

## Newsletter

### *Increasing pressure on TMT industry in Russia: key events in early 2022*

February 22<sup>nd</sup>, 2022

Dear Ladies and Gentlemen,

We would like to inform you about the key events in the Russian TMT industry that have taken place recently in Russia.

- **First turnover-based fines against social media**

In 2021, Russia introduced an obligation to administer the content by owners and hosting providers of the Internet resources and liability for failure to fulfill the obligation to restrict access to forbidden information (Art. 13.41 of the Code of Administrative Offences). In case of repeated violations, the company may be fined with the amount from 1/20 up to 1/10 of the annual aggregate revenue.

In 2021, Google and Meta were fined several times in various court disputes for failure to fulfill mentioned obligation for a total of 49 million RUB (approx. 573 937 EUR) and 70 million RUB (approx. 819 910 EUR) respectively.

In December 2021 due to the repeated violations, the Russian court imposed fines in the amount of 7.2 billion RUB (approx. 82,735,000 EUR) against [Google LLC](#) and 1.9 billion RUB (approx. 21,833,000 EUR) against [Meta Platforms Inc.](#) The companies were fined for violations on YouTube and Instagram. As follows from the court decisions, the approved turnover fines amounted to 5% of the annual aggregate revenue of these companies.

The amount of annual aggregate income of the companies was calculated based on the information provided by the Federal Tax Service of Russia who received it in frames of automatic exchange of information between tax authorities, namely the information on 5 affiliates of Google LLC (the companies' names are not specified in the text of the court decision) and their revenues from activities in Russia, amounting to 144 billion RUB (approx. 1 686 672 000 EUR), and 3 affiliates of Meta Platforms Inc., whose total revenue for

2020 amounted to 40 billion RUB (approx. 468 520 000 EUR).

According to the available information, Meta Platforms Inc. appealed against the fine. The court of appeals did not satisfy the company's appeal.

- **First steps to comply with the Landing Law by IT companies**

The Federal Law № 236-FZ "On the activities of foreign entities on the Internet on the Russian Federation" ("**the Landing Law**") entered into force in full on January 1, 2022.

The Landing Law regulates the owners of foreign information resources (websites and software) with a daily audience of more than 500,000 Russian users that meet at least one of the following criteria:

- receive funds from Russian individuals and legal entities;
- distribute advertising for Russian users;
- disseminate information in the Russian language;
- process personal data of Russian users.

Moreover, the Landing Law also applies to the following information resources, irrespective of their daily audience:

- international hosting providers that host websites used by Russian users;
- digital advertising systems that distribute advertising for Russian users;
- social media and digital communication platforms (social networks).

Such foreign information resources are obliged to perform the following actions:

- to create a branch, a representative office or an authorized legal entity in Russia;

- to register a personal account on the website of Russian Federal Service for Supervision of Communications, Information Technologies and Mass Media ("**Roskomnadzor**");
- to place an electronic form on their resource for feedback from Russian citizens or organizations;
- implement audience counting software.

Roskomnadzor has created a [register](#) of foreign companies that are subject to these requirements. Currently, the register includes 13 companies: Google LLC, Apple Distribution International Ltd., Meta Platforms, Inc., Twitter, Inc., TikTok Pte. Ltd., Telegram Messenger Inc., Zoom Video Communications Inc., Likeme Pte.ltd., Viber Media S.à r.l., Discord Inc., Pinterest Inc., Spotify AB, Twitch Interactive, Inc. All these companies are included in the register under the main criteria (500,000 users per day).

Some of the companies have begun to comply with the requirements of the Landing Law, such as Apple Distribution International Ltd., Spotify AB, TikTok Pte. Ltd., Viber Media S.à r.l., Likeme Pte.ltd, Zoom Video Communications Inc. They registered an account on the site of Roskomnadzor and/or placed an electronic form for feedback on their resource.

According to the register, Apple Distribution International Ltd. and Spotify AB have now opened their representative offices in Russia. Apple Distribution International Ltd. is the only company that has fulfilled almost all the requirements of the Landing Law, except implementation of audience counting software.

According to Roskomnadzor's position in the Russian mass media, companies that registered their account on the website are considered to be in dialogue with Roskomnadzor and working on "landing" in Russia. In this case, they will be provided with additional time to complete the necessary activities to comply with the Landing Law. Roskomnadzor did not specify what the terms of the transition period are.

The Law provides for several types of different non-monetary liability for non-compliance with the requirements, including as removal of a website/app from web search results, prohibition of cross-border transfers of personal data, advertising restrictions, limitation of transfers of funds, and acceptance of payments by Russian individuals and legal entities, full, or partial, blocking of a website/app.

Companies towards which limitations of transfer of funds and acceptance of payments by individuals

and legal entities are imposed will be included in a special [register](#) of Roskomnadzor.

- **New fines for non-compliance with the Landing Law**

The State Dume has passed the law imposing administrative liability on Russian credit organizations, telecom operators, payment agents, and postal operators for transfers of funds and acceptance of payments in favor of foreign IT companies included in the special register of Roskomnadzor.

The fine for officers is from 100,000 to 500,000 RUB (approx. 1 156 – 5 780 EUR), the fine for legal entities (except for credit organizations) is from 25% to 40% of the accepted payment amount but not less than 5 000 000 RUB (approx. 57800 EUR).

- **Fines for violation of personal data localization requirements**

On January 17, 2022, [MyHeritage](#), the company providing searches for ancestors and DNA tests production, was found guilty of violating requirements for localization of Russian citizens' personal data (part 8 of Art. 13.11 of the Code of Administrative Offence). According to the court decision, the personal data of Russian users was processed using Amazon Web Services databases and was not localized in databases in the territory of the Russian Federation. The company was fined in the amount of 1,500,000 RUB (approx. 17,500 EUR).

Earlier in 2021 [Google](#) was fined in the amount of 3 000 000 RUB (approx. 34,500 EUR) for non-compliance with personal data localization requirements, [Facebook \(Meta Platforms Inc.\)](#) and [Twitter](#) were fined 15 000 000 RUB (approx. 172,000 EUR) and 17 000 000 RUB (approx. 195,000 EUR) respectively for repeated violation of personal data localization requirements.

- **New liability for telecommunication providers**

New added Article 13.2.1 of the Administrative Offences Code stipulates that a telecommunication provider may be fined for a failure to fulfill the following statutory obligations under The Federal Law "On Communications":

- since 01.01.2022 for a failure to transmit to other telecommunication provider an unchanged line number when establishing a connection to transfer short text message and/or unique identification code when establishing a connection to transfer voice information over the data network - up to 1 million RUB (approx. 11 500 EUR);

- since 01.01.2022 for a failure to cease of the services of passing through network the traffic containing the unlawful mailing - up to 1 million RUB (approx. 11 500 EUR);
- since 01.01.2023 for failure to comply with obligation to connect to the system of ensuring compliance with the requirements of communication services and services to skip traffic in the public communications network - up to 1 million RUB (approx. 11 500 EUR).

- **Russian competition authority punishes Google for unclear rules for circulation of content on YouTube**

On February 10, 2022 Federal Antimonopoly Service ("FAS Russia") held Google liable for abuse of a dominant position in the market for video hosting services. FAS Russia found that the rules related to the formation, suspension, blocking of accounts and the circulation of user content on YouTube are opaque, biased and unpredictable. The Russian antitrust regulator stated that this leads to sudden blocking and deletion of user accounts without warning and justification for such action. FAS Russia found that such behavior infringes the interests of users, and also limits competition in the relevant markets.

The decision of the regulator was preceded by a number of conflicts between the Russian media/bloggers and YouTube, caused by unexpected blocking of their accounts. YouTube justified such measures by violations of the YouTube rules by these accounts.

This decision of the Russian competition authority is unique since it is the first attempt to regulate the rules for circulation of content on video hosting platforms via antitrust tools.

Google may face a turnover fine up to 15% of its annual Russian revenue in the market for video hosting services. The exact amount of fine will be calculated by FAS Russia within the separate administrative procedure.

- **FAS Russia reaches settlement with Yandex within the antimonopoly case concerning the rules of functioning of Yandex search engine**

On January 19, 2022 FAS Russia, Yandex and the applicants agreed to conclude a court settlement agreement and terminate the antimonopoly case.

Earlier FAS Russia initiated a case against Yandex on abuse of a dominant position. The authority claimed that Yandex promoted the services of companies from its own group (Yandex ecosystem) by attracting the attention of users in Yandex search engine, which discriminated

Yandex partners competing with the relevant companies from Yandex ecosystem.

Yandex recognized the validity of the warning issued by FAS Russia and complied with its provisions. In particular, Yandex published the policy, conditions and technical requirements for integrating partners into the Yandex search engine. The requirements are now open and uniform for all market participants, including the members of Yandex ecosystem.

In addition, FAS Russia will monitor the execution of the settlement agreement, as well as regularly analyze the correctness of the company's search engine. Yandex also undertakes to regularly provide the authority with an information needed for such monitoring. An independent annual audit of the ranking and display of data in search results will be conducted.

The applicants confirmed that the company had taken all necessary actions aimed at eliminating discriminatory conditions in its own search engine.

Yandex will also contribute 1,5 billion Rubles to the Russian Fund for the Development of Information Technologies, supervised by the Russian Ministry of Digital Development, Communications and Mass Media.

Thus, reaching settlement with FAS Russia helped Yandex to avoid a turnover fine and negative publicity. However, this case emphasizes the interest of the Russian competition authority to the search engine market and to the "gatekeepers" in digital markets in general.

- **FAS Russia and the largest Russian IT companies signed the principles of interaction between participants in digital markets**

At the end of 2021 FAS Russia developed and approved the basic principles of fair behavior in digital markets together with the key Russian market players. On February 17, 2022 the principles were signed by the Head of FAS Russia and representatives of 1C, Avito, AliExpress Russia, Wildberries, VK, Lamoda, Ozon, Russoft, Sberbank, Cyan, Yandex and the Association of Internet Trade Companies.

The document is aimed at establishing self-regulation, when market participants voluntarily refrain of unfair practices in respect of consumers, competitors and other parties.

Thus, the reasonable openness of digital platforms implies, in particular, free access to information about how search results are ranked. The principle of avoiding expansive and ambiguous wording in the rules for the operation of digital platforms is

intended to eliminate opaque rules in the user agreements of platforms that allow blocking and deleting accounts without warning.

In addition, the principles focus not only on the risks associated with competition, but also on consumer protection.

The principles have been developed on the basis of the practice of FAS Russia and the antimonopoly authorities of other countries and take into account the entire range of antimonopoly violations that have been identified or are being investigated in the world at the moment.

- **Conclusion**

The attention of the Russian authorities towards big IT companies is growing. Russia strengthens enforcement measures against violators as well as against their counterparties which may affect compliance with Russian law by IT giants.

It appears that any owners of digital platforms, mobile applications, and websites shall pay more attention to the Russian law requirements to do business in Russia.

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Sincerely,  
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