# Overview

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Unlike many other jurisdictions, in Russia, the exchange of information among competitors does not constitute a violation of the competition law as such.

However, if competitors who exchange information engage in any kind of simultaneous anti-competitive behaviour, then such information exchange may be treated as evidence that competitors have an agreement (even verbal) or common understanding (even in the absence of a verbal agreement) related to their anti-competitive behaviour. Notably, the framework for such information exchange (eg, within industry associations or in any other way) is basically of no importance: any information exchange between competitors may be treated as evidence if it entails parallel market behaviour not driven by objective market forces.

Information exchange among competitors which leads to parallel market behaviour not driven by objective market forces may be qualified as either a cartel arrangement or concerted actions (similar to signalling in other jurisdictions) or as a violation of the so-called "catch-all" restriction.

A cartel arrangement is an agreement on price fixing, market division or exercise of any other traditional anti-competitive practices reached between competitors in writing or verbally. Today, cartels are usually formed via a verbal agreement of competitors, which complicates the investigation process. At the same time, enforcement practice has developed so that a range of indirect evidence (eg, information confirming that competitors have had personal meetings, no other reasons which can explain parallels in competitors' behaviour) is usually employed to claim that there is a cartel. Importantly, cartels are unlawful "per se", so there is no need for the antimonopoly authority to prove a de facto negative impact on competition. The mere fact of a verbal agreement between competitors on undertaking any actions that could have a negative impact on competition may be viewed as a cartel arrangement (even in the absence of any practical implementation of such arrangement).

In certain circumstances, information exchange between competitors may be qualified as evidence of unlawful concerted actions. Concerted actions are actions of competing market participants which take place in the absence of any agreement between them (including a verbal agreement) if:

- the results of such actions are favourable to all such market participants;
- there was a public announcement of one such market participant with respect to its market behaviour; and
- such concerted actions are not driven by objective market forces equally affecting all market participants.

We specifically note that legislation does not clarify what should be understood by a "public announcement". There is no developed practice on this issue either. Thus, any declaration with respect to market behaviour addressed to more than one individual could in theory be viewed as a public announcement. Announcements made through media such as advertisements and company websites are likely to be treated as public announcements. Concerted actions of competitors that lead to the restriction of competition (eg, to various forms of market division between competitors, price fixing) are prohibited. Thus, it can be claimed that there are unlawful concerted actions of competitors in a situation when one competitor posts its price list on its website and other competitors increase their prices in a similar way in the absence of any changes on the market (ie, there is no de facto exchange of information between competitors, just unilateral collection of information and subsequent behavioural adjustment). Given there is no developed enforcement practice on concerted actions, extreme attention should be paid to any information publicly disclosed by a company to ensure that such information does not prompt competitors to adjust their behaviour accordingly.

Information exchange affecting market behaviour may also be qualified as a violation of the "catch-all" restriction against any agreements (including verbal) which lead or may lead to restriction of competition. Unlike the situation with cartel artangements, in order to apply the catch-all restriction, the antimonopoly authority must prove that the restriction of competition has de facto taken place as a result of such agreement.

In light of the above, it is necessary to ensure that information exchange with competitors (if any) is organised with a significant degree of caution to ensure that the nature of information being exchanged does not encourage improper behaviour of market participants. It is recommended that information of the following types is not exchanged with competitors:

- prices and any price-related issues;
- customer base data;
- production and marketing plans;
- information related to development of new product types; and
- other issues of high commercial importance or of a confidential nature.

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Marat Mouradov is a partner at Dentons' Moscow office and head of Dentons' Russian competition law practice.

He is ranked among the best Russian competition law experts by *Chambers Europe*. Marat focuses his practice on dominance abuse, vertical and horizontal restraints as may be applicable to structuring of product distribution schemes, various forms of unfair competition practices, state procurement projects and merger control filings. He has also represented a number of large international and Russian groups in investigations launched against them by the Russian antimonopoly regulator.

Marat has handled a number of large-scale internal antimonopoly and compliance audits and investigations aimed at revealing and assessing legal risks.

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Natalia Afinogenova is an associate in Dentons' Moscow office. She focuses primarily on analysis of the compliance of distribution structures with competition law requirements and advises on measures to help mitigate the relevant risks. Natalia also advises on issues related to abuse of dominance and anti-competitive agreements and arrangements. Natalia has extensive experience in merger control filings and strategic filings. She has represented a number of clients in inspections and investigations conducted by the Russian antimonopoly regulator. Natalia also specialises in regulatory issues applicable to CIS countries.

Natalia gained her professional experience in competition law assisting clients operating in a wide range of sectors, including the health-care sector, packaging manufacturing, coal tar distillation, automobile manufacturing, food, and technological products of various designation.

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