

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Kazakhstan****-- 2018 --****5-7 June 2019**

This report is submitted by Kazakhstan to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

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Kazakhstan

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

1. In 2018, Competition authority of Kazakhstan (Committee on Regulation of Natural Monopolies, Protection of Competition and Consumer Rights under the Ministry of National Economy of the Republic of Kazakhstan) carried out in three main directions. The results of this work were reflected in the Law of the Republic of Kazakhstan “On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Improving Business Regulation”, which was signed by the Head of State on 24 May 2018.

1.1. First main direction

2. In 2018, 108 laws and 972 regulations were revised by Competition authority in order to detect provisions that hamper competition. As a result of the revision of these legislative acts, 144 provisions were identified as hampering competition.

3. To eliminate them, Competition authority made a number of proposals.

4. In particular, among the most notable, it is possible to single out amendments aimed at eliminating provisions that impede the development of competition in the following sectors:

1. grain and cotton industries (Laws of the Republic of Kazakhstan "On grain", "On the development of the cotton industry");
2. field of use and reproduction of wildlife (Law of the Republic of Kazakhstan "On Protection, Reproduction and Use of Wildlife");
3. field of communications (Law of the Republic of Kazakhstan "On Communications");
4. field of plant quarantine (Law of the Republic of Kazakhstan "On Plant Quarantine").

1.2. Second main direction

5. Frontal reduction of all types of costs for business, including the cost of services in the energy, transport, logistics and housing and communal services.

6. Among the amendments in the field of competition law, the following should be highlighted:

- expansion of notification;

7. Cases, in which the notification is sent to a market entity, were added with signs of anti-competitive concerted actions of market entities, anticompetitive vertical agreements of market entities. As a result, a person whose actions show signs of a violation gets the opportunity to voluntarily eliminate the violation, without applying anti-monopoly response measures against him.

- revision of the list of permissible cases of application of different prices by market entities with a monopolistic or dominant position;

8. Thus, previously, different prices due to different costs of production, sale and delivery of goods, non-discriminatory use of a discount system that takes into account sales volumes, payment terms, and terms of the contract were not allowed.

9. This amendment leads to a reduction in business costs (in the form of possible fines) and a reduction in the risks of violation in the course of business activities in terms of the application of different prices.

- obligatory public hearings when considering applications of state monopoly entities for pricing goods, works or services, the consumer of which include business.
- the seizure of monopoly income is carried out only if the subject of the market establishes monopoly high (low), monopsony low prices. At the same time, its confiscation is excluded for other, less serious, types of abuse of a dominant or monopolistic position.

10. Previously, the confiscation of monopoly income was proceeded in cases of monopolistic activity, including all types of abuse of dominant or monopolistic position.

1.3. Third main direction

11. The legal mechanism for identifying and suppressing price and tariff collusions, including bidding and procurement of the state and quasi-public sector, was improved, as well as responsibility for price and tariff collusions and creating obstacles to their identification was strengthened.

12. Thus, at the legislative level, the coordination by the organizers of the procurement and bidding of the activities of the procurement suppliers, bidders, if these actions lead or may lead to restriction of competition, was prohibited, and administrative liability for violation of this requirement was introduced.

13. Also, a mechanism for monitoring the procurement and trading by Competition authority is provided, as well as the right of the Competition authority to permanent access to trade or information systems, commodity exchanges and other e-procurement sites for goods or trades, allowing real-time monitoring of procurement of goods/

14. In addition, the process of collecting evidence was detailed: carrying out photo, audio, video recordings, inspecting objects, electronic and paper documents and other information carriers located in the premises and on the territory of the object of investigation, requesting explanations from the objects of investigation and other interested persons.

15. In total, violations of the legislation of the Republic of Kazakhstan in the field of competition protection are distributed as follows (Figure 1):

- anti-competitive agreements (30.1%)
- anticompetitive concerted actions (11.9%)
- abuse of dominant position (11%)
- unfair competition (5.9%)
- anticompetitive actions of state bodies / local executive bodies (41.1%).

16. In the sectoral context, most of the violations of the legislation of the Republic of Kazakhstan in the field of competition protection are in the fuel and energy complex (81%) (Figure 2).

2. Enforcement of competition law and policy

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

17. Main functions of Competition authority are the prevention, suppression, investigation and detection of violations of the law in the field of competition protection.

18. The number of completed investigations in 2018 amounted to 219 investigations, of which 166 investigations were completed with the detection of violations in the Competition Law of the Republic of Kazakhstan (79%).

19. In total, for the year of 2018, the amount of administrative fines imposed in KZT 2.6 billion and monopoly income was amounted to 418 KZT 767.8 million), of which KZT 360 million was collected.

20. In 2018, the Competition authority conducted 66 investigations on the grounds of cartel collusion.

21. In total, violations of the Competition Law of the Republic of Kazakhstan are distributed as follows: (Figure 1).

- anticompetitive agreements (30.1%)
- anticompetitive concerted actions (11.9%)
- abuse of dominant position (11%)
- unfair competition (5.9%)
- anticompetitive actions of state bodies / local executive bodies (41.1%).

22. In the sectoral context, most of the violations of the legislation of the Republic of Kazakhstan in the field of competition protection are in the fuel and energy complex (81%) (Figure 2).

Figure 1. Violations of the Competition Law of the Republic of Kazakhstan by type

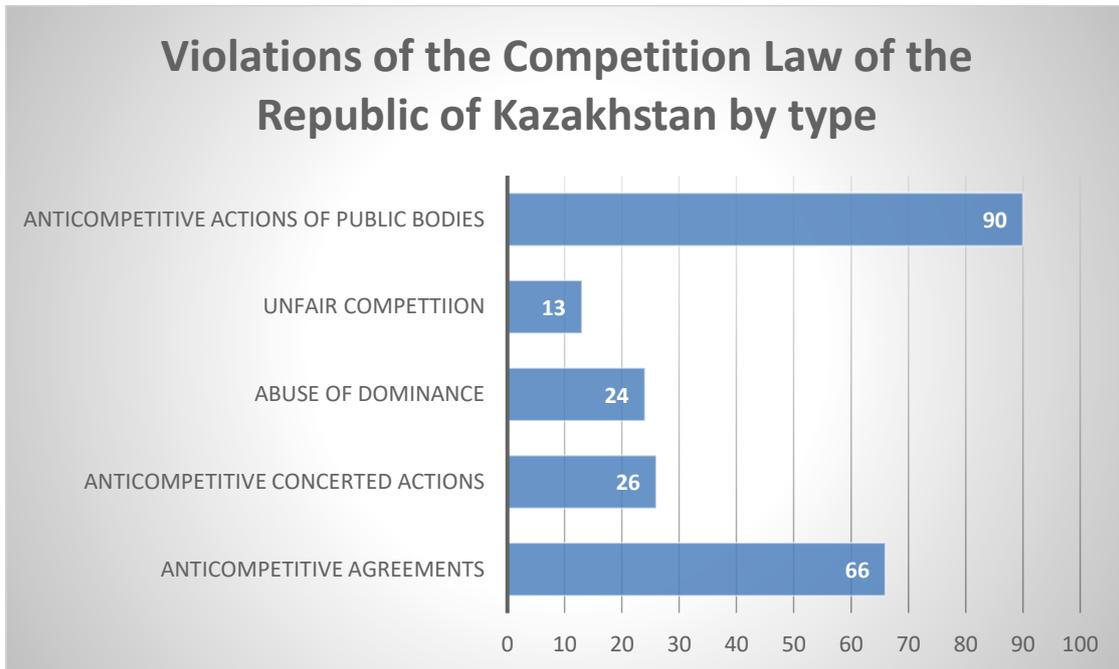
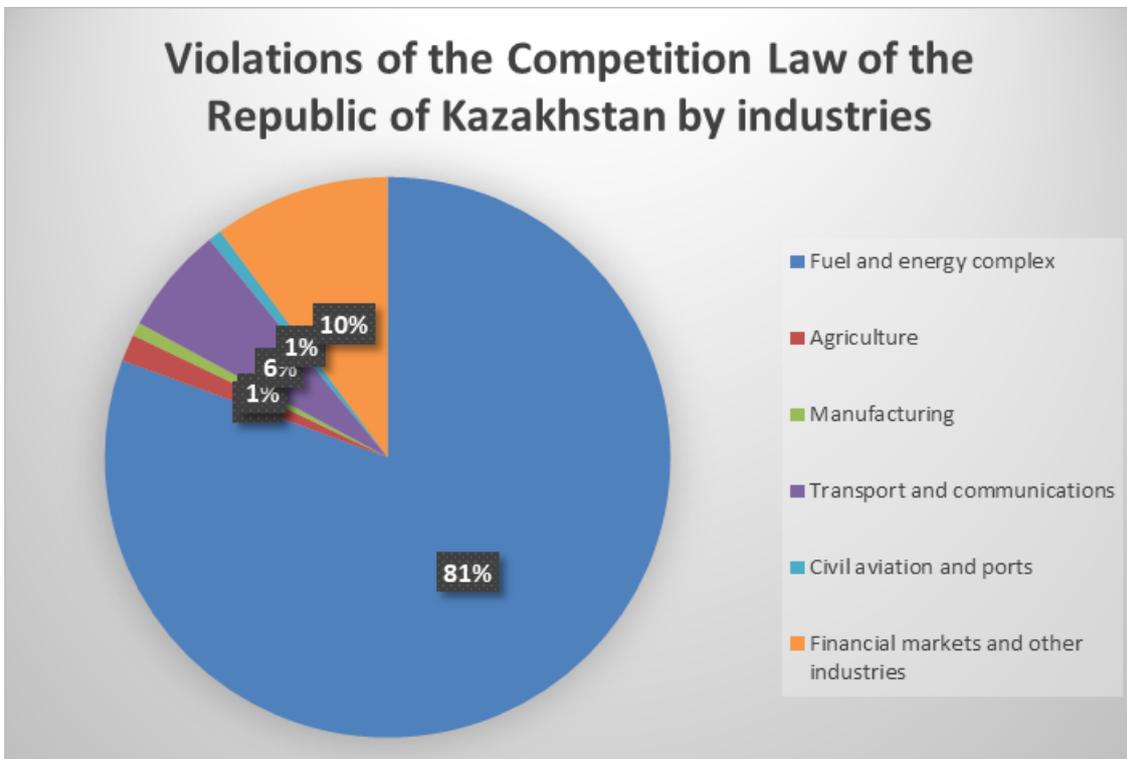


Figure 2. Violations of the Competition Law of the Republic of Kazakhstan by industries.



Box 1. Case

Investigation on the grounds of abuse of dominant position

Competition authority conducted an investigation into violations of the legislation of the Republic of Kazakhstan in the field of protection of competition against “KazTransGas Aimak” JSC on the basis of abuse of a dominant position in terms of establishing an excessive price for gasification services in Almaty and South Kazakhstan regions, as well as lobbying the interests of “Zenit TVK” LLP in the procurement of construction and installation works (clauses 1) and 10) of Article 174 of the Entrepreneurial Code of the Republic of Kazakhstan (hereinafter – the Code)).

According to the results of the investigation, administrative proceedings were instituted and the prescription to stop violations of the Code was issued.

By the Resolution of the Specialized Court of Astana city dated May 15, 2018, “KazTransGas Aimak” JSC was brought to administrative responsibility with a fine in the amount of KZT 13,4 million, with confiscation of monopoly income of KZT 13,8 million. By the decision of the Court of Astana city dated July 5, 2018, the above decision was left unchanged (the penalty is paid in full).

2.2. Control over economic concentration

23. Currently, in accordance with Articles 200-210 of the Code, Competition authority, in order to prevent the emergence or strengthening of a monopoly position and (or) restriction of competition, exercises state control over economic concentration, expressed in the prior receipt of approval the following transactions (actions):

1. reorganization of the market entity by merger or affiliation;
 2. the acquisition by a person (group of persons) of voting shares (shares in the authorized capital, units) of a market entity in which such person (group of persons) gets the right to control more than fifty percent of the said shares (shares in the authorized capital, units).
24. This requirement does not apply to the founders of a legal entity when it is created.
3. obtaining ownership, possession and use by a market entity (group of persons) of fixed production assets and (or) intangible assets of another market entity, if the book value of the property constituting the transaction, exceeds ten percent of the book value of fixed assets and intangible assets of a market entity alienating or transferring property.

25. Within control over economic concentration in 2018, the competition authority examined 64 applications for merger. All of them were allowed.

3. Resources of the Competition authority

3.1. Annual budget of the Competition authority

26. In 2018, the annual budget of the competition authority of the Republic of Kazakhstan amounted to approximately 5.8 million EUR (KZT 2,561,791 thousand).

3.2. Personnel structure of the Competition authority

27. The system of the Competition authority includes a central office in Astana and 17 subordinate territorial units (departments) located in all regions of Kazakhstan.

28. In 2018, the number of employees of the central apparatus of the antimonopoly authority amounted to 158 people, territorial units - 429 people.

29. At the same time, in the structure of the central office for 2018, the number of employees in the areas of activity is as follows:

1. investigation of violations of legislation in the field of competition protection – 45 people:
2. state control of economic concentration - 9 people.

3.3. The period of coverage of the information provided

30. The information contained in this report covers the period from 1 January 2018 to 31 December 2018.