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ORIGINAL PAPER

A SMART ANTITRUST COMPLIANCE SYSTEM FOR THE RESEARCH AND EDUCATION ENVIRONMENT

A.Yu. Rozhkova, Pskov State University, Pskov, Russia
Yu.V. Daneykin, Yaroslav-the-Wise Novgorod State University, Veliky Novgorod, Russia

Abstract. The article is devoted to the issues of the corporate model of antitrust compliance of a digital solution based on corporate norms for business entities of the educational and scientific services market. The model can serve as a tool for removing public collisions, conflicts of unfair competition, legal nihilism and opportunism, digital inequality due to the formation of a single scientific and educational space as a digital market for educational and scientific services to ensure equal access to technologies for both traditional and new (digital) business entities of higher education and science. The theoretical and methodological basis of fundamental teachings, the development of the modern paradigm of the digital ecosystem on the issues of understanding antitrust compliance, approaches and criteria for its applicability are presented. The theoretical and methodological basis of fundamental teachings, the development of the modern paradigm of the digital ecosystem on the issues of understanding antitrust compliance, approaches and criteria for its applicability are presented. An analysis of the local regulations on the application of antitrust compliance in the field of higher education showed the use of a paternalistic approach. The foreign experience of law enforcement on the introduction of key components of antitrust compliance, changes in public norms and the development of corporate programs as a guideline for considering new digital phenomena and the lawful use of components, considering regional, industry and economic characteristics in the Russian market, is presented. Counteraction to anticompetitive manifestations in Russian practice is distinguished by a complex set of offenses related to corruption. The platform model of antitrust compliance of a digital solution based on corporate norms is driven by the emergence of new digital goods / services, for example, online structures; new digital institutions such as smart contracts; new “intermarket” market participants and new digital market elements as substitutes for traditional market elements, as a database of personal and other data. A smart system is proposed for traditional and new digital participants in scientific and educational activities to design programs for compliance with antitrust legislation.
Keywords: antitrust compliance, composition of criteria, corporate model, scientific and educational environment, smart system, technological collaboration

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ОРИГИНАЛЬНАЯ СТАТЬЯ

СМАРТ-СИСТЕМА АНТИМОНОПОЛЬНОГО КОМПЛАЕНСА НАУЧНО-ОБРАЗОВАТЕЛЬНОЙ СРЕДЫ

А.Ю. Рожкова, Псковский государственный университет, Псков, Россия
Ю.В. Данейкин, Новгородский государственный университет имени Ярослава Мудрого, Великий Новгород, Россия

Аннотация. Статья посвящена вопросам корпоративной модели антимонопольного комплаенса цифрового решения на основе корпоративных норм для хозяйствующих субъектов рынка образовательных и научных услуг. Модель может служить инструментом снятия публичных коллизий, конфликтов недобросовестной конкуренции, правового нигилизма и оппортунизма, цифрового неравенства в силу формирования единого научного и образовательного пространства как цифрового рынка образовательных и научных услуг в обеспечение равного доступа к технологиям и традиционных, и новых (цифровых) хозяйствующих субъектов высшего образования и науки. Представлена теоретико-методологическая основа фундаментальных учений, разработанность современной парадигмы цифровой экосистемы по вопросам понимания антимонопольного комплаенса, подходов и критериев ее применимости. Основной формой антимонопольного комплаенса может явиться технологическая коллаборация и развитие корпоративной системы правовых норм, позволяющая продвигать оперативно образовательные стратегии, образовательные и научные продукты на отечественные и международные платформы. Анализ локального положения о применении антимонопольного комплаенса в сфере высшего образования показал применение патерналистского подхода. Представлен зарубежный опыт правоприменения о внедрении

ключевых компонентов антимонопольного комплаенса, изменения публичных норм и разработки корпоративных программ как ориентир для учета новых цифровых явлений и правомерного применения компонентов с учетом регионально-отраслевых и экономических особенностей на российском рынке. Противодействие антиконкурентным проявлениям в российской практике отличается сложным составом правонарушений, связанных с коррупционными деяниями. Платформенная модель антимонопольного комплаенса цифрового решения на основе корпоративных норм обусловлена появлением новых цифровых товаров / услуг, например онлайн-конструкций; новых цифровых институтов, например, смарт-контракты; новых «межрыночных» участников рынка и новых цифровых рыночных элементов как заменителей традиционных элементов рынка, как базы персональных и иных данных. Предложена смарт-система для традиционных и новых цифровых участников научно-образовательной деятельности для проектирования программ соответствия антимонопольному законодательству.

Ключевые слова: антимонопольный комплаенс, композиция критериев, корпоративная модель, научно-образовательная среда, смарт-система, технологическая коллаборация

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Introduction

In the context of the development of platform models, the formation of a unified scientific and educational space with the digital transformation of the market for educational and scientific products/services, IT-substitution of traditional participants, the strengthening of digital inequality at the regional level, antitrust compliance (hereinafter – ATC) acquires special relevance for participants in the market of scientific and educational services.

Scientists of the Higher School of Economics (St. Petersburg, Russia) aim to deeply analyze changing institutions as key components of the restructuring of education and science in the context of digital and value transformation [1].

In [2] the authors noted the introduction of online structures of the platform model of a scientific and educational organization, which "will facilitate the integration of subjects of scientific activity into a single scientific and educational space, include IT suppliers, and also contribute to the development of digital institutions of legal facts for copyright protection".

The renewal of the composition of market participants creates new risks associated with anti-competitive actions [1]. In such conditions, technological collaboration with intermediaries – IT-suppliers – is appropriate.

Thus, B. Pallas believes that technological collaboration can be one of the forms of maintaining competition [3]. According to [4], IT-suppliers as "inevitable trading partners" with traditional market participants can receive a special status – "strategic intermediaries of intermarket interaction" for technological collaboration. In [5] the authors reveal the modern paradigm of organizing scientific activities based on the integration of digital and platform solutions. In [6] the authors raise issues related to the introduction of ATC to ensure fair competition, with the distribution of mutual obligations.

The advantages of the European experience described in [1] can serve as a vector for managing educational strategies, assessing the risk map of anti-competitive actions in the design and piloting of scientific and educational products based on legal maturity for the use of ATC as a tool for ensuring equal access for participants to the market of scientific and educational services.

The key message of this study is the search for an algorithm for using ATC as a complex mechanism that represents a smart system of software components.

The methodological basis for the application of mechanisms for ensuring competitive principles is formed by the fundamental teachings of the classical and neoclassical schools about competition in the 10th-3rd centuries BC. Greek civilization, where competition is considered the "spirit of profit" [7], which has a "natural nature" (A. Smith and D. Ricardo, K. Marx and S. Sismondio) relation of "personal interest" [8].

In [9] the author presents the genesis of the theory of competition as a process of building relationships between business entities, the etymology of the category of "free competition" as a natural and objective phenomenon, including in the scientific works of J. Mill, A. Cournot, U.S. Jevanson, F.I. Edgeworth, A. Marshall, D.M. Clark, F. Zeuten, P. Sraff, J. Robinson, E. Chamberlin, M. Tresey, F. Wiersem, J.F. Mura, A.M. Brandenburger, B.J. Neilbuff, K.K. Prahalada, G. Hamela. The methodological part is supplemented by the scientific developments of the authors of the modern paradigm of the digital ecosystem development – A.P. Tenishev [10], D.N. Rodionova [11], A.A. Pranevich [12], N.A. Nefedova [13], I.V. Knyazeva [14].

Due to the twofold nature of the manifestation of anti-competitive and corruption acts in [15] the author notes that the legal regulation of competition can be provided by the laws on the protection of competition (No. 135-FZ of July 26, 2006) and anti-corruption (No. 273-FZ of December 25, 2008).

In [16] the author indicates the quality criteria (productivity, usefulness, value) of the ATC platform model.

During the review of the provisions of [9] the modern approaches of M. Tresey and F. Wiersem to the diversification of digital strategies based on platform solutions and the principles of ensuring

competition according to the theory of A. Smith, M. Porter, were outlined.

Thus, the principle of competition "cooperation and interdependence" (J.F. Moore, A.M. Brandenburger) serves to form a corporate model, when business entities can jointly promote the system of strategies of G. Hamel, K.K. Prahalada ("shaping one's own consumer", "shaping future markets" as exemplified by Microsoft, Motorola, Honda).

Let us add that on the basis of "cooperation" "the functionality of the platform model of a scientific and educational organization includes not only the exchange of scientific, educational, legal and organizational information, the formation of a digital profile of the copyright holder of developments, but also the corporate procedure for interaction of all categories of users on a smart contract basis" [2], where according to article 141.1 of the Civil Code of the Russian Federation the digital profile of each copyright holder is transparent and accessible.

Results and Discussion

The peculiarity of the ATC lies in the fact that the institute is located at the junction of legal regulations, corporate governance, and economic processes. ATC as a legacy of the common law of Western thinking is one of the main tools of the corporate management model, an alternative out-of-court mechanism for removing legal and managerial risks and disputes. As a tool to minimize transactional and public law costs (court and procedural costs), loss of business ties, ATC has the following advantages: no public conflict, preservation of business reputation and brand, no dominance of forbidden norms that create preconditions for the growth of cost and market prices, as well as the prevalence of corporate code of conduct and business ethics based on the principle of mutual benefit.

The institution under consideration has the following properties:

- the duality of nature at the junction of economics and law;
- mutual interpretation of public and corporate norms;
- public legal risks of collision and corporate opportunities;
- public legal risks of collision and corporate opportunities;
- special properties of the ATC corporate model;
- the ATC algorithm in combination of imperative and voluntariness (dispositiveness);
- legal responsibility and economic incentives.

Legal regulations on the applicability of the ATC can be external, developed by public state bodies. However, the ATC depends on public collisions as factors of sometimes declarative antitrust regulation. It seems that such risks are easier to mitigate through a prompt and flexible revision of the legal regime and the behavior of participants using corporate agreements and contracts based on internal regulations, thereby ensuring elasticity of behavior and the corporate model. However, enterprises can use the ATC as a tool for avoiding legal responsibility by hiding data in the form of confidentiality and nondisclosure of corporate information with reference to norms (part 4 of article 65.2 of the Civil Code of the Russian Federation, article 34 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 23.06.2015 No. 25), the application of the norm of commercial secrets (parts 1, 2, article 3 No. 98-FZ of July 29, 2004).

In turn, the corporate model of ATC, characteristic of private legal entities, commercial and non-commercial societies, is constructed by the norms of private (civil and corporate) law; and the organizational and administrative system of norms of state and municipal institutions is built based on public law. Such differences are significant for the construction of an algorithm for the use of ATC, considering the delineation of forms of ownership. For example, for traditional participants (i.e., state and municipal institutions) of the market of scientific and educational services, local acts on the applicability of the ATC are already being developed.

Thus, the Regulations of one of the Russian universities [17] were considered, where the preferential provisions of the future matrix of the ATC software were formulated:

- (p. I): the conceptual apparatus of the ATC as a tool for prevention and pre-emption, collegiality and criteria for assessing its effectiveness;
- (p. II): risk-based model and principles of openness, probability of disruption and continuity;
- (p. III): the procedure for notification and investigative measures;
- (p. IV): examination of local legal acts, data monitoring, reporting and cooperation with the antitrust authority.

However, the local legal act in question in some provisions is declarative due to a copy of the public norms of antitrust regulation:

- educational specialization, the level of technological and digital sustainability for monitoring data when implementing the ATC platform model;
- individualization of the risk map in the field of electronic trading for government needs, criteria of legal risks for examinations of regulatory acts and assessment of the behavior of participants;
- interest and legal responsibility of the entire staff of the university in accordance with the standard of competitive and anti-corruption behavior;
- classification of forms of monitoring and its objects, for example, in relation to data about employees; on the facts of concluded state contracts and civil contracts; on the application of antitrust clauses in contractual legal relations;
- collision in the forms of prevention (for example, "elimination of competition", as well as

the identification of the risk of "non-admission of competition" – do not belong to such);
- the presence of self-control by the staff and the need for decentralization of management;
- the presence of a corporate department of competitive lawyers and an antitrust lawyer or a platform model of a digital solution for the implementation, application, monitoring and conformity assessment of the ATC;
- the need for criteria and indicators for the distribution of obligations in accordance with the position held to assess the effectiveness and performance of the ATC.

In general, there is a paternalistic approach to the ATC, leading to the declarative nature of this Regulation and the ineffectiveness of the ATC due to an increase in transaction and labor costs. Nevertheless, the first step has been taken to introduce ATC in the field of higher education, which is important for the formation of technological collaborations in the field of electronic trading to provide IT suppliers with the ATC digital platform, digital platforms of a scientific organization, online courses, as well as for the formation of databases of scientific and educational products.

To create an algorithm for applying ATC as a "natural and objective process", it can have such criteria as regional and industrial affiliation, type of economic activity (OKVED) for the subsequent establishment of monitoring indicators: "marginal utility", "elasticity of ethics of behavior" and "legal flexibility of ATC".

In [8] the author formulates the statement that "elasticity" is a relative indicator of competition, based on the theory of A. Marshall.

In our case, one can draw an analogy associated with the introduction of the concept of "elasticity of behavior" of participants or "elasticity of the corporate model", which has features of corporate interest, conscientiousness, and business ethics. In turn, elasticity can be applied to a legal norm (today the definitions of "flexibility of legislation", flexibility of the legal system, considering the economic changes) are applicable.

Based on the theory of utility, let us assume that the "marginal utility" of the ATC is a certain sum of units of organizational and legal utility, for example, the number of involved ATC participants, the limit of functionality and legal powers, the level of ATC distribution, the share of transaction costs for monitoring compliance, – each of which has a unit of measure for calculating the economic effect of the legal corporate model.

In turn, when monitoring indicators, a distinction can be made between traditional economic entities into categories, considering the marginal indicators – the corporate (gross) market concentration index (VCR-3) and the individual market concentration index (ICR-3 i). Indicators based on indices will make it possible to establish the imperativeness or voluntariness (dispositiveness) of ATC, as well as the limits of the use of ATC. Thus, we believe the imperativeness of the ATC for corporations, state and municipal bodies with the VCR-3 indicator is more than 50%, where the ICR-3 limits (lim) are established by corporate norms. For example, the corporate concentration index of Russian Railways was 78.9%, which confirms the need to introduce ATC. Failure to comply with the ATC in accordance with norms No. 135-FZ, No. 273-FZ, No. 44-FZ, No. 223-FZ (or failure to act) may be punishable by administrative measures.

Further, the "legal flexibility" of the ATC can represent a certain sum of units of organizational and legal utility in accordance with the above criteria, adjusted for the elasticity of ethics of behavior. Let us present the symbols of the formalized part of the obtained criteria (*Table 1*).

Table 1 / Таблица 1

Sequence of ATC Applicability Components / Последовательность компонентов применимости антимонопольного комплаенса

1. Criteria / 1. Критерии	
Regional and industry affiliation	Type of economic activity
2. Indicators of limit ATC / 2. Индикаторы предельности АМК	
Formula for calculating the corporate (gross) market concentration index: $VCR3_{Lim} = \sum_i^{\text{корп}} ICR3_{lim} = \sum_i^{\%} ICR3 + \sum_J^{\%} ICR3 + \ldots + \sum_n^{\%} ICR3,$ where VCR3$_{Lim}$ – the limit value established by federal and/or regional regulations; $\sum_i^{\text{корп}} ICR3_{lim}$ – the sum of the limit values of each member of the corporation established by corporate norms; $\sum_i^{\%} ICR3$ – the total share of the corporation member for the reporting period; *i, j* – corporation members; *n* – the number of members of the corporation	
3. Indicators of ATC monitoring / 3. Показатели мониторинга АМК	
Marginal utility (U$_{lim}$), equal to the marginal value of the corporate (gross) market concentration index (VCR3$_{lim}$), in units of measure	$\mathrm{U}_{\mathrm{lim}} = VCR3_{lim}$
Elasticity of ethics of conduct (E ⩾ 1) as the sum of total elasticities (n) of each (i) participant for the reporting period (t), obtained by rating, in %, where elasticity shows the coefficient of behavior change due to changes in legal norms, in %	$\sum\sum_i^n E_t$
Legal flexibility of the ATC (E$_{АТС}$ = 1) as the sum of the products of organizational and legal utilities (U$_i$) by the elasticity of the participant's ethics of behavior (E$_i$) for the reporting period (t), in units of measure	$\sum_{\mathrm{AMK}_t} U_i \times E_i$

Source: compiled by the authors / *Источник:* составлено авторами

Foreign experience in the implementation of key ATC components based on the norms of international and public law in relation to IT companies in the USA and EU countries is described in the works of D. Coyle

[18], C. Ritz [19], M. Jarsulic [20], T. Banks and J. Murphy [21], C. Macy et al. [22], Bloomberg Law, as well as the practice of assessing the applicability of ATC Programs of leading law firms in the EU and the US [23] and the Antitrust Department of the US Department of Justice "Assessment of corporate compliance programs in criminal antitrust investigations" [24].

The European experience in the context of the transition of economic entities to the "digital rails", where the contractual legacy and the application of "soft law" are laid [25], sets the basis for corporate programs: "Guidance Principles on Abuse of Preemptive Position in Transactions Between Digital Platform Operators and Consumers Providing Personal Data" [26], "EU Directive 2019/1 of the European Parliament and of the Council on empowering competition authorities in member states to effectively enforce functioning of the internal market".

In [25] V. Robertson designates such a new definition as "digital competition" associated with the development of "digital markets with new digital institutions and business models that make up a digital ecosystem based on the principle of relevance, which can be enshrined in the provisions of the "Law on Competition 4.0" and be subject to antitrust monitoring. Price substitutes were identified – "exchange of personal data for free content" and "counter-provision to the consumer".

It is difficult to establish and qualify an antimonopoly violation of price discrimination for the new elements. Corporate internal "data exchange" between counterparties is also not fixed as a price element, thus, it is difficult for the European Commission to qualify an offense, for example, in the case of the Facebook & WhatsApp merger [27].

The transformation of the market element "product" and the emergence of a new element on the market – "innovation spaces" (or digital environment, platform), in respect of which the legal regulations have not yet established the legal nature, have been revealed.

Based on the legal analysis of precedents in relation to Apple / Shazam, Facebook / WhatsApp, Google Shopping V. Robertson argues that the former institutions and criteria for assessing dominance are already declarative in nature, for example, as the market concentration index (CR-3 ⩾ 50%) or market share (⩾ 30%) due to the emergence of a new substitute in the form of "volume and network effects of databases" as a tool for "digital mergers". Therefore, the German legislator proposed criteria (*Table 2*) (§ 18 para 3a GWB; § 18 para 3b GWB; § 18 para 3 nr 2 GWB) [25].

Table 2 / Таблица 2

Composition of ATC Criteria / Композиция критериев антимонопольного комплаенса

Market Member Type / Тип участника рынка	ATC Applicability Criteria / Критерии применимости антимонопольного комплаенса
For traditional members	Traditional criteria
	– *criteria*: regional and industry affiliation, type of economic activity (OKVED)
	– *indicators*: "marginal utility", "elasticity of ethics of conduct", "legal flexibility of the ATC"
	– *indicators* of the limit of the corporate (gross) index of market concentration (VCR-3) and individual index of market concentration (ICR-3i), the imperative or voluntariness (discretion) of obligations and their distribution by volume VCR-3
For "intermarket" members	Traditional criteria & Transitional criteria
For digital participants and digital markets	Transitional criteria
	– direct and indirect network effects – parallel use of provider services and user costs for switching – economies of scale due to the network effect – enterprise's access to data – innovation pressure – level of leverage and auto-referencing

Source: Compiled by the authors / *Источник:* составлено авторами

The authors of the "8 Key Elements of An Effective Antitrust Compliance Program" [28] mark the ATC as a tool for removing the level of punishment in the event of legal liability, qualified by criminal law according to the decision of the US Department of Justice [29].

We will get an ATC smart system of a platform model of a digital solution (*Fig. 1*), including complexity and complexity, a package of functions and a standard of antitrust and anti-corruption behavior.

A smart system can be based on the following foci:

- the composition of the market participants for scientific and educational services: traditional, new ("intermarket" suppliers (retailers) and IT-companies);
- technological collaboration in order to ensure technological and digital sustainability as one of the forms of maintaining competition from the standpoint of cooperation and research and production corporations;
- the ATC platform model based on corporate norms and digital solutions due to the formation of a single scientific and educational space;
- the primacy of public norms that do not violate the balance of public and private, which are not a brake on the formation of flexibility in organizational and legal processes to update educational strategies, educational standards and competition;
- taking into account new economic phenomena and market elements, as well as digital institutions of the legal system, criteria, indicators and the limit of applicability of the ATC;

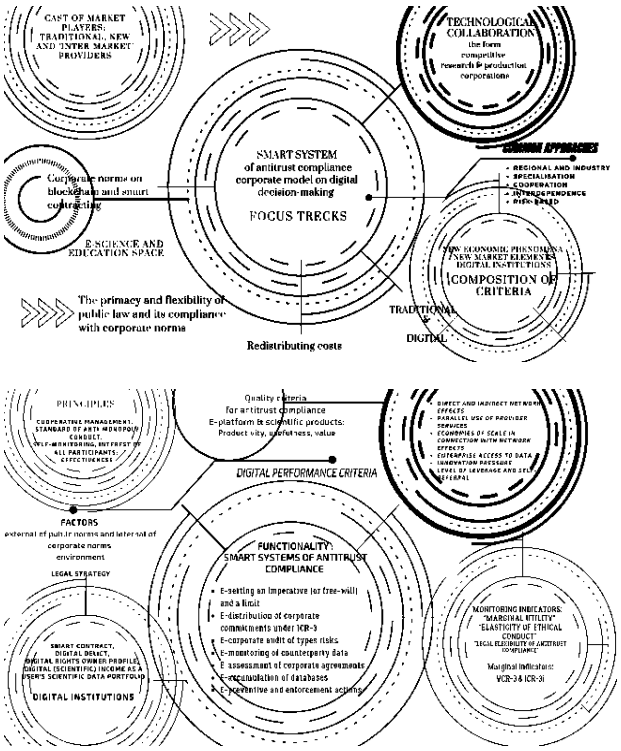

Fig. 1. **ATC Smart system** / *Рис. 1.* **Смарт-система антимонопольного комплаенса**

Source: compiled by the authors based on [30] / *Источник:* составлено авторами на основе [30]

- redistribution of technological, intellectual costs and revision of labor functionality during retraining;
- classification and composition of criteria of applicability and conformity assessment of ATC.

Conclusion

As a conclusion, let us formulate the program components of the ATC applicability.

1) Composition of criteria for "intermarket" members (or retailers) and traditional members.

2) A roadmap of the principles and approaches of the ATC application within the framework of decriminalization based on the standard of antitrust behavior with the imperative of legal training, implemented in a contract or job description, or in the form of an antitrust clause. Inaccurate or incomplete data under the contract will not allow registration and self-fulfillment of the contract; they are removed using a smart contract system based on the blockchain according to the ATC [24] software criteria.

3) The contextual part of the Program provides for sectoral and risk-oriented approaches, criteria and indicators of data of an open and reliable type of ATC, risk classification.

4) ATC functionality:

- automatic establishment of the imperative (voluntariness) and the limit of the ATC applicability;
- distribution of corporate liabilities between participants according to the size of individual concentration indices;
- corporate audit of risk classification;
- data monitoring and audit of industry and regional affiliation of counterparties;
- online examination of title documents, agreements;
- accumulation and processing of databases;
- preventive and coercive measures.

5) The effectiveness of the ATC Program is associated with the use of digital and mobile solutions for monitoring these violations of norms No. 135-FZ, No. 273-FZ, No. 44-FZ, No. 223-FZ. The program serves as an additional tool to consider regional and industry affiliation and ensure digital sustainability.

Authors' Contribution

Anna Yu. Rozhkova conducted an extensive review of the scientific and methodological development of the topic under study, a review of the legal and economic foundations using an interdisciplinary approach, general scientific and private research methods, software applications and cloud services. Yuriy V. Daneykin provided contextual and organizational work in the search, acquisition and analysis of data, the application of classification methods, systematization, and visualization of the results.

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About the Authors / Информация об авторах

Анна Юрьевна Рожкова – канд. экон. наук; доцент, Псковский государственный университет, Псков, Россия / **Anna Yu. Rozhkova** – Cand. Sci. (Economics), Docent; Associate Professor, Pskov State University, Pskov, Russia
E-mail: annroz80@ya.ru
SPIN РИНЦ 7717-5184
ORCID 0000-0002-0321-6603
Юрий Викторович Данейкин – канд. физ.-мат. наук, доцент; проректор по образовательной деятельности, Новгородский государственный университет имени Ярослава Мудрого, Великий Новгород, Россия / **Yuriy V. Daneykin** – Cand. Sci. (Physical and Mathematical), Docent; Vice-Rector for Educational Activities, Yaroslav-the-Wise Novgorod State University, Veliky Novgorod, Russia
E-mail: Yury.Daneykin@novsu.ru
SPIN РИНЦ 7876-1730
ORCID 0000-0001-7181-2557
ResearcherID N-1531-2014
Scopus Author 55543389800

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