

Newsletter

Concept on pre-installing of applications elaborated by FAS Russia: returning to the Stone Age or stepping forward to the Digital Era?

February 5, 2019

Dear Ladies and Gentlemen,

Digital economy is a system of economic relations new for the Russian markets. It has emerged due to the development of modern information technologies, that increased the role of information as a market-development resource.

Currently, all the regulators pay significant attention to digitalization and IT technologies that might influence the market environment in Russia.

The Federal Antimonopoly Service ("**FAS Russia**") has just recently presented its draft Concept on pre-installing of applications ("**Concept**") developed in pursuance of the action plan for development of competition in certain sectors of the Russian economy ("**Road map**")¹.

According to FAS Russia, the Concept meets the objectives of competition development, as well as consumer interests' protection. It also ensures national interests in developing information and knowledge society and competitiveness of the Russian information, as well as communication technologies at the global level.

While developing the Concept, FAS Russia took into account practice of considering cases on violation of antimonopoly legislation and approaches to analysis of barriers to market entry, tested in practice in IT and other industrial sectors. As shown in the [Google/ Yandex case](#), application pre-installation is an effective channel for attracting customers to software products.

It is used by developers of global operating systems on a priority basis. In this regard, it is very difficult for Russian developers to enter the existing market and compete with the owners of such global operating systems.

As the Head of the Department for Regulation of Telecommunications and Information Technology

of FAS Russia, Ms. Zaeva, noted, global companies gained competitive advantages to promote their own applications and services using the product binding practice. As the official stressed, consumers' inability to remove the pre-installed applications enhance these competitive advantages.

Substance of the Concept

The Concept establishes requirements to end connection equipment for the customers:

- (i) to have pre-installed, home-produced software products of similar functionality, AND
- (ii) to ensure the possibility of complete removability of pre-installed programs, except for service programs that ensure the functionality of the equipment.

Consequently, on the one hand, the Concept provides an opportunity for the Russian developers to get into the channel of pre-installation of software products and effectively compete with the products of global companies and, on the other hand, ensures the customers' ability to choose applications that they would like to see installed on their devices.

During the Concept development process, it was suggested to specify equipment categories that should meet the requirements for pre-installation and removability, as well as classification of software to be pre-installed. The following four categories were determined by the regulator:

- (i) Antivirus programs;
- (ii) Web search engines;
- (iii) Geolocation software;
- (iv) Email exchange programs and messengers.

¹ Order of the Government of the Russian Federation No. 1697-P dated August 16, 2018

FAS Russia intends to finalize the Concept in accordance with the proposals made during the debates with the business community and experience of application of the similar regulation in other countries such as South Korea and China. Once the Concept is finalized, it will be sent to the Ministry of Digital Development, Communications and Mass Media of the Russian Federation for further consideration.

Conclusion

Adoption of the Concept might have a positive impact on the Russian developers and enable them to compete effectively with the global developers of operating systems, in the mobile application market.

At the same time, the Concept should consult interests of not only the Russian producers and developers but also other market players such as global developers of IT applications, software, retailers and also end customers, in order to avoid increase in prices and expansion of "grey" import practices.

FAS Russia is currently finalizing the draft Concept in order to ensure that its adoption addresses the existing challenges and does not create new problems for the industry.

We hope that the information provided herein will be useful to you. If you would like to learn more about our [Competition / Antitrust Practice](#), please, [click here](#).

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If you have any questions, please, do not hesitate to contact ALRUD partners



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