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ANTIMONOPOLY REGULATION OF THE ACTIVITIES OF DIGITAL COMPANIES AND THE OPERATION OF INTERNET PLATFORMS IN RUSSIA AND IN THE EUROPEAN UNION

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The subject. The article examines the antimonopoly regulation of relations arising in the course of the activities of modern companies that ensure the operation of certain digital online platforms. The development of digital information technologies has led to the emergence of various new forms of economic and social communications. These forms include, among other things, digital technological platforms operating on the Internet and representing a kind of platform within which information interaction of various subjects takes place, related to the implementation of their professional activities or interpersonal communication. In this regard, the law faces the task of ensuring effective regulation of relations that are formed in the context of the development of electronic market systems and digital services. An important role in this should be assigned to antimonopoly legislation, since the possession of large data sets and the latest information technologies can lead to companies trying to use their resources to violate the rights of other subjects.

The aim of the study is to determine the legal essence of the Internet platform and to identify possible features and limits of antimonopoly regulation of the activities of companies that ensure their work, including taking into account the current Russian and foreign legislation and law enforcement practice in this area.

Research methods are formal – logical interpretation, systemic method and comparative analysis.

The main results, scope of application. Digital technological platform is a complex phenomenon that includes various results of intellectual activity, both subject to and not subject to legal protection, including computer programs, databases, as well as technical means, ensuring the functioning of the digital platform. In addition, the analysis of Russian antitrust legislation and the theory of civil law led to the conclusion that the existing exemptions from the scope of the rules on the prohibition of monopolistic activities established for holders of exclusive intellectual rights could significantly complicate the application of antitrust rules to digital companies that are copyright holders results of intellectual activity that are part of the Internet platform. At the same time, the currently established law enforcement practice actually follows the path of limiting these antimonopoly immunities, despite their legislative consolidation, which is hardly justified. On the other hand, the existence of broad antitrust immunities is also unfounded. In order to bring the antimonopoly legislation in line with the needs of the emerging digitalization relations antitrust immunities are subject to limitations.

Conclusions. There are new criteria for determining the dominant position of digital companies in the relevant markets, which include network effects, large user data and significant barriers to entry into the market.

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1. Introduction

In modern conditions, information technology is beginning to play an increasingly important role in the economic and social life of society. The development of information and telecommunication networks and electronic means of data transmission contributes to the transformation into a digital form of various social relations that develop both in the process of entrepreneurial activity and in everyday life. Electronic trading platforms and services are entering the market, artificial intelligence is being created, large digital platforms are being formed that combine arrays of various data. Digital technologies are actively penetrating into the financial sector [1].In a certain sense, the concept of the digital economy even "absorbs" public administration: this means that governance begins to be built according to the same canons as the private sector [2, p.20]. The active digitalization of economic relations has led to the emergence of such terms as "platform economy" or "sharing economy", which is characterized by the absence of a hierarchy in its organization: decision-making is collective [3, p.5]. In this regard, the law faces the task of ensuring effective and balanced regulation of digital relationships emerging in society, including by enshrining in law various concepts, categories necessary for the formation of legal relations in electronic form, such as big data, artificial intelligence, system distributed registry, virtual and augmented reality technologies, etc. At the same time, in the sectoral aspect, the set of such categories will differ and be determined by sectoral characteristics. Among the various groups of norms governing relations in the field of digitalization, antitrust law plays an important role, since the high-tech markets that are currently emerging tend to monopolize. An analysis of their dynamics led to the conclusion that the main reason for the development of a monopoly in the digital market space is the rapid formation of goods and markets, while monopolies and a high degree of capital concentration are the state that is inherent in the modern digital economy (quoted from: [4, pp.27-28]).In such conditions, the antimonopoly authorities will have to actively analyze collective (group) behavior patterns, business strategies, network effects, price algorithms, robotization of business processes for the presence or absence of an anti-competitive effect [5, p.264].This state of affairs should be taken into account when formulating a program for the further development of antimonopoly legislation.

It should be noted that the digitalization of public relations contributes to the fact that foreign and Russian legal science and law enforcement practice are faced with both new forms of manifestation of traditional violations of antimonopoly legislation, in particular monopolistic activity and unfair competition, and with such actions that have not been previously committed and anticompetitive the effect of which is becoming apparent at the present time. The specificity of monopolistic activity at the present stage is the use by the subjects of their dominant position associated with the possession of arrays of big data, various information technologies that allow the formation of certain information systems, in particular digital platforms, as well as the possession of exclusive rights to the results of intellectual activity necessary to ensure the operation of these information systems and the existence of virtual markets. A new phenomenon in public life is digital technological (online) platforms (digital platforms), which are a set of technological solutions in the digital space of the Internet based on a combination of software algorithms (computer codes), computer technology equipment, cloud computing, large databases, and also other digital technologies (blockchain technologies, data analytics, artificial intelligence, etc.) [6, p.25]. Digital platforms are a kind of typical organizational macro-unit in the modern digital environment, within which a special interaction mode is formed - an ecosystem that claims an independent legal status and, accordingly, a legal regulation regime [7, pp. 37-38]. Currently, studies appear in the legal literature that characterize various aspects of the work of digital companies associated with the use of Internet platforms, including in certain areas of the economy and social life [8-11]. At the same time, it seems that the activities of companies that ensure the functioning of digital technological platforms,

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especially in relation to the field of antimonopoly regulation, continue to be a topical subject of scientific research due to insufficient knowledge. Some of the problematic issues in the functioning of such platforms are the lack of transparency regarding the use of platform-generated information by their operators, issues of data ownership, use and access to them, which affects the provision of proper and balanced contractual relationships between service providers and business users, as well as observance of user rights [12, p.42].This necessitates the characterization of such a category as "digital platform" or "technological platform", as well as an analysis of the possibility of applying antitrust laws in relation to modern digital companies acting as operators of such platforms.

2. Modern European and Russian practice of applying antimonopoly legislation in relation to companies that ensure the operation of digital platforms

Digital platforms currently include search and information systems (Google, Yandex), e-commerce platforms (AliExpress, TMall, Europages), social networks (Facebook, Instagram[1]), messengers (WhatsApp, Snapchat), payment and settlement services (Alibaba, PayPal) and a lot others. Some authors propose to single out transactional, innovative, integrated and investment platforms [7, p.38]. The main direction of their activity, as a rule, is electronic mediation between various categories of entities, including sellers and buyers, users of social networks, performers and consumers of services. At the same time, large digital companies that organize the work of the relevant Internet platforms, due to the possession of modern technologies and computer programs, the accumulation of large user data, have serious prerequisites for increasing their influence in various areas of social life, as well as occupying a dominant position in a particular virtual market. One example of such monopolization is the behavior of companies that ensure the functioning of social networks and video hosting. Thus, the activity of such well-known social networks as Facebook, LinkedIn[2], WhatsApp and Instagram was the subject of antimonopoly control in a number of foreign countries. The study of the functioning of digital companies that ensure the operation of the relevant social networks allowed experts to conclude that such companies, acting as a strong point in relations with users, can abuse their position when determining the conditions for accessing the network and using personal data of users in the user agreement. The imposition of unfavorable contractual conditions for the collection and processing of personal data is due to a utilitarian goal - the desire to accumulate large amounts of data about users, which gives a huge competitive advantage and ultimately enhances the market power of the social network [13, pp. 40-44, 77-81]. This is expressed in the fact that by using the information received, the social network can increase the number of users, which causes the so-called network effects, i.e. increasing the attractiveness of this social network and an even greater increase in the number of its participants, as well as advertisers, and forcing existing competitors to leave the market. The decision of the Federal Cartel Office of Germany (Bundeskartellamt) adopted in 2019 in relation to the American social network Facebook, which, according to the agency, occupies about 90% of the national social network market, became a precedent in this regard. The anti-competitive conduct of the digital company was charged with imposing unfair terms on contracts with users and collecting user data from Facebook subsidiaries such as WhatsApp and Instagram, as well as third parties, and further using such data. At the same time, data collection was carried out, including without the knowledge and consent of users [14, pp.76-77].

Bargaining power is particularly difficult to assess when firms offer free services to consumers in exchange for data. However, the free offer can be part of a profit-maximizing strategy to attract price-sensitive consumers and then gain bargaining power over other groups of participants. Market power can also be exercised through non-price aspects of

[1] Social networks Facebook and Instagram owned by Meta Platforms Inc. are recognized as extremist in Russia and banned on the territory of the the Russian Federation.

[2] Blocked on the territory of the Russian Federation for violating the terms of storage of personal data of Russian users established by Russian legislation.

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competition (firms offer inferior products or services, impose large amounts of advertising, or even collect, analyze or sell excessive consumer data) [15, p.231]. In this regard, the serious attention of the antimonopoly authorities has now begun to be caused by the merger of social networks, as well as various information resources, which is a strategy for increasing market power through the accumulation of large user data. In particular, the antimonopoly authorities of Europe and the United States at various times analyzed the merger of such social networks as Facebook and Instagram, Facebook and WhatsApp, as well as the acquisition by Microsoft of the professional social network LinkedIn. And if the first two transactions did not cause any claims from the antimonopoly authorities, then when agreeing in 2016 on the transaction between Microsoft and LinkedIn, the European Commission formulated some conditions related to the need to ensure competition in the relevant market. In particular, companies were instructed to ensure that manufacturers of computers and mobile devices do not pre-install the LinkedIn application on devices with the Windows operating system and do not create barriers for competing professional social networks to access the Microsoft Office family of products, as well as Microsoft Office mobile applications [14, pp.81-84].

There are other forms of anti-competitive behavior on the part of digital companies. For example, Google has been fined several times by the European Commission. The fines amounted to billions of euros. Among other things, the company was accused of abusing its dominant position in the Internet search market by improperly favoring its own sales service, Google Shopping, by misrepresenting search results for various products based on consumer queries. It was found that the offers of the main competitor Google Shopping were given out on average on the fourth page of the search, and the offers of other competitors even further, which created an unreasonable competitive advantage for the company. In another case, a German competition authority concluded that a company that dominates the accommodation booking services market and owns the well-known Booking.com digital platform restricts competition by prohibiting hotels from offering cheaper services on other online booking services, as well as from displaying lower prices on their own websites. The highest court of Germany later partially supported this position, noting that the only violation is the ban on placing cheaper offers on other booking services [16, p.161].

In Russia, the antimonopoly service also has to analyze various actions of large companies that have digital platforms with significant information resources, including mergers. So, for example, in the course of considering an application for consent to conclude an agreement on joint activities by merging the assets of Yandex and Uber, the antimonopoly authority was faced with the need to assess the impact of large digital aggregator platforms on the state of competition in the market for the provision of information interaction services for taxi drivers and passengers. As a result, the application for the transaction was approved and the consent of the antimonopoly body of the company was received, however, in the order issued together with the positive decision, the companies were obliged to ensure that the passenger receives information about the trip in the interface of the mobile application, with which the user places an order for taxi transportation, as informative as possible. . First of all, we are talking about the various characteristics of the service provided, including data on the driver and the name of the partner-carrier. In addition, organizations were obliged not to establish prohibitions for drivers and passengers to use mobile applications of other companies that provide information interaction services for taxi drivers and passengers[3]. According to the opinion expressed by representatives of the Federal Antimonopoly Service of the Russian Federation, if the effect of the consolidation of platforms does not lead to the fact that the combined aggregator will be able to determine the conditions for the provision of transportation services in the relevant market, then this cannot be regarded as a basis for recognizing the presence of coordination of economic activities or cartel

[3] Order of the Federal Antimonopoly Service dated November 24, 2017 No. АГ/82030/17. Available at: https://fas.gov.ru/documents/ag-82030-17 (accessed 21.01.2021).

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collusion [17, p.9]. On the contrary, when considering a similar application for approval of a transaction for the acquisition by Yandex of a taxi service called Vezet, the antimonopoly authority found that the transaction would lead to an increase in the concentration of the market for information interaction services for passengers and taxi drivers (the market of taxi aggregators), to a narrowing choice of taxi drivers and passengers and, consequently, the consequences of the transaction may adversely affect competition in the relevant market. As a result, the Federal Antimonopoly Service of the Russian Federation denied Yandex's application[4].

In connection with the foregoing, it should be noted that in modern conditions, such criteria for the presence of the market power of a digital company as the possession of large user data, the presence of significant barriers to entry into the relevant market, the dependence of the commercial attractiveness of business users on the ability to access the relevant Internet platform are increasingly visible due to the so-called scale effect or network effect. These aspects need to be taken into account by the antimonopoly authority in the context of evaluating a company's behavior for compliance with antitrust laws.

3. Definition of a digital technological platform in the law of the European Union and Russia

For the purposes of further analysis of the antimonopoly regulation of the activities of online platform operators, it is necessary to give a legal description of such platforms. Despite the opinion expressed about the lack of certainty of the term "platform" itself to characterize the remote electronic interaction of subjects or the processes of consolidating some resources, knowledge, skills, information and competencies [18, pp.13-82], this must be done, since the category "digital platform" or "online platform", as well as a number of similar terms, have become firmly established in the modern economic and regulatory lexicon. For example, the German Antimonopoly Office proposed a definition according to which platforms are understood as all Internet companies providing "intermediary services that allow direct interaction between two or more different user groups that are connected by indirect network effects" [3, p.7]. European Commission documents characterize online platforms as software tools that offer bilateral or even multilateral markets where providers and users of content, goods and services can meet[5].The ability of technological platforms to create and shape new markets, challenging traditional ones, as well as organize new forms of participation or business, benefit from "network effects", use information and communication technologies for instant and easy access to their users[6].

The activities of online platforms are considered by the European Union primarily in the context of the provision of intermediary information services and are regulated by various regulatory documents, including the Directive of the European Parliament and the Council of the European Union 2000/31 / EC of June 8, 2000 on electronic commerce. At the same time, this Directive distinguishes between information services, which consist in the transfer of information provided to an information intermediary (information service provider) to third parties or in simply providing access to it to such persons, as well as caching (transmission and short-term storage of transmitted information) and hosting (storage of information provided by recipients of services), while determining the grounds under which the information intermediary should not be responsible for the content of the transmitted or stored

[4] The Federal Antimonopoly Service of Russia denied Yandex the purchase of taxi aggregators of the Vezet group. Available at: https://fas.gov.ru/news/29967 (accessed 21.01.2021).

[5] Commission Staff Working Document Online Platforms, accompanying the document "Communication on Online Platforms and the Digital Single Market", May 25, 2016. Available at: https://ec.europa.eu/digital-single-market/en/news/commission -staff-working-document-online-platforms (accessed 21.01.2021).

[6]Communication from the Commission to the European Parliament, the Council, the European economic and social committee and the Committee of the regions «Online Platforms and the Digital Single Market Opportunities and Challenges for Europe», May 25, 2016. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016DC0288 (accessed 21.01.2021).

information content. The general rule here is that the exemption from liability of information service providers applies only to situations where their activity is limited to a technical operational process, is automatic and passive, which implies that the information service provider cannot control the information that is transmitted or stored. On the other hand, if the provider of the information service intentionally modifies the information it transmits, or if the recipient of the service acts under the influence or control of the information intermediary, the statutory limitations of liability relating to the transmitted information do not apply. In order to increase the transparency of commercial relations between business users and e-commerce service providers, as well as between users of corporate websites and online search engines, Regulation of the European Parliament and of the Council of the European Union 2019/1150 of June 20, 2019 on improving fairness and transparency for business users of e-commerce services. This Regulation establishes the requirements for the provision of information on the conditions for the implementation of activities by information intermediaries providing e-commerce services, as well as the rules for access to personal data of business users and consumers provided for the use of these services.

As for Russian legislation, in accordance with paragraph 2 of the Decree of the Government of the Russian Federation of April 30, 2019 No. 529 “On approval of the rules for providing subsidies to Russian organizations to reimburse part of the costs of developing digital platforms and software products in order to create and (or) develop the production of high-tech industrial products”, a digital platform is understood as a set of information technologies and technical means that ensure the interaction of business entities in the industrial sector. At the same time, an analysis of the activities of companies - aggregators organizing the work of digital platforms, allows us to conclude that more accurately, from a meaningful point of view, a digital technological platform is defined in Article 2 of the Federal Law of July 27, 2006 No.149-ФЗ “About information, information technologies and information protection”, where it corresponds to the concept of an information system, which refers to the totality of information contained in databases and the information technologies and technical means that ensure its processing. In turn, Article 2 of this law defines information technology as processes, methods of searching, collecting, storing, processing, providing, distributing information and methods for implementing such processes and methods. A slightly different concept of technology is contained in paragraph 1 of Article 1542 of the Civil Code of the Russian Federation, according to which a single technology is recognized as the result of scientific and technical activity expressed in an objective form, which includes, in one combination or another, objects of industrial property, computer programs or other results of intellectual property. activities subject to legal protection, and can serve as a technological basis for certain practical activities in the civil or military sphere. At the same time, the unified technology may also include the results of intellectual activity that are not subject to legal protection, including technical data and other information. In the legal literature, information technology is also understood as an independent protected or unprotected result of intellectual activity, as well as a complex object sui generis, including both protected and unprotected results of intellectual activity [19, p.89]. According to the Law of the Russian Federation of February 7, 1992 No. 2300-1 “On Protection of Consumer Rights”, the owner of an information aggregator about goods is understood to be an organization or an individual entrepreneur who owns a program for electronic computers and (or) owners of a website and (or) a page of a website in networks "Internet" and which provide the consumer with respect to a certain product the opportunity to simultaneously familiarize themselves with the seller's offer to conclude a contract for the sale of goods, conclude an appropriate contract, and also make an advance payment for the goods by cash or transfer funds to the owner of the aggregator. Thus, the analysis of Russian legislation and the provisions of scientific doctrine gives grounds to consider a digital electronic platform primarily as a complex, complex phenomenon that includes various results of intellectual activity, both subject to and not subject to legal protection, including computer programs,

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databases data, Internet sites, domain names, technical information, as well as technical means that ensure the functioning of the electronic platform.

4. Antimonopoly immunities as a possible problem with the application of Russian competition law to the activities of digital companies

The application of antimonopoly law in relation to companies that ensure the functioning of digital platforms is a rather important and topical issue of modern Russian practice. Certain problems in this regard are caused by the presence of so-called antimonopoly immunities, i.e. exemptions from the scope of antimonopoly regulation provided for holders of exclusive rights to the results of intellectual activity and equivalent means of individualization. In particular, in accordance with Part 4 of Art. 10 and part 9 of Art. 11 of the Federal Law of July 26, 2006 No. 135-ФЗ "On Protection of Competition"[7], the requirements of the relevant articles regarding the prohibition of abuse of dominant position and the conclusion of anti-competitive agreements do not apply to actions or agreements related to the exercise or disposal of exclusive intellectual rights to the results of intellectual activity and equated means of individualization of a legal entity, means of individualization of products, works or services. Such actions and agreements are excluded from the scope of the norms on the prohibition of monopolistic activity[8].The presence in the legislation of such norms is explained by the protection of the interests of right holders. Meanwhile, the question of the necessity and scope of antimonopoly immunities in the Russian literature has been debatable for several years now. Both proposals for the abolition and further preservation of the norms of Part 4 of Art. 10 and part 9 of Art. 11 of the Federal Law "On Protection of Competition", as well as the current version of these norms [21-23]. However, it appears that the existence of such broad immunities could, in theory, make it much more difficult to enforce monopoly prohibitions against companies that operate digital platforms. So, if a digital company is the owner of the protected results of intellectual activity that are part of information technology as the basis for the operation of a digital platform, then actions related to providing access to consumers or business entities to the information contained in the database of such a platform or providing the opportunity to use the software resources of the corresponding platforms, including on the basis of licensing agreements, can be considered, respectively, as actions for the exercise of intellectual rights or the company's disposal of exclusive rights to certain results of intellectual activity (computer program, Internet site, database, etc.). In this regard, the actions of the antimonopoly authorities aimed at preventing and suppressing monopolistic activities on the part of aggregator companies may often contradict the restrictions established by law on the application of antimonopoly rules to owners of exclusive intellectual property rights. It should be noted that, unlike the Russian Federation, the provisions of the antimonopoly legislation of the European Union, the United States and a number of other countries allow its application to actions and agreements with the participation of holders of exclusive rights to the results of intellectual activity and means of individualization in case of violation of antimonopoly regulations by the right holders. Another thing is that the current law enforcement practice in Russia actually follows the path of limiting antimonopoly immunities, despite their legislative consolidation. A fairly striking example in this regard was the legal proceedings under the general name of the antimonopoly authority and the Yandex company against the Google group of companies[9].In this case, the court, supporting the position of the antimonopoly authority, considered the actions of the Google group of companies, expressed in the conclusion of license agreements with mobile device manufacturers to install the Google Play application store, as monopolistic activity, and the companies' arguments about the non-application of antitrust laws to the agreements concluded by it Part 4 of

[7] Further in the text, the Federal Law "On Protection of Competition".

[8] On this issue, see also [20, pp.102-112].

[9] Decision of the Arbitration Court of Moscow dated March 15, 2016 in case No. A40-240628 / 15-147-1984. Available at: http://sudact.ru/arbitral/doc/eGhIIk5Y2i61/ (accessed 21.01.2021).

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Article 10 of the Federal Law "On Protection of Competition" considered unreasonable. However, if there are exceptions expressly provided by the antitrust law from the scope of the norms on monopolistic activity in relation to actions and agreements in relation to intellectual property rights without any exceptions, assessing the actions of the Google group of companies to dispose of the exclusive right to the application store as an abuse dominance looks very controversial[10].

Currently, the antitrust authority is increasingly considering issues related to compliance with antitrust laws by digital companies. So, in one of the cases, the well-known recruiting company Headhunter LLC was found to have violated the rule on the inadmissibility of monopolistic activity due to the fact that, under the conditions it accepted, the use of the site created by the company for posting information about vacancies and searching for candidates for vacant vacancies hh.ru and the contract for the provision of relevant services established a ban on the use of third-party software by users when working with the site, and also blocked entities using such software. In response to the company's arguments about the inapplicability of Article 10 of the Federal Law "On Protection of Competition" to the company's actions to provide access to the information platform due to the presence of antimonopoly immunities established by part 4 of this rule, the antimonopoly authority indicated that such actions go beyond the exercise of exclusive rights to the results of intellectual activity related to the hh.ru website, since these rights cannot be extended to third-party software that is not subject to the exclusive rights of Headhunter LLC. Accordingly, the issues of relations between a party to an agreement with Headhunter LLC and any other right holder regarding the use of this or that software in relation to the resources of Headhunter LLC will go beyond the scope of legal relations under such an agreement[11].In general, the position of the antimonopoly authority in relation to the activities of companies - aggregators of digital platforms is that such activities are considered as the provision of services to ensure information interaction of certain entities, depending on the profile of the relevant platform[12]. Despite the relatively small jurisprudence regarding the evaluation of agreements concluded by the owners of Internet platforms with their customers, such practice still exists. Currently, such agreements are primarily classified as agency agreements[13] or mixed agreements containing the provisions of a license agreement and a service agreement[14].In the legal literature, it is also proposed to consider the relationship that develops between companies - platform operators and persons using their resources, through the prism of a service agreement or an agency agreement [25, p.5; 26, pp. 38-47] At the same time, it seems that the provision of services by digital companies, including agency services, mediating the access of any subject to a digital platform, is a legal form of behavior of the right holder of the corresponding result of intellectual activity, which, from a substantive point of view, is the use of such a result or the disposal of an exclusive right in relation to it. Such a conclusion follows from the fact that, in accordance with Articles 1229 and 1270 of the Civil Code of the

[10] The case eventually culminated in a settlement agreement in which the Google group of companies committed itself to making a number of changes to license agreements aimed at waiving exclusivity requirements for the installation of its applications, as well as taking actions related to providing users with the ability to choose a search engine. "default". See, for example, [24].

[11] Decision of the Federal Antimonopoly Service on violation of antimonopoly law in case No. 11/01/10-9/2019 dated January 23, 2020. Available at: https://br.fas.gov.ru/ca/upravlenie-regulirovaniya-svyazi-i-informatsionnyh-tehnologiy/8e4961ce-3f9c-4b37-9f4b-b2804deeec88/ (accessed 21.01.2021).

[12] See, for example, the Recommendations of the Expert Council of the FAS Russia on the development of competition in the field of information technology and the Expert Council of the FAS Russia on the development of competition in the retail trade "On practices in the use of information technologies in trade, including those related to the use of price algorithms". Available at: https://fas.gov.ru/documents/684828 (accessed 21.01.2021).

[13] Determination of the Supreme Court of the Russian Federation of January 9, 2018 No. 5 - КГ17-200. Access from the legal reference system "Garant".

[14] Resolution of the Ninth Arbitration Court of Appeal dated March 6, 2015 No. 09АП-2062/15. Access from the legal reference system "Garant".

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Russian Federation, the copyright holder can use his work in any form and in any way that does not contradict the law, as well as, at his discretion, allow or prohibit other persons from using such a work. These norms do not contain any closed list of possible ways of using one or another result of intellectual activity. The use of a work in legal literature is usually understood as giving the result of creativity a form suitable or convenient for direct consumption and adapted for launching into economic circulation. The right to use is considered as the ability of the right holder to monopoly perform actions for the commercial operation of the object, bringing property benefits, and to prohibit all third parties from performing such actions without the permission of the right holder [27, p.48]. In this regard, it seems that actions to exercise exclusive rights to the results of intellectual activity and equated means of individualization, in respect of which antimonopoly immunities are provided, may include a variety of conditions established by the copyright holder for users to access such results, including a ban on the use of certain software tools when working with these results of intellectual activity, except for cases of free use of the relevant works provided for by law. Indeed, if one or another action of the aggregator company or an agreement on the conditions for access to the information platform is not considered by the law enforcement agency as a license agreement, i.e. is not qualified as an act of disposal of the result of intellectual activity, but is considered as the provision of a certain service or, in other words, the provision of such a result for its consumption, this does not mean that such actions on the part of the copyright holder are not covered by the term use of this result. Otherwise, it would be necessary to assume the existence of some additional authority of the owner of the result of intellectual activity, in addition to using such a result or disposing of it. However, the current legislation does not give grounds for such assumptions.

It should be noted that the Russian antimonopoly department has made repeated attempts to adapt the antimonopoly legislation to the specifics of the activities of business entities in the digital economy. Thus, he prepared a draft law called the “fifth antimonopoly package”, in the discussion of which state bodies and the legal community took an active part (see, for example: [28-30]). Subsequently, the bill was submitted to the State Duma of the Russian Federation[15]. In this bill, among other things, an attempt is made to extend the norms of a dominant position to entities that own computer programs and occupy a share of more than 35 percent in the market for services provided using such programs, introduces the concept of a network effect, and also proposes to consider any transactions related to in violation of the prohibition of ownership, management or control by foreign entities of more than 20 percent of the shares (shares) in the authorized capital of a person that is a member of the so-called significant economic entity that owns a computer program. Despite the rather large number of comments made during the expert assessment and at various stages of the discussion of the draft law, related, in particular, to insufficient substantiation of the need for certain proposed innovations, the use of legally vague, and sometimes inconsistent with current regulations, formulations, it should be recognized that legislative work to improve antimonopoly legislation, taking into account new digital realities, is an important element of state policy for the development of competition.

5. Conclusions

Thus, at present, we can talk about the emergence of new criteria for determining the dominant position of digital companies in their respective markets, which include network effects, big user data and significant barriers to entry into the market. The existing law enforcement practice indicates the desire of operators of large digital platforms to use their technological and information resources to strengthen their own market power, which in some cases entails a restriction of competition.

In addition, the considerations given in this paper regarding Russian legislation give reason to believe that the actions of companies aimed at providing access to consumers or business entities to the information contained in the database of the

[15] Draft Federal Law No. 745967-7 “On Amendments to the Federal Law “On Protection of Competition”. Access from the legal reference system "Consultant Plus".

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digital platform they have created fall under antitrust immunities, and the current law enforcement practice aimed at actually limiting the existing exemptions from antimonopoly legislation established for intellectual property rights holders, including companies with Internet platforms, can hardly be recognized as corresponding to the literal content of the provisions of this legislation. At the same time, the presence in the legislation of broad antimonopoly immunities is also not justified, since it can contribute to the abuse of the relevant rights by right holders and create obstacles to the development of the digital economy.

To eliminate this situation, it is possible to propose amendments to Part 4 of Article 10 and Part 9 of Article 11 of the Federal Law "On Protection of Competition", retaining antimonopoly immunities, but supplementing the relevant norms with a provision allowing the application of prohibitions established by antimonopoly legislation to holders of exclusive rights on the results of intellectual activity and means of individualization in cases where their actions or agreements create an opportunity to eliminate competition in the relevant market or on other persons as a result of such behavior of right holders, restrictions are imposed that do not correspond to the goals of such actions or agreements.

The digitalization of the modern economy and public life opens, in fact, a new page in the history of antimonopoly regulation, related to the need to ensure the competitive development of digital companies and protect the rights of persons using information resources. The importance of such regulation is difficult to overestimate, since the degree of development and quality of the relevant regulations will have a serious impact on the processes of introducing digital forms of public relations into economic and social reality. At the same time, the extent to which antimonopoly law norms can take into account constantly changing economic realities will largely determine the effectiveness and validity of the practice of applying the relevant norms.

[13] Проект Федерального закона № 745967-7 «О внесении изменений в Федеральный закон «О защите конкуренции» // СПС «КонсультантПлюс».

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