Vertical selling products, sharing relevant information’s regarding

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Vertical Restriction: Vertical restrictions arecompetitive restrictions in agreement and treaty by undertakings over anotherone, which can affect the firms, which are being restricted in production, accessing to the trade and distribution process. These restrictions don’t abidethe law that prohibits dominant position showing by a firm within an internalmarket as it affects trades between the member states. These can be consideringas an abuse, which may be a direct, or indirect involving unfair purchase orselling prices, limiting production or other technical advancement in theinternal market. The restriction is done to achieve economic strength by anundertaking by empowering the competitors in by which trade means. Article 102(Ex article 81) of Treaty on the functioning of the European union (TEFU) aimsat preventing the vertical restriction holding on by an undertaking overothers. To establish framework, boundaries of competition between the firms hasto be identified and defined as well. Market definition does the same, which iscompletely different from what we usually define as selling field.

It ismandatory to frame by the commission, which involves preventing the verticalrestriction. Relevant product market explains what are the rightful information’sregarding the products that are interchangeable among the firms or consumers. The region or area in which the trade and distribution is being done affectsthe rules governing this restriction prevention and the extent with which anundertaking can empower their competitors is different for different areas andis defined as geographic market. The competition should be homogenous in allway including production process, selling products, sharing relevantinformation’s regarding the products and so on. Article 101/102 of TEFU: European union is not ableto take action like

imprisonment of the member state and also intervention isprohibited while TEFU is investigating the vertical restriction in any memberstate. The aim of the article 101/102 is to provide transparent markets and doremedy when some undertaking has restricted other. One of vicious thing tofocus on is economic welfare of the consumers.

Article 101 says that ifrestriction is beneficial to the consumers and not affecting all of the competitors, then it can be performed and undertaking has not undergone into any inspectionregarding the restriction and respective remedies. Also, exemption of theagreement to minor holding 15% of relevant market together is acceptable. Also, in some cases, not a substantial part of the competition can be eliminated. Thesame laws are applicable to US antitrust and article 101 centered on antitrustissue when an undertaking breaks an agreement made within the market whereasarticle 102 deals with abuse of competitors by an undertaking showing dominancein all aspects.   Google-Yandex case: TheFederal Antimonopoly Service (FAs of Russia) initiated a case against Googleunder antimonopoly law for abuse of dominant position in the market in February2015 after the application of the company “ Yandex”. Until June 2015, the case was dealt with under article 14 (same as article 101 of TEFU inRussia) of the Competition Act as an unfair competition. On June 1, FASadditionally qualified the case against Google under article 10 (same asarticle 102 of TEFU in Russia) of the Law “ on protection ofcompetition”-abuse of dominant position.

The essence of the claims of “ Yandex” to Google “ Yandex” considered that Googledictates its terms to manufacturers of mobile devices based on the operatingsystem Android. Afterwards, the company applied to FAs in 2014

that Googlebanned the preinstallation of all Yandex services on mobile devices Fly, Explayand Prestigio. Initially, Google positioned Android operating system is open andfree, so it became the main mobile platform in the world as well in Russia. However, at the time of the application of " Yandex" to FAs, theoperating system Android was an actually closed one. For example, access to keycomponents of the platform smartphone manufacturers could get only on Google'sterms such as the manufacturer could not install the most popular app storeunder Android Google Play, if not they have to install all the otherapplications from Google Mobile Services and will not make Google the defaultsearch. In some cases, Google has imposed a ban on mobile device manufacturersto collaborate with other competitor companies and developers of competingapplications: Yandex made a comment, as " Many manufacturers are eager to cooperatewith us, as our services are popular with users, but due to restrictions inagreements with Google, the possibilities of partnership are limited However, it is our understanding that, in recent times, even such limited cooperation isunder the threat of a total ban.

Recent vivid examples are Explay."" Yandex" noted that linking Google OS Android with itsthird-party services reduced the motivation of users to download alternativeapplications, which also limited competition. Commenting on the application, Yandexstated that Google should not prohibit mobile device manufacturers frompreinstalling the services of other companies on Android. On February 20, 2015, FAs filed a case against Google, and then onMarch 6, Alliance FairSearch (16 companies including Nokia, Oracle, Microsoft, etc.

) supported “ Yandex” in the antimonopoly case against Google. OnJune 2015 FAs deployed this case as “ abuse of dominant position”. On September 14, 2015, FASrecognized Google as a violator of the competition law and was guilty ofabusing its dominant position in the market of preinstalled Android app stores. According to the FAs decision, Google is insisted to not to prohibitthe pre-installation of competitors’ applications by manufacturers who want toinstall Google Play and should not provide only a single package. Also, not toinsist the competitors to use Google’s default search.

FAS has ordered Google to fix violation by making corrections inagreements with manufacturers of mobile devices issued in Russia, and also tonotify all users of mobile devices on Android about possibility of deactivationof preinstalled Services and installation of alternative applications thatmatch the functionality, the possibility of changing the search in the browserGoogle Chrome by the installation of a different search widget. Google’s lawsuit against FAs was announced on November 17, 2015 in away that challenged the decision of FAs and filed a lawsuit with the MoscowArbitration Court on December 10. On February 5, 2016, the arbitral tribunalgranted Google’s application to review the case in closed mode, and also agreedto involve “ Yandex” in the trial as a third party. On March 14, 2016, the arbitral tribunal recognized the decision of FAs as binding the sale ofgoods to producers by the subject occupying a dominant position, theacquisition of which is necessarily taking into account its uniqueness, withthe implementation of other applications and considered the competition as anindicative of the limitation of competition.

From the decision of the arbitral tribunal, the arbitration confirmedthat some Google agreements with manufacturers indicated, in respect of whichparticular competitors, prohibitions and restrictions on the placement of applications, in some cases Google materially stimulated the producers to establish this kindof conditions. Google's argument that consumers could install the necessaryalternative applications on their own and it did not change the fact that therights of competitors were initially violated. Google also argued that the MADA (Mobile Application DistributionAgreement), which the company had concluded with manufacturers to preinstallapplications, was licensed and intended to transfer intellectual rights, respectively, to Antimonopoly legislation is not applicable to it.

However, theCourt concluded that the MADA contracts are mixed (regulate the issues ofsupply, distribution and introduction of the product, with restrictiveconditions in the latter part), and therefore must conform to the establishedantitrust Regulations. In addition, another type of Google agreements — RSA(revenue Share Agreement) — is with Google Ireland, which is not the trademarkholder of the GMS, and therefore such contracts are not licensed. On August 17, 2016, Google lost the court in second instance. TheCourt of Appeal left the decision of the Court of First instance in force, confirming the legitimacy of the decision and regulations of FAs Russia andrecommended to be executed by Google in its entirety as prescribed.

According to FAs, Google had tosend a message to all users of Android operating systems before August 29, 2016about the possibility The use of third-party search engines, as well as thedeactivation of pre-installed applications. In addition, FAS has fined Googleof 438 million rubles and on

August 29, a counter-claim from Google against FAswas filed with the Moscow Arbitration Court, presumably the reason for thelawsuit was an attempt to challenge the imposition of a Faso fine fornon-compliance with the Antimonopoly Law. Also, on September 2, 2016, thecompany filed a petition to the Federal Antimonopoly Service with a request toextend the terms of execution of the orders for a period of 1 to 12 months. Thepetition was reviewed and the official refusal to extend the deadline for theexecution of the Order was published on 13 September. Google was forced tocomply with the terms of the resolution and made edits to the software, whichwas reported to all users of the Android operating system on September 29through system notification of the possibility of using third-party searchengines, as well as the removal. On October 25, 2016, Yandex filed apetition to join the case against FAs as a third party. The arbitration Court considered the request, while denying Yandex theinvolvement in the case. In November 2016, as the deadlineassigned to FAs, Google Inc.

And Google Ireland Limited had not complied withthe regulations; the Office issued an order to bring to administrativeresponsibility both campaigns in the amount of 500 thousand rubles each. In December 2016, FAs reinstituted administrative proceedings (article 19. 5 of the Codeof Administration) for inaction by Google to implement measures aimed atforming a competitive environment in the field of information technology. On April 17, the Cassation Court approved a global agreement betweenFAs and Google and on 25 April 2017, FAS discontinued administrativeproceedings against Google for failure to comply with the service'srequirements, as a global agreement was signed.

Google made settlement with FAS agency in the antitrust case. Google has hada fine of 7. 8 million Dollar imposed by FAS. It accounted to 9% of Google’srevenue in Russia during the year of 2014. According to the agreement, Googleshould no longer demand exclusivity of its applications on Android devices inRussia, and also should not restrict the pre-installation of any competingsearch engines and applications including the Android home screen. GoogleSearch should not be the only search engine and must allow third parties toinstall their own search engines. Also, Google had to develop a new Chromewidget for Android devices by replacing the standard Google search widget onthe home screen with a new “ choice screen” when it gets launched. The aggrementhas got approved within 60 days.

Followed that, other countriesstarted investigation on Google’s antitrust behavior. As a result, they foundout some anti-trust issues against Google like demanding its consumers toinstall Google apps on Android OS in an effort to be competitive with itscompetitors and it defended against all of itMicrosoftcase: The European Commission opened a case under article102 of the TFEU after a lawsuit filed in December 2007 from the Opera SoftwareASA, a Norwegian web browser manufacturer who believed that Microsoft had usedits dominant position in the market Client operating systems by associatingInternet Explorer. TheEuropean Commission in the position considered that such binding of the clientoperating system directly violate the provision of article 102 of the TFEU, thus highlighting the four criteria 1. Linking andrelated items are two separate products; 2. Theobligation concerned is dominant in the market of related goods; 3.

Theobligation concerned does not allow customers to obtain a binding productwithout a related product. 4.

Bindingentails the collection of competition. Operatingsystem-a software product that allows the computer to function fully, allowingthe user to use the computer on which such software is installed, also run anduse special Application software products (such as Media Player, text editor andso on). The Windows operating system developer, which is Microsoft, covers theworld market share of the PC operating systems at a rate of 90% and itmaintained such a high market share over the past 10 years. The Commissionconsidered, for reasons of supply and demand, the operating system PC and webbrowser are versatile and separate products. Before the release of Windows 7, linking Internet Explorer to Windows was both technical and Commissiontentatively considered to be a liability except for the market for Web browsersand that linking gave Internet Explorer an artificial Distribution benefitsthat could not be mapped to other Web browsers. By associating InternetExplorer with Windows, Microsoft has ensured the ubiquity of Internet Exploreron computers around the world, as it was in Windows. There are two main channels for thedistribution of web browsers according to the statement of objections. Thesetwo channels are distributed through the OEM and downloaded over the Internet.

According to the Microsoft licensingmodel, OEMs must license Windows with Internet Explorer Pre-installed, andinstall an alternate Web browser, but only in addition to Internet Explorer. The evidence in the Commission’s dossier showed that OEMs who pre-installedWindows almost never distribute competing web browsers. Non-Microsoft webbrowser cannot be installed in

any windows client computer of the top ten OEMmanufacturers in the United States and the EEA. Generally such agreements couldoccur in any case, but with Internet Explorer, there was an exception because ofothers applications installed in third-party web browsers in addition toInternet Explorer. For many OEMs, customer support is the core value of thebusiness.

Asfor the download via the Internet, the analysis in the statement of objectionsshowed that the alternative channel, despite its importance for thedistribution of web browsers does not compensate the artificial distributionadvantage of Internet Explorer in Result of linking to Windows. In order forthe distribution mode to be successful, vendors of competing browsers mustfirst overcome the inertia of the users and persuade them not to be limited tothe pre-installed Internet Explorer. Downloading a new Web browser thusrequires an active solution from a user who should be aware of the existence ofthis alternative product and then search, select and install such a competingweb browser. Aconsumer survey conducted on behalf of the Commission showed that more thanhalf of Windows users and about two-thirds of Windows users with InternetExplorer as their primary web browser did not download Web browsers from theInternet. All Windows users who have never or only once downloaded a Webbrowser were also asked during the survey why they did not download Webbrowsers or, for those who downloaded only once, why they do not do it moreoften. 55% of those users said that there was no need to download Web browsers, 31% did not know how to install or download the software, 15% answered that theyreviewed downloading or installing software as hard or complicated, 8% fearedsecurity risks and 7% did not know that they could download a Web browser.

Thesurvey confirmed that there was a significant lack of information fromconsumers.

To sum up, 84% of Windows users who used to have been using InternetExplorer as their primary web browser never used another web browser on theircomputer because they were unaware of other options, or because they didn’tWant or do not know how to download. Anenterprise survey conducted on behalf of the Commission shows that theinformation deficit is not limited to consumers only. The Commission hadpreliminary concluded that, as a result of binding, the market share ofInternet Explorer remained much higher than that of its competitors, althoughit could not be regarded as an excellent product compared to its maincompetitors. In fact, the Commission came to the preliminary conclusion thattying allowed Microsoft to maintain its market share, despite the fact that ithas not improved neither Internet Explorer 7 nor previous versions for manyyears, and it seemed to hold The superiority of their major competitors, particularly in the Firefox Web browser. Theubiquitous spread of Internet Explorer through Windows has also been previouslyfound to create a network that affects Internet Explorer. Depending on the time andresources, web designers and software developers tend to develop their productfor a Web browser that gives them the greatest potential audience, namely thatof Windows users.

In the statement of objections, theCommission also provisionally concluded that linking Internet Explorer withWindows could strengthen the position of Microsoft in the client PC operatingsystem market. The applications that were previously only available on computerOS are available on the all form

of web browsers in Android OS including e-mail, spreadsheets, or word processing applications. In the statement of objections, the Commission concluded that by associating web browsers with its ownoperating systems, Microsoft was trying to confront this threat becauseInternet Explorer had its own way of interpreting Web standards and usedtechnologies such as ActiveX, which are only available in Windows. As InternetExplorer is only available for Windows, its written applications did not workin non-Microsoft OS.