

# Kluwer Competition Law Blog

## Apple Inc. vs Russian antitrust authorities: the legal battle is starting soon

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### *The plot of the case*

Two weeks ago, Apple Inc. filed a lawsuit against the Federal Antimonopoly Service (FAS). The court hearing is scheduled for the 18<sup>th</sup> of January 2021 at the Commercial Court of Moscow city. The reason for such legal action is the fact that, at the end of August 2020, the FAS issued an order to the American company to eliminate the relevant violations in connection with the complaint of Kaspersky Lab (KL). Moreover, the FAS recognised Apple Inc. as a violator of antitrust laws.

The case was initiated in 2019 at the [request](#) of KL, which accused Apple Inc. of creating obstacles to the distribution of its parental control application «Kaspersky Safe Kids» on the iOS mobile platform created by Apple Inc.

KL alleged that Apple Inc. blocked the placement of the updated version of the application «Kaspersky Safe Kids» in the App Store, simultaneously launching a similar application, namely «Screen Time».

### *What are Apple Inc.'s violations?*

[According to the FAS](#), the offence on the part of Apple Inc. was expressed in the fact that, from October 2018, this company followed a policy to limit the tools and capabilities for developing parental control applications, as a result of which most of the functionality of the third-party applications was lost.

As previously stated, the situation was aggravated by the fact that the implementation of such a time policy coincided with the release of Apple's Inc.'s own pre-installed «Screen Time» application, which has functionality similar to that of parental control applications.

The FAS Commission found that Apple Inc. abused its dominant position in relation to developers of mobile parental control applications and limited competition in the market for distributing applications for mobile devices running the iOS operating system.

The violation was also expressed in the fact that Apple Inc. reserved the right to reject and not allow any third-party application to the App Store, even if it met all of Apple Inc.'s requirements.

### *The legal background of the case*

Apple Inc. argued that its above-mentioned actions fall under the exception established by Article 10 of the Russian Law on Protection of Competition, which sets forth the rules as to the prohibition of abuse of a dominant position by an economic entity. The requirements of this article do not apply to actions which involve exercising exclusive rights to the results of intellectual activity and equated means of individualisation of a legal entity, means of individualisation of products, works or services (paragraph 4 Article 10).

Article 1225 of the [Civil Code of the Russian Federation](#) (Civil Code) stipulates that the results of intellectual activity which are granted legal protection (intellectual property) include, inter alia, programs for electronic computers (computer programs).

In turn, in connection with Article 1270 of the Civil Code, the author, or another copyright holder, has the exclusive right to exploit the work in any form and by any means not contrary to law.

Thus, the exercising of exclusive rights to computer programs includes actions to use the computer program or actions to dispose of exclusive rights to the computer program.

The FAS indicated that, when distributing applications for devices running iOS, developers do not use, reproduce, distribute, and rework the App Store. In other words, the developers do not exploit the product within the meaning of Article 1270 of the Civil Code.

It was indicated that Apple Inc. provides developers with services for distributing applications for devices running iOS. In particular, Apple Inc., rather than application developers, checks and places third-party applications in the App Store, and provides tools to ensure compatibility of application programs with Apple Inc. programs by providing program codes, etc., without affecting Apple Inc. programs, including without the possibility of making changes to Apple Inc. programs.

The FAS concluded that the exception provided for in part 4 of Article 10 of the Law on Protection of Competition does not apply to actions that go beyond the exercising of exclusive rights.

Even more, as established in Resolution No. 10-P of the Constitutional Court of the Russian Federation by virtue of the constitutional principle of justice, the freedom recognised for persons engaged in entrepreneurial and other economic activities not prohibited by law, must be balanced by the requirement of a responsible attitude towards the rights and freedoms of those affected by the above-mentioned economic activities.

The Constitutional Court stated that the provisions of the antimonopoly legislation, in particular paragraph 4 of Article 10 of the Law on Protection of Competition, cannot be interpreted and applied as completely removing the conflict of interests of trademark holders and other participants in legal relations regarding goods on which the relevant trademarks are placed, as well as the associated possibility of assessing the behaviour of the parties as unfair due to the mechanisms of ensuring the balance of constitutionally-significant values.

*What's next?*

The litigation procedure will soon start, and the legal community is looking forward to seeing the outcomes of this case.

Taking into account the current court practice, it is highly likely that the decision on Apple Inc.'s claim will be made in favour of the FAS.

It is also possible to conclude a settlement agreement, as was the case with a similar situation involving Google. In August 2016, the FAS, following a [complaint](#) from Yandex, fined Google 438 million rubles for preventing the installation of applications and services on Android devices, and in November of the same year, the service issued two additional fines of 500,000 rubles for non-compliance with the order. Google tried to challenge the decisions but without success. As a result, the company entered into a [settlement agreement](#) with the FAS, agreeing not only to pay the fine but also to change its agreements with manufacturers.

For late execution of the FAS order, Apple Inc. will face the above-mentioned fine of up to 500,000 rubles, following which the sanctions can be extended to a fine of 1% to 15% of revenue in the market where the offence was committed.

It should be noted that the company is currently having legal disputes in other jurisdictions. The Italian Antimonopoly Service fined Apple Inc. 10 million euros for [aggressive and misleading actions](#) in the sale of the iPhone. The company has stated that a number of iPhone models are water-resistant, and can withstand depths of 1-4 metres for half an hour. This information is misleading consumers, according to authorities.

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