

## Yandex vs. Google

**Evgeny Bolshakov & Denis Gavrilov**

*Egorov Puginsky Afanasiev & Partners, Russia*

On September 18, 2015, the Federal Antimonopoly Service of Russia (“FAS”) ruled that Google had abused its dominant position in the market for pre-installed applications on mobile devices with an Android operating system in the Russian Federation.<sup>1</sup> The ruling was affirmed on March 14, 2016 by the Moscow Arbitration Court.<sup>2</sup>

Russia’s largest search engine provider, Yandex, had brought this matter to the attention of the FAS after several major manufacturers of mobile devices and tablets (in particular, Fly, Prestigio, Huawei, Samsung, and HTC) refused to cooperate with Yandex in relation to installation of the Yandex search engine and browser as the default settings. In unofficial comments, each of the manufacturers explained that it refused due to prohibitions and restrictions imposed by Google.

During the investigation, FAS looked at the pre-installed application market on Android devices (Android OS) localized for distribution in the Russian Federation. FAS distinguished pre-installation as a means to distribute mobile applications (which include app stores) from other means, such as independent download of applications and services by mobile device users from websites of developers and third parties. Pre-installed services and applications (installed on mobile devices at the time of purchase) are most commonly used by consumers and, as a rule, are not replaced by other services with similar functions. The FAS found that pre-installation is, therefore, the most efficient distribution channel. In this market, Google, as the developer and owner of the most sought-after app store, Google Play, and having ten times more users than its nearest rival, was found to be occupying a dominant position.

After analyzing the company’s practices, the FAS found that Google was endorsing Google Play. The manufacturers saw Google Play as a consumer’s first and basic need among Google applications and services comprising so-called Google Mobile Services (“GMS”). The GMS package comes with Google search pre-installed as the main (default) search engine. The FAS found that Google Play was tied to the GMS package and that individual components of the GMS package could not be purchased separately. As a result, most Android-based mobile devices sold in the Russian Federation had pre-installed Google applications from the GMS package (including those less popular with consumers) and Google search as the default search engine.

Mandatory pre-installation of Google Play as part of the GMS package was in some cases reinforced by additional prohibitions and limitations. Google prohibited manufacturers seek-

ing to obtain Google Play from pre-installation of any applications competing with GMS applications on Android mobile devices. It expressly prohibited installation of Yandex as the default search engine and the Yandex Browser, and, in some cases, paid a fee from mobile advertising proceeds in return for the prohibition.

Additionally, Google required that any mobile device display on its home screen, in the manner specified by Google, all pre-installed Google applications, including Google Play.

Such practices ensured that the company’s products had maximum reach to raise revenues from mobile advertising, thereby creating preferential conditions for its business activities in the market. The practices raised barriers for Google’s competitors (in particular, Yandex) to access a number of markets, and it primarily blocked Yandex from the search market. The barriers could potentially result in restriction of competition due to a reduction in the number of business entities operating in the product market. The FAS concluded that these facts provided a ground to treat Google’s conduct as an abuse of dominance under Article 10 Part 1 of the Federal Law on Protection of Competition.

As a result of the investigation, a compliance order was issued to Google containing a number of behavioral conditions, including a prohibition against making availability of Google Play conditional upon pre-installation of other Google applications, products and services. The FAS ordered Google to notify users of Android mobile devices sold in Russia (by displaying a notice on the device’s screen) that (1) pre-installed Google applications can be deactivated, (2) the search engine in Google Chrome can be changed, (3) search engines and other applications similar to those in the GMS package can be installed from other providers and (4) an icon’s location on the device’s screen can be changed.

Application of antitrust requirements to the conduct of a dominant firm related to the use of intellectual property was a key issue in the investigation. Google claimed that all of the practices specified in the FAS’s charges amounted to lawful exercise of its exclusive rights to intellectual property, which excluded them from challenge as an abuse of dominance.

Rejecting Google’s argument, the FAS ruled that the applications included in the GMS package could not be treated as a single item of intellectual property, and it considered that each of the mobile applications taken separately, including Google Play, could be an item of intellectual property. The fact that Google may have exclusive rights in each of them did not justify

Google requiring pre-installation by manufacturers of mobile devices, much less prohibition of the use of other parties' applications on those devices, if doing so leads to restriction of competition.

The FAS investigation has been closely watched by both the Russian public and the regulatory authorities of the European Union. Currently, several complaints are pending in the European Commission concerning Google's alleged anticompetitive behavior in relation to Android OS, namely, the functioning of mobile applications specifically developed for that system. It

is expected that the FAS decision may serve as a precedent for the European Union's regulators.

---

<sup>1</sup> Press Release, Fed. Antimonopoly Serv., Google abuses its dominant position on the market of pre-installed application stores in "Android" OS (Sept. 14, 2015), available at <http://en.fas.gov.ru/press-center/news/detail.html?id=39482>.

<sup>2</sup> Press Release, Fed. Antimonopoly Serv., The Court: Google violated antimonopoly legislation (March 14, 2016), available at <http://en.fas.gov.ru/press-center/news/detail.html?id=44968>.



**Evgeny Bolshakov** is Counsel in the Moscow office of Egorov Puginsky Afanasiev & Partners.



**Denis Gavrilov, Ph.D.**, is Counsel in the Moscow office of Egorov Puginsky Afanasiev & Partners. Mr. Gavrilov is also Deputy Head of the Competition Law Department at Kutafin Moscow State Law University (MSLA).