive.government.ru/eng/gov/base/54.html>

⁸<http://en.smb.gov.ru/support/regulation/ccpart1/>

⁹http://www.consultant.ru/document/cons_doc_LAW_34661/ Russian version only

¹⁰http://www.consultant.ru/document/cons_doc_LAW_10699/ Russian version only

¹¹<http://www.eurasiancommission.org/en/nae/news/Pages/01-01-2015-1.aspx>

¹²<http://en.fas.gov.ru/documents/documentdetails.html?id=15342>

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

The practice of investigating cases of violation of antimonopoly legislation is established by Article 45 "Examining a Case on Violating the Antimonopoly Legislation" the Law "On Protection of Competition" (FZ-135 of 26.07.2006), as well as the Administrative Regulation on initiation and hearing of cases on violation of the antimonopoly legislation of the Russian Federation¹³, which do not provide any restrictions for Russian companies or companies in other jurisdictions, thereby using a non-discriminatory and equal approach.

In accordance with the Code of the Russian Federation on Administrative Offenses, administrative liability is provided for violation of antimonopoly legislation in Russia. This liability extends to foreign citizens, stateless persons and foreign legal entities who have committed an offense in the territory of the Russian Federation.

Under the Article 2.6 of the Code of the Russian Federation on Administrative Offenses foreign citizens, stateless persons and foreign legal entities who have committed administrative offences in the territory of the Russian Federation shall be administratively liable on general grounds.

The issue of the administrative responsibility of a foreign citizen, who is immune from the administrative jurisdiction of the Russian Federation in compliance with the federal laws and international treaties of the Russian Federation and who has committed an administrative offence on the territory of the Russian Federation, shall be resolved in conformity with the rules of international law.

Regarding the procedure for the processing and delivery of procedural documents to foreign defendants in the course of considering cases of violation of the antimonopoly legislation and administrative offences, the current version of the Code of Administrative Offenses of the Russian Federation provides that in case of necessity to perform procedural actions, the official sends a request for legal assistance to the relevant official of a foreign state in accordance with the international treaty, concluded by Russia, or on the basis of reciprocity.¹⁴

The Russian Criminal Code contains a special the Article 178, according to which the crime is recognized conclusion between economic entities-competitors of anticompetitive agreement (cartel). Criminal liability for participation in the cartel occurs if there are consequences in the form of causing large (especially large) damage to citizens, organizations or the state or extracting income in a large (especially large) amount.

Foreign physical and legal persons have a right to seek independent review of decisions by administrative bodies (including FAS) in the court according to the Constitution of the

¹³ <https://fas.gov.ru/documents/576226> Russian version only

¹⁴ Part 1 Art. 29.1.1 of the RF Code of Administrative Offences

Russian Federation as explained by to the [Decree of the Constitutional Court of the Russian Federation of 17.02.1998](#). This means that the relevant court is obliged to issue a fair and lawful decision per request of the foreign person.

c) Transparency and Predictability

i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.

In accordance with chapter 3 of article 15 of the Constitution of the Russian Federation, unpublished laws shall not be used. Normative legal acts concerning human rights, freedoms and duties of man and citizen may not be used, if they are not officially published for general knowledge.

In order to increase clarity, transparency and accessibility, the FAS Russia uses a certain set of tools, in particular, maintaining the official website of the FAS Russia in Russian and English at www.fas.gov.ru (www.en.fas.gov.ru), where basic information on cases of violation of the antimonopoly legislation including definition, warning, decision; regulations; explanations of antimonopoly legislation; analytical and other materials are published. The Agency also the closely works with television, radio, print media, and has several accounts in various social networks.

ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.

The law "On protection of competition" (135-FZ of 26.07.2006) defines: the functions of the FAS Russia (Articles 22-25 of 135-FZ of 26.07.2006); cases of violation of antimonopoly law (Articles 10-16 of 135-FZ of 26.07.2006); investigation and enforcement proceedings in merger and acquisition cases (Articles 26-35 of 135-FZ of 26.07.2006). The subject and the execution of these functions are formalized in separate Administrative regulations, which are designed in accordance with the Decree of the Government of the Russian Federation, approved by the Orders of the FAS Russia and registered by the Ministry of Justice. For example, the Regulation of the FAS Russia¹⁵, which determines general rules for the FAS Russia work, defines the procedures of implementation of powers related to the competence of the FAS Russia in accordance with the legislation of the Russian Federation. It also provides for procedures of the Agency interaction with other federal executive bodies and sets out the basis of the FAS Russia internal organization.

In addition, the FAS Russia has developed the Administrative Regulation for the initiation and consideration of cases on violation of the Antimonopoly legislation of the Russian Federation¹⁶. This document establishes terms and sequence of actions, the order of

¹⁵<https://fas.gov.ru/documents/593033> Russian version only

¹⁶<https://rg.ru/2008/06/28/fas-reglament-dok.html> Russian version only

interaction between structural divisions and officials as well as interaction between physical or legal persons (applicants) at execution of the public functions.

iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.

As previously described, all normative legal and procedural acts relating to the application of antimonopoly legislation are publicly accessible in the media, press and Internet.

In addition, in cases where the FAS Russia decisions are appealed in court or the FAS Russia obtains the execution of its decision in court, the texts of judicial acts are obligatory published in the Internet.

iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.

Procedural rules in conducting Investigations and participating in Enforcement Proceedings are regulated in details and observed by the FAS Russia on the basis and in compliance with the Constitution of the Russian Federation, federal constitutional laws, federal laws, acts of the President of the Russian Federation and the Government of the Russian Federation.

The law "On protection of competition" (135-FZ of 26.07.2006) also establishes the principle of prohibiting abuse by persons participating in the case of their procedural rights, the Administrative Regulation provides for control over the commission of actions in the performance of public functions and decision-making, in which the Head (the Deputy head of the FAS Russia), the Head (the Deputy head) of the responsible structural division as well as the Responsible Officer is personally responsible for untimely and (or) inadequate performance of administrative actions during the consideration of the case of violation of the antimonopoly legislation.

In accordance with the applicable Procedural rules, interested persons have the right to appeal against the actions (inaction) of the antimonopoly authority, their officials and decisions taken (carried out) by them in a judicial or pre-judicial (extrajudicial) manner.

According to the article 198 of the Arbitration Procedure Code of the Russian Federation¹⁷ citizens, organizations and other persons shall have the right to file to the arbitration court applications for recognizing as invalidated the non-normative legal acts and as unlawful the decisions and the actions (inaction) of the bodies, exercising public powers and of official persons, if they believe that the disputed non-normative legal act, the decision and the action(inaction) do not correspond to the law or to another legal normative act and infringe upon their rights and lawful interests in the sphere of business and other economic activity, that they unlawfully impose upon them any kind of duties and create other obstacles to the performance of the business and other economic activity.

Besides, the Federal law "On the procedure for consideration of appeals by citizens of the Russian Federation (№ 59-FZ of 2.05.2006)¹⁸ and the Federal law "On Legal Practice and Advocacy in the Russian Federation"(№ 63-FZ of 31.05.2002)¹⁹ define the rules of work with

¹⁷http://www.consultant.ru/document/cons_doc_LAW_37800/ Russian version only

¹⁸http://www.consultant.ru/document/cons_doc_LAW_59999/ Russian version only

¹⁹http://www.consultant.ru/document/cons_doc_LAW_36945/ Russian version only

citizens letters and lawyers appeals. At the same time, in order to strengthen the rule of law and to protect state and public interests, prosecutor's supervision is carried out to control the FAS Russia activities and respond to possible citizens' complaints.

v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.

In order to clarify the provisions of the antimonopoly legislation and other normative legal acts on the protection of competition, the FAS Russia clarifies the legislation and other acts on the protection of competition by:

- responding to appeals of individuals and legal entities;
- explaining the legislation addressed to the uncertain circle of persons and placed, in particular, on the official site of the FAS Russia in the Internet.

Thus, the Presidium of the FAS Russia approved a number of clarifications and developed a number of recommendations on key areas of activity of the Russian antimonopoly body, which clearly states how to act in order to reduce the risk of violation of the law "On protection of competition" (135-FZ of 26.07.2006), including Explanations "On the application of the provisions of the article 10 "Prohibition of Abuse of Dominant Position by an Economic Entity"²⁰ of the law "On protection of competition" (135-FZ of 26.07.2006), Explanation "Proving inadmissible agreements (including cartels) and concerted actions on commodity markets, including at auction"²¹ and others.

In addition, in order to increase the openness and transparency of the FAS Russia activities and its territorial bodies, as well as to prevent violations of antimonopoly legislation the Order of the FAS Russia "On the approval of the Provision on information policy of the Federal Antimonopoly Service and its territorial bodies" of November, 10 2015 № 1069/15²² has been developed. This document establishes the rules of disclosure of information on activities of the FAS Russia and its territorial bodies and release of public information on the official website of the FAS Russia and its territorial bodies, as well as in the Agency accounts in social networks.

In accordance with the article 23 of the law "On protection of competition" (135-FZ of 26.07.2006), the Federal Antimonopoly service annually submits to the Government of the Russian Federation a Report on Competition in the Russian Federation, which contains a comprehensive description of the most important aspects of the Russian policy for the protection and development of competition. The Report on Competition in the Russian Federation is annually discussed during the Meeting of the Russian Federation Government.

Besides, in developing a number of documents, the FAS Russia closely cooperates with the Association of Antimonopoly Experts. The Association of Antimonopoly Experts has existed since 2007. It brought together leading lawyers in the field of the Russian antimonopoly legislation, economists and teachers specialized in competition issues. Association members

²⁰<https://fas.gov.ru/documents/561690> Russian version only

²¹<https://fas.gov.ru/documents/562597> Russian version only

²²<https://fas.gov.ru/documents/562509> Russian version only

take part in the development of the most significant legal acts, including the latest amendments to the law "On protection of competition" (135-FZ of 26.07.2006) and related legislation, as well as government resolutions and other regulatory acts.

d) Investigative Process

Procedure for proceeding cases on violation of antimonopoly legislation by the Antimonopoly body is regulated by Chapter 9 of the law "On protection of competition" (135-FZ of 26.07.2006) and Administrative Regulations of the Federal Antimonopoly Service on Execution of State Function on Initiation and Consideration of Cases on Violation of Antimonopoly Legislation of the Russian Federation, approved by the Order of the FAS Russia of 25.04.2012 No 339²³, and the Procedure of Analyzing the competition situation in the product market, approved by the Order of the FAS Russia of 28.04.2010 No. 220²⁴.

i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.

The procedure for consideration of the case on violation of Antimonopoly legislation is regulated by article 45 "Consideration of the case on violation of antimonopoly legislation" of the law "On protection of competition" (135-FZ of 26.07.2006). In the event the Agency decides to initiate a case on violation of the Antimonopoly legislation, it shall issue an Order on initiating a case and establishing a Commission. The Commission consists of the Chairman of the Commission (the Head of the Antimonopoly Authority or his Deputy, the Head of the Regional Office of the Antimonopoly Authority or his Deputy) and members of the Commission. The copy of this Order is sent to the applicant and the respondent within three days from the date of the issuing of this Order. Besides, the Order on initiating a case, a press release on the beginning of an antitrust investigation is published at the official website of the FAS Russia.

ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.

According to paragraph 1 of article 43 of the law "On protection of competition" (135-FZ of 26.07.2006) "The Rights and Obligations of Persons Participating in a Case on Violating the Antimonopoly Legislation", from the moment of initiating the violation of the antimonopoly legislation case persons participating in the case have the right to familiarize themselves with the materials of the case, to make abstracts from them, to give evidence and to familiarize themselves with the evidence, to put questions to the other Participants, to enter petitions, to give written and oral explanations to the Commission, to present their arguments on all questions arising in the course of examination of the case, to familiarize themselves with the

²³<http://base.garant.ru/70213314/> Russian version only

²⁴<http://base.garant.ru/12177774/> Russian version only

petitions entered by the other persons, to object to the other Participants' of the case petitions, arguments.

According to paragraph 13 of article 44 of the law "On protection of competition" (135-FZ of 26.07.2006) "Examining a Petition, Materials and Initiating a Case on Violating the Antimonopoly Law" within 15 days from the day of issuing the order to initiate a case on violating the antimonopoly law, the chairman of the commission shall issue an intermediary order to examine the case and send copies of the intermediary order to the persons taking part in the case. This order is also published at the official website of the FAS Russia.

According to paragraph 14 of article 44 a determination ordering the hearing of an antimonopoly case must comprise:

- 1) Information about the parties to the case*
- 2) The grounds upon which the case was initiated*
- 3) Description of the exposed elements of violating the antimonopoly law, evidence, factual and other circumstances corroborating them*
- 4) The date, time and location of the Commission meeting*

As it was mentioned above, an order to initiate a case, a press release on the beginning of an antitrust investigation, and further definition, warnings, admonitions, notifications, decisions on cases are published at the official website of the FAS Russia. Thus, third parties and interested parties can become full participants in the case and provide additional information.

The procedure for consideration by the Antimonopoly authority of transactions and other actions in respect of assets subject to state control is regulated by Chapter 7 "State control over economic concentration" of the law "On protection of competition" (135-FZ of 26.07.2006).

iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.

According to article 25 of the law "On protection of competition" (135-FZ of 26.07.2006) "Obligation to Provide Information to the Antimonopoly Body" persons are obliged to provide to the antimonopoly body, upon its reasonable request within the established period, and in accordance with its scope of reference, documents, explanations, and information, orally or in writing (including information constituting commercial, official, other legally protected secrets), including acts, contracts, certificates, business correspondence, other documents and materials in the form of digital recording or in electronic format. In accordance with the Administrative regulations on the initiation and consideration of cases on violations of the Antimonopoly legislation, the request for information must contain motivated requirements for providing the necessary information, as well as the deadline for providing information.

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

Article 44 of the law "On protection of competition" (135-FZ of 26.07.2006) "Examining a Petition, Materials and Initiating a Case on Violating the Antimonopoly Law" stipulates that within 15 days from the day of issuing the order to initiate a case on violating the antimonopoly law, the chairman of the commission shall issue an intermediary order to examine the case and send copies of the intermediary order to the persons taking part in the case. This order is also published at the official website of the FAS Russia. According to article 45 of the law "On protection of competition" (135-FZ of 26.07.2006) a case on violating the antimonopoly legislation is examined by the Commission within three months period from the date of issuing the order to initiate proceedings. If necessary the term of consideration of the could be prolonged for another six months

Articles 27 and 29 of the law "On protection of competition" (135-FZ of 26.07.2006) also provide for an exhaustive list of transactions and other actions that require the prior approval of the Antimonopoly authority.

In accordance with part 1 of article 33 "Decision-Making on the Basis of Results of Examination of Application by the antimonopoly body, Issue of Determination to Applicant submitting the notification of the law "On protection of competition" (135-FZ of 26.07.2006), initial term of consideration of such transactions is 30 calendar days. The term of consideration of the application may be prolonged if, based on the results of its initial consideration, the Antimonopoly authority comes to conclusion that the declared transaction of economic concentration may lead to restriction of competition. The term for which the Antimonopoly authority may extend the consideration of the application should not exceed two months. In other words, the maximum period of consideration of the application is three months.

In the event of a decision to extend the term of consideration of the application, the Antimonopoly authority shall post information on the transaction of economic concentration declared in the relevant application on its official website on the Internet. Thus, all interested parties have the right to learn about the transaction, which may lead to the restriction of competition, as well as to submit their position on this issue to the Antimonopoly authority.

In addition to Antimonopoly control, the FAS Russia is a Federal Executive body authorized to monitor the implementation of foreign investments in economic entities of strategic importance for the country's defense and state security (hereinafter-strategic companies). According to the provisions of the Federal Law "On the Procedure for Foreign Investments in Economic Entities of Strategic Importance for the Defense of the Country and the Security of the State" (57-FZ of 29.04.2008). Term review of these transactions by the authorized body may not exceed three months from the date of the filing of the petition until the day of preliminary approval of the transaction or approval of establishing control or refusal in the preliminary approval of the transaction or approval of establishing control. In extraordinary cases, the term of consideration of the application may be prolonged for three months by the decision of the Government Commission.

f)Confidentiality

i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.

Article 26 of the law "On protection of competition" (135-FZ of 26.07.2006) "Liability of the antimonopoly body to observe commercial, official or other secrets protected by law" imposes an ability to the antimonopoly body of non-disclosure of the information which consists of a commercial, service or another private information protected by law. Moreover, in the Administrative Regulations on implementation of the state function of initiating and considering cases on violation of the antimonopoly legislation is stated that documents and materials containing confidential information are placed to a separate section.

At the same time, the Central Office and regional offices of the FAS Russia have developed special regulations on an order of treatment with documents containing confidential information. (Order of the FAS Russia № 45, 240/14, 99)²⁵. These instructions also state a special treatment, control, storage of documents coming to the Body with the mark "for a service usage", as well as direction and restriction of free access to such an information. Such a mechanism, if necessary, allow to determine a person who is guilty in violation of a confidentiality regime.

One of the effective tools of international cooperation of competition authorities in law enforcement, which is widely used in developed countries when considering global transactions of economic concentration, is waivers of confidentiality.

Basing on these provisions and instruments the FAS Russia already has obtained a considerable experience of practical cooperation in considering global transactions (Oracle/Sun, Yandex.Taxi/Uber, Bayer/Monsanto, Siemens/Alstom, Taceda/Shire).

Taking into account the long-standing need to systematize work on applying waivers of confidentiality, in 2018 the Presidium of the FAS Russia adopted Recommendations "On applying waivers of confidentiality when considering merger control transactions"²⁶.

Rules and norms of an assignment of the regime of confidentiality to different documents are determined in accordance with the Federal Law "On Commercial Confidentiality"(№98-FZ of 29.07.2004)²⁷. Article 13 of the Law provides that "The state power bodies... shall...be obligated to create conditions providing for protection of the confidentiality of information passed over to them by legal persons or individual entrepreneurs." "The officials ... have, in the absence of consent thereto of the holder of information constituting a commercial secret, no right to disclose or transfer to other persons, state power bodies or other state authorities, bodies of local self-government information constituting a commercial secret that became known to them by virtue of performance of official obligations...and also have no right to use that information for mercenary or other personal aims." The Law provides for some limited exemptions from this rule related to crime prevention and national security. Officials acting in breach of this Law are subject to administrative and criminal penalty.

²⁵<https://zab.fas.gov.ru/page/10483> Russian version only

²⁶<https://en.fas.gov.ru/press-center/news/detail.html?id=53894>

²⁷http://www.consultant.ru/document/cons_doc_LAW_48699/ Russian version only

Liability of staff for disclosure of a confidential information is stated by the Federal Law "On Information, Information Technology and Protection of Information"(№149-FZ of 27.07.2006)²⁸.

All the documents which set the procedure of treatment with a confidential information are published in open-access in the information-law portals for example on the FAS Russia's web-site www.fas.gov.eng. Procedure of treatment with a confidential information is open and clear.

The FAS Russia has strong cooperation with the Eurasian Economic Commission (EEC) - a supranational body authorized to conduct antitrust investigations against companies - residents of the Eurasian Economic Union (EAEU). The exchange of confidential information is carried out by the EEC in compliance with the requirements of an international treaty, namely the "Agreement on the procedure for protecting confidential information and responsibility for its disclosure when exercising powers by the Eurasian Economic Commission to monitor compliance with the unified rules of competition"²⁹, signed in Moscow on November 12, 2014.

ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.

In accordance with the legislation of the Russian Federation, disciplinary, civil, administrative and criminal liability is established for violating the Law on Commercial Secrecy.

iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.

Persons, involved in the case on violation of the antimonopoly legislation have the right to familiarize themselves with applications, objections, explanations and other materials submitted at the initiative of a person participating in a case to confirm presence or absence of the fact of violation of the antimonopoly legislation. In relation to such files, the mode of commercial secret cannot be established .

Information provided at the request of the FAS Russia, in respect of which the mode of commercial secret has been established and which are files of a case of violation of antimonopoly legislation, may be introduced for examination to persons participating in the case on receipt with the consent of the owner of such information.

Third parties may be refused to familiarize themselves with the case files - the courts recognize the competition authority's refusal to third parties to familiarize themselves with the case files that contain commercial secret in case of refusal of the owner of such information to provide consent.

Other government authorities that have gained access to information constituting a commercial secret are subject to civil liability before the owner of such information for the

²⁸http://www.consultant.ru/document/cons_doc_LAW_61798/ Russian version only

²⁹http://www.consultant.ru/document/cons_doc_LAW_171018/ Russian version only

disclosure or illegal use of this information by their officials, who became aware of it in connection with the performance of their official duties.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Prevention of conflict of interest is a highest priority for the FAS Russia. The Agency has rules, policies and guidelines to ensure that its officials are objective and impartial and do not have material conflicts of interest. Principles and rules regarding identification, prevention and handling such conflicts are provided by the National Law, particularly by the following statutes: [Constitution of the Russian Federation, FL No. 273-FL of 25.12.2008 "On countering corruption,"](#)³⁰ [FL No. 79-FL of 27.07.2004 "On civil service in the Russian Federation,"](#)³¹ the law ["On protection of competition" \(135-FZ of 26.07.2006\)"](#)

Basing on these Acts, by the Order of the Head of the FAS Russia approved its internal regulations aimed at prevention of corruption and conflict of interest, including but not limited to the following: ["Statute of the Department of Civil Service of the FAS-Russia,"](#)³² ["Ethical Code of state civil servants of the Federal Antimonopoly Service."](#)³³

These statutes and regulations are enforced by the FAS Russia Department of Civil Service in the Agency Central Office. In the Territorial Offices, this is responsibility of the Heads of the Offices and officials responsible for work with personnel. Prevention of corruption and conflict of interest is a part of their civil servants' responsibilities.

In 2009 FAS established a Counter Corruption Unit as a part of the Department of the Civil Service responsible for practical enforcement of the above mentioned statutes.

Periodically issues related to conflict of interest and professional conduct of the FAS personnel are considered by the specially established [Commission on observation of requirements to professional conduct of state civil officials and regulation of conflict of interest.](#)³⁴ Each case is being considered by Commission appointed from the FAS Russia staff members.

Pursuant to the above mentioned provisions, the FAS Russia officials are responsible for avoiding participation in consideration of cases which outcome may affect their material and financial interests. Failure to comply with the regulations and attempts of officials to influence the outcome of cases under consideration in their personal interest result into administrative sanctions, including displacement and prohibition to occupy public service positions for up to three years. A staff member is responsible for reporting a conflict of interest situation to a superior official while being appointed to the Commission considering a particular case and, thereby, avoid such appointment. In this situation, the staff member will be replaced in the Commission.

³⁰ Available in Russian only.

³¹ Available in Russian only.

³² Available in Russian only.

³³ Available in Russian only.

³⁴ Available in Russian only.

The provisions also stipulate for multilayer control over professional behavior of officials and their responsibility to report situations of conflict of interest to superior officials.

h) Notice and Opportunity to Defend

i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.

ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.

iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.

Russia has an administrative system of enforcement of anti-monopoly legislation and merger review, except a possibility of criminal prosecution of persons engaged in cartelization. In case the evidence of involvement of physical persons in organization of a cartel is present, the FAS Russia would pass it to the Ministry of Internal Affairs for further initiation of a criminal case against them.

Each person subjected to the FAS Russia administrative procedures has a Constitutional right ([Article 45\(2\) of the Constitution of the Russian Federation](#)) for being heard and to present, respond to and challenge evidence as well as for notification of the alleged violations or claims against them and provision with sufficient time for preparation of their defense arguments to the FAS Russia Commission investigating particular case. The FAS Russia is responsible for earlier notification of persons concerned about the initiation of the case. These responsibilities of the Agency are provided for by the law "[On protection of competition](#)" (135-FZ of 26.07.2006) and [Code of the Russian Federation on Administrative Offences](#).

The FAS Commission considering case follows relevant Agency guidelines and administrative regulations that provide detailed instructions on observing the parties' Constitutional rights for defense. These guidelines and administrative regulations include Administrative Regulations approved by the FAS Russia orders № [339](#)³⁵, [340](#); the FAS guidelines «[Administrative Guidance of the Federal Antimonopoly Service on execution of state function on initiation and consideration of cases of violation of anti-monopoly legislation of the Russian Federation](#)»³⁶.

These guidelines are based on more general regulations, such as: the [Federal law No. 135 «On protection of competition»](#), [Code of the Russian Federation on administrative offences](#) that build upon the Constitutional provision for the right of physical and legal persons for defense in the court and administrative bodies. Particularly, Article 42 of the law "[On protection of competition](#)" (135-FZ of 26.07.2006) provides for the list of Persons participating in the hearings by the Commission and their rights as follows:

³⁵ Available in Russian only.

³⁶ Available in Russian only.

“1. Persons participating in the violation of the antimonopoly legislation case are:

1) applicant – is the person who submitted an application, state body or body of the local self-government which sent the documents;

2) defendant – is the person regarding to who the application was submitted and documents were sent, or in whose actions (inaction) the antimonopoly authority found the signs of the antimonopoly law violation. The mentioned persons are recognized as defendants in the case of violation of the antimonopoly legislation from the moment of initiation of the proceedings;

3) interested persons – are the persons on whose rights and legitimate interests influence examination of the case of violation of the antimonopoly legislation.”

i) Representation by Counsel and Privilege

i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.

ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.

iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.

Point i(i) of this Template is generally addressed by Article 48 of the [Constitution of the Russian Federation](#) stipulating that “everyone shall be guaranteed the right to qualified legal assistance” and “any person detained, taken into custody, accused of committing a crime shall have the right to receive assistance of a lawyer (counsel for the defense) from the moment of detention, confinement in custody or facing charges accordingly.”

This Constitutional principle is being further detailed in the relevant legislation corresponding to Points i(ii) and i(iii) of the Template, including:

Legislation mostly relevant to Point i(ii):

The law ["On protection of competition" \(135-FZ of 26.07.2006\)](#), Article 42(2) stipulating that “the persons participating in examination of the case of violation of the antimonopoly legislation have the right to exercise their rights and obligations by themselves or through their representative.”

Legislation mostly relevant to Point i(iii):

[Federal Law No. 63-FZ of May 31, 2002 on solicitor's/barrister's activity and the Bar in the Russian Federation \(with the Amendments and Additions of October 28, 2003, August 22, December 20, 2004, July 24, December 3, 2007, July 23, 2008, July 11, 2011, November 21, 2011\)](#). This Law is a legal norm governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the

solicitation or rendering of legal advice. Although, the term “privileged information” is not used in the Russian legislation; the term “confidential information” is being used instead.

Article 8 “Solicitor/barrister secrets” of the law safeguards confidentiality of information circulating between a solicitor/barrister and his (her) client with the following provisions:

“1. Any information relating to the provision of legal assistance by a solicitor/barrister to his/her client shall be deemed a solicitor's/barrister's secret.

2. The solicitor/barrister shall not be summoned and interrogated as a witness about the circumstances that have come to his/her knowledge in connection with his/her being approached and asked for legal assistance or in connection with the provision thereof.

3. The performance of operational investigation actions and investigation actions in respect of a solicitor/barrister (in particular, on the residential and service premises used by him/her to pursue his/her activity of a solicitor/barrister) is permitted only under a court decision.

The information, things and documents received as the result of operational investigation or investigation activities (including, after suspension or termination of solicitor/barrister status) may be used as evidence for an accusation only when they are not part of the solicitor's/barrister's proceedings relating to his/her clients' cases. The said restrictions shall not extend to an instrument of crime and also items the circulation of which is prohibited or restricted under Russian law.”

Additionally to that, the law ["On protection of competition" \(135-FZ of 26.07.2006\)](#) specify the use of these provisions applicably to consideration of anti-monopoly cases (see above).

j) Decisions in Writing

i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.

ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.

FAS issues all types of decisions or orders in writing, including imposition of a prohibition, remedy, or sanction under applicable Competition Laws or dismissal of complaint. The decisions include measures to preserve competition, i.e. commitments to be taken by the Parties of the case made for this purpose. The decisions are publically available at the FAS web-site at www.fas.gov.ru. Depending on the type of decision, the principle of issuing decisions in written form is provided for in various articles of the law ["On protection of competition" \(135-FZ of 26.07.2006\)](#).

Article 18(1) 10 provides for written decision on dismissal of complained should be sent to the complaining Party;

Article 33.1 provides for written decision on application of consideration of a deal/transaction subject to state control, including merger review decisions. The decisions are made in written form with reasons for approval or disapproval of the deal stated, as well as merger remedies. The decision is made available to parties concerned and general public through FAS web-site (with possible exception of confidential information);

Article 35 provides for written decision on authorization of agreement between private parties that may restrict competition;

Article 41 is especially important from the position of issuing decisions in writing because it regulates the procedure of issuing the decision by the FAS Commission considering violation of anti-monopoly Law. Particularly, this Article provides for the following rules of issuing decision in written form:

“1. The Commission passes Statement on findings of the case circumstances, warnings, orders, decisions, and determinations.

2. Upon the completion of the review of the case of violation of the antimonopoly legislation the Commission adopts decision at its session. Decision of the Commission is presented as a separate document and is signed by all members of the Commission present at the session where the decision has been taken. A member of the Commission who disagrees with the Commission’s decision is obligated to sign the act adopted by the Commission and can present a special opinion in a written form, which shall be enclosed to the case materials in a sealed envelope and shall not be disclosed. A decision of the Commission is made in one copy, which is joined to the case papers.

3. A decision on a case on violating the antimonopoly law comprises an introduction, a descriptive part, a statement of reasons and substantive provisions.

3.1. An introduction to a decision on a case on violating the antimonopoly law includes the name of the antimonopoly body that investigated the case, the members of the Commission that investigated the case, the case number, the date of announcing the substantive provisions of the decision, the date of preparing the decision in all parts, the location where the decision was made, the subject-matter of the case, the parties to the case, surnames of the persons attended the Commission meeting and their authority.

3.2. A descriptive part of a decision on a case on violating the antimonopoly law must contain a brief description of the claim (if a case was opened upon the outcome of investigating a petition), objections, explanations, statements and petitions filed by the parties to the case.

3.3. A statement of reasons in a decision on a case on violating the antimonopoly law must give:

1) Factual and other circumstances of a case established by the Commission, including the circumstances ascertained in the course of analyzing the state of competition by the antimonopoly body, and the circumstances established through verifying compliance with the antimonopoly law

2) Evidence, on which the Commission based its conclusions on the case circumstances and the arguments for the decision, the grounds, on which the Commission rejected particular evidence, accepted or rejected arguments given by the parties to the case to justify their claims and objections.

3) *The laws and other regulatory acts that the Commission was guided by making the decision.*

4. *Substantive provisions of a decision on a case on violating the antimonopoly law must contain:*

1) *Conclusions on the grounds to terminate the case investigation or their absence*

2) *Conclusions on violation of the antimonopoly law or its absence in the actions (omissions) of a respondent in the case*

3) *Conclusions on the grounds or their absence to issue a determination and a list of actions included in the determination and subject to execution.*

4) *Conclusions on the grounds or their absence to undertake other measures by the antimonopoly body to suppress and (or) eliminate the consequences of violating the antimonopoly law, supporting competition (including the grounds for filing a lawsuit, transfer the case materials to the law enforcement bodies, issuing recommendations to public authorities or local self-government bodies to exercise actions aimed at protecting competition).*

4. *The Commission issues a determination on the basis of the decision. Determination is made out like a separate document for each person who is obliged to fulfill the actions determined in the decision within the period established in the determination, and it is signed by the chairman and members of the Commission presenting at the meeting*

5. *Chairman of the Commission or the Commission pronounces an order in the cases mentioned in this Article. The order is presented as a separate document, signed by the chairman and the members of the Commission and sent to the persons participating in the case as well as to other persons in the cases stated in this Article.*

6. *Templates of acts adopted by the Commission are approved by the federal antimonopoly body.*

7. *Documents mentioned in this Article could be signed by the Chairman of Commission and Members of Commission with the enhanced encrypted digital signature.”*

These legal provisions are supported by the FAS Guidelines approved by the Administrative Orders No. 139 and 140 mentioned above and correspond to general principles of making administrative decisions by the Russian government bodies provided for by the Law.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

An opportunity for physical and legal persons to seek review of an administrative decision by the Court is provided by Article 46 of the [Constitution of the Russian Federation](#) stipulating that:

“1. Everyone shall be guaranteed judicial protection of his rights and freedoms.

2. Decisions and actions (or inaction) of bodies of state authority and local self-government, public associations and officials may be appealed against in court.”

The right of ‘everyone’ for judicial protection means that it applies to every person regardless nationality/citizenship. I.e. foreign persons also have this right according to the [Decree of the](#)

Constitutional Court of the Russian Federation of 17.02.1998. The guarantee of the protection by the court means the right of everyone to submit a complaint to a relevant court, on one hand, and the court's obligation to consider this complaint and make lawful, fair and justified decision.

There are several legal provisions providing physical and legal persons subject to decisions by the FAS with the opportunity to exercise their Constitutional right to seek review by an independent, impartial adjudicative body such as court in the Russian legislation. In the context of consideration of competition, related matters the Law particularly indicate the following:

Article 5.4 of the law "On protection of competition" (135-FZ of 26.07.2006) enables an entity "...to provide evidence before court or antimonopoly authority that the position of this economic entity in the commodity market cannot be recognized as dominant."

According to the Article 23 sections 6 and 7 the Anti-monopoly Authority can apply to the arbitration court "...with claims and applications concerning violations of the antimonopoly legislation..." and participates in the court hearings on violation of the anti-monopoly legislation.

Article 38 provides for a possibility of mandatory divestiture of an entity systematically engaged in violation of the anti-monopoly legislation or separation some parts from it by court decision per the claim by the anti-monopoly body. I.e. the entity in question has a right for impartial court review of its divestiture case.

Article 52 is especially important in the context of opportunity for impartial review by the court for the entities subjected to the decision by the FAS. It provides as follows: "Decision or direction of the antimonopoly authority may be appealed against within three months from the date of the decision adoption and the directions issuance." "The appeal to court or court of arbitration suspend the fulfillment of the antimonopoly authority directions for the period of its examination in court until the court decision comes into legal force. "

The above mentioned provisions of the law "On protection of competition" (135-FZ of 26.07.2006) correspond to the relevant provisions of the Laws on administrative violations and arbitration.