

Annual Report on Competition Policy Developments in Kazakhstan

21-23 June 2017

This report is submitted by Kazakhstan to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 21-23 June 2017.

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1. Changes in competition law and policy in the Republic of Kazakhstan

1. Competition law of the Republic of Kazakhstan had been widely liberalized during the period of 2015-2016 years in the result of implementing of the 53rd step of the Plan of the nation on changing the concept of the work of antimonopoly service and its alignment with the OECD standards.
2. So, within the framework of improving Kazakh competition legislation in 2016, the Law of the Republic of Kazakhstan "On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Competition and State Support for Housing Construction" was drafted in accordance with the OECD recommendations, which were aimed at strengthening the competition authority, regulating its status and order of work, as well as finalizing certain norms. The Law was adopted on December 28, 2016.
3. Within the framework of this Law, an "Antimonopoly authority and its competences" separate chapter has been introduced in the Entrepreneurial Code of the Republic of Kazakhstan, where the antimonopoly authority's system and its objectives, competence and rights of its employees were clarified, issues of interaction of the competition authority with law enforcement bodies, as well as with competition authorities of other countries.
4. Furthermore, the Law provided changes in the following main areas:
 1. Increasing of the efficiency of investigations of competition law violations.
 2. Bringing the approaches to the prohibition of anticompetitive agreements in accordance with the best world practice.
 3. Changing of the approaches to the concerted actions of undertakings.
 4. Introducing of the antimonopoly compliance.
 5. Extension of the scope of application of the notification.
 6. Changing of the approaches and methodology on analysis and assessment of competitive environment.
 7. Changing of the approaches to the state control of economical concentration.
5. Moreover, within this Law the decision on introduction of price regulation on socially significant markets from January 1, 2017 was made in order to avoid negative consequences of abolition of price regulation.
6. Thus, the adopted additions and amendments to the competition law of Kazakhstan resulted in the transition from January 1, 2017 to market pricing in previously regulated sectors of the economy, with the exception of the above-mentioned spheres of socially important markets, the possibility of taking preventive measures against violations of legislation and increasing the status of competition authority and trust to it from market entities and consumers of services.
7. The obtained results will serve as a basis, on the one hand, for the subsequent liberalization and deregulation of markets, on the other, toughening measures to fight the most severe violations.
8. The new mechanisms are mainly focused on the prevention of anticompetitive behavior and the concentration of efforts to identify major violations, which will improve Kazakhstan's position in the WEF Global Competitiveness Index on competition indicators.

9. As part of the development of integration processes, alongside with the OECD and Eurasian economic commission, active interaction with the antimonopoly authorities of the CIS countries, including the Interstate Council for Antimonopoly Policy (Joint Investigation Headquarters), is being conducted to share experiences.

10. In order to reduce unjustified state participation in entrepreneurship, measures were taken to implement the principles of the Yellow Pages Rule, which resulted in reducing the number of activities of the quasi-public sector by 47% from 652 to 346, and also to carry out an inventory of state property objects (in addition, 137 entities are subject to transfer to the competitive environment).

11. In addition, on the basis of the above-mentioned and taking into account the tasks of the competition authority, work to prevent price and tariff collusion is being carried out, and measures are being taken to identify barriers within the "audit" of all legislation and a frontal reduction of business costs. On the basis of the outcomes of this works drafting of an appropriate bill in planning by the end of 2017.

2. Enforcement of competition law and policy

2.1. Detection and suppression of violations of competition law in the Republic of Kazakhstan

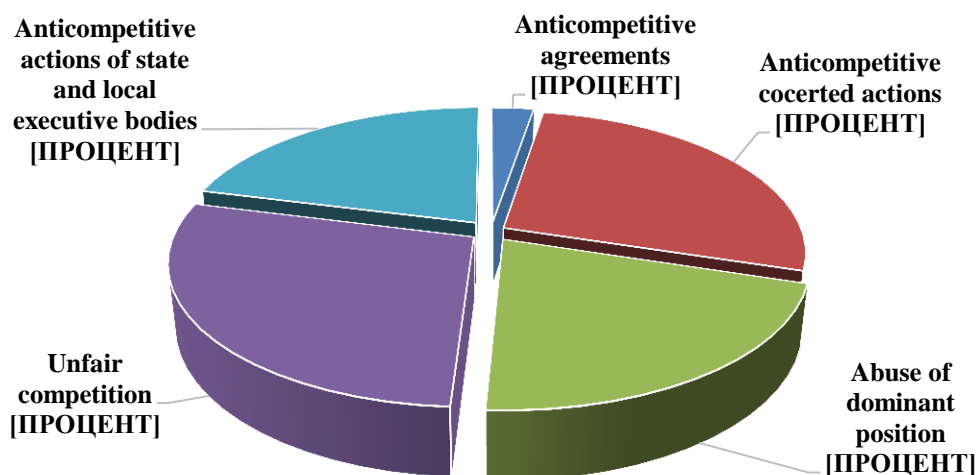
12. Prevention, suppression, investigation and detection of competition law of Kazakhstan violations are the major functions of the competition authority.

13. In general, activity of competition authority within investigation of competition law violations could be described as stable. Overall situation of detection and suppression of competition law violations in 2016 is as follows.

14. In 2016, the number of completed investigations increased by more than 50% and 21% respectively in comparison to 2014 and 2015 (in 2016 - 279 investigations, in 2015 - 232 investigations, 2014 - 185 investigations). The growth of the investigations completed with revealed violation in 2016 was 35% and 14% respectively in comparison to 2014 and 2015 (2016 - 228 investigations, 2015 - 200 investigations, 2014 - 169 investigations).

15. Unfair competition (62 violations), anticompetitive concerted actions (59 violations), as well as abuse of the dominant position (48 violations) and anticompetitive actions of state and local executive bodies (48 violations) prevail in the structure of completed investigations on types of competition law violations. Anti-competitive agreements amounted 3% (6 violations) of the overall structure of the detected violations (Figure 1).

Figure 1. Structure of completed investigations on competition law violations



16. According to the above facts of competition law violations, 62 administrative cases were initiated by the competition authority and 19 injunctions on elimination of competition law of the Republic of Kazakhstan violations, 9 of them were executed.

17. In the sphere of fuel and energy complex (FEC) in 2016, 44 investigations into 52 market entities regarding the abuse of dominant or monopoly position (15 investigations), unfair competition (9 investigations), anticompetitive concerted actions of market entities (18 investigations) and actions of state bodies (2 investigations).

18. Furthermore, 18 competition law violations detected on the results of investigations in metal rolling, building products (rubble, bitumen, primer, enamel) and housing construction markets. In particular competition law violations detected in terms of unfair competition (15), anticompetitive concerted actions (3) and abuse of dominant or monopoly position (1).

19. As a whole, on the outcomes of all completed investigations the following decisions were made:

- the termination of the investigation on the basis of the absence of violations of the competition law of the Republic in the activities of the objects of investigation on 51 investigations;
- the issuance of injunctions on elimination of competition law of the Republic of Kazakhstan violations on 57 investigations;
- the initiation of a case on an administrative offense on 93 investigations;
- transfer of the case to law enforcement bodies on 2 investigations;
- the initiation of a case on an administrative offense and issuance of injunctions on elimination of competition law of the Republic of Kazakhstan violations on 76 investigations.

20. During the reporting period, the number of fines also increased. Thus, the total amount of administrative fines imposed in 2016, taking into account the monopoly income, amounted KZT 1 991 million, of which more than KZT 1,907 million was collected.

2.2. State control over economic concentration

21. In order to prevent the emergence or strengthening of monopoly position or restriction of competition, the competition authority exercises control over economic concentration.

22. In 2016, within the framework of the state assignment "Economic Research Institute" JSC drafted Methodology for assessing economic concentration on the basis of the analysis of the leading international practice. It is planned to approve this Methodology in 2017 with putting it into operation in 2018.

23. At present, the applications for consent to economic concentration are considered by the competition authority according to the specifics of its providing in 2 stages:

Stage 1 - the completeness and relevance of the materials submitted (10 calendar days);

24. On the results of consideration of submitted materials the competition authority notifies the consumers of services about acceptance or refusal to accept the application for consideration.

25. The competition authority refuses to accept the application for consideration in case of providing incomplete materials according to the list and/or documents with expired validity.

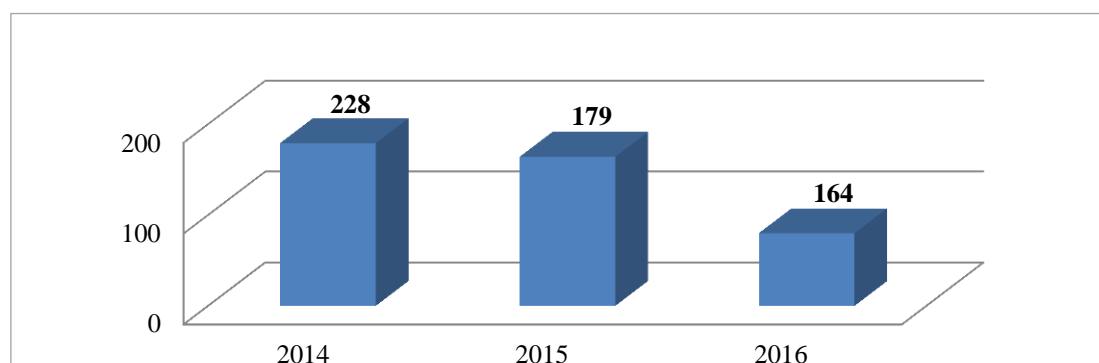
26. The list of documents, which should be attached to the application for consent to economic concentration is regulated by Article 204 of the Entrepreneurial Code of the Republic of Kazakhstan and is included into the standard of providing of "Consideration of applications for consent to economic concentration" state service.

27. After receiving a refusal to accept the application for consideration, the consumer of services has the right to apply again, eliminating the remarks.

Stage 2 – in order to identify restriction of competition (30 calendar days with the right to suspend the term), following which the competition authority issues a decision on the consent or prohibition of economic concentration.

28. Decisions of antimonopoly authority are made out by the order and addressed to a person who submitted the application within three working days.

29. In 2016, the competition authority received more than 80 applications, of which 56 applications were resolved, including 53 consent to economic concentration and 3 - prohibition. At the same time, it should be noted that a high amount of applications were not accepted for consideration due to incompleteness of submitted materials required by law, or lack of the necessity for consent of the competition authority.

Figure 2. Number of received applications

30. Thus, as a result of improving the legal framework, there is a decrease in the number of received applications in 2016 by 8% compared to 2015 and by 28% compared to 2014 (Figure 2).

31. Within the framework of the state control over economic concentration, 56 applications for the deal were reviewed, 3 of which were prohibited.

32. In 2016, the competition authority conducted analyzes of the state of competition of 24 commodity markets, which demonstrated a high share of markets with undeveloped competition in the *fuel and energy complex, construction, transport and telecommunications sectors*. At the same time, the major economic barriers for their demonopolization are underdeveloped infrastructure and the need for significant capital investments, and the main administrative barrier to entry is the imperfection of some permitting procedures.

33. Moreover, currently airport and port services are at the stage of withdrawal from the sphere of natural monopoly to a competitive environment.

34. The developing measures for elimination of problems and disadvantages became a practical result of the carried-out analyzes of the commodity markets. By the present, a number of proposals and recommendations for competition development was addressed to sectoral state bodies. These proposals and recommendations are considered at meetings of the appropriate commissions under the Government of the Republic of Kazakhstan.

3. International cooperation in competition field

35. During interaction with the Organization for Economic Cooperation and Development a large-scale work on improvement of the competition law of Kazakhstan had been carried out in a relatively short time (1,5 years). Thus, the powers of competition authority were expanded, methods and approaches of practical implementation of the competition law were changed taking into account experience of the OECD countries.

36. The Review of Competition Law and Policy in Kazakhstan, launched in the frameworks of the 2015 OECD Global Forum on Competition, was the basement of the transformation of the work of competition authority of Kazakhstan. Colombia, Finland, the United Kingdom and Romania acted as the leading experts. The final results of the Review were presented to the business community of Kazakhstan and the international community in May 2016 at the IX Astana Economic Forum.

37. The Review provides recommendations regarding restrictive agreements and concerted actions, dominance and monopolization, mergers control, as well as institutional and procedural aspects, which correspond with the generally accepted OECD standards in the competition field.
38. The result of the high assessment of the reforms carried out in Kazakhstan was the invitation of Kazakhstan to become a participant in the OECD Competition Committee in 2016.
39. Thus, the competition authority actively participates in all the OECD Competition Committee meetings and the OECD Global Fora on competition.
40. The Competition authority of Kazakhstan closely collaborates with the competition authorities of CIS countries within the framework of the Interstate Council for Antimonopoly Policy (ICAP), which is the basic platform for interaction of the competition authorities of the CIS Countries.
41. Development of common approaches to harmonize the competition legislation of the CIS Countries, improving law enforcement practices, exchanging experiences on the prevention of competition law violations at both the national and transnational levels, and also addressing a number of other issues in the field of competition policy are the main areas of work within ICAP.
42. The competition authority of Kazakhstan participates in all the meetings of ICAP and the Headquarters for Joint Investigations of the Violations of the Competition Legislation in the CIS Countries.
43. Furthermore, in the framework of implementation of the Treaty on the Eurasian Economic Union the competition authority of Kazakhstan interacts with the Eurasian Economic Commission (EEC) in the competition field, including work of improving the mechanism of interaction of the EEC with competition authorities of the EAEU countries during implementation so as to ensure general competition rules of the economic entities of the EAEU member-states on the cross-border markets.
44. Thus, in 2016 in collaboration with the EEC and authorized state bodies of EAEU member-states work was conducted on amendments to regulatory acts of the EAEU in order to bring it into accordance with the EAEU Treaty, as well as on approval of the text of Annual report of the EEC on state of competition on cross-border markets and measures, taken to prevent general competition rules violations in them.
45. Moreover, now, work on amending the EAEU Treaty in part of competition policy and antimonopoly regulation is conducted. Meetings are held on a regular basis with the participation of representatives of the EEC and authorized bodies of the member states of the EAEU in the videoconference mode.
46. Cooperation of antimonopoly authority of Kazakhstan and UNCTAD is intensively developing throughout the considerable period of time. The UNCTAD is one of the most authoritative organizations, uniting the countries of the world under the auspices of the UN. The meeting of the Intergovernmental Group of Experts on Competition Law and Policy is held annually at the UNCTAD site in Geneva, Switzerland. These meetings bring together representatives of competition authorities from around the world, as well as major competition experts.
47. The UNCTAD plays in the UN system a role of the coordination center for resolving the problems of development and related issues of trade, finances, technologies,

investments and sustainable development. Its main objective is to promote the integration of developing countries and countries with economies in transition into the world economy and development through trade and investment. In pursuit of its objectives, UNCTAD conducts research and policy analysis, intergovernmental meetings, technical cooperation and interaction with civil society and the business sector.

48. The Republic of Kazakhstan is also a member of the International Competition Network, an organization focused on the implementation of individual projects in order to improve law enforcement practices, as well as developing proposals for real convergence in procedural matters in the field of competition law enforcement for achieving best practical results, acting on the basis of consensus.

49. Activity of the ICN is carried out within the separate projects implemented by the working groups, plans of activities of which are approved at annual conferences.

50. Distribution of experience of the ICN on space of the CIS is important in collaboration of competition authority of the Republic of Kazakhstan within the ICN. Active participation in the ICN work and its working groups also allows to improve the Kazakhstan competition policy and law-enforcement practice through rapprochement with the most advanced legislation and the most effective practices of member countries for achievement the best practical results in carrying out competition policy, both on national, and on international levels.

51. In addition, a session "Promoting Competition: New Rules of the Game", devoted to the competition issues, was held in May 2016 within the framework of the IX Astana Economic Forum.

52. The sessions' agenda included keynote address of Mr. Frederic Jenny, the Chairman of the OECD Competition Committee, and representatives of the leading competition authorities of the countries of the world. The participants of the session had been acquainted with the latest changes in the competition legislation of the Republic of Kazakhstan in order to bring it into the line with the OECD standards and the best world practice.

4. Competition authority's resources

4.1. Annual budget of the Competition authority

53. In 2016, the annual budget of the Competition authority of the Republic of Kazakhstan amounted to approximately 7 million of US dollars (KZT 2 260 618 thousand).

4.2. Staffing structure of the Competition authority

54. The system of the Competition authority includes a central office in Astana and 16 subordinate territorial units (departments), located in all the regions of Kazakhstan.

55. In 2016, the number of employees of the central office of the antimonopoly authority amounted to 146 people, territorial units - 331 people

56. The central office of competition authority of Kazakhstan is responsible for four main tasks, each managed by several divisions. A group of seven units, is responsible for the regulation of specific sectors under the Law "On Natural Monopolies". These units

are organised in accordance with the regulated markets: railways, airports, heat, water and so on.

57. Six divisions deal with investigations of competition law violations in special sectors of the economy: 1) fuel and energy; 2) transport and communications; 3) industry; 4) agribusiness; and 5) financial markets and other industries.

58. One division is dealing with economic concentration. Other divisions of the central office are responsible for specific and mainly administrative functions within the agency (i.e. methodology, legal, personnel, finance and so forth).

59. Also, the Competition authority has a separate Anti-Cartel Division.

60. At the same time, in the structure of the central office for 2016, the number of employees in the areas of activity was as follows:

1. investigation of competition law violations - 32 people;
2. state control of economic concentration - 9 people;
3. competition advocacy – 8 people.