**Monopolists of attic and bedroom: why FAS prosecutes HOAs.**

by Alexey Ulianov

In Wednesday, 15 October, Economical policy Committee of the State Duma approved a draft law which was named “the fourth antimonopoly package” and recommended to assign the bill in the first reading. Though disputes about the package lasted for more than year and the president had have to settle it, meanwhile the Federal Antimonopoly services (FAS) continues to triumph over the small and medium-sized business. At the same time there are at least three government instructions to stop the prosecution of small and medium-sized enterprises with small market shares. It turns out, that the government demands the FAS to decrease the pressure, and on the other hand the fourth package, which doesn’t includes such norms, is introduced to the State Duma.

Meanwhile the FAS authorities declare small-sized enterprises as a monopolist and penalize severely and even more often. The most known is the proceeding of two sole proprietorships from Gorno-Altaysk for the equal price – 50 rubles for rent of trampoline for children. The FAS takes the same proceedings into action every day.

First a car washer from Magadan was fined for “superprofit” of 14 thousand rubles in month; then a cinema from Novosibirsk was penalized for being a monopolist on market of popcorn within the limits of cinema; then an entrepreneur from Elista was declared as an organizer of cartel collusion for asking another entrepreneur to substitute her broken “GAZel”. There are baths, laundries, bakeries, stalls, taxists in the list of pseudomonopolists revealed by the FAS. For comparison: in the USA the smallest figurant’s of antimonopoly proceeding (Transitional Optical company) turnover is $ 800 million (30 billion rubles).

This theater of absurdity is held at background of the fact, that the FAS had accepted all of the largest mergers of last years. It hasn’t done anything with the air ticket prices; the gasoline prices continued to increase after the payment of fines by oil companies (and the fines, running into billions, was paid by the gasoline customers). In the other words the services prefer not to match with the real monopolists.

Nowadays the main object of the prosecution by the FAS is the HOAs horticultural societies and garage cooperative societies. So, the HOA “Gerzena, 10” from Novosibirsk was declared as a monopolist in the market of “services of communication equipment installation” in their own premises and was fined for the rejection to OAO “Rostelecom” of the installation of their equipment. As we can know from the case, the FAS “had authentically adjudged, that the applicant occupied the dominative position on the market of the public utilities within the limits of their own apartment house”. We think in vain, that the HOAs are weak in Russia – OAO “Rostelecom” with turnover more than 113 billion rubles a year can find a justice to the such monopolist as the HOA “Gerzena, 10”.

The HOA “Vokzalnaya, 10” from Novosibirsk was declared as a monopolist on the market of services of using the attic and was fined for the refusal to let in personnel of cellular company OAO “MTS”.

When the HOA “Amur” from Khabarovsk had increased the rent for the lessee ZAO “Redcom – internet”, the FAS revealed, that the HOA was a complete monopolist on even four markets, because the cooperative was formed from four buildings on the Rabochiy gorodok street. So the residents have to pay the fine by themselves. Just as participators of the HOA “Tikhaya ploshad”, which was declared as a monopolist within the limits of the building and was penalized 200 thousand rubles for refusal of prolongation of a contract with a lessee (because of default of payment). As we know, the HOA doesn’t have a right to increase the rent or to break the contract even in the situation of a default of payment. According to Anatoly Lapkin, the chairman of the HOA “Tikhaya Ploshad”, the fine in the end will be paid by the residents: “At the present time, our account is practically arrested and an enforcement order to pay the antimonopoly fine imposed on it. In the other words, funds of residents are going away in the form of fine”.

The HOA from Dzershinsk was fined for a cartel in the form of making a contract with OOO “Reklamnye technologii” for the exclusive right of outdoor advertising on the front of the buildings of the mentioned management company. The sum of the fines is 700 thousand rubles. Despite the fact, that the payments from the residents for maintenance and repair of community property of apartment houses are practically the single source of income, the FAS refused to decrease the fine.

These examples illustrate the typical pretensions of the FAS to the HOAs. Antimonopoly services interference in the relations of the HOAs with lessees, decides how and in whose behalf community property should be used, the terms of letting in the cellular operators and internet providers.

Of course, sometimes management companies in the sphere of communal cooperatives abuse their rights, including limitations of choosing an internet-provider. But the HOAs in contrast to management companies represent the legal interests of dwelling owners, and if the residents will need the presence of cellular operator, then they can make a decision or change a chairman on the next meeting.

This doesn’t mean, that we call the FAS to switch to management companies from the HOAs. For example, a proceeding against a management company “Ecopark Dubrava” (Kazan), which had made a contract with one of the cellular operators, is very similar to the proceedings against the HOAs. It is noteworthy, that according to the FAS the faulf of “Dubrava” is in “not agitating residents for attracting of new cellular operators”. Courts of three instances hadn’t found any violation in “Dubrava” actions and had declared the decision of antimonopoly service as illegal.

Therefore local and regional authorities should improve the situations with management companies. And the FAS could promote the development of competition among the management companies. Meanwhile, the FAS had adjusted a law about the licensing of management companies. This barrier could lead to the situation in many towns, that there would be the only one company, which would be controlled by the mayor. In other words, there would no other options to choose.

The HOAs, as usual, can’t afford to hire experts in Economic or competent in the sphere of antimonopoly practice lawyer. This allows the FAS authorities to earn “points”, “stamping” proceedings against pseudomonopolists. Moreover, practically always the FAS goes to the court of the last resort, using administrative resources. This is a some kind of act of frightening for others: have no deals with us or you should prepare yourself for a long-duration proceeding, which can last for years. And declaring anyone, including the HOAs, as a monopolist within the limits of the building is an absurdity from the economical point of view and an obvious abuse of authority. Then it could come to the situation, that every human could be declared as a monopolist within the limits of his own apartment. And if you are declared as a monopolist you should deign to let everyone to the space. And the FAS would start to penalize the residents for choosing a wrong internet provider or hanging up a wrong poster.

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