

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

This report is submitted by Kazakhstan to the Competition Committee FOR INFORMATION.

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## *Kazakhstan*

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

1. The legislative work of the competition authority has been shaped by the recommendations of the OECD on the review of current practices and policies.
2. **At the first stage** - the basic one, the main recommendations of the OECD have been implemented and norms have been adopted aimed at:
  - cancellation of the State Register of dominant subjects and price regulation;
  - introduction of the institution of a conciliation commission;
  - maintaining the concept of "cartel", introducing institutions of notification and warning.
3. These norms were included in the new Entrepreneurial Code, which also implemented the norms of the previously effective Law "On Competition".
4. **At the second stage**, targeted changes were made to the implementation of the OECD recommendations, which were included in the Law of the Republic of Kazakhstan "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Competition and State Support for Housing Construction". These changes are aimed at:
  - determination of the status and tasks of the antimonopoly authority;
  - introduction of the institution of antimonopoly compliance;
  - reduction of the period for approval of the conclusion based on the results of the investigation (from 30 to 10 working days);
  - determination of a mechanism for interaction with law enforcement agencies and antimonopoly agencies of other countries.
5. **At the third stage**, large-scale work began on revising legislation to identify norms that hinder competition, as well as to improve the legal mechanism for identifying and suppressing price and tariff collusion. On May 24, 2018, the Law of the Republic of Kazakhstan "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Improving the Regulation of Entrepreneurial Activity" was adopted.
6. In 2019, in continuation of this work on revising legislation:
  - a competitive procedure was introduced to determine the expert organization in the cotton industry and the registrar of receipts in the grain industry;
  - the activities on organizing training in hunting minimum, reproduction of animal species and carrying out fumigation work were transferred to the competitive environment.
7. To improve the legal mechanism for detecting and suppressing price and tariff collusion:
  - a ban was introduced on the coordination of the activities of procurement suppliers and bidders and administrative liability for non-compliance;

- a mechanism for monitoring the procurement of goods and tenders was introduced.
8. In the course of further improvement of legislation, on April 2, 2019, the Law of the Republic of Kazakhstan "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the Development of the Business Environment and Regulation of Trade Activities" was adopted. The law provides for rules on non-recognition of a monopoly high (low) price, if it was formed in the course of properly conducted exchange and electronic trading and the establishment of the fact of a monopoly high (low) price based on the results of an investigation, taking into account exchange and over-the-counter indicators of world and Kazakhstan prices.
9. At the end of the work on the revision of regulatory barriers that impede competition and their elimination at the legislative level, as well as in the framework of the preparation of the Roadmap for the development of competition in key product markets and the Roadmap for the optimization of public services, a package of amendments was developed that provides for:
1. On the revision of legislation:
    - a) providing SMEs with cadastral installments, simplifying the procedure for acquiring rights to state land plots, developing and approving rules for access to the provision of services on the territory of the airport, not related to airport activities, excluding financial services and services of international rating agencies from one source.
  2. According to the Roadmap for the development of competition in the key commodity markets:
    - a) Reducing the grounds for State involvement in business activities and adopting a list of their activities;
    - b) Provision of space for communication operators on equal terms;
  3. On the Roadmap for the optimization of public services:
    - a) reduction of the list of documents when filing an application for consent to economic concentration.
10. This package of amendments also includes proposals for antimonopoly regulation:
- competence in the development and approval of the procedure for monitoring prices in commodity markets and its implementation;
  - assignment of a branch of a legal entity to a market entity and an object of investigation;
11. Harmonization of prices with exclusive rights by the competition authority (For example: It has been the practice in recent years to grant exclusive rights to public and private organizations in the form of joint-stock companies and limited-liability partnerships. There are now some 24 such organizations, of which 2 organizations are privately owned. In this connection, it is suggested that their prices be harmonized in accordance with the order determined by the competition authority at the level of sectoral laws.)
12. Administrative liability of non-privileged persons for bid-rigging and procurement, failure to comply with restrictions by legal entities with exclusive rights, anti-competitive

agreements between public authorities, The IIO, an organization with governmental functions to regulate the activities of market actors or between them and market actors.

13. Reference: The said amendments have been forwarded to the Ministry of Justice for inclusion in a separate draft law, in view of the introduction of the new procedure for Code of Administrative Offenses, effective 1 July this year, according to which its amendments and (or) supplements shall be implemented by law, not requiring amendments or additions to other legislation.

14. This package of amendments is included in the draft Law of the Republic of Kazakhstan «On amendments and additions to some legislative acts of the Republic of Kazakhstan on issues of business climate improvement», which is currently under consideration by the Majilis of the Parliament of the Republic of Kazakhstan.

15. At the same time, in implementation of the President's Nation Address of 5 October 2018 «Increasing the welfare of Kazakhs: improving income and quality of life» a package of amendments on the development of competition was developed and included in the draft law of the Republic of Kazakhstan «On amendments and additions to some legislative acts of the Republic of Kazakhstan on issues of taxation and improvement of investment climate».

16. The draft law on taxation provides for:

- conducting inspections of subjects of the quasi-public sector;
- development of standards (sectoral programs) for the development of competition;
- assessment and rating of government agencies and local executive bodies for the development of competition;
- introduction of a mechanism of non-discriminatory access to limited resources (mining and supply of coal, processing of fuels, etc.)

17. The draft law is also currently under consideration in the Majilis of the Parliament of the Republic of Kazakhstan.

18. The measures listed above will allow to increase the effectiveness of the measures in the reduction of state participation in the economy, to eliminate «interruptions» in deliveries, price «spikes» and monopoly abuses, to ensure constant monitoring of the achievement of key indicators of the development of competition, Shift the emphasis from State support for large enterprises to the development of small and medium-sized enterprises.

19. In general, all these measures will create better conditions for business and consequently increase the flow of investment to the country.

## 2. Enforcement of competition law and policy

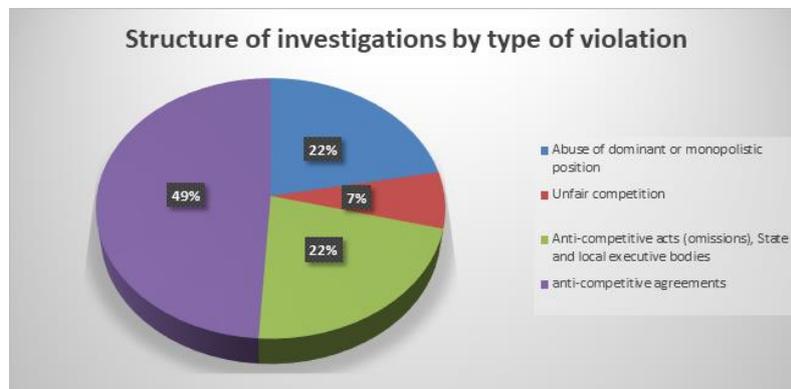
### 2.1. Detection and suppression of violations of competition law in the Republic of Kazakhstan

20. Violations of Kazakhstan's competition protection legislation are detected and suppressed through an investigation procedure.

21. A total of 87 investigations involving more than 128 market players and 19 State central or local executive bodies were completed in 2019 (219 investigations involving more than 200 market players and about 100 State or local executive bodies in 2018). However, of the 87 investigations completed, 69 have been completed with irregularities, of which:

1. 43 investigations into anti-competitive agreements;
2. Anti-competitive acts (omissions), State and local executive bodies, 19 investigations;
3. Abuse of dominant or monopolistic position in 19 investigations;
4. Unfair competition 6 investigations.

**Figure 1.**



22. In the context of industries, the statistics of investigations completed with the establishment of facts of violations is as follows, in the field:

- other industries 45 investigations;
- the fuel and energy complex 18 investigations;
- transport, civil aviation and communications 15 investigations;
- agro-industrial complex 6 investigations;
- financial markets 3 investigations.

23. Based on the results of investigations completed in 2019, decisions were made:

- Instituting proceedings for administrative offences and issuing orders for the elimination of violations of the legislation of the Republic of Kazakhstan in 59 investigations (169 in 2016, 134 in 2017, 117 in 2018);
- on the termination of the investigation on the grounds provided for by Article 223 of the Entrepreneurial Code of RoK on 18 investigations (in 2016 - 51, in 2017 - 23, in 2018 - 28);
- on initiation of an administrative offense case based on 6 investigations (in 2016 - 93, in 2017 - 52, in 2018 - 0);

- on the issuance of orders to eliminate violations of the legislation of the Republic of Kazakhstan in 5 investigations (in 2016 - 57, in 2017 - 53, in 2018 - 23);
- on the transfer of materials to law enforcement agencies for the production of a pre-trial investigation on 0 investigation (in 2016 - 2, in 2017 - 2, in 2018 - 3).

24. Overall, as shown by 2019, 2018 and 2017 statistics the number of investigations is decreasing from year to year, while the number of notifications and warnings issued is increasing, as the list of violations translated into preventive measures is broadened. However, despite a significant reduction in the number of investigations conducted, the amount of fines imposed by the court in 2019 amounted to more than 1.3 billion tenge (2018, 2.4 billion tenge, 2017, 3.2 billion tenge). The State budget included 1 billion tenge at the end of the reporting year.

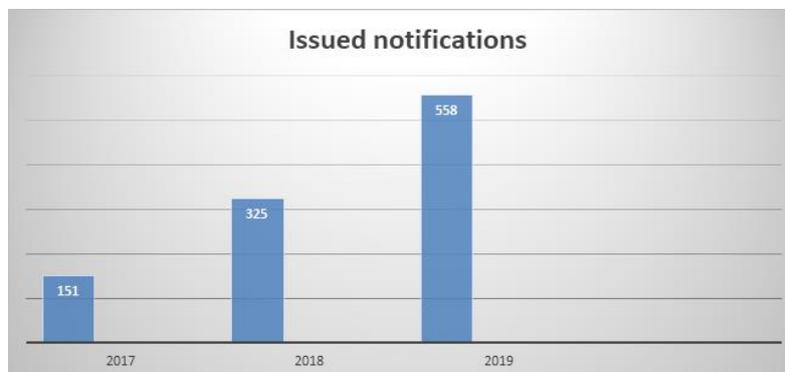
**Figure 2.**



25. As shown in graph, together with a reduction in the administrative burden on business in the form of investigations, there has been a positive trend in addressing and curbing irregularities in the form of notices and warnings.

26. In 2019, the Authority issued 558 notifications, of which 93% (519 notifications) were executed and 7% (34 notifications) were not executed.

**Figure 3.**

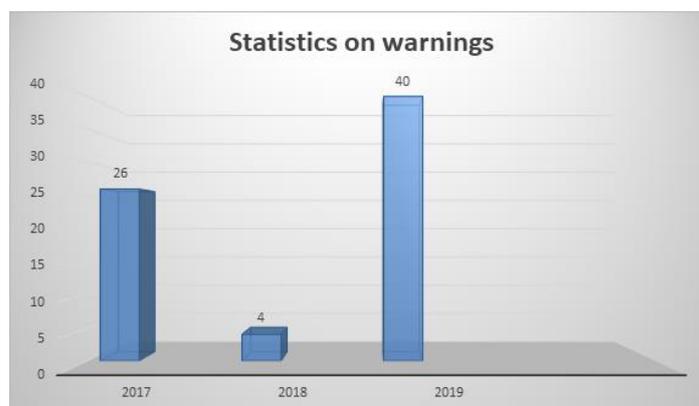


27. In the context of types of violations, the statistics of issued notifications are as follows:

- 198 on the basis of anticompetitive actions of inaction), agreements of state, local executive bodies, organizations endowed by the state with the functions of regulating the activities of market entities;
- 197 on the basis of anticompetitive concerted actions of market entities (30 or 9% in 2018);
- 80 due to the abuse of dominant or monopoly position (3 or 42% in 2017 and 93 or 29% in 2018)
- 55 based on unfair competition (88 or 58% in 2017 and 83 or 25% in 2018);
- 28 on the basis of anticompetitive vertical agreements provided for in paragraph 2 of Article 169 of the Entrepreneurial Code of RoK;

28. In addition, during 2019, 40 warnings were issued, of which 35 were issued on the grounds of anti-competitive concerted action (under article 170 of the Entrepreneurial Code of RoK), 4 on the grounds of abuse of a dominant or monopoly position (under article 174 of the Entrepreneurial Code of RoK), 1 on the grounds of unfair competition (under article 177 of the Entrepreneurial Code of RoK).

**Figure 4.**



29. Thus, the new tools introduced into the antimonopoly legislation allow market entities to voluntarily eliminate the violations committed, without initiating an investigation procedure against them and, accordingly, without imposing administrative fines.

30. During the reporting period, the Conciliation Commission held 29 meetings, as a result of which the members of the Conciliation Commission recommended:

- in 21 cases, support the revealed facts of violations of the legislation of the Republic of Kazakhstan with the revision of the draft conclusion, taking into account the voiced comments and proposals of the members of the Commission;
- In 2 cases, suspend the investigation and decide on the appointment of the expert examination;

- In 5 cases, discontinue the investigation;
  - In 1 case, extend the investigation to gather additional evidence.
31. In addition, in 2019, 2 draft external acts of antimonopoly compliance in the field of sulfuric acid sales were submitted for consideration, of which 1 was approved (Kazzinc LLP), 1 was sent for revision (Kazakhmys Corporation LLP). At the same time, in 2017 and 2018, 3 draft external acts of antimonopoly compliance were considered.
32. No applications for verification of the compliance of the draft agreement with the requirements of Article 169 of the PC of the Republic of Kazakhstan were received from market entities for consideration in 2019 (in 2016 and 2017, 2 applications were considered, in 2018, 3 applications).
33. The cartels at the auction.
34. As mentioned above, the current period has seen a concentration of efforts by the competition authority to identify and suppress the most serious antimonopoly violations of anti-competitive agreements. In 2019, 43 investigations into anti-competitive agreements were completed, which revealed:
- Facts of anti-competitive horizontal agreements in 29 cases;
  - 7 cases of anti-competitive vertical agreements;
  - 7 cases of coordination of economic activities of market participants.
  - 22 investigations were completed for procurement and bid collusion (out of a total of 43 collusion investigations completed). That is, more than half of the completed collusion investigations account for collusion in procurement and bidding. Moreover, another 22 collusion investigations have moved to 2020, of which 19 are in bidding and procurement.
35. Most of the investigations are related to the distortion of the results of the tenders, including through the division by lot, with the participation in public procurement of fuels, equipment, medical and other equipment.
36. This work was made possible by the assignment of procurement and tendering monitoring functions to the competition authority.
37. The basic principles of procurement are to spend money in an optimal and efficient manner, to give potential suppliers equal opportunities and to ensure fair competition among potential suppliers.
38. Experience has shown, however, that since the electronic platforms' inception, there has been a massive pattern of imaginary competition in procurement and tendering, whereby companies conspire not just to win without a competitive victory, but to win with a minimal reduction in price, I mean, no economy for the state.
39. In this regard, anti-competitive requirements for procurement and tendering, administrative liability for infringement thereof, as well as a mechanism for the competition authority to monitor tendering and procurement for collusion have been introduced since May 2018.
40. To date, the competition authority, in real time, manually monitors electronic buying or trading platforms for primary signs of collusion:
- Most of the tenders are won by the same company;

- A number of companies win bids or lots in turn;
- Minimum number of bidders;
- The presence of bidders who have never submitted an offer;
- Block lots or auctions;
- Minimum reduction of the winner's bid price from the initial bid price;
- is the minimum difference in the time of application, etc.

41. After establishing the primary signs of collusion, if possible, the IP addresses, the MAC addresses from which applications have been submitted are established, the applications themselves are examined for their identity or similarity, the same spelling errors, calculations, etc. a workman «call» of potential suppliers and a survey of the Internet in order to establish their presence at the same address, the same telephone number, the same e-mail address and search for other information, Evidence of links between companies, etc.

42. As a result, the number of bid-rigging and procurement investigations increased from 2-5 (2016-2018) to 41 in 2019.

43. In general, the presence of the competition authority in procurement and tendering is a new direction. There is a need to apply a case-by-case approach to each electronic site

44. According to statistics, the public procurement portal alone concluded more than 1.5 million contracts (1,559,725) in 2019. At the same time, one subdivision of the antimonopoly authority (6 persons) opens electronic platforms on a full-time basis and selectively manually examines purchases.

45. The number of court proceedings in which the authority participated in the reporting period decreased to 158 (425 in 2016, 253 in 2017, 250 in 2018), including 111 administrative cases and 47 civil cases. This is therefore due to a decrease in the number of investigations themselves.

46. As a result of the judicial proceedings, 134 cases were decided in favour of the antimonopoly authority in 2019 (370 in 2016, 204 in 2017, 217 in 2018), of which 96 were in administrative cases and 38 in civil cases.

47. At the same time, the number of court decisions against the antimonopoly authority amounted to 24 cases (in 2016 - 55, in 2017 - 40, in 2018 - 31), including 15 in administrative cases and 9 in civil cases.

## **2.2. State control over economic concentration**

48. In order to prevent the emergence of a monopoly position and (or) restrain competition, the authority monitors economic concentration.

49. Economic concentration is mainly effected through mergers and other measures to gain control over economic activities, including joint management of a market entity.

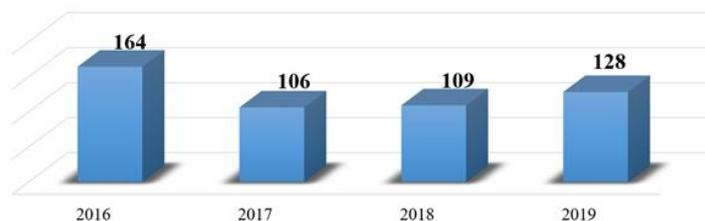
50. Under certain conditions, these actions may lead to monopolization or limit competition.

51. During 2019, the authority received 128 applications and notifications, including:

- 84 applications for approval of economic concentration, of which 79 were granted on the grounds that there was no evidence of a restriction on competition, 1 was granted with a condition, 4 were denied, 1 was violation of the moratorium on the establishment of quasi-public sector entities, 3 non-conformity with the requirements of legal acts;
- 34 notifications of economic concentration, of which 1 notification issued an order on the need to terminate the transaction due to restriction of competition.

52. The trend between 2016 and 2019 shows a slight increase in the number of applications compared to 2017 and 2018.

**Figure 5. Number of requests received in 2016 - 2019**



53. Efforts are under way to stimulate investment activity to improve the processing of applications for consent to economic concentration.

54. At the legislative level, changes are being made to enable users to submit fewer documents through the integration of public authorities' databases.

55. Full automation of this public service is planned while simplifying the business process. For example, if one of the parties to the transaction does not have any assets in the territory of the Republic of Kazakhstan, the consent of the antimonopoly authority will be submitted automatically.

56. In addition, activities are planned to improve the current methodology.

57. In particular, it is planned to define maximum permissible values of economic concentration, grounds for setting conditions simultaneously, minimizing the risks of subjective decision-making on the transactions in question.

### 3. Resources of the Competition authority

#### 3.1. Annual budget of the Competition authority

58. In 2019, the annual budget of the competition authority of the Republic of Kazakhstan amounted to approximately 2.25 million EUR (953 816 300 KZT).

#### 3.2. Personnel structure of the Competition authority

59. The system of the Antimonopoly Authority consists of a central office in Nur-Sultan and 16 territorial units (departments) under it, located in all oblasts of Kazakhstan.

60. By the Decree of the Government of the Republic of Kazakhstan dated July 10, 2019 No. 497, the Committee for the Protection and Development of Competition was created by reorganizing the Committee for Regulation of Natural Monopolies, Protection of Competition and Consumer Rights of the Ministry of National Economy of the Republic of Kazakhstan.

61. In this regard, the number of employees for 2019 in the central office of the antimonopoly body was 71 people, territorial divisions - 173 people.

62. At the same time, at the headquarters level in 2019, the number of staff in the areas of activity was as follows:

1. Investigation of competition law violations - 32 persons:
2. State control of economic concentration - 9 persons:
3. Competition advocacy - 8 persons.

### **3.3. The period of coverage of the information provided**

63. The information contained in this report covers the period from 1 January 2019 to 31 December 2019.