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## Annual Report on Competition Policy Developments in Kazakhstan

-- 2021 --

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## *Kazakhstan*

### **Introduction**

This report was prepared by the Agency for the Protection and Development of Competition of the Republic of Kazakhstan (hereinafter referred to as the Agency) in order to inform the President of the Republic of Kazakhstan and the Prime Minister of the Republic of Kazakhstan about the state of competition in individual product markets and the measures taken to limit monopolistic activities for 2021 in accordance with subparagraph 26 ) Articles 90-6 of the Entrepreneurial Code of the Republic of Kazakhstan.

The Report provides information on:

- on the most significant events (activities) in the field of antimonopoly regulation and competition policy in the Republic of Kazakhstan for 2021;
- information on international cooperation with foreign antimonopoly authorities, including within the framework of international integration associations;
- on the state of competition in certain commodity markets of the Republic of Kazakhstan, factors that distort competition and barriers to entry into commodity markets, information on the development of measures to eliminate them;
- on the results of work to reduce the participation of the state in business activities, identify and suppress violations of the legislation of Kazakhstan in the field of competition protection, performance indicators for state control over economic concentration, information on ongoing work to improve the legislation of the Republic of Kazakhstan in the field of competition protection;
- on the main tasks facing the antimonopoly authority for the coming year.

## 1. Competition policy in the Republic of Kazakhstan

### 1.1. General trends in competition policy in the Republic of Kazakhstan

1. Issues of development and protection of fair competition are among the priority areas of Kazakhstan's economic development. Currently, the competition policy in the Republic of Kazakhstan is a set of consistent measures implemented by the state in order to ensure conditions for the competitiveness of market entities, increase the efficiency and competitiveness of the economy, create conditions for providing the needs of citizens in goods and services in a cost-effective way. Its basis is the special legislation of the Republic of Kazakhstan on competition issues, the main strategic documents of the Republic of Kazakhstan, the Address of the President of the Republic of Kazakhstan. In general, the evolution of competition policy in Kazakhstan can be divided into 4 main stages<sup>1</sup>.

2. At the first stage, in 1991, the foundations of competition law were laid in the Republic of Kazakhstan, when the first Law “On the development of competition and the restriction of monopolistic activity” was adopted. This law laid down the main basic approaches to the regulation of monopolies, the prevention of unfair competition, anti-competitive actions of state authorities.

3. In the same period, the first antimonopoly authority of Kazakhstan was created - the State Committee of the Kazakh SSR to support new economic structures and limit monopolistic activities.

4. The 1991 Law "On the Development of Competition and Restriction of Monopoly Activities" was formed by analogy with Western European legislation, based on the control of monopolies by suppressing their abuse. Along with this, the goal of the Law was also proclaimed to stimulate entrepreneurship, including through the disaggregation (demonopolization) of enterprises. To this end, the antimonopoly authority was granted the right to make mandatory injunctions to state authorities and administration, organizational and managerial formations and market entities on the reorganization of monopolistic organizational and administrative formations and on the disaggregation (separation) of dominant market entities.

5. Also, the Law invalidated anti-competitive acts adopted by public authorities and administrations, as well as anti-competitive agreements of these bodies, market entities.

6. In general, the Law “On the Development of Competition and Restriction of Monopoly Activities” of 1991 was revolutionary for its time and greatly contributed to the development of market relations and competition, and also brought significant benefits to the development of private entrepreneurship in our country.

7. A significant milestone in the development of competition law was the consolidation of the legal framework for free competition in the 1993 Constitution of the Republic of Kazakhstan. The state guaranteed the freedom of private entrepreneurial activity and ensuring its protection and support. The main law of the country established restrictions regarding the prohibition of monopolistic and any other activities aimed at limiting or eliminating legitimate competition, obtaining unreasonable advantages, infringing on the rights and legitimate interests of consumers.

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<sup>1</sup>Prepared on the basis of information from A. Bikebayev (Chairman of the Republican Bar Association, member of the Public Council of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan);

8. The next important step in the formation of competition law was the adoption on December 27, 1994 of the General Part of the Civil Code of the Republic of Kazakhstan, where three directions were specified to prevent the use of civil rights by entrepreneurs in order to limit competition:

1. abuse by entrepreneurs of their dominant position in the market, in particular, by limiting or stopping production or withdrawing goods from circulation in order to create their shortage or increase prices;
2. conclusion and execution by persons engaged in similar entrepreneurial activities of agreements on prices, division of markets, elimination of other entrepreneurs and other conditions that significantly restrict competition;
3. commission of unfair actions aimed at infringing on the legitimate interests of a person conducting a similar business activity and consumers (unfair competition), in particular, by misleading consumers about the manufacturer, destination, method and place of manufacture, quality and other properties of goods of another entrepreneur, by incorrect comparison of goods in advertising and other information, copying the external design of someone else's goods and in other ways.

9. Instead of prohibiting monopolistic activity, the Constitution of the Republic of Kazakhstan of 1995 established that monopolistic activity is regulated and limited by law, and unfair competition is prohibited.

10. In 1998, the first comprehensive regulatory legal act was adopted, uniting the norms for the prevention, detection and suppression of unfair competition - the Law of the Republic of Kazakhstan "On Unfair Competition".

11. At the same time, the Law on Unfair Competition, along with the rules on preventing, detecting and suppressing unfair competition, included in its regulation also antimonopoly rules aimed at restricting competition. At the same time, along with the specified provisions of the Law on unfair competition, in the Law on competition of 1991, along with traditional antitrust rules, the rules on the prohibition of unfair competition were retained.

12. The second law on competition in the history of Kazakhstan was adopted in 2001 (Law "On Competition and Restriction of Monopoly Activities"), which replaced the Law "On the Development of Competition and Restriction of Monopoly Activities" of 1991.

13. This law was in many ways a progressive act and generally took into account the balance of various interests in the market. At the same time, the authors of this law did not take into account the experience of applying the previous law.

14. The Law on Competition of 2001 did not take into account the negative consequences of the previous provision, which provided the possibility of establishing a limit on the share of an entity in the relevant product market, and the excess of which was regarded as a fact of having a dominant position. Thus, the practice of recognizing the dominance of market entities was continued on the basis of quantitative indicators of markets without taking into account qualitative characteristics.

15. The law introduced a provision on collective dominance.

16. Also, the Law on Competition of 2001 created legal conditions for the introduction of state regulation of prices for goods, works, services of all market entities included in the State register of entities occupying a dominant (monopoly) position in commodity markets.

17. The above price regulation was selective, since one of the competitors could freely set prices on the same product market, and the other, due to its inclusion in the State register of entities occupying a dominant (monopoly) position, was subject to state price regulation.

18. Thus, a situation was created when any business entity could be included in the State register of entities occupying a dominant (monopolistic) position, and, accordingly, subject to state price regulation. The antimonopoly authority could refuse to increase prices based on the fact that the market entity overestimated the cost or profit rate. Thanks to this approach, an obstacle was created to the realization of the main goal of any company - to increase its market share and increase the profitability of the business through innovation and cost reduction.

19. Thus, instead of the task stated at the dawn of the formation of an independent state in the Law of the Kazakh SSR of December 15, 1990 "On pricing in the Kazakh SSR" that "as market structures are created in the economy and the market is saturated with products, goods and services, the scope state regulation of prices is reduced and, accordingly, the scope of application of free prices and tariffs is increased" ten years later, strict state regulation of prices was introduced with the rationing of costs and profits.

20. The third stage was marked by the adoption in 2006 of the Law "On Competition and Restriction of Monopoly Activities", which became the most stringent antitrust law in the history of Kazakhstan in relation to business and competition.

21. In this law, the number of negative norms has increased, among which the following can be distinguished:

22. The 2006 Law on Competition did not extend its scope to violations of local executive bodies, since its scope was limited to only the central executive bodies of the state. The 2006 Competition Law, unlike its predecessor, made anti-competitive agreements between market entities illegal, regardless of the size of their joint market share. The new Competition Law of 2006 significantly expanded the criteria for determining market dominance.

23. The Law on Competition of 2006 did not take into account the negative consequences of the norm contained in the Law on Competition of 2001 on the obligation of market entities included in the register to notify the antimonopoly authority about the upcoming increase in the price of a monopoly product (work, service) and about the reasons for their increase. In practice, this norm has turned into an unfair selective regulation of prices for goods of entities included in the State register of entities occupying a dominant (monopoly) position. In fact, price regulation began to spread by unfairly lowering the criteria for market dominance not only to monopoly corporations, but also to small sellers and not only to essential goods, but to all goods, works and services.

24. On July 27, 2007, the Law of the Republic of Kazakhstan "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the Activities of Sectoral Regulators" (hereinafter referred to as the Law on Sectoral Regulators of 2007) amended and supplemented the Law on Competition of 2006. This normative legal act marked a turn in the regulation of competition protection relations from an unreasonably tough approach to liberal positions. The law abolished state regulation of prices for most types of goods, works and services of all persons included in the State register of entities occupying a dominant (monopoly) position.

25. However, selective price regulation was retained in relation to market entities included in the State register of entities occupying a dominant (monopoly) position in the commodity markets in the field of railway transport, electricity and heat, transportation of

oil, oil products and gas, civil aviation, port activities, telecommunications and postal service.

26. On December 25, 2008, a new Law of the Republic of Kazakhstan “On Competition” was adopted, which continued the trend initiated by the Law on Industry Regulators of 2007 to liberalize the regulation of entrepreneurial activity. However, at the same time, many other contradictions and norms unnecessarily restricting the freedom of entrepreneurial activity appeared in it. At the same time, the norm of the Law on Competition of 2006 on state regulation of prices for goods, works and services of entities included in the State register, instead of a fundamental revision, was only transferred to the Law on Natural Monopolies and Regulated Markets.

27. A new stage in antimonopoly regulation began with the adoption on October 29, 2015 of the Entrepreneurial Code of the Republic of Kazakhstan, section 4 of which, called "Economic Competition", replaced the 2008 Competition Law. During this period, a large-scale reform of the antimonopoly policy was carried out in Kazakhstan in accordance with the best world practice proposed in the recommendations of the OECD and the World Bank. The main goal of this reform was to liberalize and improve the effectiveness of antimonopoly legislation, aimed at making it easier to do business in a favorable competitive environment.

28. As part of this reform, the level of antitrust law was raised from the level of law to the level of a code. Since 2015, all norms of the antimonopoly law have been included in the Entrepreneurial Code (including the norms providing for the reform of antimonopoly policy), thereby increasing its importance in the hierarchy of legislation.

29. Since then, there has been continuous improvement, depending on the requirements of the time, legislation and the activities of the authorized authority in order to promote the formation of a favorable competitive environment for market entities. Starting from this moment and until 2021, with the exception of individual point changes, 4 antimonopoly packages were adopted during the modernization of competition law.

30. The first antimonopoly package (2015): at the first stage, in October 2015, the Entrepreneurial Code was adopted, which implemented the norms of the Law “On Competition”, as well as innovations aimed at liberalizing antimonopoly regulation, bringing the norms of the current antimonopoly legislation into account with its goals and tasks in line with the best world practice, reducing administrative barriers and the administrative burden on business.

31. The main innovations include the following:

1. since January 1, 2017, the register of dominants has been completely abolished;
2. the institution of the Conciliation Commission under the antimonopoly authority was introduced. Its purpose is to openly discuss the investigation before making a final decision. Participation in the conciliation commission of representatives of business, NCE, independent experts, including those involved by the market entity itself, ensures the transparency and objectivity of the dispute resolution process;
3. the antimonopoly authority is empowered to issue injunction to state bodies on the need to ensure (develop) competition. This measure is aimed at creating conditions for a favorable competitive environment, removing barriers in the markets and ensuring the protection of competition;
4. introduced the institution of preliminary consideration of the draft agreement of market entities. This rule allows a market entity to apply to the antimonopoly authority before the implementation of agreements for preliminary consideration

by the latter of the draft agreement for the presence or absence of provisions that contradict antimonopoly legislation or lead to restriction of competition.

5. The introduction of a preliminary agreement review tool is a common global practice, a preventive measure to prevent violations and contributes to a better understanding of the competition law by market entities;
  6. in the interests of business, in addition to the “warning”, the institute of notification was introduced (a warning about the presence of violations in the actions (inaction) of a market entity). This tool allows to warn business entities in advance, giving them the opportunity to independently eliminate violations, without conducting an investigation;
  7. the principles of the “Yellow Pages Rule” have been introduced into competitive practice, the essence of which is that in order to maintain a healthy competitive environment, it is necessary to limit the creation of legal entities with state participation and prevent state interference in those areas of the economy where business is represented.
32. Now, in order to expand and (or) change the types of activities by subjects of the quasi-public sector, it is required to obtain the prior consent of the antimonopoly authority. Also, according to the results of annual analyzes, a list of subjects of the quasi-public sector to be transferred to the competitive environment is formed.
33. The second antimonopoly package (2016): as part of the second stage of improving legislation in the field of competition protection in 2016, in accordance with the recommendations of the OECD, the Law of the Republic of Kazakhstan “On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Competition and Public housing construction support.
34. Within the framework of this Law, the Entrepreneurial Code is supplemented with the chapter “Antimonopoly authority and its powers”, which defines the system of the antimonopoly authority and its tasks, the competence, powers and obligations of its employees at the legislative level, regulates the interaction of the antimonopoly authority with law enforcement agencies, as well as with antimonopoly authorities of other countries.
35. In addition, the following changes have been made to the Law:
1. the terms for conducting investigations have been increased from 2 to 3 months, which made it possible to conduct better investigations in complex cases;
  2. the institution of the conciliation commission has been improved, in particular, norms have been included that oblige the antimonopoly authority to send the object of investigation a draft conclusion on the results of the investigation 30 days before the end of the investigation. This innovation provided an opportunity for pre-trial appeal of the results of the investigation. At the same time, the period for approval of the conclusion based on the results of the investigation has been reduced from 30 to 10 working days in order to avoid unreasonable delays in the investigation procedure;
  3. exemptions in anti-competitive agreements for exclusive rights to intellectual property have been abolished if such agreements can restrict or eliminate competition;
  4. the institute of antimonopoly compliance has been introduced - a new tool for preventing violations of antimonopoly legislation. In essence, compliance is a company's risk management system;

5. the scope of application of the institution of notification has been expanded. Its effect is extended to unfair competition and abuse of dominant position, with the exception of setting monopolistically high prices;
  6. approaches to the analysis of the competitive environment have been changed. In particular, new qualitative characteristics have been introduced, such as the presence of barriers in the markets, the possibility of influencing the conditions for the circulation of goods, the state of competition in determining a monopoly, dominant position in accordance with the approaches and methods used in OECD countries.
36. In general, the implementation of these amendments made it possible to improve the quality of analysis of commodity markets - the main instrument of antimonopoly regulation, reduce the number of investigations into minor violations by expanding warning tools, and focus efforts on identifying the most dangerous cartel agreements for the country's economy.
37. The third antimonopoly package (2018): within the framework of the tasks set in the Address of the Head of State to the people of Kazakhstan dated October 5, 2018 "Growing the welfare of Kazakhstanis: increasing incomes and quality of life", proposals were developed to reform the work of the antimonopoly authority with strengthening the function of protecting competition.
38. These proposals were included in the Law of the Republic of Kazakhstan dated May 24, 2018 "On amendments and additions to certain legislative acts of the Republic of Kazakhstan on improving the regulation of business activities".
39. This Law defined the requirements for the protection of competition in the organization and conduct of purchases and tenders (strengthened the powers of the antimonopoly authority to identify cartels in the conduct of tenders (auctions) and purchases).
40. As a result of the adopted changes, the number of identified cartels in bidding and procurement increased 6 times (from 4 in 2018 to 24 in 2019).
41. In addition, the Law clarifies the powers of officials of the antimonopoly authority during the investigation, in particular, it establishes the right to make copies of documents and electronic media, to conduct audio, photo and video recording of the object of investigation, and also expands the scope of the institution of notification.
42. Fourth antimonopoly package (2020): as part of the fourth package of modernization of competition legislation, the Law of the Republic of Kazakhstan dated June 29, 2020 "On amendments and additions to certain legislative acts of the Republic of Kazakhstan on improving the business climate" adopted amendments aimed at developing prevention tools and prevention of violations of antitrust laws.
43. In order to prevent collusion and concerted actions, the antimonopoly authority is legally assigned the function of monitoring prices in commodity markets.
44. In addition, on the basis of practical experience, the deadline for the execution of a notification has been increased from 10 to 30 calendar days, and the possibility of its extension is also provided.
45. To reduce the burden on business, the state service for coordinating economic concentration has been optimized.
46. Additionally, amendments were adopted aimed at further reducing state participation in entrepreneurial activity.

47. In particular, the list of grounds for state participation in entrepreneurial activity has been reduced from 7 to 5.

48. At the same time, an exhaustive list of types of activities of state enterprises has been defined, previously such a list was valid only for legal entities with state participation in the form of JSC and LLP.

49. A landmark event at the end of 2021 was the adoption by the Parliament of the Republic of Kazakhstan of the Law “On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the Development of Competition” (fifth antimonopoly package), work on the development of which was introduced by the Agency for the Protection and Development of Competition in 2021.

50. This law<sup>2</sup> (hereinafter referred to as the Law of 2022) was signed by the Head of State on January 3, 2022. The purpose of the Law of 2022 is to implement the main directions of the state policy on the development of competition, approved by the Decree of the President of the Republic of Kazakhstan dated December 31, 2020 No. 484 "On the main directions of the state policy on the development of competition" <sup>3</sup>(hereinafter - Decree 484), which will solve the systemic problems of the functioning of commodity markets and remove barriers to the development of competition (for more details on the provisions of the 2022 Law, see Chapter 4 of this report).

51. Speaking about the main strategic documents of the Republic of Kazakhstan, it should be noted that the relevant vector of development of the state policy in the field of competition of the Republic of Kazakhstan is currently enshrined in the main documents of the State Planning System - the Development Strategy of Kazakhstan until 2050 <sup>4</sup>(hereinafter referred to as the Strategy), National Priority 8 "Building diversified and innovative economy" (hereinafter referred to as the National Priority), the National Development Plan of the Republic of Kazakhstan until 2025 <sup>5</sup>(hereinafter referred to as the National Plan).

52. One of the requirements of the Strategy is to ensure the rules of fair competition. In this connection, fair competition has been declared one of the main principles for the formation of a new model of the country's development, set out in the National Plan. The National Plan as a whole formulated approaches to the implementation, including the Nationwide priority, aimed at stimulating and developing the economic activity of entrepreneurs, effective protection of private property and competition.

53. Fundamental changes for Kazakhstan have been identified as a nationwide priority, including from:

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<sup>2</sup>Law of the Republic of Kazakhstan dated January 3, 2022 No. 101-VII ZRK "introducing amendments and additions to some legislative acts of the Republic of Kazakhstan on the development of competition" // <https://adilet.zan.kz/rus/docs/Z2200000101>;

<sup>3</sup>Decree of the President of the Republic of Kazakhstan dated December 31, 2020 No. 484 “On the main directions of the state policy for the development of competition” // <https://adilet.zan.kz/rus/docs/U2000000484>;

<sup>4</sup>Strategy "Kazakhstan-2050": a new political course of an established state // <https://adilet.zan.kz/rus/docs/K1200002050>;

<sup>5</sup>Decree of the President of the Republic of Kazakhstan dated February 15, 2018 No. 636 “On approval of the National Development Plan of the Republic of Kazakhstan until 2025 and invalidation of some decrees of the President of the Republic of Kazakhstan” // <https://adilet.zan.kz/rus/docs/U1800000636>;

- regulation to motivation;
- from increased administrative control to the simplification and legal conduct of business activities;
- from the active role of the state as the owner and regulator in industries to healthy competition between private entities.

54. Also, the main tasks necessary for the implementation of fundamental changes, including denationalization in competitive industries, as well as ensuring a healthy competitive environment, have been identified as a national priority.

55. The main strategic indicator is to increase the share of medium-sized businesses in the economy of Kazakhstan by the end of 2026 to 16%.

56. An important event in 2021 was also the development and approval for the implementation of the tasks set of the regulation on the comprehensive development of competition of the National Project for the Development of Entrepreneurship. Thus, the Government Decree<sup>6</sup> approved the National Project for the Development of Entrepreneurship for 2021-2025, which included provisions for the comprehensive development of competition. The relevant provisions were included in the National Project for the Development of Competition (pursuant to Presidential Decree No. 484 of December 31, 2020), which was submitted to the Office of the Prime Minister of the Republic of Kazakhstan on June 7, 2021 (July 1, 2021 at a meeting of the Supreme Council under the President for reforms, a decision was made to include the provisions of the National Project for the Development of Competition in the National Project for the Development of Entrepreneurship).

57. The direction for the integrated development of competition of the National Project for the Development of Entrepreneurship is aimed at solving 3 main tasks:

1. ensuring access to markets in the electric power industry (projects to increase the volume of centralized trading in electric energy, eliminate tariff differentiation, and remove barriers to reorientation of demand);
2. development of exchange (organized) trading (projects to expand the list of exchange goods and increase the volume of exchange trading in key goods are at the implementation stage);
3. denationalization of the economy (projects to reduce government assignments, reduce state operators, reduce the share of public procurement from a single source, sectoral analysis of state ownership).

58. The implementation of the National Project is carried out on the basis of the electronic platform "Easy project" under the direct supervision of the National Project Office specially created by the Government.

59. In continuation of the topic of significant events, it should be noted that in the implementation of Decree 484, for the first time in the country, the Master's degree program "Competition Law" (specialty code 7M04207) was registered in the Register of Educational Programs. Training of specialists with knowledge of the fundamentals and mechanisms of the effective operation of competition is necessary for the implementation of a proactive competition policy in the country.

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<sup>6</sup>Decree of the Government of the Republic of Kazakhstan dated October 12, 2021 No. 728 "On approval of the national project for the development of entrepreneurship for 2021-2025" // <https://adilet.zan.kz/rus/docs/P2100000728>;

60. In the new academic year, a magistracy department was opened on the basis of KazGUU named after M. Narikbayev<sup>7</sup>. In connection with the launch of this training program, with the involvement of experts from neighboring countries, scientists, lawyers practicing in the field of antimonopoly law, as well as the leadership of the Agency for the Protection and Development of Competition, a training manual "Competition Law and Policy of the Republic of Kazakhstan" was developed. The preface to it was written by the Head of State.

61. This study guide provides an understanding of the fundamentals of competition theory, analyzes the key trends in the development of competition and the regulatory system in the world, the place of competition law in the general system of law, compares the mechanisms for legal protection of competition, reveals the concepts and types of monopolistic activities, anti-competitive agreements and concerted actions. The essential facilities doctrine is analyzed in detail, which is important for Kazakhstan today. At the same time, the role and tasks of economic analysis for the purposes of antimonopoly regulation are considered.

62. In the official opening of the master's educational program "Competition Law" and the presentation of the textbook for the first stream of undergraduates of the program "Competition Law" in KazGUU named after M. Narikbaev was attended by undergraduates, a team of authors of the textbook, Judge of the Supreme Court Gulzhan Almagambetova, heads of the Center for the Development and Protection of Competition Policy, heads of foreign antimonopoly authorities of Armenia, Kyrgyzstan, Tajikistan, Uzbekistan, the Eurasian Economic Commission, experts from the International Center for Competition Law and BRICS Policy and others .

63. The training of the first stream of undergraduates under the program "Competition Law" started on February 1, 2022. Among the students are 24 mid-level specialists of quasi-state companies (KazTransGas JSC, Petrosan LLP, Samruk-Kazyna National Welfare Fund JSC, Air Astana JSC, Samruk-Energy JSC, International Center for Competition Law, Innovation and policy) and 3 specialists of the Agency for the Protection and Development of Competition.

64. Along with Kazakh teachers, national experts in the field of competition law, lectures to students are given by the head of the scientific laboratory of the "Center for the Study of Competition Policy and Economics" SIU RANEPa, RF, Professor Irina Knyazeva. Also during the academic year, guest lectures are given by specialists from the Agency for the Protection and Development of Competition.

65. Effective implementation of competition policy also implies the improvement of law enforcement practice.

66. In this regard, the Agency for the Protection and Development of Competition, within the framework of Decree 484, together with the Supreme Court, analyzed all court decisions in civil cases received from local courts.

67. Based on the results, a generalization was prepared that takes into account problematic issues when considering antitrust cases. The generalization will ensure the uniformity of judicial practice, a unified approach to the interpretation and application of antimonopoly legislation.

68. Also, together with the Financial Monitoring Agency, in order to strengthen interaction, a Memorandum of Cooperation was signed and a regulation was signed on the

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<sup>7</sup>Master's degree. Educational programs of KazGUU named after M.S. Narikbaeva // <https://kls.kazguu.kz/ru/magistratura-obrazovatelnye-programmy/>;

transfer of materials on the grounds of criminal offenses related to violation of competition law, the allocation of specialists and the exchange of information.

69. Also, in order to effectively identify cartel collusion in public procurement, the Agency for the Protection and Development of Competition is implementing the Ormek search analytical system on the platform of the Single Procurement Window of NCE Atameken, which makes it possible to automatically identify signs of cartel collusion at auction.

70. A similar system for identifying bid rigging has been operating in Russia for a year under the name "Big Digital Cat". It allows to automatically generate final data from trading floors with the establishment of signs of collusion. A significant difference between the Kazakh analytical system "Ormek" is the analysis of behavior and the establishment of indirect links between bidders with automatic notification of possible signs of bid rigging.

71. The new antimonopoly control mechanism will make it possible to suppress imaginary competition in procurement, will positively influence the development of healthy competition, will help attract new participants to public procurement and, in general, save budget funds.

72. The antimonopoly authority is consistently working to remove barriers to the development of competition. Thus, since 2020, under the Agency for the Protection and Development of Competition, the Councils for Identifying and Eliminating Barriers to Entry to Commodity Markets (hereinafter referred to as Barrier Councils) have been operating on the principles of crowdsourcing<sup>8</sup>. In 2021, 10 systemic barriers to the development of competition were eliminated:

1. the discriminatory criterion for the selection of drug suppliers is excluded.

In the course of the work of the Councils on Barriers, the existence of discriminatory criteria for the selection of potential suppliers (scoring points based on the presence of foreign production experience) was revealed when purchasing medicines under the state order.

Thus, the participant receives 2 points for the experience of pharmaceutical production for more than five years outside of Kazakhstan. The Barriers Council noted that this condition infringes on the rights of domestic manufacturers, since pharmaceutical manufacturers with foreign participation are given an advantage.

Decree of the Government of the Republic of Kazakhstan dated June 4, 2021 No. 375 "On approval of the Rules for organizing and conducting the procurement of medicines, medical devices and specialized medical products within the guaranteed volume of free medical care and (or) in the system of compulsory social health insurance, pharmaceutical services and recognition invalidated some decisions of the Government of the Republic of Kazakhstan" Decree of the Government of the Republic of Kazakhstan dated October 30, 2009 No. 1729 "On approval of the Rules for organizing and conducting the procurement of medicines and medical devices, pharmaceutical services" was recognized as invalid, thereby eliminating the criterion for accruing additional 2 points to the participants of the competition for having experience in pharmaceutical production for more than five years with a potential supplier or its founder (participant) outside the Republic of Kazakhstan;

2. limited access to small suppliers for the purchase of coal has been eliminated.

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<sup>8</sup>Barrier Council Facebook page // <https://www.facebook.com/groups/372403647206099>;

In the course of the work of the Councils on Barriers, a barrier to the development of competition associated with limited access for regional coal suppliers was identified.

Previously, coal mining companies at the peak of the season contracted the entire annual volume as part of one-time trading in large volumes (from 100 to 500 thousand tons of coal in one lot) for a short period. As a result, access to resources for small businesses was completely limited.

Based on the results of the work carried out, trading in municipal coal was launched according to a new scheme: 10% of the produced volume<sup>9</sup>. Coal is sold in small lots (1-5 wagons) directly to regional operators. According to most dead ends, they gained access to exchange trading in coal from coal mines in small lots, available for purchase directly without intermediaries;

3. the barrier to private laboratories' access to prenatal screening services has been removed (Stage 2).

In the course of the work of the Councils on Barriers, an administrative barrier was identified for the development of competition in the conduct of perinatal screening by private laboratories. Based on the results of the work carried out, the Ministry of Health has amended the Rules for organizing screening<sup>10</sup> in terms of providing the possibility of conducting laboratory tests as part of prenatal screening (stage 2) by medical laboratories, regardless of ownership and departmental affiliation.

Previously, the second level of prenatal screening could be carried out only by obstetric organizations (perinatal centers, maternity hospitals, maternity wards);

4. the high entry requirements for participation in the auctions of fuel and lubricants have been eliminated.

In the course of the work of the Councils on Barriers, an administrative barrier for the development of competition was identified in terms of the presence of requirements for buyers of petroleum products in the form of a requirement for an annual turnover of 50 thousand tons to participate in exchange trading in petroleum products.

Based on the results of the work carried out, the requirements for the turnover of fuels and lubricants for participation in exchange trading were reduced by 10 times to 5 thousand tons per year (the size of a small regional network of filling stations, the most massive segment);

5. non-discriminatory access to cemetery maintenance services is provided.

In the course of the work of the Councils on Barriers, a barrier to the development of competition was identified, associated with the lack of equal conditions for the functioning of market entities, namely the transfer of cemeteries to trust management on non-transparent terms, there were examples when the local executive body transferred 50 cemeteries to trust management in favor of one private company.

Due to the transfer of cemeteries to trust management in such conditions, the prices for digging, lowering the body into the grave and burial have increased significantly.

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<sup>9</sup>Order of the Minister of Trade and Integration of the Republic of Kazakhstan dated August 13, 2021 No. 498-HK "On Amendments to the Order of the Minister of National Economy of the Republic of Kazakhstan dated February 26, 2015 No. 142 "On Approval of the List of Exchange Commodities" // <https://adilet.zan.kz/rus/docs/V2100023993>;

<sup>10</sup>Order of the Minister of Health of the Republic of Kazakhstan dated September 9, 2010 No. 704 "On approval of the Rules for organizing screening" // <https://adilet.zan.kz/rus/docs/V1000006490>;

Based on the results of the work carried out, a rule was adopted on the transfer of cemeteries to trust management only on a competitive basis, in addition, amendments were made regarding the provision by the administration of cemeteries of equal access to all subjects of funeral services <sup>11</sup>;

6. redundant licensing requirements for power supply activities have been eliminated.

Based on the results of the analysis of the electricity supply market, work was carried out to eliminate the requirements for a license in terms of the existence of agreements / protocols of intent for the transmission and purchase of electricity <sup>12</sup>.

This will allow new players to be less dependent on the actions of energy companies affiliated with energy supply companies - competitors. This requirement was also inconsistent with the policy of transferring purchase and sale transactions to centralized auctions;

7. a register of applications (waiting list) was introduced in the IS "Qoldau" for subsidies in the agro-industrial complex.

During the work of the Barrier Councils, a technological barrier was identified when using the Qoldau IS, which consists in the technical complexity of obtaining subsidies and the inability to apply for subsidies in the absence of funds in the budget (for example, when funds are received from the budget, the Qoldau system starts to accept applications, but within a short time the funds run out, after which the Qoldau program does not accept applications. As a result, only those entities that managed to apply within a few minutes receive subsidies).

Based on the results of the work carried out, amendments and additions were made to the Subsidizing Rules for the reimbursement of part of the costs incurred by the subject of the agro-industrial complex during investment investments <sup>13</sup> in terms of introducing a "waiting list". Thus, entrepreneurs will be included in the Reserve (waiting list) in their areas, and taking into account these applications, the payment of subsidies will be carried out in order, according to the date and time of receipt of applications, when additional budgetary funds are allocated in the next financial year;

8. eliminated the facts of non-competitive distribution of goods between terminals.

A barrier to the development of competition associated with the distribution of goods between terminals has been identified. LLP "KTZ-FT" (ignoring the requirements of foreign consignors) previously sent cargo to the terminals of its subsidiary JSC "Kedentrans-service". The antimonopoly authority submitted a notification to the address

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<sup>11</sup>Order of the Minister of National Economy of the Republic of Kazakhstan dated October 6, 2021 No. 90 "On Amendments to the Order of the Minister of National Economy of the Republic of Kazakhstan dated May 31, 2019 No. 48 "On Approval of the Model Rules for Burial and Organizing Care of Graves" // <https://adilet.zan.kz/rus/docs/V2100024678>;

<sup>12</sup>Order of the Minister of National Economy of April 14, 2021 No. 42 "On Amendments to the Order of the Minister of National Economy of the Republic of Kazakhstan of January 29, 2015 No. 60 "On Approval of Qualification Requirements and a List of Documents Confirming Compliance with them for the Purchasing of Electricity for the Purposes of energy supply, operation of main gas pipelines, oil pipelines, oil product pipelines" // <https://adilet.zan.kz/rus/docs/V2100022546>;

<sup>13</sup>Order of the Minister of Agriculture of the Republic of Kazakhstan dated November 16, 2021 No. 332 "On amendments and additions to the order of the Acting Minister of Agriculture of the Republic of Kazakhstan dated July 23, 2018 No. 317 "On approval of the Subsidizing Rules for reimbursement of part of the costs incurred by the subject of the agro-industrial complex, with investments" // <https://adilet.zan.kz/rus/docs/V2100025174>;

of NC KTZ JSC, which was executed. Today, cargo is placed at the terminals of consignees in accordance with the requirements of foreign shippers;

9. non-transparent access and pricing in the markets for the sale of fuels and lubricants have been eliminated.

In the course of the analysis of the fuels and lubricants market, a barrier to the development of competition associated with limited access to petroleum products was identified. In particular, the sale of fuels and lubricants is carried out through the direct conclusion of contracts, which leads to the formation of an opaque process of selecting counterparties for the corresponding positions of fuels and lubricants, as well as determining the price.

In this regard exchange trading in gasoline, diesel fuel, bitumen, jet fuel has been launched in Kazakhstan. As a result, access to goods in key markets was provided for all business categories, including small and medium sized businesses. Transparent stock quotes are formed, which should be used by market participants;

10. Equal access to the program of preferential leasing financing for car manufacturers is provided.

A barrier to the development of competition in the current program and rules for leasing financing of domestic automakers has been identified.

In order to finance domestic automakers under the financial and economic justification program “Lending to Baiterek NMH JSC”, approved by the Ministry of Industry and Infrastructure Development, lending is being carried out to Industrial Development Fund JSC (IDF, formerly DBK-Leasing JSC).

According to the financing mechanism determined by this program, the Association of Automobile Business of Kazakhstan (hereinafter - AKAB) single-handedly determines the amounts of limits for leasing financing for each automaker. Similar norms are spelled out in the IDF program for leasing financing to support the production of domestic cars.

73. Based on the results of the work carried out, the Ministry of Industry and Infrastructure Development and the Industry Development Fund changed the mechanism of leasing financing: the amounts of limits are distributed according to the decision of the commission instead of the sole distribution of AKAB.

74. The work to identify and eliminate barriers that hinder the development of competition is actively ongoing and is one of the key areas in the activities of the Agency for the Protection and Development of Competition.

75. Similar work continues at the regional level.

76. For example, the barrier in the market for passenger transportation along the Medeu-Shymbulak route has been removed. Thus, the Green Economy Department of the city of Almaty executed the notification of the Agency for the Protection and Development of Competition and, as a result, the exclusive right to transport passengers along the route Medeu - Shymbulak was excluded. Earlier, the Akimat of Almaty city granted the monopoly right to provide transportation services along the above route to EZS Operator LLP. As a result of the work carried out, a new player in the person of Bly Sky Energy LLP entered this commodity market. A new player entered the market at a price lower by 25%.

77. Barriers in the housing and communal services markets of the Mangistau region have also been removed. In particular, 4 notices were issued to the intercom companies in Aktau on the facts of their imposing services for the maintenance of intercom equipment after its installation and the inclusion of a monthly subscription fee for maintenance.

78. To date, notifications have been executed and, based on the results of the work carried out, residents have the opportunity to choose potential intercom repair companies. The monthly subscription fee has also been eliminated.

79. In addition, an order was issued to the Akimat of Aktau on the fact of the transfer of 388 elevators (without a tender) for service to Aktau City Elevators LLP. As a result of the work carried out, the elevators will be transferred to the balance of the residents and there will be an opportunity to change the service provider. For reference: there are 8 companies operating in the market for the maintenance of elevators.

80. Currently, in order to create a holistic policy in the field of protection and development of competition, synchronized with other state policies that directly or indirectly affect competition, and integrated into the general economic policy of the country, a draft Concept for the protection and development of competition in the Republic of Kazakhstan for 2022-2026 has been developed. (hereinafter referred to as the Concept). The implementation of the Concept involves the elimination of systemic barriers that hinder the development of competition, the improvement of approaches and mechanisms for protecting competition in order to create a favorable competitive environment for market entities.

81. It is expected that the implementation of the Concept will help ensure non-discriminatory access of business entities to key production factors, state support measures; reduction and elimination of regulatory barriers to the development of competition, switching costs; limiting the participation of the state in competitive industries; involvement of all central state and local executive bodies in the work to promote the development of competition and the introduction of a proactive competition policy; improving the effectiveness of preventive measures of antimonopoly regulation and the quality of decisions made by the antimonopoly authority based on economic analysis.

## 1.2. The international cooperation

The Agency for the Protection and Development of Competition is constantly working to strengthen international cooperation with foreign antimonopoly authorities, both within the framework of the functioning of international integration associations and on a bilateral basis, as well as to improve the image of the antimonopoly authority of the Republic of Kazakhstan and the country as a whole.

### *1.2.1. Interaction within the framework of cooperation with international organizations:*

#### *Interaction with the OECD:*

82. The Agency for the Protection and Development of Competition continues to implement the 53rd step of the Program of the President of the Republic of Kazakhstan dated May 20, 2015 "Plan of the Nation - 100 Concrete Steps" <sup>14</sup>.

83. *For reference: In 2015, the Review of Competition Policy and Legislation conducted by the OECD was completed. Based on this Review, in 2016, changes were made to competition law aimed at implementing OECD standards.*

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<sup>14</sup>Step 53: CHANGING THE CONCEPT OF WORK OF THE ANTI-MONOPOLY SERVICE AND BRINGING IT IN COMPLIANCE WITH OECD STANDARDS. The updated service should focus on promoting free competition // <https://adilet.zan.kz/rus/docs/K1500000100>;

84. *As a result of the work carried out to implement the OECD recommendations, on June 17, 2016, Kazakhstan was accepted as a participant in the OECD Competition Committee.*

85. In 2017, as part of the 1st stage of the Roadmap, a revision of the legislation was carried out (monitoring of 108 laws and 972 by-laws) to identify norms that impede the development of competition.

86. In 2018, the Law “On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Improving the Regulation of Business Activities” eliminated 35 barriers to competition.

87. In 2020, the 2nd stage of the audit of regulatory barriers that hinder competition in more than 50 legislative acts was carried out, and the relevant proposals for solving the identified problems are included in the Law “On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Improving the Business Climate”.

88. In 2021, as part of the 2nd stage of the Roadmap "Conducting an analysis of the changes made to the legislation in the field of competition protection following the results of its bringing into line with OECD standards and the fulfillment of obligations to submit assessment questionnaires to the OECD", the Agency for the Protection and Development of Competition conducted an audit of 22 recommendations of the OECD, which resulted in the implementation of 19 OECD recommendations, which is 86% (with a plan of 70% according to the Roadmap).

89. In April 2021, responses to the evaluation questionnaire on the activities of the antimonopoly authority were sent to the OECD, which covers 5 sections, including quantitative and qualitative indicators (including number of solutions by section: cartels and other anti-competitive agreements; abuse of dominant position / unilateral behavior; mergers and acquisitions; competition advocacy).

90. These measures are a mandatory preliminary stage for the OECD Competition Committee to decide whether to conduct a second review of the competition legislation and policy of the Republic of Kazakhstan.

91. From June 7 to 11, 2021, employees of the Agency for the Protection and Development of Competition participated in the annual meeting of the OECD Competition Committee and in meetings of Working Groups 2 and 3. During the meeting, topics such as “Competition law enforcement and regulatory alternatives” were discussed, “Competition Compliance Programs”, “The Concept of Potential Competition”, “Methodology for Measuring Market Competition”, “Data Portability, Interoperability and Competition”.

92. In the period from November 29 to December 3, 2021, the OECD Competition Week (Meeting of the OECD Competition Committee, Working Groups 2 and 3) was held via videoconference, which was attended by industry departments of the Competition Protection and Development Agency.

93. On December 6-8, 2021, employees of the Agency for the Protection and Development of Competition took part in the 20th OECD Global Forum.

94. Within the framework of the OECD Global Forum, a number of topics were considered: "Trade, development and competition", "Economic analysis and evidence in cases of abuse", "Promotion of competitive neutrality by competition authorities", "Market definition diagnostics".

95. In addition, employees of the Agency for the Protection and Development of Competition took part in seminars at the OECD Regional Center, the purpose of which is

to improve the skills of employees of antimonopoly agencies and exchange practical experience between participants:

- "Market research: a key factor in advocacy and competition law enforcement" (May 18-19, 2021);
- "Assessing abuse by dominant market participants - focus on digital markets" (September 21-22, 2021);
- "Competition Policy and Intellectual Property Rights" jointly with the Federal Antimonopoly Service of the Russian Federation (November 15-16, 2021).

96. Due to the COVID-19 pandemic, all OECD workshops in 2021 were held via videoconferencing.

97. Also, within the framework of cooperation with the OECD, the Agency for the Protection and Development of Competition prepared the following articles for publication in the journal of the OECD Regional Center for Competition "Competition Policy in Eastern Europe and Central Asia":

- article by the Chairman of the Agency for the Protection and Development of Competition S. Zhumangarin and Head of the Department of Economic Integration of the Agency A. Baimakanova "Creation of an independent antimonopoly authority of the Republic of Kazakhstan" in the journal "Competitive Policy in Eastern Europe and Central Asia. Attention to Abuse of Dominance in Digital Markets" (Bulletin No. 16, March 2021);
- article of the Deputy Chairman of the Agency for the Protection and Development of Competition B. Sambetov and chief expert of the Investigation Division of the Agency's Investigation Department A. Abdikarim "New stages of the fight against bid rigging (Automobile procurement cartel)" in the journal "Competitive Policy in Eastern Europe and Central Asia. Bid Collusion and Competition Policy (Bulletin No. 17, July 2021).

#### *Interaction with UNCTAD*

98. During 2021, employees of the Agency for the Protection and Development of Competition took part in a number of meetings in the UNCTAD-UNECE Regional Dialogue and in the UNCTAD working group on cross-border cartels:

1. On February 4, April 12 and June 1, 2021, employees of the Agency for the Protection and Development of Competition took part in the UNCTAD working group on cross-border cartels via videoconference.
2. June 18, 2021 Chairman of the Agency for the Protection and Development of Competition S. Zhumangarin participated online in an UNCTAD event on competition policy and the resurgence of micro, small and medium-sized enterprises in the post-COVID-19 period.
3. On March 25, 2021, the Chairman of the Agency for the Protection and Development of Competition S. Zhumangarin took part online as a speaker in a discussion on the role of competition policy in the process of economic recovery of micro, small and medium-sized enterprises following the COVID-19 pandemic.
4. July 7-9, 2021 in Geneva (Swiss Confederation) was attended by the Chairman of the Agency for the Protection and Development of Competition S. Zhumangarin at the UNCTAD venue for the Nineteenth Session of the Intergovernmental Group of Experts on Competition Law and Policy.

5. On November 23, 2021, employees of the Agency for the Protection and Development of Competition took part online in the Ad Hoc meeting of the Intergovernmental Group of Experts on Competition Law and Policy of the United Nations Conference on Trade and Development (IGE UNCTAD), dedicated to promoting international cooperation in combating cross-border cartels.

#### *Interaction with the World Bank and the International Monetary Fund*

1. On April 28, 2021, was held a meeting of the Deputy Chairmen of the Agency for the Protection and Development of Competition R. Akhmetov and M. Omarov with representatives of the World Bank on the issue of the Matrix of reforms for the implementation of the project "Financing in support of development policies".
2. On November 10, 2021, a meeting was held between the Deputy Chairman of the Agency for the Protection and Development of Competition M. Omarov with representatives of the World Bank to discuss the development of the private and financial sectors.
3. On November 11, 2021, an official visit of the mission of the International Monetary Fund to the Republic of Kazakhstan took place, incl. with the Chairman of the Agency for the Protection and Development of Competition S. Zhumangarin to discuss the recent creation of an independent competition agency representing a promising reform that should help lower barriers to market access, trade and investment.

#### *Interaction with BRICS*

1. On July 6, 2021, a meeting was held between the Chairman of the Agency for the Protection and Development of Competition S. Zhumangarin and Deputy Chairman of the Agency M. Omarov in Moscow (Russian Federation) with the Director of the International Center for Competition Law and BRICS Policy Yu. Ivanov on opening a branch of the BRICS International Center for Competition Law and Policy in Kazakhstan.
2. On December 13-14, 2021, by the Agency's Chairman on protection and development of competition S. Zhumangarin took part as a speaker at the meeting of the BRICS+ Working Groups on the study of competition problems in the food and pharmaceutical markets in online format.

#### *Interaction within the framework of cooperation with the EAEU*

99. Agency for the Protection and Development of Competition actively interacts with the Eurasian Economic Commission (hereinafter referred to as the EEC) on issues of law enforcement practice and harmonization of legislation in the countries of the Eurasian Economic Union (hereinafter referred to as the EAEU) on the basis of the Treaty on the EAEU.

100. In 2021, the Agency for the Protection and Development of Competition took part in a number of expert joint meetings with the EEC on the issues of improving competition legislation, antimonopoly regulation, as well as on the EEC cases under consideration. Thus, the Agency for the Protection and Development of Competition weekly participated in EEC meetings on the following projects:

- discussion of the draft Methodology for assessing the state of competition, taking into account the improvement of the procedure for assessing digital markets in the

EAEU and the delimitation of powers between the antimonopoly authorities of the EAEU member states;

- discussion of the draft amendments to the Treaty on the EAEU dated May 29, 2014;
- discussion of draft amendments to the Procedure for Considering Applications, the Procedure for Conducting Investigations and the Procedure for Considering Cases of the EEC;
- discussion of the EEC Annual Report on the state of competition in cross-border markets and measures taken to curb violations of the general rules of competition in them for 2021;
- discussion of a draft procedure for exemption from liability in case of a voluntary declaration by an economic entity (market entity) of an agreement that is unacceptable in accordance with paragraphs 3-5 of Article 76 of the Treaty on the EAEU, as well as participation in it;
- discussion and identification of problematic issues in the execution by the antimonopoly authorities of the EAEU member states of the reasoned submission of the EEC.

101. In order to discuss the most pressing issues of improving competition legislation and law enforcement practice, exchange of information and problems of harmonizing the legislation of the EAEU Member States, in 2021, 4 meetings were held by a member of the Board (Minister) in charge of competition and antimonopoly regulation and heads of authorized bodies of the EAEU Member States in the format "5+1":

- March 25, 2021 in Moscow (Russian Federation);
- September 16, 2021 in Yerevan (Republic of Armenia);
- October 8, 2021 in Almaty (Republic of Kazakhstan);
- December 23, 2021 in Moscow (Russian Federation).

102. The meetings were held in a hybrid format.

103. This 5+1 format allows discussing the effectiveness of existing antimonopoly regulation tools, identifying a set of further measures to improve it and areas of work to protect and develop competition.

104. The meetings were also attended by representatives of the Association of Antimonopoly Experts, the Non-Commercial Partnership "Association of Corporate Lawyers of Russia", the Eurasian Antimonopoly Association, the Eurasian Patent Office (EAPO) of the Eurasian Patent Organization, Business Academia (HSE Institute of Law and Development - Skolkovo), etc.

105. At the invitation of the Member of the Board (Minister) for Competition and Antimonopoly Regulation, the meetings were attended online by representatives of the antimonopoly (competitive) authorities of the observer states to the EAEU (the Republic of Uzbekistan and the Republic of Moldova), as well as the embassies of the Republic of Cuba in the Russian Federation.

106. As part of the implementation of Section VII of Annex No. 19 to the Treaty on the EAEU dated May 29, 2014, it is necessary for the EAEU member state to send notifications to the EEC and other EAEU member states on the introduction of state price regulation.

107. Thus, the Agency for the Protection and Development of Competition sent 2 notifications to the EEC and the EAEU member states on the introduction by the Republic of Kazakhstan of state price regulation for socially significant food products.

108. The Agency for the Protection and Development of Competition has carried out work to amend the Agreement on the Procedure for the Protection of Confidential Information and Responsibility for its Disclosure in the EEC Exercising its Authority to Monitor Compliance with the Uniform Competition Rules dated November 12, 2014 (hereinafter referred to as the Agreement). On March 16, 2022, the Law of the Republic of Kazakhstan "On Ratification of the Protocol on Amendments to the Agreement" was signed by the President of the Republic of Kazakhstan.

109. The ratified Protocol is aimed at bringing the text of the Agreement on the procedure for protecting confidential information and responsibility for its disclosure in line with the provisions of the Treaty on the Eurasian Economic Union by introducing editorial changes.

110. As part of interaction with the antimonopoly authorities of the EAEU Member States, the Agency for the Protection and Development of Competition took part in a number of events:

1. On July 5, 2021, a meeting was held between the Chairman of the Agency for the Protection and Development of Competition S. Zhumangarin and Deputy Chairman of the Agency M. Omarov in Moscow (Russian Federation) with the head of the FAS Russia M. Shaskolsky at the site of the FAS Russia on issues of bilateral cooperation.
2. On September 7, 2021 Chairman of the Agency for the Protection and Development of Competition S. Zhumangarin attended the conference “Antimonopoly regulation: balancing the interests of the state and society”, dedicated to the 5th anniversary of the establishment of the Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus.
3. On September 17, 2021 Chairman of the Agency for the Protection and Development of Competition S. Zhumangarin took part as a speaker at the event dedicated to the 20th anniversary of the establishment of the Commission for the Protection of Competition of the Republic of Armenia.
4. On November 8, 2021 Deputy Chairman of the Agency for the Protection and Development of Competition M. Omarov and Head of the Economic Integration Department of the Agency A. Baimakanova took part in the examination panel on an expert review of legal regulation and competition policy in the Eurasian Economic Union.

111. The article “Stages of improving the competition legislation of the Republic of Kazakhstan” was published by Head of the Department of Legal Support of the Agency for the Protection and Development of Competition R. Pasechko in the specialized journal of the EEC on competition policy in the EAEU “Competition and antimonopoly regulation in the Eurasian Economic Union”.

*Interaction within the framework of the Interstate Council on Antimonopoly Policy of the CIS Member States*

112. On an ongoing basis, work is carried out within the framework of the Interstate Council on Antimonopoly Policy of the CIS Member States (hereinafter referred to as ICAP), the Headquarters for Joint Investigations of Violations of the Antimonopoly

Legislation of the CIS Member States (hereinafter referred to as the Headquarters), and also takes part in their regular meetings.

113. The next 38th meeting of the Headquarters and the 52nd meeting of the ICAP took place on April 22-23, 2021 via videoconference.

114. The ICAP meetings reviewed the practical experience of the Russian Federation, the Republic of Belarus and the Republic of Kazakhstan in stabilizing prices for socially significant food products in the context of the COVID-19 pandemic, as well as law enforcement practices in the field of combating unfair competition by selling goods with illegal use of intellectual property results and equated means of individualization of a legal entity, etc.

115. During the meeting of the Headquarters, issues were discussed on the progress of the work of the Headquarters on the preparation of new mechanisms for paying for goods, works and services in the context of the development of Internet commerce and electronic commerce, as well as on the preparation of a report on the activities of the Interstate Council on Antimonopoly Policy.

*Events held at the Agency's site for the Protection and Development of Competition in 2021:*

1. On June 7, 2021, the Agency for the Protection and Development of Competition held a round table "The role of competition policy in improving the economic well-being of the state" jointly with the Center for Development and Protection of Competition Policy JSC, timed to coincide with the celebration of the 30th anniversary of the Antimonopoly Service of the Republic of Kazakhstan.

In 2021, for the first time, the Day of employees of the antimonopoly authority appeared in the map of holidays in Kazakhstan (The first antimonopoly agency of the country was created on June 7, 1991, at the dawn of Kazakhstan's independence.).

This event was attended by the heads of the antimonopoly departments of Kazakhstan, Belarus, Russia, the Kyrgyz Republic, representatives of the EEC, the Commission for the Protection of Competition of Armenia, the Center for the Development and Protection of Competition Policy, veterans of the antimonopoly service of Kazakhstan;

2. On October 7-8, 2021, the Agency for the Protection and Development of Competition held the VII Eurasian Antimonopoly Forum in Almaty together with the Center for Development and Protection of Competition Policy JSC. The heads and representatives of the antimonopoly authorities of 6 countries took part in a hybrid format (the Republic of Armenia, the Republic of Belarus, the Kyrgyz Republic, the Russian Federation, the Republic of Uzbekistan, the Republic of Turkey) and 6 international organizations (representatives of the Supreme Court of the EAEU, the European Court, the EEC, the OECD, the ICC, UNCTAD) and other international experts in the field of antimonopoly regulation of national and cross-border markets on the territory of the Eurasian continent.

The Forum discussed new approaches to assessing the state of competition in commodity markets and conducting investigations, the possibility of protecting their rights and interests by market entities in case of violations of competition in cross-border markets, the practice of resolving disputes between competitors, practical issues of protecting the interests of market entities and other relevant cases. The speakers from the Agency for the Protection and Development of Competition were:

- Chairman of the Agency for the Protection and Development of Competition S. Zhumangarin on the topic "Planned changes in antimonopoly regulation"
- Deputy Chairman of the Agency for the Protection and Development of Competition B. Sambetov on the topic "The work practice of the Agency for investigating violations of the norms of the antimonopoly legislation of the Republic of Kazakhstan";
- Deputy Director of the Investigation Department of the Agency for the Protection and Development of Competition T. Kalenov on the topic "The concept and types of "unfair competition" (including generalization and demonstrative cases)";
- Director of the Department of Strategic Analysis of the Agency for the Protection and Development of Competition A. Iskakov on the topic "Practice and prospects for the use of soft law instruments in the antimonopoly regulation of the Republic of Kazakhstan".

As part of the forum, an agreement was signed on a strategic partnership between the BRICS International Center for Competition Law and Policy at the National Research University Higher School of Economics, Russian Federation (NRU HSE) and the International Center for Competition Law, Innovation and Policy of the Republic of Kazakhstan.

### 1.3. Development of exchange trading

116. In the address of the Head of State <sup>15</sup>by the President of the Republic of Kazakhstan K.K. Tokayev noted the need to restore order with exchange trading, and, first of all, in the field of oil products, electricity, coal, emphasizing that imitation of transparency by large players is unacceptable.

117. Currently, one of the tasks of the Agency is the issue of expanding the range of exchange goods, primarily in markets where there is a risk of restricting access and increasing the share of goods sold at auction (liquefied gas, wheat). This issue is of particular relevance in connection with the launch in 2025 of common markets for oil and oil products, gas, and electricity within the EAEU.

118. Under the Agency, the Exchange Committee, subcommittees on coal, oil products, the agricultural sector, cement, whose meetings are held on an ongoing basis, have been established and are actively functioning.

119. Based on the results of these meetings, by analogy with bitumen, the issue of the transition of all exchange goods from the minimum lot size to the minimum volume of exchange goods to be sold through the commodity exchange and the categories of persons to whom such an obligation will apply, which, in the opinion of the Agency, will allow the formation of objective price indicators.

#### 1.3.1. Municipal coal

120. From April 2021, coal mines based on the Recommendations (*sectional rules*) for the sale of municipal coal through commodity exchanges, approved by the Exchange Committee, *in* small batches exchange trading of **10%** of municipal coal is carried out

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<sup>15</sup>Address from the Head of State K.K. Tokayev to the people of Kazakhstan "KAZAKHSTAN IN THE NEW REALITY: TIME FOR ACTION". September 1, 2020 // [https://www.akorda.kz/ru/addresses/addresses\\_of\\_president/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana-1-sentyabrya-2020-g](https://www.akorda.kz/ru/addresses/addresses_of_president/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana-1-sentyabrya-2020-g);

directly to regional dead ends accredited on commodity exchanges based on information provided by the local executive bodies (*the list of regional operators included about 200 companies, except for 3 regions (Atyr.reg., Mang.reg. and WKO)*).

121. According to the Plan for the supply of municipal coal formed by the MIIR RK, the demand for coal products for domestic needs for the period 2020-2021 amounted to about **10 million tons**, of which the municipal sector accounts for about **2.8 million tons**, population - **7.2 million tons**.

122. As part of the recommendations for the sale on the domestic market of **10%** of the volume of municipal coal through commodity exchanges in 2021, the volume of monthly plans for coal mines was **511,870 tons**. At the end of 2021, out of the exposed 476 thousand tons, sold over 269 thousand tons:

- **Karazhyra** approximately 89 thousand tons;
- **Shubarkul** approximately 120 thousand tons,
- **Bogatyr Komir** approximately 11.2 thousand tons;
- **Maikuben West** approximately 49 thousand tons.

123. More than **40 regional coal operators** acted as buyers of municipal coal from 11 regions of the country (Nur-Sultan, Almaty, Shymkent, Akm.region, Alm.region, East Kazakhstan region, Zhamb.region, Kar.region, Kost.region, North Kazakhstan region, Pavl.region). This contributed to the emergence of new players on the market and increased competition between regional operators. In order to determine the **forecast for the cost of coal for autumn 2021**, the Agency analyzed the planned selling prices of regional operators.

124. The analysis showed that despite the growth of individual costs (transportation, etc.), coal prices in the 2021-2022 heating season, purchased directly from producers through commodity exchanges, remained at the price level of the previous heating season (2020-2021).

**Table 1. Coal produced by Karazhyra JSC**

Region	Exchange price, KZT/t	Price 10% 2021, tenge/t	Price 90% 2021, tenge/t	Price 2020, tenge/t
Akmola region	5682 - 6650	11 500	16 000	12 500
East Kazakhstan region	5682 - 5990	10 800 - 13 000	9 500 - 15 000	9 800 - 13 000
Jambyl region	6 680	14 300	-	14 500
Pavlodar region	6 650	11 500	11 500	11 000
North Kazakhstan region	5682 - 6800	11,000 - 13,000	-	12 500 - 14 500
Nur-Sultan	5 700 - 6 650	11 500 - 12 000	12 200 - 13 500	12 200 - 12 800
Almaty city	6 650 – 6 850	14 300	13 800 - 14 500	15,000

Table 2. Coal produced by Shubarkol Komir JSC

Region	Exchange price, KZT/t	Price 10% 2021, tenge/t	Price 90% 2021, tenge/t	Price 2020 , tg/t
Karaganda region	6 328 – 8 792	10 100 - 11 500	10,000	15 400
Kostanay region	5,000 - 9,000	13 150 - 14 000	13 500 – 14 400	13 600 – 14 700
Pavlodar region	4 982 – 9 515	13,000 - 16,000	13,000 - 16,000	15,000
Nur-Sultan	7996	13 500 - 13 600	13 500 - 15 000	13 200
Jambyl region	7996 – 8792	14 250 - 14 500	15,000	13 800 - 14 500
Shymkent	4712	12 550	14 600 - 15 000	14 250
Almaty city	6 328 – 9 515	15,000	14 500 - 15 000	15,000

125. Based on the results of exchange trading and exchange quotations, there are no grounds for a significant increase in the cost of coal purchased through commodity exchanges directly from producers in the 2021-2022 heating season.

126. At the same time, akimats were recommended to pay special attention to the pricing system in the retail sale of municipal coal and take measures to prevent unreasonable price increases. For the timely and proper implementation of coal volumes and greater coverage of the population, akimats were also recommended to carry out work in advance to inform the population about the date, place and volumes of coal supply.

127. Similarly, according to established experience, in the third quarter of 2021, exchange trading in municipal coal produced by Shubarkol Komir JSC took place within the framework of sectional rules for the sale of municipal coal through commodity exchanges (10%), already according **to the delivery plan for 2022**.

128. The total trading volume amounted to 268.4 thousand tons of coal in the amount of 1.8 billion tenge with delivery for the period January-December 2022, where more than 30 regional operators from 10 regions (*Nur-Sultan, Shymkent, Akmola, Almaty, Zhambyl, Karaganda, Kostanay, Kyzylorda, North Kazakhstan, Turkestan regions*).

129. Similarly, in accordance **with the delivery plan for 2022**, in the third quarter of 2021, exchange trading in municipal coal produced **by Karazhyra JSC took place**.

130. More than 19.2 tons of coal were sold for a total amount of 164.2 million tenge with delivery in January-March 2022, where 9 regional operators from 5 regions (*Kyzylorda, North Kazakhstan regions, East Kazakhstan, Zhambyl and Karaganda regions*) acted as a buyers.

131. **Conclusion:** The accreditation of regional dead ends on commodity exchanges provided them with free access to exchange trading of coal not only within the framework of trading in 10%, but also in trading in 90% of coal.

132. This, among other things, was facilitated by the work carried out on large-scale training of market participants on participation in exchange trading, which in turn ensured the emergence of new players in this market and, accordingly, a decrease in the share of intermediary companies in the pricing structure of the cost of coal for the end consumer.

133. On January 6, 2022, as part of the execution of the instructions of the Deputy Head of the Administration of the President of the Republic of Kazakhstan T.M. Suleimenova concerning the adoption of urgent measures regarding pricing for coal, the Agency recommended that the Ministry of Trade and Integration in advance, before the start of the next heating season, make a corresponding change to the order of the Minister of National Economy of the Republic of Kazakhstan dated February 26, 2015 No. 142 "On approval of

the list of exchange commodities" in part establishing the minimum share of municipal coal subject to mandatory sale through commodity exchanges at the level of 40 %.

134. *For reference: from August 13, 2021, the obligation of a coal producer (coal mine, coal mine) to sell 10% of the total annual volume of municipal coal through commodity exchanges is enshrined at the legislative level; "On Approval of the List of Exchange Commodities".*

### **1.3.2. Petrol**

135. On the commodity exchange "ETS" from March 31 to March 28 December 2021 inclusively, 1 26.5 thousand tons of gasoline (AI-92 and AI-95) were sold to 36 buyers with a cash turnover of more than 25.7 billion tenge.

136. Trades were conducted on six main trading instruments, on grades of gasoline AI-92 and AI-95 at three domestic oil refineries.

137. On the first day of trading on March 31, 2021, the base price for AI-92 was:

- Atyrau refinery 169,000 tenge/t, as of the last day of trading on November 30, 2021, the weighted average price was 198,276 KZT/t, thus, the price growth for eight months amounted to 17 %.
- POCR 176,000 tenge/t, as of the last trading day 21 December 2021, the weighted average price was 213,047 tenge/t, so the price increase for nine months was 21 %.
- PKOP 178,000 tenge/t, as of the last trading day 28 December 2021, the weighted average price was 216,664 tenge/t, so the price increase for nine months was 21 %.

138. For AI-95 on the first day of trading on March 31, 2021, the base price was:

- Atyrau refinery 184,000 tenge/t, as of the last day of trading on December 28, 2021, the weighted average price was 219,526 tenge/t, so the price increase for nine months was 19 %.
- POCR 189,000 tenge/t, as of the last day of trading on December 7, 2021, the weighted average price was 238,500 tenge /t, so the price increase for nine months was 26%.
- PKOP 189,000 tenge/t, as of the last day of trading on December 28, 2021, the weighted average price was 23 8 610 tenge/t, thus, the price growth for nine months amounted to 26 %.

### **1.3.3. Jet fuel**

139. Exchange trading in aviation fuel started on September 22 2021 at the site of JSC Commodity Exchange ETS. Trades were held in three main trading instruments at 3 domestic oil refineries.

140. In total, from September 22 to December 29, 2021, more than 14.3 thousand tons of aviation fuel in the amount of more than 3.4 billion tenge were sold through the commodity exchange.

141. At the same time, by the decision of the Exchange Committee dated November 8, 2021, it was recommended, from November 10, 2021, to reduce the base prices for jet fuel to 220,000 tenge per ton, sold through commodity exchanges as part of the Recommendations (sectional rules) for the wholesale sale of petroleum products through commodity exchanges approved by the minutes of the meeting of the Exchange Committee dated March 5, 2020 No. 3.

142. According to the results of trading on December 29, 2021, the weighted average index of aviation fuel at the ANPZ plant of the RT brand amounted to 247 755 tenge/t, at the PKOP plant of the TS grade – 1 amounted to 257 765 tenge/t, and at the PNKhZ plant of the RT grade amounted to 252 710 tenge/t.

#### ***1.3.4. Diesel fuel***

143. Based on the results of the meeting of the subcommittee on petroleum products of the Exchange Committee of the Republic of Kazakhstan from 15 November 2021, under the chairmanship of the Vice Minister of the Ministry of Energy of the Republic of Kazakhstan A. Magauov a decision was made on the pilot launch of exchange trading in diesel fuel from 24 November 2021.

144. From the specified period to December 30, 2021, more than 36 thousand tons of diesel fuel in the amount of more than 8.5 billion tenge were sold at exchange trading.

145. According to the results of trading on December 30, 2021, the average-weighted index of diesel fuel at the Atyrau Refinery of the DT-3-K4 brand amounted to 236 836 tenge/t, at the Petrochemical Plant of the DT-L-K4 brand 247 755 tenge/t.

#### ***1.3.5. State control over compliance with the legislation of the Republic of Kazakhstan on commodity exchanges***

146. According to Article 25 of the Law of the Republic of Kazakhstan "On Commodity Exchanges", state control over compliance with the legislation of the Republic of Kazakhstan on commodity exchanges is carried out in the form of an unscheduled inspection, preventive control with a visit to the subject (object) of control, as well as preventive control without visiting the subject (object) of control.

147. However, given the effect of the moratorium on inspections and preventive control with visits, in 2021 the Agency carried out preventive control without visiting commodity exchanges, which was carried out by comparing information obtained from various sources of information on their activities.

148. At the end of 2021, the Agency sent 11 recommendations on the elimination of identified violations based on the results of preventive control.

149. At the same time, as part of monitoring the activities of commodity exchanges, the Agency found that the activities of JSC "Asian Commodity and Raw Materials Exchange" and JSC "International Universal Commodity Exchange "Shygys" do not comply with the requirements of the legislation of the Republic of Kazakhstan on commodity exchanges.

150. In this regard, the Agency initiated lawsuits to the judicial authorities on the forced liquidation of these commodity exchanges.

151. By the decision of the Nur-Sultan SIEC, the Agency's claim for liquidation of the Asian Commodity and Raw Materials Exchange JSC was satisfied, the decision came into force, the license was terminated.

152. During the consideration of the case in the SIEC of the East Kazakhstan region in relation to JSC "International Universal Commodity Exchange" Shygys ", the commodity exchange returned the license to carry out activities in the field of commodity exchanges on a voluntary basis, the license was terminated.

## 2. Analysis of the state of competition in individual product markets

153. In accordance with the Entrepreneurial Code <sup>16</sup>, the antimonopoly authority is empowered to analyze the state of competition in commodity markets. Analysis of the state of competition in commodity markets is a key tool for the implementation of competition policy, which predetermines the adoption of appropriate decisions on the identification of market entities that occupy a dominant or monopoly position, the development of a set of measures aimed at protecting and developing competition, preventing, restricting and suppressing monopolistic activities.

### 2.1. Fuel and energy complex

#### 2.1.1. Market of oil and oil products

154. According to the Ministry of Energy, in 2021, the volume of oil production amounted to 85.9 million tons, of which exports - 67.6 million tons (Tengizchevroil - 26.6 million tons, Kashagan - 16.2 million tons, Karachaganak - 10.3 million tons, others - 14.5 million tons), the volume of the domestic market - 17.5 million tons.

155. 80% of oil sales on the domestic market are accounted for by CNPC (PRC)  $\approx$ 35% and KazMunayGas  $\approx$ 45%.

156. Pricing in the domestic oil market is non-market in nature. There is a tacit regulation of prices for oil supplied to the domestic market.

157. Price determination is carried out on the basis of a reverse calculation mechanism for the cost of a basket of petroleum products. In other words, when the optimal price for an oil product is established, the purchase price for oil is formed.

158. There are no criteria for the formation of volumes of oil supplies.

159. There are direct contracts without the use of centralized trading and exchange market indicators.

160. At the same time, subsoil users who supply oil to the domestic market belong to an aging group of fields. They have an annual decline in oil production. In the medium term, a further decline in well flow rates and conservation of fields is predicted, which will affect the provision of oil supplies to the refineries of the Republic of Kazakhstan.

161. In this regard, it is necessary to take measures to include large fields (Tengiz, Kashagan, Karachaganak) in the plan for oil supplies to the domestic market (preliminarily - up to 5 million tons annually with a subsequent increase).

162. However, subsoil users operating oil production at these fields are ready to supply oil to the domestic market, but using the market pricing mechanism, at export supply prices.

163. Refining in Kazakhstan is represented by three large refineries and 35 mini-refineries.

164. The share of the three major refineries that are part of vertically integrated companies in the oil refining services market is 94.3%.

165. Thus, CNPC (the founder of the Shymkent Oil Refinery) and KazMunayGas (the founder of the Shymkent, Atyrau and Pavlodar Oil Refineries) account for the main share

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<sup>16</sup>Subparagraph 11) of Article 90-6, Article 196 of the Entrepreneurial Code of the Republic of Kazakhstan // <https://adilet.zan.kz/rus/docs/K1500000375>;

of refining, which limits the opportunities for developing competition in the wholesale and retail markets for petroleum products.

166. In addition, the practice of crushing a single technological cycle of oil refining has been formed at domestic refineries.

167. Thus, in connection with the sale to third parties of the factory storage park and loading racks, previously owned by the Atyrau Oil Refinery, all liquefied petroleum gas is directly pumped into the tanks of LPG Storage Park LLP. As a result of the emergence of a new dominant company, the final cost of the product increases.

168. This practice of separating a single cycle of production, pumping and loading of liquefied petroleum gas is also reflected in the activities of the Pavlodar refinery, where the latter sold the property involved in the process of enrichment and delivery of the product.

169. On the wholesale market, the main oil suppliers – Petrosun LLP, Petroleum Operating LLP and KazMunayGas JSC – purchase raw materials from subsoil users that are members of the CNPC group and KazMunayGas, taking 80% of the total volume of oil supplies to the domestic market.

170. Of the 11 million tons of oil products, two thirds are sold directly to retail chains, one third to secondary wholesale suppliers, as a rule, who do not have any infrastructure.

171. At the end of 2021, Petrosun LLP sold at least 40% of diesel fuel to such intermediaries.

172. According to the data of the Kazakhstan Fuel Association, independent networks of filling stations get the missing volumes of oil products from intermediaries: Helios - 65%, Gazprom Neft-Kazakhstan - 80%, small networks - up to 90%.

173. Pricing on the wholesale market of petroleum products is also of a non-market nature. There are direct contracts, exchange trading covers only 10% of the total volume of the domestic market.

174. In conditions of high concentration of the wholesale market, where the share of two dominant groups is 80%, there are no incentives for price competition between market participants. Thus, the price policy of JSC "KazMunayGas" is officially formed taking into account the prices prevailing in the domestic market and published by the publication "Argus - the market of the Caspian Sea".

175. In such conditions, the margin of large oil suppliers reaches 30%, and affiliated intermediaries - 10-15%.

176. Retail segment is represented by 6 large networks of filling stations (gas stations) represented by Petro Retail LLP, Sinooil LLP, Helios LLP, Gazpromneft-Kazakhstan LLP, Avtogaz Trade LLP - GazEnergy, Royal Petrol LLP ". They account for more than 50% of the market with a concentration in the capital and regional centers of the republic. At the same time, if Sinooil purchases volumes directly from its affiliated company Petrosun, then Petro Retail - from the former owner of this network - KazMunayGas.

177. Independent networks represented by Helios and Gazpromneft-Kazakhstan purchase 20-30% from Petrosun, and the missing volumes from intermediaries. Regional and small chains of filling stations buy only 5-10% from Petrosun, and the missing volumes - from intermediaries.

178. This scheme for the sale of petroleum products, where the state company KazMunayGas sells the bulk of petroleum products to the private retail chain Petro Retail, and the main resource holder Petrosun to affiliated Sinooil and intermediaries, limits access to resources and the development of small filling station networks.

179. Without competing with each other, these vertically integrated companies do not allow competition from independent filling station chains, limiting their direct sales.

180. The latter, in conditions of strict price control in the retail market, are forced to leave the regional centers of the country.

181. Aviation fuel market deserves special attention, where dependence on imports exceeds 10%.

182. Access to the market is limited by the technical capabilities of airport infrastructure - fuel storage tanks.

183. In the context of limiting the growth of tariffs for regulated services, airports sell jet fuel directly or through affiliated suppliers, restricting access to other market participants.

184. Thus, the basis of the oil production complex and the oil product markets are the dominant vertically integrated companies created according to the principle “from the well to the gas station”. Their presence is a common global practice that ensures the stability of supplies and their economic efficiency.

185. In Kazakhstan, the presence of two main vertically integrated groups, one of which has 100% state participation, also provides control over the prices of petroleum products.

186. At the same time, in the absence of price competition, transparent exchange trading, the economic costs of such a market structure increase.

187. The high marginality of oil suppliers, the presence of unproductive intermediaries means underfunding of production and the withdrawal of funds from the economic turnover of adjacent, consumer markets.

188. In this regard, the following measures are proposed:

- the introduction of state regulation of oil prices, as well as the definition of criteria for the volume of oil supplies to the domestic market. This will make it possible to legalize the processes of pricing and quoting, as well as to ensure price stability at the first stages of deconcentration of markets;
- introduction of exchange trading in oil (5-10%) produced by independent companies with the prospect of including the volumes of large VIOCs, and an increase in trading in petroleum products (up to 30%) with the possibility for independent participants to create incentives for price competition in the market. A gradual increase in the volume of exchange trading will ensure the gradual deregulation of markets as the main factor in increasing their investment attractiveness;
- ensuring the direct participation of subsoil users in the supply of oil for processing directly or through affiliated oil suppliers (trading houses) and ensuring the opportunity to be an oil supplier to a domestic refinery;
- Consolidation of oil suppliers in order to reduce the risk of price imbalances in the market by establishing a minimum volume of oil supply for processing of 100,000 tons or more;
- exclusion of an intermediary link in the person of a secondary wholesale supplier, with the exception of the owners of tank farms on the right of private ownership and other legal grounds in volumes corresponding to their storage capacities. Oil suppliers are allowed to rent the relevant tank farms for wholesale and retail sales on a regional basis;

- inclusion of large deposits in the future in the plan for oil supplies to the domestic market. Preliminarily - up to 5 million tons annually with a subsequent increase, as well as taking measures to revise the terms of contracts in the direction of increasing the share of oil supplied to the domestic market;
- restoration in a judicial or contractual manner of a single technological cycle for the production of petroleum products at Kazakhstan refineries and the establishment of a ban on their crushing;
- purchase of oil by refineries directly from subsoil users and the sale of finished products directly to filling station networks and large consumers;
- the obligation of oil suppliers once a year to publish in the public domain information containing, among other things, information on the volume of services provided, selling prices, raw material purchase prices and other information necessary to establish the transparency of their activities;
- the obligation for the owners of tank farms and oil suppliers to establish the size of the marginal trade markup of no more than 15% for each stage of the sale of petroleum products;
- limiting the right of airports to supply aviation fuel, while providing for the introduction of the institution of operators with infrastructure on the territory of airports on the right of ownership.

189. Thus, the main goal of the proposed measures is to exclude unproductive intermediaries, reduce the marginality of the wholesale non-production link, provide access to resources to independent market participants, and create conditions for price competition to increase the economic efficiency of the existing dominant groups.

### *2.1.2. Commercial gas market*

190. The balance of the commercial gas market is positive. Its production volumes in 2021 - 25.8 billion m<sup>3</sup> exceed consumption volumes - 18.6 billion m<sup>3</sup>. 7.2 billion m<sup>3</sup> of gas was sent for export in the direction of China - 5.9 billion m<sup>3</sup>, the Russian Federation - 0.9 billion m<sup>3</sup>., the Kyrgyz Republic - 0.34 billion m<sup>3</sup>.

191. The share of the main commercial gas producers in the domestic market is 79%, of which: Tengizchevroil - 28.4%, SNPS-Aktobemunaigas - 18.9%, KazRosGaz (Karachaganak gas) - 31.7%.

192. Since 2020, commercial gas exports have decreased by 2.8 billion m<sup>3</sup> or 31% due to the growth in domestic consumption. This reduces the possibility of subsidizing commercial gas prices for the population.

193. According to the Ministry of Energy, by 2025 the volume of commercial gas consumption will increase to 27.7 billion m<sup>3</sup>, and the deficit will be 1.6 billion m<sup>3</sup>.

194. On the wholesale market, 95% of commercial gas is sold by QazaqGaz JSC, which has a monopoly, pre-emptive right to purchase raw and commercial gas from subsoil users.

195. At the same time, the mechanism for exercising the pre-emptive right has not been regulated, there are no grounds for refusal of QazaqGaz JSC to exercise its right.

196. Marketable gas markets are subject to state price regulation at all stages of sales – gas purchase from a subsoil user, wholesale and retail sales, and gas transportation.

197. The mechanism for regulating prices for purchased gas is detailed, but its application is carried out selectively, in connection with which the “run-up” of prices

reaches a 16-fold value (from 600 to 10,000 tenge per thousand m<sup>3</sup>), which causes complaints from subsoil users.

198. The procedure for forming the composition of gas supplies to the domestic market is not regulated. In practice, this led to the use in the domestic market of a more expensive volume of imported gas from the Russian Federation (from 30-40 thousand tenge per thousand m<sup>3</sup>), while it was possible to supply gas at a price of 5-10 thousand m<sup>3</sup> from Kazakh subsoil users.

199. With high profitability of QazaqGaz JSC, there is a high level of debt burden of individual subsidiaries. Thus, taking into account the foreign currency loan of Beineu Gas Pipeline - Shymkent LLP and due to changes in the exchange rate, after 5 years of the loan agreement, the amount of debt on the loan provided by MUFGBank and the Bank of China decreased from 720 to 540 million US dollars, and the amount debt on a loan provided by KazTransGas JSC increased from 400 to 405 million US dollars, due to the fact that tariff income was used to repay a loan from MUFGBank and the Bank of China.

200. At the same time, the share of the tariff of Beineu-Shymkent Gas Pipeline LLP in the final price for the population is 80%.

201. There are natural monopoly entities on the market for the transportation of commercial gas that provide services through main gas pipelines - Intergas Central Asia JSC, Asian Gas Pipeline LLP and Beineu Shymkent Gas Pipeline LLP and distribution networks - KazTransGas Aimak JSC.

202. Here, 35% of the costs of natural monopoly entities (KazTransGas Aimak JSC, Beineu-Bozoi-Shymkent Gas Pipeline LLP) are removed from state tariff regulation by transferring the technical operation of gas pipelines to outsourcing and submitting contracts, rather than data on actual costs, while rationale for tariffs.

203. As a result, from 2019 to 2021, the cost of these works increased from 5.4 to 7.7 billion tenge, or by 42.7%.

204. Granting the pre-emptive right to KazTransGas JSC was justified by the need for large-scale gasification of the country's regions, construction of main and distribution gas pipelines. At the same time, the main sources of financing for the construction of the Saryarka gas pipeline were the funds of AstanaGas KMG JSC (a subsidiary of KazMunayGas JSC) and borrowed funds received from the Eurasian Development Bank (187 billion tenge, at a 10% rate), Halyk Bank (1.9 billion tenge, at a rate of 11.6%). Whereas the sources of financing for the construction of distribution networks of KazTransGas Aimak JSC are the funds of the investment program included in the tariff. Completion of gasification is planned by 2030.

205. The process of demonopolization of the market has begun in the market of commercial gas retail sales. Thus, the share of private operators in 6 regions of the republic already reaches 15-20%.

206. However, access to the retail market for independent supply organizations is limited. 90% of commercial gas purchased by QazaqGaz JSC under the pre-emptive right is sold by KazTransGas Aimak JSC.

207. In turn, the retail operator KazTransGas Aimak JSC outsourced more than 70% of the scope of work to third parties.

208. However, there is no competitive access to the services of third parties purchased by KazTransGas Aimak JSC.

209. Thus, over the past 5 years, the services of KazTransGas Aimak JSC, outsourced to third parties (billing, transport and other services), are accompanied by the same suppliers.

210. These are RTSKU-Shymkent LLP, RTSKU-Atyrau LLP, RTSKU-Taldykorgan LLP, RTSKU-Oral LLP, RTSKU-Kyzylorda LLP, RTSKU-Kostanay LLP, RTSKU-Aktau LLP, ABC Almaty Gas LLP, ITs-Taraz LLP, QazServiceGroup LLP (Nur-Sultan and Karaganda).

211. The procurement procedure of the National Operator and KazTransGas Aimak JSC deserves special attention, where the volumes of their purchases are received by the same companies: GasQurylys LLP, DS-TAS LLP, Kogay F.V., KazTransGas Onimderi.

212. So, for example, in 2021, in a single lot, KazTransGas Aimak JSC purchased gasification works, including design and survey work, turnkey construction, and the supply of goods and services related to these works, where the consortium represented by DS-TAS, GasQurylys LLP, ABTM LLP, AlatauGorProekt LLP, ZapKazExpertiza LLP, NPP Aktobe Eco LLP, RTsKU-Zapad LLP, through competitive negotiations, was recognized as the winner of purchases for a total amount of more than 6 billion rubles. tenge.

213. Thus, a potentially competitive market is monopolized, and therefore there are no conditions for the development of SMEs in the retail market for the sale of commercial gas and the markets for related services.

214. The most serious restrictions are present in the market of construction and installation works (hereinafter referred to as CWR), which are carried out during the construction of distribution networks by order of KazTransGas Aimak JSC and "intra-house" networks (from distribution networks to the house).

215. In the CWR market ("intra-house" networks), out of more than 250 service providers, the main player in certain regions of the Republic owned up to 70% of the market. At the same time, they subcontracted local market entities, or provided services on their own at prices higher than competitors' prices by 15-20%.

216. At the same time, a number of advantages have been created for the main provider of construction and installation services, such as being located in the offices of KazTransGas Aimak JSC, as well as priority consideration of applications for connection.

217. At present, due to the withdrawal from the market, its volumes of construction and installation works are carried out directly by KazTransGas Aimak JSC.

218. Thus, based on the results of the analysis of commercial gas markets, it should be noted:

- - reduction in commercial gas exports, which reduces the possibility of subsidizing the domestic market. Thus, by 2025, if exports cease, domestic gas prices will rise by an average of 60%;
- the imperfection of the applied mechanisms for pricing, exercising the pre-emptive right and the composition of gas supplies to the domestic market;
- withdrawal from tariff regulation of the volume of work transferred for outsourcing, which contains the risks of overstating costs and increasing monopoly costs;
- restrictions on access to the procurement of the National Operator and the markets for billing services, construction and installation works and other third-party organizations;

- a high proportion of the scope of work carried out by third parties, which confirms the readiness of the gas retail market for its demonopolization.

219. As a result, the monopoly structure of the market, using the mechanisms of state regulation of prices and supply volumes, increases the margin of the wholesale link, both in the interests of the state, the population, and the group of companies of the National Operator.

220. In this regard, the following measures are proposed:

- maintaining state regulation of prices for commercial gas, which will ensure the stability of domestic prices while demonopolizing the retail market;
- introduction of state regulation of the volume of gas supplies to the domestic market in order to increase the transparency of the process of gas withdrawal from subsoil users;
- introduction of exchange trading and, accordingly, non-distribution of price regulation for new volumes of produced gas for sale to large industrial consumers. In the absence of gas production growth dynamics, this will allow attracting investments for the development and production of new gas fields;
- introduction of rules for access to commercial gas for subsoil users, which will provide direct, competitive access to gas for supply organizations without the participation of QazaqGaz JSC;
- cancellation of the pre-emptive right of QazaqGaz JSC to purchase commercial gas for its sale on the domestic market, while maintaining such a right to sell gas on foreign markets. This is necessary to exclude competition between gas producers in foreign markets;
- withdrawal of KazTransGas Aimak JSC from the commercial gas retail market with the sale of the relevant assets to energy supply organizations;
- division of transportation and retail sales of commercial gas in case of privatization of distribution networks (separate privatization);
- establishment of a ban on outsourcing more than 10% of the volume of work within the framework of tariff, price regulation of gas transportation services.

221. In general, this will make it possible to create a competitive model of the commercial gas market, increase the transparency and economic efficiency of market participants, and reduce their level of influence on the state's regulatory policy.

### ***2.1.3. Electricity market***

222. The wholesale electricity market is oligopolized by several vertically integrated structures (groups of companies Samruk-Energo, Kazakhstan Utility Systems, Central Asian Electric Power Corporation, ERG), which combine energy assets for the production, transportation and retail sale of electricity. Thus, the share of 4 major players (CR-4) in the total production in Kazakhstan exceeds 60%.

223. In the retail market, it was also not possible to organize competition between energy supplying organizations (hereinafter referred to as ESOs): it was assumed that ESOs would be created privately, which would compete with each other for the supply of electricity to retail consumers, and thus competition in the retail market would be ensured.

224. So, in fact, the shares of ESOs vertically integrated with electric grid and (or) energy-producing organizations vary from 55-70% (East Kazakhstan, Kostanay, Turkestan regions and Nur-Sultan) to 90-100% (in other regions).

225. As a result, the current structure of the market limits the ability of its participants to benefit from the competitive market, which is due to the presence of a number of unresolved problems in the industry, in particular:

1. the sphere of organized trade in electricity has not received due development. Today, organized trade in electricity is carried out in the format of centralized trades.

The vast majority of electricity is sold under bilateral agreements. In the conditions of the oligopolistic structure of the market, the execution of purchase and sale transactions under direct agreements has a number of negative aspects, such as an opaque process of distribution of volumes, selection of counterparties, etc.

In general, the reason for the decline in trading volumes, incl. called the principle of selling electricity at prices not higher than the marginal. The right to independently determine the level of selling prices applies only to spot trading (within a day, a day in advance) in the amount of not more than 10%.

International experience shows that electricity is traded in many countries, with a significant amount of electricity sold through forward contracts. In general, the expediency of electricity trading is confirmed by the experience of countries with similar electricity markets.

A promising model of the electricity market must necessarily provide for two levels: wholesale and retail electricity markets operating in a competitive environment.

In this regard, the objectives of the development of the wholesale electricity market are to form an optimal market structure, expand its boundaries and, as a result, increase the level of competition through the organization of an efficient organized trade in electricity. At the same time, the price regulation of the market leads to the fact that the volumes of "cheap" electricity of ESOs, including those with state participation, are sold through affiliated ESOs, which generally reduces the effectiveness of price regulation.

In conditions of strict price regulation of the market, there is no economic feasibility in using centralized trade. In this regard, the measure envisaged by the National Project for the Development of Entrepreneurship to increase the volume of centralized electricity trades implies the sale of these volumes at unregulated prices.

Thus, the task is to develop organized electricity trading in Kazakhstan, incl. taking into account the Address of the Head of State<sup>17</sup>. The plans are to reach trading volumes of up to 30% of the total volume of electricity sold.

The Law of 2022 amended subparagraph 2) of paragraph 3-1 of Article 13 of the Law "On Electric Power Industry", which came into force on March 7, 2022, providing for an increase in the volume of centralized trading in electric energy (the share of electric energy subject to mandatory sale through centralized trading on medium-term and long-term periods, is determined by the authorized body in agreement with the antimonopoly authority).

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<sup>17</sup>Address from the Head of State K.K. Tokayev to the people of Kazakhstan "KAZAKHSTAN IN THE NEW REALITY: TIME FOR ACTION". September 1, 2020 // [https://www.akorda.kz/ru/addresses/addresses\\_of\\_president/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana-1-sentyabrya-2020-g;](https://www.akorda.kz/ru/addresses/addresses_of_president/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana-1-sentyabrya-2020-g;)

At the same time, the procedure for calculating the actual volume of electrical energy subject to mandatory sale through centralized auctions is determined in accordance with the rules for organizing centralized trading in electrical energy.

2. the presence of differentiation of tariffs for electricity supply services has a negative impact on price competition in the retail electricity market.

Thus, there is a tendency for legal entities and budgetary organizations to leave for alternative ESOs, which negatively affects competition (ESOs are not interested in competing for household consumers), as well as the population, since a decrease in the volumes guaranteeing suppliers leads to an annual increase in the average selling tariff (with decrease in volumes, costs and losses are borne by the remaining consumers).

Thus, according to clause 14 of the Rules for Pricing in Socially Significant Markets<sup>18</sup>, if an entity in the field of electric power industry incurs losses as a result of an increase in the difference between the costs of purchasing and (or) transmission and (or) distribution of electric energy, taken into account in the agreed marginal price, and actual expenses for the purchase and (or) transmission and (or) distribution of electric energy, the department of the authorized body, when considering the notification of the subject in the field of electric power industry, increases the marginal price for the difference that has arisen.

In order to ensure equal competition, it is necessary to create conditions that eliminate the distortion of pricing, namely, to study the issue of changing approaches to subsidizing household tariffs with a focus on socially vulnerable segments of the population.

In this connection, a phased alignment of differentiated tariffs to the average holiday tariff is proposed. It follows from the calculations that, in general, over 20 billion tenge will be saved by local budgets in the republic. The costs of small and medium-sized businesses will decrease by more than 31 billion tenge.

This requires additional funds for the provision of annual housing assistance of about 600 million tenge, while the amount already allocated is 1 billion tenge. At the same time, the local budget for subsidizing the population through tariffs, including wealthy citizens, annually overpays over 20 billion tenge. To test this reform, it is necessary to pilot the abolition of differentiated tariffs in several regions.

Taking into account the results of the meeting held on March 2 this year on the issues of electric power industry and housing and communal services, Kostanay, West Kazakhstan regions and the city of Almaty are considered as pilot regions.

In other regions, the difference in differentiated tariffs will also have to be reduced, but at a lower rate compared to the pilot regions;

3. the level of state participation in generation remains high, the solution to which can be denationalization measures;
4. the presence of technological limitations due to the layout of generation (the largest power plants are located in the northern energy zone), the underdevelopment of the grid economy, its limited capacity, which leads to segmentation of the wholesale market within the power grids of the system operator and the power grids of regional power grid companies, as well as excessive requirements to activities in the field of electric power industry;

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<sup>18</sup>The rules were approved by the Order of the Minister of National Economy of the Republic of Kazakhstan dated February 1, 2017 No. 36 // <https://adilet.zan.kz/rus/docs/V1700014778>;

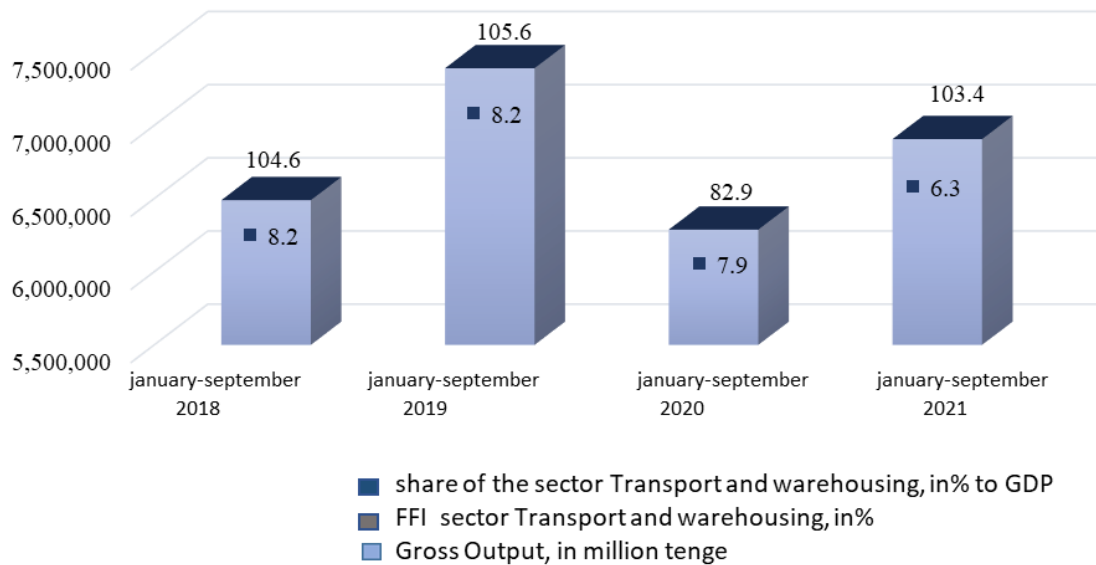
5. a separate factor is the low awareness of the consumers themselves about the possibility of changing the supplier of electricity supply services and the lack of available mechanisms for changing the ESO. In this regard, it is necessary to create conditions to simplify the procedure for the consumer to change the ESO serving him.
226. The National Entrepreneurship Development Project provides for tasks to ensure market access in the electricity sector as part of the elimination of pricing distortions.
227. One of the tasks is to increase the proportion of consumers who have switched to alternative electricity suppliers and reduce the number of days to change the supplier by introducing an online digital platform (market place) for changing the electricity supplier with a reduction in the time for consideration by the ESO of the consumer's application to change the ESO.
228. Taking into account the importance of the implementation of the specified task of the National Project for the Development of Entrepreneurship, the Agency is studying the issue of attracting a company to create an appropriate Internet resource (digital platform) that allows the ESO to offer its conditions on a competitive basis, and consumers have the opportunity to compare the ESO offers, choosing the ones that are preferable for themselves terms and conditions of the ESIA and conclude an appropriate agreement with the ESIA.
229. In this case, the experience of Germany is indicative: a consumer, using a special Internet resource that provides a comparison of price offers of electricity suppliers and the conclusion of agreements with them, can determine the best tariff for their needs, then, using various means of communication (telephone, Internet, office) sends an application to conclude an agreement.
230. Upon receipt of the application, the new supplier notifies the former ESO of the termination of the contract and performs the appropriate procedures for the transition of the consumer to its service. This procedure takes about two weeks on average and allows the consumer to receive discounts of up to 30%.

## **2.2. Transport and communications**

### ***2.2.1. The market of rail transportation services***

231. The physical volume index for the Transport and Warehousing industry in January-September 2021 amounted to 3.4%. The volume of cargo turnover amounted to 539.4 billion t-km and increased by 1.1%. In the volume of GDP production for January-September 2021. the share of "Transport and warehousing" accounted for 6.3% (6,906 billion tenge).

Figure 1. Share of the "Transport and warehousing" sector in GDP



Source: Bureau of National Statistics of the Republic of Kazakhstan “GDP structure by production method”

232. Since 1999, since the adoption of the Law on Railway Transport, the market for the carriage of goods by rail has been competitive and does not belong to the sphere of natural monopoly.

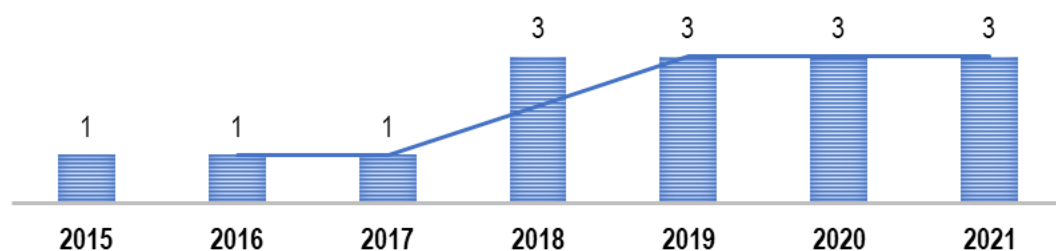
233. To carry out activities, a market entity needs to obtain a state license for the carriage of goods in the field of railway transport, which has currently been received by 48 companies.

234. At the same time, this market is monopolized, the largest and practically the only market entity is KTZ-FT LLP, which transports goods on the territory of the Republic of Kazakhstan. In turn, KTZ-FT LLP is a subsidiary of NC KTZ JSC with 100% participation in the authorized capital, as well as the National Freight Carrier, which also performs special and military transportation and ensures the implementation of the plan for the formation of trains throughout the main railway network.

235. The result of the analysis of the rail freight transportation market showed that the market is highly concentrated with undeveloped competition.

236. Meanwhile, it is necessary to note the presence of positive dynamics of changes in the number of market entities.

Figure 2. Dynamics of changes in the number of market entities



237. So, since November 2018, 2 private carriers Dar rail LLP and TTT Service LLP, operating in local areas with access to the services of the IRS, have also begun to transport goods, with a total market share of less than 10%.

238. It is important to note that the transportation activities of market entities engaged in rail freight transportation, with the exception of services for the transportation of goods by rail in containers, container shipments and empty fitting platforms, as well as in transit through the territory of the Republic of Kazakhstan, are classified as socially significant markets, prices which are subject to state regulation.

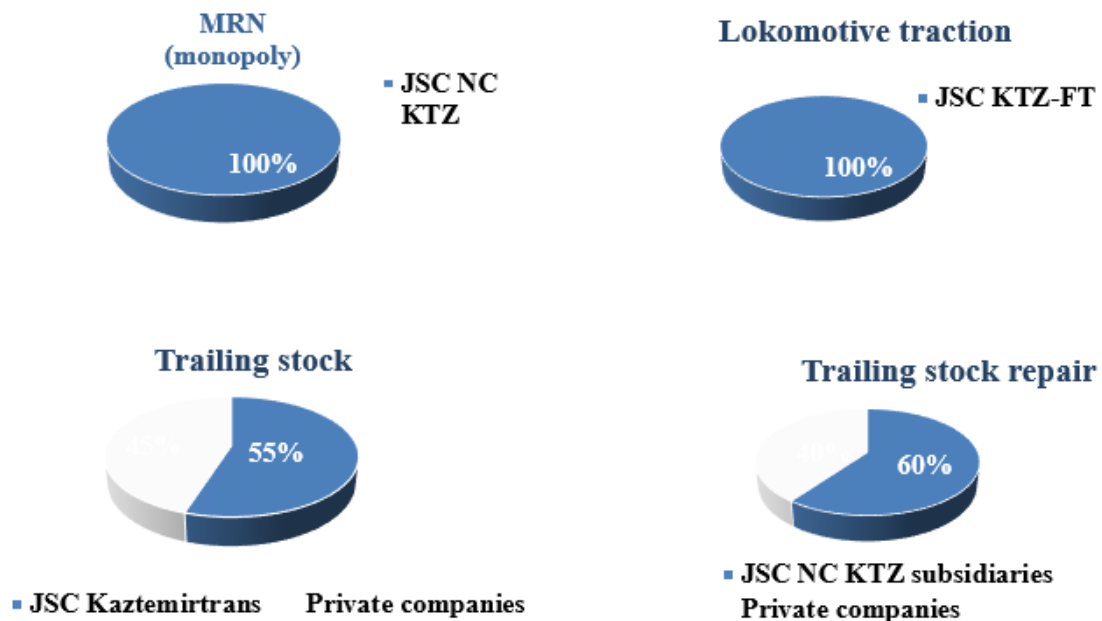
239. In addition to the presence of a historically established major market player, a number of the following factors also have a great influence on the state of competition and the growth in the number of private carriers:

1. the presence of a high affiliation of the market;
2. restriction of access for private entities to the infrastructure - the main railway network.

240. At present, in Kazakhstan, the cargo transportation market is represented by a vertically integrated group of companies NC KTZ JSC, which carries out transportation activities and owns the entire infrastructure for cargo operations, occupying a dominant (monopolistic) position in these markets. JSC "NC KTZ" is the National Infrastructure Operator, which provides carriers with access to the services of the IRS. JSC "NC KTZ" is in charge of the main networks, wagon facilities, locomotive traction services, paramilitary railway security services, automated information systems for transport management, etc., almost all operations related to the transportation process.

**Figure 3. Shares of dominance of the JSC "NC KTZ" group**

Infrastructure services



241. In this regard, private carriers are in unequal competitive conditions compared to the national carrier of goods when entering the commodity market for the carriage of goods.

242. In general, the barriers indicated in the analysis can lead not only to the difficulty of potential suppliers entering the commodity market, but also to the absence of another alternative for consumers (consignors, consignees, etc.) in obtaining freight transportation services on the territory of the Republic of Kazakhstan.

243. Entry into the market of alternative carriers is also hampered by the presence of problematic issues related to the imperfection of the regulatory framework. For example, the IHC Rules contain a number of norms that distort competition. In addition, there is an internal act of NC KTZ JSC, which provides for obtaining the approval of KTZ-FT LLP (a potential competitor) during the consideration by the National Infrastructure Operator of JSC NC KTZ of the application of a private access carrier to the IHC.

244. International experience in the transportation of goods has shown that in the United States there are 560 private railways with their own infrastructure, in France there are 21 private and 4 national carriers on the market, in Poland 75 carriers actually operate, including 5 state-owned companies, in Germany there is a state holding company Deutsche Bahn AG, private carriers (15 large independent operators that master about 80% of cargo turnover). By 2016, the share of the state-owned company in freight traffic in the intra-German market fell to 68.6%.

245. Based on the results of the analysis, the following problems (barriers to entry into the market) that impede the development of competition were identified:

- significant capital investments with long payback periods of these investments (acquisition/lease of freight rolling stock (locomotives, wagons, etc.), repair, maintenance, etc.);
- the advantage of the National Cargo Carrier operating in the market under consideration over potential market participants (KTZ-FT LLP has a branch network formed from road departments and locomotive depots that serve customers on the Kazakhstan railway network and provide a full range of cargo transportation services);
- private carriers, due to the presence of a vertically integrated group of companies on the market, are in unequal competitive conditions compared to the national carrier when entering the goods transportation market;
- imperfection of the regulatory legal framework, which does not take into account the plurality of carriers.

246. In this regard, the following measures are proposed:

247. Development of a new model of the rail transportation market, taking into account the creation of a competitive market for private carriers. The main directions of the new model of the rail transportation market will determine the conditions and limits of responsibility, as well as disclose the procedure for performing multimodal transportation, when the transportation of goods is carried out by two or more carriers, new tariff conditions, changing the principle of dispatching and integrating information systems of carriers to ensure the convenience of consignors.

248. In order to develop competition, as well as to exclude discrimination by JSC NC KTZ in relation to private carriers in access to infrastructure facilities and create comfortable conditions for their subsidiaries, it is necessary to ensure non-discriminatory access to the main railway network and other infrastructure facilities, as well as create conditions for the development of the private rail transportation market.

249. As recommendations for the development of competition in the analyzed product market, it is proposed:

- separation into a separate independent legal entity of a company providing services to the main railway network;
- introduction of amendments to the Rules of the IHC, in terms of eliminating duplicate requirements, as well as rules restricting the access of private carriers to the IHC.

### ***2.2.2. The market for services of regular transportation of passengers by air***

250. Regular and non-scheduled commercial air transportation is carried out on air routes. Air routes are divided into international and domestic. In turn, international air routes for regular commercial air transportation are determined in accordance with international treaties of the Republic of Kazakhstan.

251. Airlines that meet the qualification requirements established by the rules for the admission of airlines to perform regular domestic commercial air transportation are allowed to perform domestic scheduled commercial air transportation.

252. Due to different market access conditions, qualification requirements, regulations for airlines, domestic and international air transport cannot be considered as one product market.

253. Passenger transportation activities, in addition to airlines, are carried out by rail and road transport. However, due to the qualitative and technical characteristics of air transportation services associated with shorter travel time, high speed of passenger delivery, higher ticket price, air transportation services are not interchangeable with rail and road transportation services.

254. Consumers of passenger air transportation services on domestic scheduled flights are passengers – individuals who are not part of the crew and are transported on an aircraft in accordance with an air transportation contract or on other legal grounds.

255. The sellers in this product market are airlines - legal entities that have a civil aircraft operator certificate.

256. Airlines performing regular air transportation are created in the form of a joint-stock company in the manner prescribed by the laws of the Republic of Kazakhstan. Regular domestic air transportation in the Republic of Kazakhstan is carried out by 6 airlines: Air Astana JSC, Fly Arystan (a structural subdivision of Air Astana JSC), Qazaq Air JSC, SCAT Airlines JSC, Southern Sky JSC, Zhezkazgan-Air Airline, Zhetysu Airline JSC.

**Figure 4. Dynamics of changes in the activities of market entities**



257. The composition of market entities was also analyzed for inclusion in one group of persons in accordance with Article 165 of the Entrepreneurial Code. Based on the results, market entities included in one group of persons were identified:

1. a group of related persons as part of Air Astana JSC with the Fly Arystan structural subdivision (51% belongs to Samruk-Kazyna SWF JSC) and QAZAQ AIR JSC (Samruk-Kazyna SWF JSC - 100%);
2. a group of related persons of SCAT JSC and Southern Sky JSC (founder of SCAT JSC).

258. At the end of 2019, the activities of Bek Air JSC were suspended, which subsequently strengthened the monopoly positions of the largest market players.

259. The analysis of the state of competition in the domestic scheduled transportation of passengers by air for 2021 showed a high concentration of the market, with insufficiently developed competition. Market concentration of domestic passenger air transportation (2018 - 70%; 2019 - 86.2%; 2020 - 89.9%; 2021 - 93.2%).

260. The main indicators of air transport activity are presented in the table below according to the data of the Bureau of National Statistics of the Republic of Kazakhstan.

**Table 3. Indicators of air transport activity**

Period	Income from passenger transportation, million tenge			Passengers carried, thousand people			Passenger turnover, million pkm		
	Total	local	international	Total	local	international	Total	local	international
2018	337 952	X	X	7555	4312	3 243	14 989	5 292	9 696
2019	387 105	127 618	259 487	8645	5 354	3 291	16 886	6 199	10 687
2020	177 671	83 759	93 912	5494	4602	892	8 525	5477	3048
2021	366 309	X	X	9 434	X	X	14 815	X	X

Source: The value "X" means confidential data.

261. At the same time, there are the following problematic issues of development of competition in the market:

- the high cost of aviation fuel due to the presence of unproductive intermediaries (about 1/3 of all costs for air transportation falls on aviation fuel);
- there is no competition between service providers (storage and refueling of jet fuel, airport services), which leads to the formation of a "monopoly" component in the price of jet fuel and an increase in transportation prices;
- limited access to the infrastructure of subjects of natural monopoly and refueling complexes of airports;
- the presence of market entities with state participation.

262. In this regard, the following measures are proposed:

- providing access for alternative ground handling providers at airports, including independent suppliers, to the sale of aviation fuel on the territory of airports;
- exclusion of requirements for the presence of experience of airlines and the minimum number of seats on aircraft on subsidized routes;
- allocation of FlyArystan as a separate market entity;

- sale of shares of QazaqAir JSC.

### ***2.2.3. The market for passenger transportation services by public transport***

263. The procedure for the carriage of passengers and baggage by road is regulated by the Rules for the Transportation of Passengers and Baggage by Road, approved by Acting Minister for Investments and Development of the Republic of Kazakhstan dated March 26, 2015 No. 349 (hereinafter - Rules 349).

264. In the Republic of Kazakhstan, about 409 carriers operate in the market of regular bus transportation of passengers, of which 9 companies with the state participation (utility vehicle fleets) with 2,776 buses on 312 routes and 400 private carriers with 9,085 buses on 1,147 routes. There is a significant deterioration of the bus fleet (over 40% older than 7 years, about 12,000 units).

265. In general, about 12,000 buses are operated by communal vehicle fleets in the republic, of which 9,000 are operated by private vehicle fleets. In cities of republican significance and regions where there are car fleets with state participation, the share of private carriers is only 24%.

266. According to statistics for 2021, passengers were transported by road - 7.6 billion people. Income from passenger transportation amounted to 93.4 billion tenge.

267. Entry into the market of new entities is limited by the duration of contracts of carriage, which, in accordance with Rules 349, are concluded for a period of at least three years with a possible extension. This rule allows the incumbent firms to operate on the market for a long time and creates a barrier to entry into the market for prospective participants.

268. The tariff for services is set by local executive bodies in agreement with local representative bodies. For regular road transport of passengers and luggage in urban (rural) communications, the local executive body establishes a single tariff for the services of transporting passengers by public transport.

269. In general, tariffs for passenger transportation services on urban routes are unprofitable, and therefore, the local executive body annually plans to allocate funds from the budget to subsidize the losses of carriers on socially significant routes.

270. A problematic barrier in the development of a commodity market for passenger transportation services is the regulation and containment of fares. A new tariff is being considered and approved for a very long time, while the main components and components for regular transportation are becoming more expensive. During this period, carriers operate with zero profitability and even at a loss, which in turn makes it difficult to update the rolling stock, purchase spare parts and components, increase the salaries of drivers, which leads to a shortage of category "D" drivers.

271. Proposals submitted by market entities to eliminate existing barriers and ways to solve problematic issues:

- increase in funding to improve the infrastructure of urban passenger transportation - roads, stops, lighting, all-season maintenance of roads with a corresponding increase in the level of responsibility of the customer and contractors;
- prompt resolution of issues on changing tariffs due to changes in pricing factors, pricing for passenger transportation should be carried out according to the Methodology of calculations approved by the authorized body in accordance with the Law "On Transport" and Rules 349;

- formation of the city budget, taking into account the subsidization of urban passenger traffic in the direction of:
  - subsidies for large buses;
  - Compensation for free and preferential travel for pensioners, visually impaired children, children aged 7 to 15 years and other categories;
  - transfer to budget financing of real-time dispatching support (GPS);
  - resolving the issue of a special price for fuel for enterprises engaged in passenger transportation;
  - ensuring sufficient volume of uninterrupted supply of diesel fuel;
  - establishment of a zero rate of customs duties on new buses imported from far abroad;
  - extension of the period of validity of permits for regular international road transport of passengers and luggage up to 10 years;
  - production of buses adapted to the low-mobility segments of the population (disabled people, people in wheelchairs) in accordance with the changes made to the current legislation on transport;
  - amendments to the current regulatory legal acts regarding the admission to the transportation of passengers, baggage and cargo of carriers that have converted vehicles for the transportation of people with limited mobility and disabled people using wheelchairs.

#### ***2.2.4. Internet access services market***

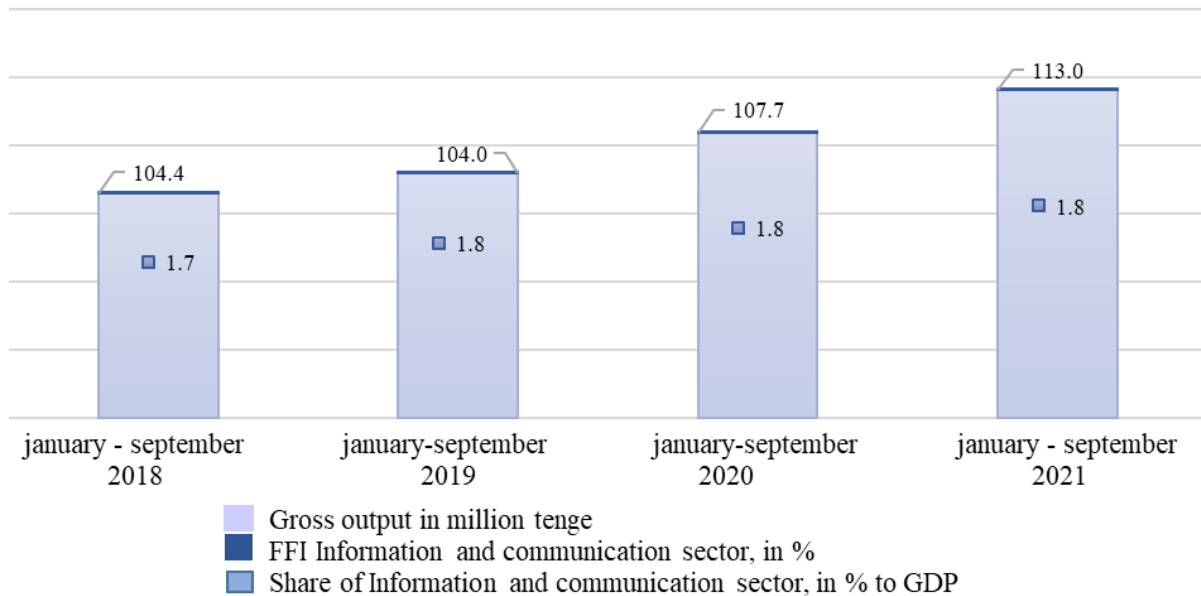
272. The legal basis for activities in the field of communications on the territory of the Republic of Kazakhstan, the powers of state bodies to regulate this type of activity, the rights and obligations of individuals and legal entities providing or using communications services are determined by the legislation in the field of communications and the Rules for the provision of Internet access services.

273. Services for providing access to the Internet according to the Classifier of Products by Type of Economic Activity are classified according to codes 61.10 "Wire telecommunications" and 61.20 "Wireless telecommunications".

274. The physical volume index for the Information and Communications industry in January-September 2021 amounted to 113%. The volume of communication services in January-September 2021 amounted to 743,518.4 million tenge, of which cellular services - 187,685.6 million tenge, Internet services over telecommunications wired and wireless networks - 294,718.6 million tenge, other telecommunications services - 149,357 million tenge.

275. In the volume of GDP production for January-September 2021 (964,192.2 million tenge) 1.8% fell to the share of "Information and Communication".

Figure 5. Share of the Information and Communications sector in GDP



276. Today, Internet access services in the country are carried out using fixed and wireless communication technologies.

277. Fixed Internet access is provided through ADSL, CDMA/EVDO and FTTx technologies.

278. ADSL technology allows to simultaneously transmit voice and data at speeds up to 10 Mbps over conventional "copper" telephone channels.

279. FTTx technology allows to increase the connection speed up to 120 Mbit/s and get a full range of telecommunications services, such as IP telephony and high-quality digital television.

280. In remote rural settlements, CDMA/EVDO technology is used, which makes it possible to use the Internet at speeds up to 3.1 Mbit/s.

281. The commodity boundaries of the market define wireless (mobile) services Internet and fixed (wired) Internet, which do not have substitutes comparable in terms of technical characteristics and consumer value of services.

282. According to the latest data of the ITU report "Measuring the Information Society", Kazakhstan occupies a high position in the tariff availability of communication services. In particular, Kazakhstan ranks 37th out of 181 countries in terms of tariffs for cellular communication services (2nd place in CIS countries), and 23rd out of 173 countries in terms of fixed broadband services (2nd place in CIS countries).

283. The average cost of 1 GB of mobile Internet in the world is \$8.53. At the same time, in Kazakhstan, the average cost of 1 GB is 0.49 US dollars, which allowed our country to take 37th place in the world and 2nd place among the CIS countries.

284. According to tariffs for fixed broadband services, Kazakhstan ranks 23rd in the world and 3rd among the CIS countries, the average cost of 1 GB of fixed broadband is 6.67 US dollars.

*Mobile Internet market in Kazakhstan.*

285. There are 3 mobile operators on the mobile Internet service market - Kcell JSC (with the trademarks "Kcell" and "Activ"), MTS LLP (with the trademarks "Tele2" and Altel), and KaR-Tel LLP (with Beeline and IZI trademarks). At the same time, Kcell JSC and MTS LLP are defined as a group of related persons of Kazakhtelecom JSC.

286. The total number of active subscribers in the Republic of Kazakhstan using mobile Internet at the end of 2020 and July 2021 amounted to 21.9 million people.

287. The total volume of mobile Internet services at the end of 2020 amounted to 2,820 million GB and in January-June 2021 amounted to 1,684 million GB.

288. The leader in the mobile Internet services market in terms of traffic in 2020 and the first half of 2021 is Mobile Telecom-Service LLP.

289. Based on the results of the analysis, it was found that the total share of KaR-Tel LLP and the Group of Companies of Kazakhtelecom JSC in the mobile Internet is over 50%.

290. Based on the results of the analysis, it was found that the market for mobile Internet services in Kazakhstan is highly concentrated, on which 2 market entities operate with a large number of buyers. Considering that the mobile Internet services market in the Republic of Kazakhstan is a highly concentrated market, as well as the presence of high barriers to entry into the market, this product market belongs to a market with insufficiently developed competition.

291. The main barriers for new entities to enter the commodity market under consideration are economic (volumes of initial investments), technological (limited resources of the radio frequency spectrum), and administrative (licensing) restrictions.

292. Based on the results of the analysis of systemic issues that adversely affect the development of competition in the mobile Internet services market, the Agency for the Protection and Development of Competition identified the following administrative barrier in obtaining permits.

293. Thus, according to subparagraph 5) of paragraph 7 of Article 12 of the Law "On Communications", the absence of an appropriate license for the type of entrepreneurial activity in the field of communications using radio frequencies is the basis for refusing to issue a permit to the applicant to use the radio frequency spectrum.

294. At the same time, according to the Rules for the provision of the public service "Issuance of a license for the provision of services in the field of communications", the non-compliance of the service recipient with the qualification requirements is the basis for refusing to issue a license.

295. In turn, the qualification requirements include the obligatory possession of a permit for the use of the radio frequency spectrum for the provision of cellular communication services (according to the Qualification Requirements and the list of documents confirming the applicant's compliance with the provision of communication services, approved by order of the Acting Minister for Investments and Development of the Republic of Kazakhstan dated January 20, 2015 No. 21).

296. Thus, in order to obtain permission to use the radio frequency spectrum, a potential telecom operator must have an appropriate license. At the same time, this license is issued in the presence of permission to use the radio frequency spectrum.

297. In this connection, this fact leads to the restriction or elimination of competition, preventing new participants from entering the market.

298. About the competition restriction in the cellular communications market was also informed by Transtelecom JSC - the operator, ready to provide services in the field of cellular communications, which was previously denied by the Telecommunications Committee of the MDDIAI, in accordance with subparagraph 5) of paragraph 7 of Article 12 of the Law of the Republic of Kazakhstan "On Communications" in obtaining permission to use radio frequency spectrum due to the lack of an appropriate license.

299. In this regard, on August 13, 2021, the Agency for the Protection and Development of Competition in relation to MDDIAI issued an Injunction on taking actions aimed at ensuring competition in the cellular services market by initiating changes to the Qualification Requirements and the list of documents in terms of excluding from them the mandatory presence of a permit for use of the radio frequency spectrum for the provision of cellular communication services.

300. In addition, the limited resource of the radio frequency spectrum hinders the development of the industry and causes the problem of its distribution. There is an unequal distribution of new radio frequencies and the issuance of license obligations to cellular operators. The current procedure for the allocation of new frequencies is non-transparent, there are no clear criteria for the allocation of the radio frequency spectrum.

301. In this connection, as part of its activities aimed at developing competition in the cellular communications market, the Agency for the Protection and Development of Competition recommended to MDDIAI to develop equal access to the telecommunications infrastructure, in particular, to the radio frequency spectrum.

302. According to the MDDIAI, in order to effectively use the limited national radio frequency resource, the authorized body is currently developing a legislative establishment of competence to approve the procedure for holding tenders (or auctions).

303. In this connection, after the relevant amendments are made by the MDDIAI, there will be developed a procedure for holding tenders (or auctions) for the distribution of the radio frequency spectrum in the Republic of Kazakhstan in the range for which the IFRF recommended limiting the possible number of telecom operators operating in a certain territory.

304. *Barriers to access the cable channels infrastructure and multi-apartment residential buildings.*

305. The current Rules for the provision of cable channels for use do not provide equal and transparent access to the infrastructure. There are also proposals from the market entities to review the procedure for the provision of cable channels services and the connection process for non-discriminatory open access.

306. In addition, market participants reported that companies engaged in the field of digital types of business are forced to use the services of the monopolist Kazakhtelecom JSC without alternative. So, when receiving a request for permission to connect to cable and sewer networks, Kazakhtelecom JSC often requires a report of the channels, which accordingly leads to additional costs, and in other cases delays the process of issuing a permit or issues an unreasonable refusal. All this happens at the stage of construction and issuance of technical conditions.

307. Along with this, problems often arise when telecom operators connect to the communication cable channels for various reasons, including due to the limited number of containers in the cable channels. In this regard, the subjects are invited to review the procedure for providing cable channels services and, if possible, optimize the connection process for non-discriminatory open access. There are also facts when the cable channels owners refuse to issue technical specifications and refuse to provide containers for reasons

of reservation of containers by third parties or the owner himself or due to absence of free containers in the cable channels, however, these facts are not confirmed during joint verification.

308. As a solution to problematic issues in the field of access to cable channels, the Agency for the Protection and Development of Competition sent specific proposals and solutions to the Republican Council on Barriers to Access to Commodity Markets in order to discuss them with the business community.

309. In addition, there are appeals from market participants about problematic issues when laying a subscriber access network in multi-apartment residential buildings and office buildings.

310. For example, the Agency for the Protection and Development of Competition previously received proposals from market entities (KaR-Tel LLP, AlmaTelecommunications JSC) on the issue of providing operators with equal conditions for laying cable networks at engineering infrastructure facilities of residential buildings, in connection with the establishment of cooperatives of owners of premises and managers of objects of condominiums of unreasonable conditions in contracts.

311. KaR-Tel LLP, as a solution to the problem of placing subscriber communication lines in the multi-apartment buildings and office buildings, proposes to introduce requirements for the design and construction of houses into building codes and rules with the creation of a single fiber-optic communication network inside the house with the organization of the possibility of connecting such a communication network to networks communication of telecom operators through standard interfaces in a specially equipped room in the basement, in the attic of a residential building or a remote access point (at a substation, transformer box, etc.).

312. On this issue, the MDDIAI provided information that, in order to address the issue of providing residential buildings with fiber-optic communication lines at the construction stage, the issue of amending the Code of Rules of the Republic of Kazakhstan 3.2-101-2012\* "Dwelling multi-apartment buildings" has been worked out. The amendments were discussed and approved at the Scientific and Technical Council under the Committee for Construction and Housing and Communal Services, adoption is expected in due course.

## **2.3. Industry and agro-industrial complex**

### ***2.3.1. Primary housing market***

313. According to the Bureau of National Statistics of the Agency for Strategic Planning and Reforms of the Republic of Kazakhstan, in 2021 in Kazakhstan, the increase in prices for primary housing amounted to 16.6% (for 2020 - 5%); for secondary - 24.3% (for 2020 - 13.2%).

314. Under instruction from the Head of State regarding the adoption of measures to prevent excitement and restraining price growth in the real estate market, given following an expanded meeting of the Government of the Republic of Kazakhstan on January 26, 2021, the Agency for the Protection and Development of Competition analyses of the state of competition in the primary housing sales markets in regional centers and cities of republican significance, including to establish the reasons for the increase in prices.

315. Based on the results of the analysis, the Agency for the Protection and Development of Competition in the actions of market entities identified a violation of the legislation of the Republic of Kazakhstan in the field of competition protection, expressed in anti-competitive concerted practices in terms of fixing and (or) maintaining prices in the

housing market in the actions of 15 market entities (2 - in Almaty - "Basis-A", "RAMS Qazaqstan"; 2 - in Nur-Sultan - "Bi Group", LLP "Orda Stroy Group"; 2 - in Shymkent - LLP "Otau Stroy" , Dostyk Invest Group LLP; 4 - in the Karaganda region - Eurasian Building LLP, Prof Invest LLP, Halyk Building LLP, Housing Fund LLP; 3 - in the Aktobe region - Investcomplex LLP , PK "Nectar", LLP "Zavod Svetotekhnika\_W"; 2 - in East Kazakhstan region - LLP "Dostar May", 2-group of persons: LLP "Service SMU", LLP "VK Invest company").

316. Warnings were sent to these entities about the elimination of signs of violation of competition law and the need to reduce prices, 14 of which were executed.

317. In connection with the failure to comply with the notification, in Nur-Sultan, LLP "Orda Stroy Group" is being investigated on the grounds of unfair competition.

318. As part of the execution of warnings, the RAMS-Kazakhstan group of companies reduced prices for a number of housing estates in Almaty by 15% or up to 90 thousand tenge per square meter, BAZIS-A reduced price for residential complexes in the city of Almaty to 20 thousand tenge per square meter. "BI Group" reduced prices for primary housing in 51 residential complexes in Nur-Sultan by an average of 8%, in Almaty - by 11%, in Shymkent - by 3%, in Atyrau - by 4%.

319. Other developers also fulfilled the warnings and reduced prices by an average of 15-20%:

- in Shymkent, DOSTYK INVEST GROUP LLP from 330 to 270 thousand tenge, Otau Group LLP from 300 to 270 thousand tenge per sq. meter;
- in Karaganda LLP "PROF INVEST" from 300 to 279 thousand tenge, LLP "Eurasian Building" from 283 to 269 thousand tenge;
- in Ust-Kamenogorsk LLP "Dostar May" from 350 to 220 - 280 thousand tenge per sq. m. meter, depending on the comfort and number of storeys of a residential facility;
- in Kostanay LLP "BK-Stroy" from 245 to 230 thousand tenge as part of antimonopoly compliance.

320. Along with this, in connection with the failure to provide the requested information, 21 protocols on administrative offenses were drawn up.

321. The courts imposed fines on the entities in the amount of more than 10 million tenge. Also, to date, 7 acts of antimonopoly compliance with enforcement of the law in the field of competition protection have been concluded.

### ***2.3.2. Construction materials market***

322. The increase in prices for domestic building materials in 2021 amounted to 26.5% (in 2020, the growth was 3.5%).

323. Under instruction from Head of State to take prompt measures to curb the rise in prices for construction materials given following the expanded meeting of the Government of the Republic of Kazakhstan on June 10, 2021, the Agency for the Protection and Development of Competition considered the actions of domestic manufacturers and suppliers of construction materials for a speculative increase in prices in due to the expectation of increased demand, expressed, including unreasonable overstatement of administrative costs, profits, etc.

324. Based on the results of the work carried out, the actions of market entities showed signs of violation of the legislation of the Republic of Kazakhstan in the field of competition protection, expressed in anti-competitive concerted practices, as well as abuse of their dominant position in terms of setting a monopoly high price and applying different prices to equivalent agreements without objectively justified reasons.

325. Based on the results of the analyzes, 84 warnings were sent to construction materials market entities about the elimination of signs of violation and the need to reduce prices:

- cement - 21 (4 - in the Akmola region - IP "Egorov P.", LLP "Firm Stroitelny Dvor", LLP "Baza Vostok Stroy", IP "Palace E.V."; 4 - in the Kostanay region - LLP Aigul-94, BK-Market LLP, KM Trading House LLP, Megastroy Sever LLP; 2 - in Shymkent - Standard Cement LLP, Shymkent Cement LLP; 2 - in the Turkestan region - IP "Bekbulatov", IP "Maldybekova"; 1 - in Zhambyl - LLP "Zhambyl cement production company", 2 - in East Kazakhstan region - LLP "Bukhtarma cement company", LLP "Cement Semey", 2 - in Aktobe region - Agishan LLP, SpetsstroyMontazh LLP, 2 - in the Almaty region - ALGA LLP, Import-TEK LLP, 1 - in the Kyzylorda region - Gezhuba Shieli Cement Company LLP, 1 - in the Mangistau region. Caspian Cemen LLP.
- fittings - 21 (4 - in the Pavlodar region - KSP Steel LLP, Firm Steel Union LLP, Steel Yard Astana LLP; 6 - in Nur-Sultan - Steel Yard - Astana LLP, LLP MMK-Kazakhstan Trading House, Kazakh-Russian Steel Industry Company LLP, Albina Stroy-2030 LLP, MetTransTerminal LLP, Beles-TK LLP, 2 - in East Kazakhstan - Beakris-Metall LLP, LLP "Titan-Vostok"; 2 - in the Atyrau region - "Ural Metal Invest" LLP, "KazTemirContract" LLP; 2 - in the North Kazakhstan region - "Ermekbay-Stroy Group" LLP, IE "Silantyeva O.A."; 2 - in WKO - LLP "Metal-Service KZ" (in two regions); 1 - in the Kostanay region - LLP "EvrazCaspian Steel"; 1 - in the Zhambyl region - LLP "Taraz Metal Invest"; 1 - in the city of Shymkent - LLP "Ferrum-Vtor");
- brick - 13 (4 - in the Akmola region - LLP "Astana ceramics", LLP "Enki", LLP "Kaz National Group", IP "Tagiev T.F."; 3 - in the Turkestan region - LLP "Agro-V", LLP "Batsu - Vodokanal", LLP "Lenger Kysh"; 3 - in the Kyzylorda region - IE "Shalkibaev", LLP "Asar-Kurylys", LLP "Valiant-Stroy"; 1 - in Shymkent - LLP "Company R.E.T", 1 - in WKO - JSC "ZKKSM", 1 - in Almaty - LLP "ArlanPlast");
- concrete - 10 (2 - in the East Kazakhstan region - "Firma Asia" LLP, reinforced concrete plant and "Reinforced Concrete Products Semey-Kurylys" LLP; 2 - in the Kyzylorda region - Asar LLP, Adem-Zhan LLP; 2 - in the Aktobe region - "TOO Nagyz concrete", LLP "Sapali - C"; 3 - according to the SCO of Vayk Group LLP and ExpressBeton LLP, Unity LLP; 1 - in Atyrau - Gradeks KZ LLP);
- mineral wool board - 5 (3 - in the Kostanay region - "Trading House of Building Materials" LLP, "TPK Metallobaza" LLP, "Northern Partner Company" LLP; 1 - in Almaty - Mamyr LLP, 1 - in the Karaganda region - LLP "Vodokanalstroy");
- polyethylene pipes - 3 (2 - in the Akmola region - Tynys JSC, Arystan Stepnogorsk Pipe Plant LLP, 1 - in the WKO - Ural Commercial and Industrial Company LLP);
- crushed stone - 3 (2 - in the Almaty region - LLP "Kentas", LLP "AKNM" 1 - in the Zhambyl region LLP "Altai Building LTD");

- channel - 2 (1 - Almaty - Mechel-Service Kazakhstan LLP; 1 in East Kazakhstan region of PKF Titan LLP);
- concrete wall block - 1 (1 - according to the North Kazakhstan Standards - Logic Stroy Resource LLP);
- cable - 3 (1 - in WKO - OK Oral Cable LLP, 2 - in Almaty - Aknur Cable LLP and Almaty KazKabel LLP);
- glass - 1 (1 - in the Karaganda region - Mir Stekla LLP);
- parquet boards - 1 (1 - in Almaty, LLP "Workshop of comfort").

326. As a result of the antimonopoly measures taken, prices were reduced: for reinforcement - 25%, for mineral wool boards - 11%, cement - 10%, concrete - 10%, polyethylene pipes - 6%, cable from 5 to 14%, brick - 3%.

327. In connection with the failure to comply with warnings, 20 investigations into violations of the legislation of manufacturers and suppliers of reinforcement, cement, bricks, concrete and crushed stone were appointed, including:

- 9 for reinforcement (Ferrum-Vtor LLP, KSP Steel LLP, Steel Union Firm LLP, Mechel-Service Kazakhstan LLP, Nurtas Temir LLP, ALBION-STROY-2030 LLP, LLP MetTransTerminal, Astana Steel Yard LLP, Kazakh-Russian Steel Industrial Company LLP, UralMetallInvest LLP, KazTemirKontrakt LLP, Metal-Service KZ LLP, Taraz Metall Invest LLP);
- 4 for cement (Standard Cement LLP, Shymkentcement JSC, Gezhuba Shieli Cement Company LLP, Agishan LLP and SpetsstroyMontazh LLP);
- 3 bricks (ENKI LLP, ZKKSM JSC, Batsu-Vodokanal LLP);
- 2 for concrete (JSC Stroykonstruktsiya, LLP Sapaly Ts);
- 1 for crushed stone (Kentas LLP);
- 1 for mineral wool board (TPK Metallobaza LLP).

328. At the same time, 26 protocols on administrative offenses were drawn up for failure to provide the requested information, as well as 1 protocol for violating the law in the field of competition protection.

329. The courts imposed fines on the entities in the amount of more than 20 million tenge.

330. In addition, in order to stabilize prices in the construction materials markets, 10 antimonopoly compliance agreements were concluded with manufacturers and suppliers of cement ( *Gezhuba Shieli Cement Company LLP, Kyzylorda region*), *Central Asia Cement JSC, Karaganda region*; *Aulie-Ata cement LLP, Aulie-ata cement group LLP, Zhambyl region*), brick (*D.D.A. LLP, Shalkibaev IP, Kyzylorda region*), crushed stone (*Aktas LLP, Ceramics Invest LLP, Zhambyl region*), concrete and reinforced concrete products (*Nur-Stroy LTD LLP, Kyzylorda region; BatysAllianceStroy LLP, Atyrau region*) on compliance with the norms of the legislation of the Republic of Kazakhstan in the field of competition protection.

331. Thus, as part of the concluded antimonopoly compliance, the cement manufacturer in the Karaganda region, Central Asia Cement LLP, reduced prices by 7% (from 23,500 to 21,800 tenge per ton).

### 2.3.3. Market of socially significant food products

332. According to the Bureau of National Statistics of the Agency for Strategic Planning and Reforms, for 2021 in Kazakhstan, the increase in prices for socially significant food products amounted to 9.9% (for 2020 - 11.0%).

333. Under instructions from the Head of State regarding the creation of commissions to investigate intermediary schemes along the entire food pricing chain with an emphasis on wholesale markets, the Agency for the Protection and Development of Competition conducted analyzes of the state of competition in the food markets for 13 commodity items out of 19 APPs, with the largest growth prices, subject to regular price volatility over the past 3 years, and a high share of import dependence (over 20%), as well as making the main contribution to the growth in food prices (sunflower oil, eggs, sugar, buckwheat, chicken meat, bread, flour, beef meat, milk, potatoes, carrots, onions, cabbage).

334. As part of the analysis, the level of concentration in the markets of fruit and vegetable products (potatoes, carrots, onions, cabbage), beef meat, where a relatively low level of concentration is noted (less than 9% of total sales are accounted for by one leading entity, with an average value of 7%), markets for eggs, milk, bread and flour are moderately concentrated (one leading entity accounts for 10-20%, with an average value of 15%), markets for sunflower oil, chicken meat, sugar and buckwheat are highly concentrated markets (one leading entity accounts for more than 20%, with an average value of more than 25%).

335. In addition, food markets are covered, consisting of several levels - these are producers, importers (primary link); wholesale suppliers, resellers (second link); trade networks, markets (third link). The chain from the manufacturer to the end consumer consists of 2, 3-level and more intermediary structures. The structure of trade links is largely determined by the conditions of transportation of goods.

336. In general, food markets are moderately concentrated or low concentrated, which means minimal conditions for the impact on the conditions of the functioning of markets by market individual participants, minimal risks of price collusion between market participants, and the presence, mainly, of economic reasons for growth. Unlike the highly concentrated markets of the fuel and energy complex, transport and communications, where the influence of 2-3 subjects prevails, the influence on price formation is limited by the actions of other market participants.

337. Food markets are covered, consisting of several levels of intermediary links - these are manufacturers, importers (primary link); wholesale suppliers, resellers (second link); trade networks, markets (third link). The chain from the manufacturer to the end consumer consists of 2, 3-level and more intermediary structures. The structure of trade links is largely determined by the conditions of transportation of goods.

338. 8 large manufacturers producing **sunflower oil** in the republic.

339. *First level* - 8 sunflower oil producers in 6 regions: EURASIAN FOODS CORPORATION JSC, Maslo-Del LLP (Almaty), Shymkentmai JSC (Shymkent), Aktobe Food LLP (Aktobe), Prombaza-7 LLP, (Kostanay), May JSC, Ust-Kamenogorsk Oil Plant LLP, Vostokselkhozprodukt LLP (VKO).

340. The commodity market of sunflower oil, according to the results of the analysis, is highly concentrated in 14 regions and moderately concentrated in 3 regions of the republic.

341. Imported products prevail in 3 regions of the republic (North Kazakhstan, Kostanay, Akmola regions).

342. *Second level:* more than 20 large and medium-sized distributors of domestic products, the wholesale link of the region: PRIMA DISTRIBUTION LLP (Almaty) - 15 branches; EURASIAN FOODS CORPORATION JSC (Almaty) - 9 regions; Maslo-Del LLP (manufacturer Almaty) - supplies to 5 regions, etc.

343. Manufacturers supply to the regions where the plants are located, as well as to other regions of the republic, directly or through wholesale suppliers, their own dealers, distributors, branches.

344. *The third level:* large retail chains, medium and small retail stores and markets: TC "Small", LLP "KENMART" (Nur-Sultan), LLP "MAGNUM CASH & CARRY", (Almaty), LLP "ZHETI ASPAN" (Galmart), ANVAR LLP, etc.

345. In general, from the producer to the consumer, the trade markup reaches 25%.

346. **Chicken** eggs - 35 manufacturers produce chicken eggs in the republic.

347. *First level* - 29 large chicken egg producers in 15 regions

348. - LLP "Zhas-Kanat 2006" and JSC "Sever-bird" (Kostanay region), LLP "Sharbakty-Kus" and LLP "PK Pavlodar Kus" (Pavlodar region), Poultry farm named after. K.Marksa, Agrofirma Kurma LLP, Karaganda Kus LLP, Plemptitstorg LLP (Karaganda region), Shymkent Kus LLP and Tassay Kus LLP (Shymkent), Yakorskaya PF LLP, LLP Alekri Firm, and PTF Esilskaya LLP, (SKO), ADM Investment LLP (Aktobe region), Agroinvest-2015 LLP, Kazger Kus LLP, Ush Bulak LLP and Izhevskiy PC (Akmola region), Asa Damu LLP (Zhambyl region), Almaly Kus LLP (Atyrau region), Ural PF LLP, Agrofirma Akas LLP (WKO), Moldir and K LLP (Kyzylorda region. ), Saryagash Kustary LLP, Beskara LLP, Yassy Kus LLP, Koger LTD LLP, Kazakhstan Kustary LLP, Sunkar LLP, etc.

349. The commodity market for the sale of chicken eggs is moderately concentrated.

350. *Large importers* - 3 Kuzbass Poultry Farm JSC (Russia) supplies to Almaty, Elba LLC (Russia) supplies to East Kazakhstan region, SPK Gaiskaya Poultry Farm (Russia) supplies to Atyrau.

351. Imported products prevail in 3 regions of the republic (Almaty, Atyrau and East Kazakhstan regions).

352. *Second level:* more than 15 large and medium-sized distributors of domestic products:

353. - wholesale link of the region: Zhas-Kanat 2006 LLP (Kostanay) - supply of eggs to 4 regions; Karaganda Kus LLP, Koger LTD LLP, Kazger Kus LLP - delivery to 3 regions; Alekri LLP, Kazakhstan Kustary LLP, Assa Damu LLP, Esilskaya Poultry Farm - delivery to 2 regions; Sever Ptitsa JSC (Kostanay), Bakai Kus LLP (Atyrau), Kurochka Ryaba LLP (Akm Region), Ushtobe Kus LLP (Karaganda), Agrofirma Kurma LLP (Karaganda), Kausar Kus LLP" (Almaty), Shymkent Kus LLP (Shymkent) and others. Delivery in 1 region.

354. Manufacturers supply to the regions where the plants are located, as well as to other regions of the republic, directly or through wholesale suppliers, their own dealers, distributors, branches.

355. *The third level:* large retail chains, medium and small retail stores and markets: TS "Small", LLP "KENMART" (Nur-Sultan), LLP "MAGNUM CASH & CARRY", (Almaty), LLP "JETI ASPAN" ( Galmart), ANVAR LLP, etc.

356. In general, from the producer to the consumer, the premium reaches 25%.

357. **Sugar** - in the republic, 4 large producers produce sugar, which are located in 2 regions of the republic (Taraz city - 2, Almaty region - 2).
358. *The first level* - 4 large sugar producers in 2 regions:
359. – Koksu Sugar Plant LLP, Aksu Kant LLP (Almaty region), Merken Sugar Plant LLP, Taraz Sugar Plant LLP (Zhambyl region).
360. The commodity market for the sale of sugar is a highly concentrated market.
361. Imported products prevail in 7 regions of the republic (Almaty, Atyrau, West Kazakhstan, Kostanay, Pavlodar, North Kazakhstan, East Kazakhstan regions).
362. *Second level*: more than 14 large and medium-sized distributors of domestic products:
363. - the wholesale link of the region: KaisInvest LLP (Aktobe region) supplies 11 regions; Belarusian Agrarian Company LLP supplies 3 regions; SakharProm Kazakhstan LLP is supplied by 2 regions; SWEET STEP LLP supplies 2 regions; LLP PK "MIR KRUP", LLP "Firma As An" LLP "Albak", LLP "Astyk" (Almaty); Meir trade distribution company LLP (Shymkent); IP Darbaev K.K., LLP Mukot (Akmola region), IP Dzhirgalbaev, LLP As-An Market (Almaty region); Zhazyk Group LLP (Atyrau region) and others supply in 1 region.
364. *Third level*: large retail chains, medium and small retail stores and markets:
365. - TS "Smol", LLP "KENMART" (Nur-Sultan), LLP "MAGNUM CASH & CARRY", (Almaty), LLP "ZHETI ASPAN" (Galmart), LLP "ANVAR", etc.
366. In general, from the producer to the consumer, the premium reaches 53%.
367. **Buckwheat** - in the republic 10 producers produce buckwheat groats, which are located in 4 regions of the republic (Kostanay region - 1, North Kazakhstan region - 1, East Kazakhstan region - 2; Pavlodar region - 6).
368. *The first level* - 10 buckwheat producers in 4 regions:
369. – Mibeko LLP (Kostanay region), Rakhat Opt LLP (SKO), Tsarskaya Kasha LLP, Spets BD LLP, Zernograd LLP, Grano-PV LLP, Yugoton LLP, LLP FIRM "KOLOS" (Pavlodar region), LLP "Vostok Eco Line", LLP "Vertex Vostok" (VKO).
370. In some cases, for example, it directly goes from the manufacturer to the distribution network, bypassing intermediaries, for example: Vertex Vostok LLP (VKO) - MAGNUM CASH & CARRY LLP (Nur-Sultan, Almaty region), Tsarskaya Kasha LLP (Pavlodar region) - LLP "Skif Trade" (Almaty, Almaty region), LLP "Special BD" (Pavlodar region) - LLP "TD "Shagan" (Almaty region), LLP "Tamasha Market" (Kostanay region), Zernograd LLP (Pavlodar region) – Trade House Shagan LLP (Almaty region), Skif Trade LLP (Pavlodar region).
371. The commodity market for the sale of buckwheat is highly concentrated.
372. Imported products prevail in 5 regions of the republic (Nur-Sultan, Atyrau, Aktobe, West Kazakhstan, Kyzylorda regions).
373. *Second level*: more than 4 large and medium-sized distributors of domestic products
374. - the wholesale link of the region: KaisInvest LLP (Aktobe region) supplies 3 regions; Leo grain trade LLP (Pavlodar region) supplies 3 regions; DOM company LLP (Karaganda region) is supplied by 2 regions; Prima Distribution LLP (Almaty) supplies 2 regions; LLP "Aidoni", LLP TC "Mir Krupp" (Nur-Sultan); IE "TamiDani", LLP

"NaftaTransService", LLP "Eurasia Foods" (Almaty); Tezko LLP, Prima Distribution LLP (Shymkent) and others supply in 1 region.

375. *Third level:* large retail chains, medium and small retail stores and markets:

376. - Skif Trade LLP, KENMART LLP (Nur-Sultan), MAGNUM CASH&CARRY LLP (Almaty), ZHETI ASPAN LLP (Galmart), ANVAR LLP, etc.

377. In general, from the producer to the consumer, the premium reaches 33%.

378. **chicken meat** - in the republic, 24 producers produce chicken meat, which are located in 12 regions of the republic (WKO-1, Aktobe region - 1, Kostanay region - 2, Akmola region - 6, North Kazakhstan region - 1, East Kazakhstan region - 3; Pavlodar region - 1, Karaganda region - 2, Almaty region - 4, Zhambyl region - 1, Turkestan region - 1, Shymkent - 1).

379. *The first level* - 24 chicken meat producers in 12 regions:

380. – Zhaiyk Kus LLP (WKO); Akkus-Aktobe LLP (Aktobe region); Broiler poultry farm Zhas-Kanat LLP, Arkalyk Kus LLP (Kostanay region); PK "Izhevsky", LLP "Makinskaya poultry farm", LLP "Capital Project LTD", LLP "Blic Terminal", LLP "APP Astrakhan bird", LLP "Kurochka ryaba" (Akmola region); Petropavlovsk Broiler Factory LLP (SKO); Aknar PF LLP, Agrofirma Kurma LLP (Karaganda region); Alatau Kus LLP, AlelAgro LLP, OTAN Green Food LLP, NURLY-KUS LLP (Almaty region); Aulie-Ata Phoenix LLP (Zhambyl region), Infrostroy LLP (Shymkent).

381. The commodity market for the sale of chicken meat, according to the results of the analysis, is highly concentrated.

382. Imported products prevail in 3 regions of the republic (Almaty, Atyrau, North Kazakhstan regions).

383. *Second level:* more than 3 large and medium-sized distributors of domestic products:

384. Wholesale link of the region: Perun Trade LLP (WKO) supplies 4 regions; Resource Vostok LLP (Almaty) supplies 2 regions; Ice Trading LLP supplies 2 regions; ICEFOOD LLP (Nur-Sultan); LLP "Global Food Trade" (Almaty); Ulan B LLP (Shymkent), IP Rein I.A. (Akmola region); LLP "Alta 21 century" (Kostanay region) and others supply 1 region.

385. *Third level:* large retail chains, medium and small retail stores and markets:

386. - Skif Trade LLP, KENMART LLP (Nur-Sultan), MAGNUM CASH&CARRY LLP (Almaty), ZHETI ASPAN LLP (Galmart), ANVAR LLP, etc.

387. In general, from the producer to the consumer, the premium reaches 28%.

388. **Milk** - in the republic, 49 producers produce milk, which are located in 13 regions of the republic (WKO-1, Aktobe region - 3, Mangystau region - 2, Kostanay region - 3, Akmola region - 12, North Kazakhstan region - 2, East Kazakhstan region - 3; Pavlodar region - 2, Karaganda region - 3, Almaty region - 9, Zhambyl region - 5, Turkestan region - 1, Shymkent - 2).

389. The commodity market for the sale of milk, according to the results of the analysis, is highly concentrated in 11 regions, moderately concentrated in 4 regions and low concentrated in 2 regions of the republic.

390. Manufacturers supply directly to retail chains and stores without intermediary links, the percentage of the premium does not exceed 15%.

391. **Flour and bread** - in the republic, 76 manufacturers produce flour, which are located in 15 regions of the republic (Nur-Sultan - 3, Almaty - 1, Shymkent - 12, WKO-2, Aktobe region - 1, Kostanay region - 4, Akmola region - 31, North Kazakhstan region - 5, East Kazakhstan region - 5; Pavlodar region - 3, Karaganda region - 3, Almaty region - 1, Zhambyl region - 3, Turkestan region - 1, Mangystau region - 1), production of bread by 99 producers located in all regions of the republic (Nur-Sultan - 3, Almaty - 1, Shymkent - 5, WKO-5, Aktobe region - 4, Kostanay region - 3, Atyrau region - 9, Akmola region - 9, North Kazakhstan region - 10, East Kazakhstan region - 3; Pavlodar region - 12, Karaganda region - 5, Almaty region - 5, Zhambyl region).

392. The commodity market for the sale of flour and bread, according to the results of the analysis, is moderately concentrated.

393. In general, from the producer to the consumer, the premium reaches 18%. Most deliveries are made directly.

394. **Beef meat and fruit and vegetable products** are produced by more than 1,000 entities in the republic, the market is low concentrated, characterized by a large number of market participants.

395. Antimonopoly control measures cover commodity markets with the highest price growth with the presence of large producers and suppliers of goods; in the markets of fruit and vegetable products and beef meat, due to legal requirements and their low concentration, response measures cannot be taken.

396. According to the Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan, since 2021 there are no measures for exceeding the maximum allowable retail prices (under Article 202 of the Code of Administrative Offenses), for violation of the legislation of the Republic of Kazakhstan on the regulation of trading activities for organizing the activities of trade markets (according to Art. 204-1 of the Code of Administrative Offenses) - 54 warnings, exceeding the amount of remuneration, or illegal demand for remuneration in connection with the acquisition of NWPT (under Art. 204-3 of the Administrative Code) - 3 warnings, and exceeding the size of the trade allowance (under Art. 4 Administrative Code) - 34 warnings.

397. At the same time, a set of antimonopoly measures aimed at stabilizing prices and reducing, mainly, the speculative trend of market participants, has been implemented in the above markets.

398. For 2021, in the markets of NWPT, the antimonopoly authority issued:

399. - 114 notifications regarding manufacturers and wholesalers of chicken eggs (32), chicken meat (33), sugar (19), sunflower oil (11), buckwheat (6), retail chains (4), dairy products (3), for horns and flour (4). Of these, 86 notifications were executed.

400. - 16 investigations were appointed (sunflower oil - 2, sugar - 2, bread - 2, flour - 1, eggs - 5, chicken meat - 1, retail chains for MWTP - 2);

401. *For reference: Since the beginning of the year, 16 investigations have been appointed, 8 of them have been completed. And out of 8 completed investigations, facts were confirmed in 2 investigations (on sunflower oil, one order was made to the manufacturer, the second was fined 150 MCI). 6 investigations were terminated due to the absence of corpus delicti, which confirms the validity of the price increase.*

402. - 20 orders to eliminate violations of antimonopoly legislation (sunflower oil - 1, retail chains - 19);

403. - 11 warnings about the inadmissibility of violating the legislation of the Republic of Kazakhstan in the field of competition protection, for a public statement about a possible increase in prices for producers of bread, eggs, flour, pasta and chicken meat;

404. - 199 antimonopoly compliance acts were concluded with manufacturers, wholesalers and retail chains.

405. An antimonopoly compliance act was adopted with the largest republican retail chains - Magnum (Magnum Cash@Carry LLP), SMALL (SMALL & Skif LLP), Anvar (Anvar LLP), with over 100 branches, to reduce the trade markup for NWPT from 15 to 10%, as well as providing the prices of producers and suppliers of NWTP to the information system derekhub.kz (developed by MIT), which will allow taking prompt response measures.

406. As a result, if food prices at the beginning of the year grew by an average of 0.5% weekly, then since March of this year. and at the end of 2021, after the adoption of measures, the monthly dynamics of price growth in general for the NWPT shows a downward trend.

407. Thus, antimonopoly control measures cover commodity markets with the highest price growth with the presence of large producers and suppliers of goods; in the markets of fruit and vegetable products and beef meat, due to legal requirements and their low concentration, response measures cannot be taken.

408. At the same time, work has been carried out to eliminate administrative barriers:

1. changes and additions have been made Rules for subsidizing the reimbursement of part of the costs incurred by the subject of the agro-industrial complex, with investments, in terms of the introduction of a "waiting list". Entrepreneurs will be included in the Reserve (waiting list) in their areas, and taking into account these applications, the payment of subsidies will be carried out in order, according to the date and time of receipt of applications, when additional budgetary funds are allocated in the next financial year;
2. the criteria and requirements for the infrastructure of a commodity producer applying for subsidies have been reduced in the Rules for subsidizing the development of livestock breeding, increasing the productivity and quality of livestock products:
  - feedlots: a specialized area for fattening cattle, with a capacity of at least 1000 heads of male cattle at a time (for Atyrau, Kyzylorda and Mangystau regions - at least 500 heads of bulls) with a developed infrastructure that meets the recommended norm for the technological design of cattle enterprises beef cattle;
  - feedlots: a specialized area for fattening small cattle with a capacity of at least 5,000 male small ruminants at a time (for Atyrau, Kyzylorda and Mangystau regions - at least 500 male small ruminants) with a developed infrastructure.

## 2.4. Markets of other industries

### *2.4.1. The market of paid medical and laboratory services*

409. The analysis was carried out on the highest incidence of the population registered in medical and preventive organizations according to the statistics of the Ministry of Health for 5 appointments and consultations of narrow specialists and two types of diagnostics:

- reception and consultation with a cardiologist;

- reception and consultation of a pulmonologist;
- reception and consultation of an infectious disease specialist;
- reception and consultation of a gastroenterologist;
- appointment and consultation with a urologist;
- computed tomography (CT) scan;
- magnetic resonance imaging (MRI).

410. It was also carried out on the most popular medical laboratory services (the initial stage of diagnosing a therapeutic disease, preparation for planned treatment in a hospital):

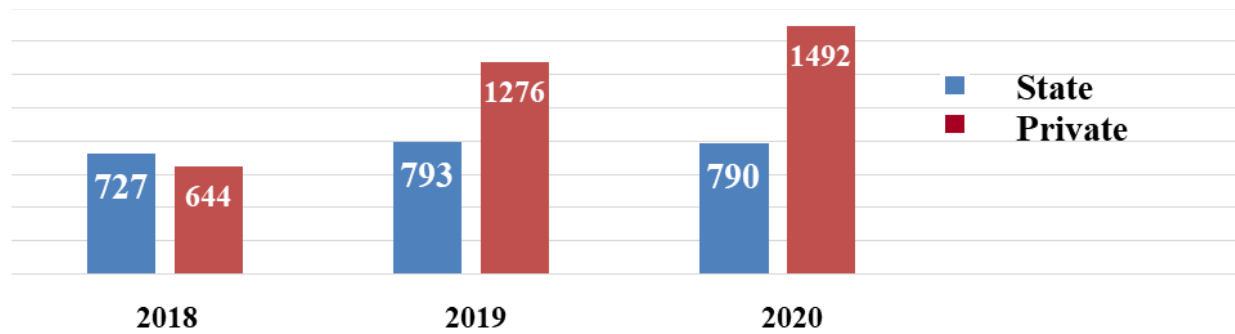
- complete blood count (detailed);
- general urinalysis;
- determination of total bilirubin;
- determination of creatinine in blood serum;
- determination of total cholesterol;
- determination of alanine aminotransferase;
- determination of aspartate aminotransferase;
- determination of glucose;
- determination of teriotropic hormone (TSH);
- determination of free triiodothyronine (T<sub>4</sub>free);
- hepatitis (B, C);
- 25-OH vitamin D (vitamin D).

411. According to Article 77 of the Code “On the health of the people and the healthcare system” (hereinafter referred to as the Code), citizens of the Republic of Kazakhstan have the right to receive, including a guaranteed volume of free medical care (GVFMC), free choice of a doctor and a medical organization, medical and other services on a paid basis.

412. The development of the paid medical services sector has had an impact on the entire healthcare system. It is worth emphasizing that the population initially negatively perceived any attempts to combine business and medicine. There were many problems related to issues of quality, service, pricing, legal support. At the first stage of the development of paid medicine, this circumstance was automatically transferred to the attitude towards private practitioners, who were perceived as fraudsters. In addition, the prices for medical services were often considered too high, and therefore paid medicine was regarded as a whim, available only to wealthy citizens.

413. Subsequently, there has been a transformation of attitudes towards private medicine towards improvement, while criticism and the number of claims against state free medicine are increasing. At present, the issue of competition between private medical centers, clinics and public medical institutions that provide similar services on a paid basis has already become relevant. Chronic underfunding of medicine has gradually led to the commercialization of healthcare in our country, as well as the formation of commercial services in healthcare. Thus, in the database of the Health Insurance Fund (HIF), in comparison with 2018, the number of private healthcare entities has increased significantly. One can observe the gradual development of private medicine.

Figure 6. Database of healthcare subjects



414. Since 2019, the share of private market entities (65.4%) in the market for the provision of medical services within the framework of the Guaranteed volume of free health care /Compulsory social health insurance has been increasing.

415. There are more than 300 medical organizations providing paid medical services, as well as more than 50 medical laboratories on the market of Kazakhstan.

416. However, the results of the analyzes so far indicate that there is a high concentration on the market.

417. Along with this, it can be noted that there are administrative barriers to entry into the medical services market. Thus, the presence of administrative barriers in the form of the obligation to conduct a “second reading” of mammography images in an oncology center, the presence of a monopoly in laboratory research as part of the provision of oncological care.

418. A similar situation is developing in the market of laboratory services for the determination of HIV infection within the framework of the guaranteed volume of free medical care. The indicated services within the framework of the GVFMC are provided by centers for the prevention and control of AIDS, while in this market there are private medical centers and laboratories that provide this service on a paid basis.

419. These barriers are included in the Map of Barriers and work is ongoing to eliminate these barriers with the authorized body in the healthcare sector.

#### **2.4.2. Payment services market**

420. Analysis of the state of competition in the payment services market (payment for utilities by accepting cash through STB offices and branches).

421. As part of the analysis, it was found that 25 entities operate in the payment services market, including 23 second-tier banks (hereinafter referred to as STBs) and 2 payment organizations. Out of 23 STBs, only 8 STBs accept payments for utilities by accepting cash through offices of the remaining STBs, accept payments for utilities free of charge (online payments through digital platforms).

422. The analysis showed that the payment services market is highly concentrated. It is established that Kazpost JSC undertakes a dominant position.

423. Payments are primarily made online, with no fees charged for making payments through digital platforms.

424. The amount of the commission for processing a receipt for utilities in Kazpost JSC and STB, with the exception of Jýsan Bank and FORTEBANK, for the period from 2019 to 9 months of 2021, did not increase.

425. There is a significant decrease in the volume of services rendered for receiving utility payments through offices and branches of second-tier banks and Kazpost JSC. In 2021, the volume of services provided decreased by 2.3 times compared to 2019. This is due to the fact that the payment services market is dynamically developing in the direction of online payments through digital platforms, for which no commission is charged.

#### ***2.4.3. Business lending services market***

426. The Agency conducted an analysis of the state of competition in the market in the business lending services market.

427. As part of the analysis, it was found that 27 second-tier banks operate in the business lending services market for the period from 2019 to the 1st half of 2021.

428. Based on the results of the analysis, it was found that the market for business lending services for the period of 2019 and 2020 is moderately concentrated and for 1<sup>st</sup> half of 2021 highly concentrated.

429. A dominant market entity has been established on the market - Halyk Savings Bank of Kazakhstan JSC with a 45% share in the 1st half of 2021.

430. In the analysis, it was found that, according to paragraph 5 of Government Degree, a mandatory requirement for second-tier banks, leasing companies, an agricultural corporation that provides loans and financial leasing, the presence should be at least 50 billion tenge of the minimum equity capital of STB and ACC.

431. The requirement for the amount of equity capital does not apply to STBs that issue loans at their own expense.

432. It is proposed to work with the authorized bodies on the possibility of reducing the minimum amount of equity capital of STB.

433. The proposals by the Association of Financiers of Kazakhstan were sent to the authorized bodies for further development.

#### ***2.4.4. Market of higher education services***

434. According to Article 30 of the Constitution of the Republic of Kazakhstan, a citizen has the right to receive free higher education on a competitive basis in a state higher educational institution. Obtaining paid education in private educational institutions is carried out on the grounds and in the manner established by law.

435. The educational policy of the Republic of Kazakhstan is formed taking into account the strategic priorities of the socio-economic development of the republic, outlined in the long-term Strategy Kazakhstan-2030 "Prosperity, security and improvement of the welfare of all Kazakhstanis" dated October 16, 1997, as well as in the annual messages of the President to the people of the country. The basis of the educational policy is the Law "On Education" dated July 27, 2007 No. 319-III (hereinafter - Law 319) and the Law "On Science" dated February 18, 2011 No. 407-IV.

436. According to paragraph 48-1 of article 1 of Law 319, education is a continuous process of education and training, carried out for the purpose of moral, intellectual, cultural, physical development and the formation of professional competence.

437. According to subparagraph 21-3) of paragraph 21 of article 1 of Law 319, an organization of higher and (or) postgraduate education is a higher educational institution that implements educational programs of higher and (or) postgraduate education and carries out research activities.

438. Private educational organizations use income from the sale of goods (works and services) provided on a paid basis, including tuition fees within the framework of state compulsory education standards, founders' funds and other sources of funding not prohibited by law on their own.

439. The relationship between an educational organization that provides services on a paid basis and a student (pupil), his parents and other legal representatives are regulated by an agreement (clause 6, article 63 of Law 319).

440. Thus, as part of the analysis, it was found that there are more than 110 universities in the republic, however, despite the number of universities in the regions, the market is highly concentrated with low development of competition (the number of entities in the regions is from 1 to 8 universities, in Nur-Sultan - 13 universities, in Almaty - 37 universities).

441. Most universities with tuition fees during 2018-2020 practically did not increase, there is an increase in 2021 (for the 2021-2022 academic year due to an increase in the salaries of university employees) by 12-31%, since according to the Decree of the Government of the Republic of Kazakhstan dated April 16, 2018 No. 199 "On approval of the state educational order for the training of specialists with higher and postgraduate education, as well as technical and professional, post-secondary education in educational organizations financed from the republican budget (with the exception of educational organizations that train specialists for the Armed Forces, other troops and military formations, as well as special state bodies), for 2018-2019, 2019-2020, 2020-2021 academic years" (hereinafter referred to as the Resolution), the average costs per 1 student for 2020-2021 have been increased approximately 2 times .

At the same time, the cost of education on a paid basis does not exceed the cost of a state educational grant.

442. When determining the cost of education, the university is guided by the regulation, which indicates the average cost of education for 1 student per academic year, depending on the category of the university and groups of specialties.

443. The calculation of the cost of studying a student-contractor is carried out according to the Methodology of per capita normative financing of higher education, approved by order of the Minister of Education and Science of the Republic of Kazakhstan dated November 27, 2017 No. 597.

444. Thus, according to the results of the conducted analyzes, no violations of the legislation of the Republic of Kazakhstan in the field of competition protection were detected.

#### ***2.4.5. The market of services of managing service companies***

445. The provision of services by management (service) companies in the field of housing and communal services is characterized by the presence of a large number of market participants, while despite this there is a high level of concentration, for example, in the markets for services for the removal of solid waste, elevator, intercom services (CR-3 > 90%).

446. To date, the practice of imposing the services of their management companies on the part of developers remains.

447. This practice and the lack of strict regulation of the choice of a management company when commissioning new residential facilities is a barrier to entry into the market for new and existing independent service companies.

448. In particular, if earlier the requirement to conclude contracts with the developer's management company was provided for in equity participation agreements in housing construction (and other side agreements on investment, assignment of rights of claim, etc.), now the management company's services are imposed upon signing the acceptance certificate - transfer of housing and the issuance of keys. Without signing an agreement with the management company of the developer, the signing of the acceptance certificate and the issuance of keys is not carried out.

449. At the same time, the keys to the housing by the developer (his authorized company) are transferred to the management company - a third party that is not a party to the housing construction equity agreement, which also confirms the fact of imposing its services.

450. In addition, taking advantage of the fact that before the transfer of housing ownership to equity holders, the developer (authorized company) acts as the main owner of the premises with a share of more than 90%, he holds a meeting of residents and determines his management company.

451. Then, the management company independently provides a part of the services (which is prohibited by law), or transfers these volumes of work to its service companies.

452. Thus, the actions of construction companies, initially, create advantages for their management and service companies in the markets for these services and prevent entry into these markets and the free choice of consumers.

453. Often, within the geographical boundaries of regional cities, large developers act as dominants in the construction market and their actions have a negative impact on adjacent markets, including the markets for management and services.

454. The fact of imposing the services of a management company is confirmed by established practice (in shared housing construction agreements, these requirements have already been excluded) and written requests from applicants.

455. This is also confirmed by the electronic procedure for signing object acceptance and transfer certificates on the developers' official electronic resources.

456. According to Articles 42-1 and 42-3 of the Law "On Housing Relations" (hereinafter - the Law), the choice of a management company falls within the competence of the meeting of owners of apartments and non-residential premises, or the council of the house (in case of delegation).

457. From the Rules for making decisions on the management of the condominium object and the maintenance of the common property of the condominium object, approved by the order of the acting Minister of Industry and Infrastructure Development of the Republic of Kazakhstan dated March 30, 2020 No. 163, it follows that the meeting of owners of apartments, non-residential premises of an apartment building is the highest management body of the condominium object, providing collective discussion and decision-making by the owners of apartments, premises.

458. The current Law and Rules do not regulate the procedures for choosing a management company, and therefore it is possible that the developer (authorized organization) can choose a management company even before the stage of transfer of apartments and premises to equity holders.

459. Meanwhile, the creation of an association by the owner of the property (OSI), holding a general meeting, a decision-making mechanism (by voting) is a collective form of condominium management.

460. Instead, the developer (authorized organization), replacing the association of property owners and acting as the sole owner of apartments and premises before they are transferred to equity holders, forms the management bodies of the condominium and makes key decisions, including the choice of a management company.

461. This gap in legislation creates an unreasonable advantage for construction organizations in the market of management, service companies, since it allows them to impose the services of their companies at the stage of commissioning an object.

462. In this regard, the Agency is working on the issue of abolishing this administrative barrier and distorting competition by amending the Rules, providing for:

1. a ban on the formation by the developer (authorized organization) of the governing bodies of the condominium and the adoption of decisions on their behalf, including the choice of management and service companies;
2. a ban on the state registration of OSI by the developer (authorized organization);
3. the ability of the developer (authorized organization) to provide the services of a management and service company before registering the BPO, forming condominium management bodies and selecting a management and service company in a competitive market.

#### *Services for the maintenance of intercom equipment*

463. In this service market, there is a high concentration of the market (*Market concentration coefficient CR-3 / CR-4-85.01%*), there are more than 65 service companies in the republic, while in each region their number is from 2 to 10 companies. The market share of the main players shows from 40 to 90%.

464. These are the following market entities that occupy a dominant position - (IP Lozinskaya S.S. (Kokshetau), LLP "Kainar-Media" (Taldykorgan), LLP "HOME MASTER" (Ust-Kamenogorsk), "Metacom" - IP Golovinsky A.A. (Semey), Stroymaster Intercoms Taraz LLP (Taraz), Comfort Service Plus LLP (Uralsk), Inno Tech Karaganda LLP (Karaganda), LLP "Domophones SET" and LLP "Center of Elite Technologies" (Aktau), LLP "Service Center DOMOFON - CYFRAL", LLP "Pavlodar-Domofon" and a group of persons LLP "Modus-Pavlodar" and LLP "Modus-Pavlodar-1" (Pavlodar) for a total share of over 75%, SECUR LLP (Turkestan).

465. As part of the analysis, it was found that intercom equipment does not incur production costs, such as water, heat and electricity, and organizations do not incur costs for the independent operation of the equipment.

466. Therefore, in the event of damage to the equipment system, the organization believes that residents should be served by a lump sum payment, in the form of a service organization.

467. At the same time, there is a barrier to changing the service company - in cases where consumers refuse the services provided, the intercom organization, in accordance with the contract, has the right to dismantle and pick up the equipment, since the equipment is not transferred to the ownership of residents.

468. Subsequently, consumers are forced to be served only by these companies, since in case of refusal of services they will be left without equipment and in cases of applying for services to other intercom organizations, they additionally bear installation costs.

*The market for elevator services*

469. In general, the market for elevator services is competitive and the choice of payment for the services of elevator organizations should be made at the discretion of the residents themselves. The pricing policy is determined by the market participants themselves.

470. In this market of services, there is a high concentration of the market (market concentration ratio CR-3 / CR-4-89.7%), by region the share of the main players shows from 42 to 100%.

471. Market entities that occupy a dominant position - Lift-Service 2006 LLP (Kokshetau), Aktau City Lifts LLP (Aktau), Ekibastuzlift LLP Group and Ekibastuzliftstroy LLP (Ekibastuz), LLP "Elite lift service" (Shymkent), "Almatyoblif" LLP (Taldykorgan), "Ros-lift" LLP group of persons, "Liftek" LLP (Ust-Kamenogorsk), "Uralsk Service Lift" LLP (Uralsk), Karagandalift LLP (Karaganda), Elittechservice-2013 (Aktobe).

472. The market for these services is regulated by the Law "On Housing Relations", the National Standard "Elevators, Escalators, Travolators and Elevators for Persons with Disabilities", while there are no clear rules for changing the service company, and therefore elevator maintenance services should be regulated in the national standard.

473. Problematic issues in the market are the lack of a unified system of payment for services for the maintenance of elevators (two payment systems are used in the republic: subscription (per 1 square meter, per apartment, per person) and card) lack of transparency in the calculation of the costs of elevator companies for maintenance. Thus, there is a need to create conditions for overcoming these information barriers on both sides of supply and demand.

474. In general, given the current structure of the markets for services of management (service) companies in the field of housing and communal services, it can be concluded that there is a common problem characteristic of these markets, namely the presence of barriers to reorientation of demand.

This problem is related to limited access to information, which not only limits the conditions for entry into the industry for new companies, but also the ability of consumers to find better deals.

475. Following the example of the OECD countries <sup>19</sup>, it is proposed to introduce effective compensatory measures aimed at mitigating the shortcomings of the market mechanism and thus for the benefit of the consumer.

476. In this case, in the context of the ongoing digitalization of the economy, a trend that is gaining in world practice to introduce a system of comparative resources (websites, mobile applications that compare prices, which helps buyers to make a more informed choice) is to be developed.

477. The main advantages of such services include, first of all, a convenient search for profitable offers and improving the quality of services by increasing the speed of all business processes, expanding the product line (range).

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<sup>19</sup>OECD - GVH RCC, Newsletter Issue No. 11, July 2018, p. 10;

478. Thus, buyers get ample opportunities to choose goods (works, services) and change suppliers, and as a result, obstacles are removed for finding more suitable deals and reorienting demand, which stimulates competition for the consumer.

479. In this case, the task is to provide access for IT companies (third party providers) to the functionality and content of information resources of providers of goods (works, services) for their subsequent integration or creation of their own applications for the purpose of analyzing and distributing products (aggregator showcases that reflect information about goods (works, services) from different suppliers and providing an opportunity to compare them, electronic platforms (market place) that allow you to purchase goods (works, services) remotely).

480. In Kazakhstan, the change of a service provider by a consumer using comparative resources can be implemented within the framework of informatization objects in the field of housing relations, which automate the business processes of managing a house.

481. Currently, the Agency for the Protection and Development of Competition, together with the authorized state bodies - the ministries of digital development and the aerospace industry, justice, the Kazakhstan Center for the Modernization and Development of Housing and Communal Services JSC and market participants, are introducing a pilot project for an online change of service providers in the field of housing - public utilities.

482. In this pilot, the digital platforms Pater Services, E-KNOT, E-KSK, IQamal, Osi.kz expressed their readiness to participate.

483. To ensure the legitimacy of conducting electronic voting, the MDDIAI resolved the issue of a simplified service (possibility of yes/no voting) to confirm the owner of the property.

484. Along with this, amendments to the legal acts necessary to ensure the possibility of choosing a supplier are proposed:

1. in Draft Law on Amendments on the Implementation of Certain Instructions of the Head of State in Part:
  - conducting electronic voting of residents to change the supplier providing services in one entrance;
  - assignment of intercom equipment to the common property of the condominium in order to exclude the practice of imposing services for the maintenance of intercoms.
2. in building codes and regulations (SNIP) in terms of providing access to several telecom operators at the stage of construction of an apartment building so that residents can choose providers (Internet services, cable television).

485. The launch of the pilot project is expected in the second quarter of 2022.

#### ***2.4.6. Cemetery maintenance and service market (digging, lowering the body into the grave, burial)***

486. According to the results of the analysis, the market for the maintenance and service of cemeteries (digging, lowering the body into the grave, burial) is defined as highly concentrated with undeveloped competition.

487. The average prices for ritual services (digging of graves and burial) are according to Muslim customs - 39 thousand tenge, according to Christian ones - 37.6 thousand tenge.

488. Along with this, there are 99 market entities in the Republic of Kazakhstan serving more than 203 cemeteries throughout the country.

489. In addition, according to statistics, about 152 thousand people die in Kazakhstan, the burial of which costs an average of \$44.5 million (according to media reports).

490. To develop competition in this product market, the Agency for the Protection and Development of Competition proposed to amend the model rules regarding the competitive selection of subjects with annual turnover.

#### *2.4.7. Market of services of information systems of state organizations*

491. The market for information systems services of state organizations is characterized as highly concentrated with undeveloped competition.

492. The market includes the largest market entities with a state share.

493. These are the subjects of the quasi-public sector, created in order to implement the functions of state bodies - JSC "National Infocommunication Holding "Zerde", JSC "National Information Technologies", JSC "State Technical Service", RSE "Information and Computing Center", RSE "Institute of Legislation and Legal Information of the Republic of Kazakhstan", JSC "Information and Accounting Center", RSE "Information and Production Center", NJSC "State Corporation "Government for Citizens", JSC "Electronic Finance Center", JSC "Engineering and Technical Center".

494. In the course of the analysis, it was found that the methods for determining suppliers for the development and maintenance of information systems in public organizations are determined by non-competitive selection, and from one source by direct conclusion of an agreement, which indicates the restriction of access for private IT companies to participate in the procurement of these types of services.

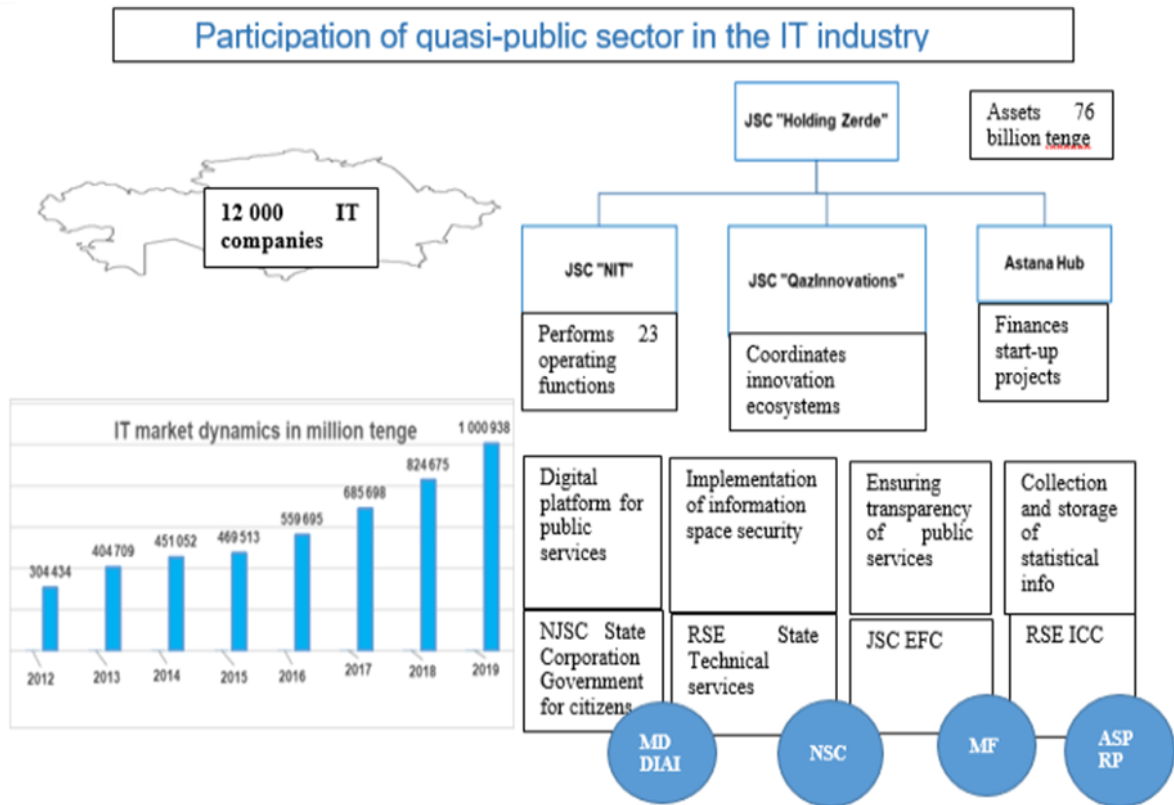
495. According to the specified subparagraph 2) of paragraph 287 of the Rules for Procurement by Individual Subjects of the Quasi-Public Sector dated November 30, 2021 No. 1253, procurement from a single source by direct conclusion of an agreement is carried out through the acquisition of goods, services that are objects of intellectual property from a person who has exclusive rights in relation to the purchased goods, services, as well as work on the adjustment of pre-project or design and estimate documentation from the person who developed this pre-project or design and estimate documentation

496. A similar provision exists in the legislation on public procurement, point 3, article 39 of the Law on public procurement (public procurement from a single source through direct conclusion of a contract).

497. Within the framework of the bill, the Ministry of Finance introduced an amendment to the implementation of the instructions of the Head of State to exclude this provision of the law.

498. Along with this, operator activity also leads to limited access to the participation of IT companies in the procurement of information systems designed to perform government functions.

Figure 7. Structure of Zerde Holding JSC

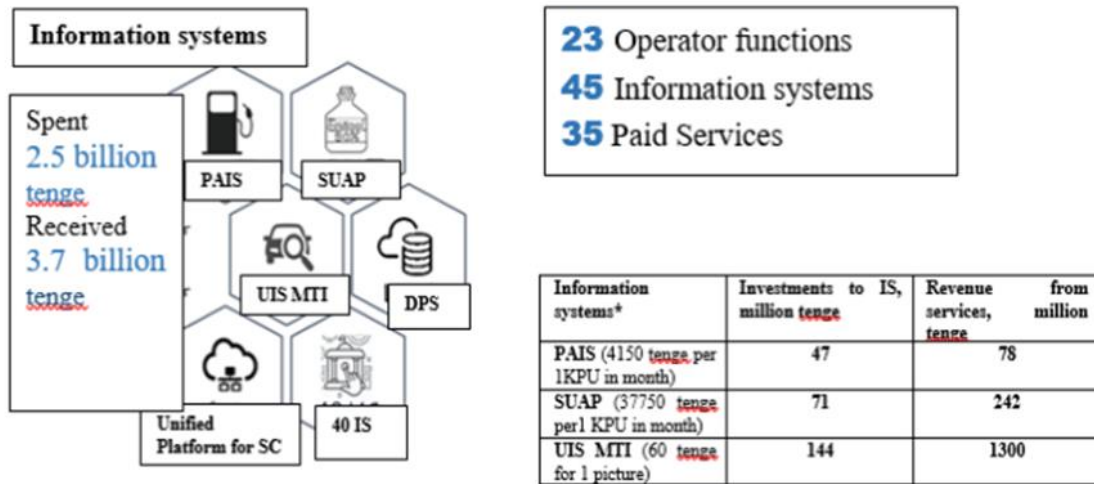


499. Thus, this group of companies carries out operator activities in 5 different areas. At the same time, none of the sectoral laws regulates pricing issues, mechanisms of state control and accountability to society.

500. **NIT JSC** carries out operator activities in 5 different areas and has the right to provide a number of services to government bodies as an operator:

- - a unified information system for mandatory technical inspection of motor vehicles and trailers for them;
- - information and communication infrastructure of "electronic government";
- - a single contact center for providing information on the provision of public and other services;
- - data of control metering devices in the field of production and circulation of petroleum products;
- - data of control metering devices in the field of production of ethyl alcohol and alcoholic products.

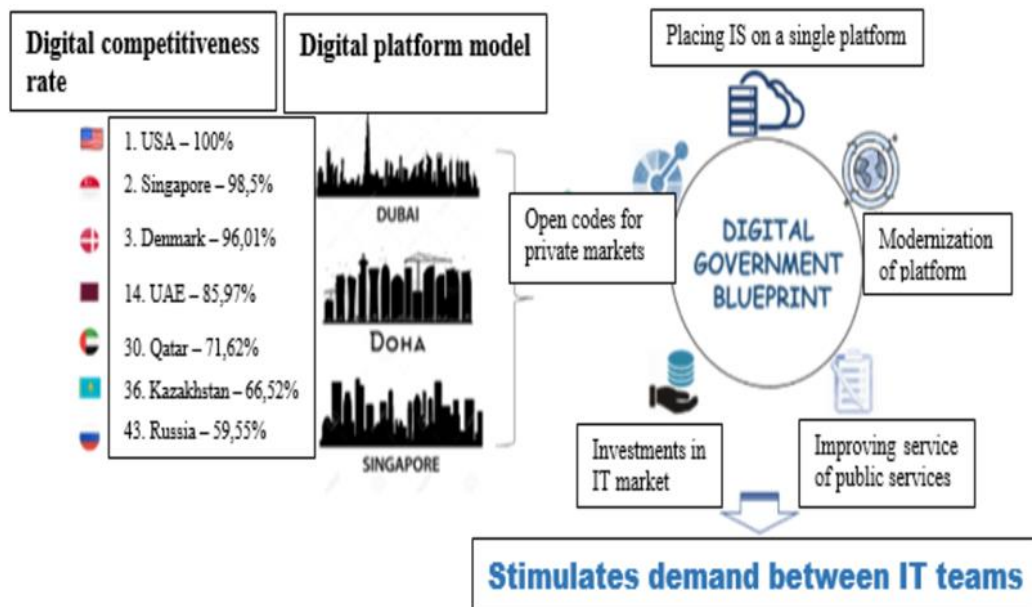
Figure 8. Information Systems



\*Implementation of IS within framework of investment programs

501. International experience. The successful experience of countries such as Singapore shows that the state has invested in the technology sector through grants and sponsored incubators, attracting the private sector.

Figure 9. Digital Government Blueprint



502. Development is carried out in accordance with the national Program for the creation of a digital state (Digital Government Blueprint - DGB).

503. The DGB proposes an approach for the seamless integration of e-services and government standards in three areas: citizens, businesses and government officials.

504. To optimize digital support and e-services for individuals and organizations, GovTech Singapore used two platforms:

- one processes applications, permits, notices and payments for more than 60 types of licenses in several government agencies;
- the second manages state grants and standardizes various grant programs.

505. In this way, the analysis of the activities of operators indicates the need to reduce functions by transferring to a competitive environment a list of information and communication infrastructure objects that are part of the "electronic government", while leaving interdepartmental information systems of strategic importance.

### 3. Restriction of state participation and control over economic concentration

#### 3.1. Limitation of the State's Participation in Entrepreneurial Activities

##### 3.1.1. Sectoral analysis.

506. In accordance with paragraph 4 of Article 192 of the Entrepreneurial Code, the creation of state enterprises, legal entities, more than fifty percent of the shares (stakes in the authorized capital) of which belong to the state, and persons affiliated with them and the expansion and (or) change in the types of activities carried out by state enterprises, legal entities persons, more than fifty percent of whose shares (stakes in the authorized capital) belong to the state, and persons affiliated with them, who will carry out their activities on the territory of the Republic of Kazakhstan, require the consent of the antimonopoly authority.

507. The antimonopoly authority, as part of the consideration of relevant applications, analyzes the expediency of state participation in entrepreneurial activity by determining those functions of state enterprises and organizations with state participation that can be transferred to the competitive market and thereby give a new impetus to the development of competition in sectors of the economy.

508. In 2021, as part of the implementation of the activities of the National Project for the Development of Entrepreneurship for 2021-2025, a study was conducted to a sectoral analysis (accelerated privatization method) of the feasibility of state participation in entrepreneurial activity.

509. Based on the results of this work, the contractor developed a methodology for conducting sectoral analysis to identify and prioritize sectors of the economy for denationalization (hereinafter referred to as the Sectoral Analysis Methodology). The sectoral analysis methodology provides for the analysis of state ownership based on the simultaneous consideration of all legal entities with state participation within a certain sector of the economy, taking into account the administrative-territorial division.

510. The consolidation of this Methodology of sectoral analysis at the level of legislation will be implemented within the framework of the Law of 2022, namely paragraph 11 of Article 196 of the Entrepreneurial Code.

511. After testing the sectoral analysis methodology in the cities of Almaty and Aktobe, recommendations were given on the privatization of 66 subjects of the quasi-public sector. In addition, a general recommendation was given on the complete exclusion of state

participation in the areas of improvement, security and dental services in all cities of regional and republican significance (25 subjects in total).

### ***3.1.2. Optimization of the list of activities permitted for subjects of the quasi-public sector.***

512. Currently, state-owned enterprises and legal entities, where 50 percent or more belong to the state, are allowed to carry out 399 types of activities. The current list was in 2015 and is an anonymous list with five-digit GCEA codes (general classifier for economic activities).

513. (general classifier of types of economic activity).

514. Taking into account the new tasks to drastic reduction of state participation in the economy, the Agency for the Protection and Development of Competition has developed a new format for the list of activities.

515. The revision of existing instruments will allow introducing the principles of "smart regulation", namely, the reduction of the types of state activities, taking into account the level of development of competition in the regions.

516. An example is the collection and disposal of non-hazardous waste. Today, private organizations in this type of activity are widely represented in large cities, but not enough in regional centers. The new version of the list will make it possible to exclude the presence of the state in large cities without prejudice to the rural population.

517. In addition, taking into account the implementation of the Privatization Plan, irrelevant activities will be automatically excluded in order to prevent the re-presence of the markets with developed competition.

518. Along with this, the project proposes the introduction of the "1 in 2 out" principle, which provides for the obligation of state bodies to exclude 2 existing types of activities when making additions to the list.

519. A corresponding draft Government Decree has been developed. Currently, work is underway to coordinate with the interested state bodies and, following the results of the coordination, it will be submitted to the Office of the Prime Minister in accordance with the procedure established by law.

520. The implementation of these proposals will reduce the share of state participation in the economy, becoming an additional incentive for the development of private entrepreneurship and competition.

### ***3.1.3. Reducing the number of government assignments.***

521. The state task is a direct order to the subjects of the quasi-public sector for the provision of certain services aimed at ensuring socio-economic stability and (or) socio-cultural development of the state.

522. The presence of this mechanism of public procurement is due to the need for the presence of the state in the implementation of particularly urgent, important and complex projects (for example, seismic monitoring, ensuring financing of a guaranteed volume of free medical care, monitoring of territories affected by rocket and space activities).

523. Since the implementation of state tasks affects the interests of business, the competitive component is completely excluded, the planning of state tasks is carried out taking into account the presence of positive conclusions of NCE Atameken and the antimonopoly authority.

524. At the same time, the analysis of government assignments showed annual growth dynamics. Thus, in the period from 2017 to 2020, the amount of funds allocated for the implementation of state tasks increased from 171 to 378 billion tenge (consulting, analytical services for the formation of state policy, support for Kazakhstan's participation in the work of international organizations, etc.). Also, today there are no specific criteria in the legislation for classifying services as the subject of a state task: general norms for ensuring socio-economic stability and (or) socio-cultural development of the state do not always reflect the essence of the state task and can be used by state bodies for non-competitive purchase of goods (works, services) from subordinate organizations.

525. To limit the state presence, a list of areas (industries) has been compiled where the implementation of state tasks is possible. It has 25 points and will be reduced in the future, taking into account the level of development of competition.

526. This measure will not allow administrators of budget programs to plan the implementation of state tasks in commodity markets where competition is already developed.

527. An exhaustive list of criteria for attributing services to the state task has also been formed, in particular, ensuring national security, the defense capability of the state, the maintenance of strategic facilities, critical informatization facilities, the absence or low level of competition in product markets, or the uniqueness of intellectual property objects.

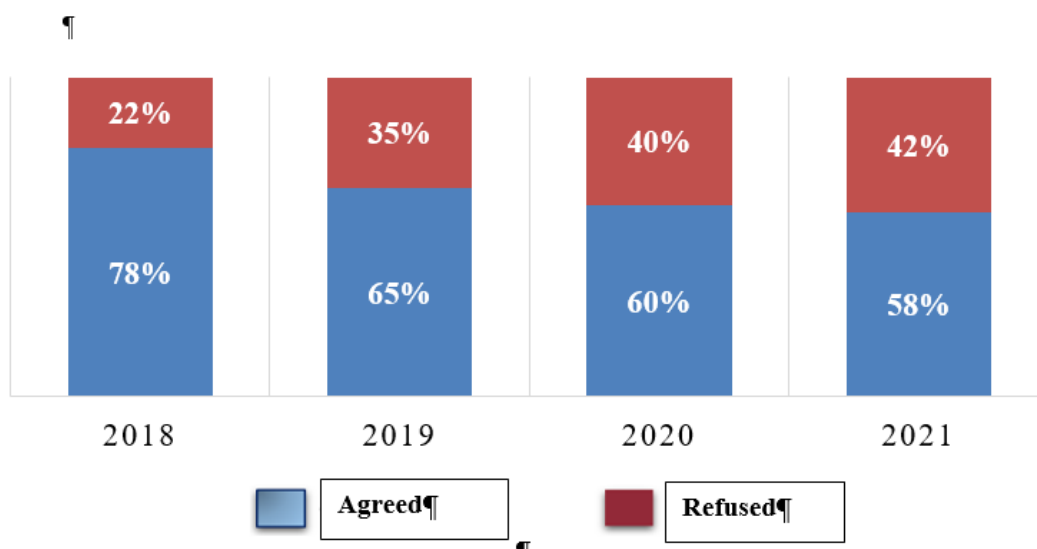
528. Taking into account the specifics of government assignments, the business does not claim the entire declared scope of work. But in some cases, part of the services can be implemented by private business entities. Therefore, when agreeing on state assignments, the antimonopoly authority puts forward conditions for the transfer of part of the work to private business entities.

529. At the same time, in the current procedure, the choice of a co-executor is carried out without competitive procedures. This is due to the specifics of certain state tasks (for example, the implementation of international agreements in the space industry, relaying the Olympics, etc.). This rule has often been criticized by business. To resolve this issue, the draft law provides for a rule that gives the antimonopoly authority the competence to determine the scope of work to be transferred to a competitive environment through a tender.

530. With the adoption of the law, certain types of work will be transferred to subcontractors on a competitive basis. In particular, aerial photography under the state assignment for the formation of the National Cartographic and Geodetic Fund, which was annually purchased without competitive procedures, will be carried out by subcontractors determined by the results of the tender.

531. Thus, the current mechanism of state assignments will be substantially revised taking into account competition policy. The adoption of these amendments is aimed at further denationalization of the economy and will create conditions for the development of competition.

Figure 10. Dynamics of agreed state assignments for 2018-2021



#### 3.1.4. Reducing the number of unified state entities (operators).

532. In 2021, as part of the implementation of the instructions of the Head of State following the message to the people of Kazakhstan dated September 1, 2020, an analysis was made of the activities of public and private operators authorized to perform certain economic functions, amendments to the legislation regarding the regulation of the activities of public and private operators were developed and included in the Law 2022.

533. Work has been carried out to abolish 9 operators, of which 5 remain as subordinate organizations, 4 have been privatized or are subject to liquidation.

534. The regulation of subjects endowed with special rights will be carried out on the following principles:

1. price regulation by the authorized body in agreement with the antimonopoly authority;
2. prohibition to participate in other legal entities;
3. a ban on other activities;
4. publicity and openness of information;
5. compensation for lost profits to a business whose activities are affected in connection with the maintenance of a special right;
6. a deferral period of six months, for the preparation of market participants.

535. The Register of Subjects of Special Rights will include only those operators whose activities have an impact on the general conditions for the circulation of goods in the relevant or related commodity markets.

536. Today, 18 operators are supposed to be regulated, the remaining 21 are not subject to regulation because they do not influence the market or their activities are already regulated by the legislation on natural monopolies.

537. The law makes the procedure for creating private operators as complicated as possible. This is allowed only in cases where it is impossible to create legal entities with 100% state participation. The government, together with the Agency for the Protection and

Development of Competition, approves the procedure for determining operators, where a requirement for a mandatory tender is fixed for private entities, at least once every 5 years.

538. Taking into account the instructions of the Head of State, this norm will be revised in favor of a complete legal ban on the creation of private operators.

### **3.2. Economic concentration control**

539. In accordance with the Entrepreneurial Code, in order to prevent the emergence of a monopoly position and (or) restrict competition, the antimonopoly authority regulates economic concentration.

540. Economic concentration is mainly carried out through mergers and other actions that allow gaining control over the commercial activities of market entities, including on the basis of trust management agreements, joint activities, agency agreements. The pooling of capital and other resources that occurs as a result of concentration may be one of the factors in increasing the efficiency of some companies and industries. At the same time, under certain conditions, the implementation of these actions can lead to a negative effect on competition, and accordingly requires the prevention of excessive concentration of market power in one hand.

541. In this regard, one of the main "classical" elements in the competition protection system is control over transactions for economic concentration. Thus, when carrying out transactions (actions) provided for by the Code, in cases where the total balance sheet value of assets, reorganized entities or their total volume of sales of goods for the last financial year exceeds ten million times the monthly calculation index, the consent or notification of the antimonopoly authority is required.

542. Thus, the legislation allows the antimonopoly authority to consider the actions of large market participants for compliance with competition law.

543. The function of the Agency for the Protection and Development of Competition to consider applications for consent to economic concentration is a public service.

544. In general, in 2021, the antimonopoly authority for the provision of the state service "Consideration of applications for consent to economic concentration" was applied 63 times, of which 62 were granted consent and 1 transaction was prohibited:

- in the 1st quarter: consent was issued for 9;
- in the 2nd quarter: consent was issued for 16;
- in the 3rd quarter: consent was issued for 18, a ban was received for 1;
- in the 4th quarter: consent was issued on 19.

## **4. Improvement and state control over compliance with competition law**

### **4.1. Improvement of legislation in the field of competition protection**

545. A landmark event in the competition policy of the Republic of Kazakhstan, as indicated in Chapter 1 of this report, was the adoption of the Law of 2022 (the fifth antimonopoly package), work on which was introduced in 2021.

546. The key areas of the 2022 Law are the reduction of state participation in entrepreneurship, ensuring equal access of business entities to state support measures and government procurement, reducing the level of market concentration in commodity

markets, developing small and medium-sized businesses, reducing administrative and economic barriers to entry into commodity markets, as well as mechanisms of price regulation.

547. The 2022 law provides for the following:

1. providing access to essential facility.

The concepts of “essential facility”, criteria for referring to essential facility, rules for equal access to essential facility are defined (Articles 174, 176-1 of the Entrepreneurial Code). This will ensure equal access of market participants to the limited and capital-intensive resources of dominant and monopoly companies;

2. regulation of the activities of public and private operators.

Public and private operators are subject to the legal regime of state monopoly (an institution of special law), strict regulation (prices, a ban on other activities), compensation for losses to competitors, publicity (Articles 120, 172, 193 of the Entrepreneurial Code, laws on accounting and access to information).

These amendments will make it possible to eliminate the negative impact of monopolies on related markets, as well as ensure the transparency of their selection and activities.

Amendments to the Entrepreneurial Code, providing for the creation of an institution of special law, which supplements and improves the mechanism of state monopoly, come into force on July 1, 2022 (a suspense period is provided);

3. reduction of state participation in entrepreneurship.

A sectoral analysis of state property will be carried out (to accelerate privatization) and monitoring of the activities of subjects of the quasi-public sector (Articles 90-6, 192, 196 of the Entrepreneurial Code). That is, if the sector has matured, taking into account the share of SMEs, private investment and the volume of trade, then not a single enterprise, but the entire segment of the market should be privatized.

In addition, an exhaustive list of grounds for the allocation of state tasks, as well as methods for their consideration by the antimonopoly authority (Article 41 of the Budget Code) has been determined;

4. development of competition in public procurement.

The use of 8 grounds for procurement from a single source is limited, of which 2 are completely excluded (Article 39 of the Public Procurement Law). The following grounds are excluded:

- purchase of goods, works, services at prices, tariffs established by the legislation of the Republic of Kazakhstan;
- acquisition of services for the processing of statistical observation data.

From January 1, 2024, the basis for procurement from a single source of energy supply services and the purchase and sale of electrical energy from a supplier of last resort is excluded. This means that from 2024, electricity and energy supply services for state-owned legal entities will be purchased through a tender method;

5. ensuring equal access to state support measures.

A requirement has been introduced to agree with the antimonopoly authority on new measures of state support (rules for their provision) and criteria have been established for determining priority areas for the provision of state support measures (Article 194 of the Entrepreneurial Code).

The implementation of the norms in practice will make it possible to create equal conditions for access to state support measures, eliminate the facts of targeted support that distorts competition in commodity markets, and focus the state's attention on supporting new market participants and SMEs.

At the same time, a function has been introduced to monitor the activities of persons providing state support measures for compliance with the requirements provided for in Article 194 of the Entrepreneurial Code;

6. development of tools for antimonopoly regulation.

An assessment of the impact on competition of regulatory legal acts (Article 83 of the Entrepreneurial Code), as well as the institution of a trustee to monitor compliance with the terms of economic concentration transactions (Article 210-1 of the Entrepreneurial Code) has been introduced.

The provisions of the 2022 Law on conducting competition impact assessments came into force on May 1, 2022. Starting from this time, new state regulations will be assessed by the competent authorities before they are put into effect in terms of their impact on competition.

Competition impact assessment refers to the process of reviewing regulations aimed at achieving two main goals:

- identification of norms that unnecessarily prevent competition;
- assisting in their revision so that such obstacles are not created unnecessarily.

This practice is international and will make it possible to adjust the sectoral policy, taking into account its possible impact on competition.

If the results of the assessment indicate the possibility of a deterioration in the state of the competitive environment, the authorized body will have to find the least anti-competitive alternative.

For its part, the Agency for the Protection and Development of Competition will review the results of the competition impact assessment and issue an opinion on compliance with the established procedures by the regulatory state bodies;

7. development of competition in the markets of electric power industry, pharmaceuticals. Amendments were adopted to increase the volume of centralized electricity trading, exclude intermediaries between power plants and large industrial consumers (Article 13 of the Electricity Law), and determine a specific list of medicines subject to price regulation (now all medicines are regulated). This will ensure equal access to station resources and competition between supplying organizations.

548. In addition, the Law of 2022 in Kazakhstan revised the definition of unfair competition.

549. In particular, the concept of unfair competition set out in paragraph 1 of Article 177 of the Entrepreneurial Code has been brought into line with the provisions of the Treaty on the Eurasian Economic Union and the Model Law “On Competition”.

550. According to the new concept, to recognize the actions of a market entity as unfair competition, it is not enough just that they are aimed at acquiring undue advantages.

551. Now, a prerequisite is also the infliction of damage or harm (including potential) to the business reputation of competitors by illegal actions. That is, if the actions of the subject are not directed at its competitors, do not harm them and do not discredit business reputation, such actions will not be considered as unfair competition.

552. Such a clarification will significantly reduce the repressive potential of the ban on unfair competition and will make it possible to focus this legal mechanism mainly on protecting the legitimate rights and interests of bona fide market participants, or, in other words, on protecting fair competition.

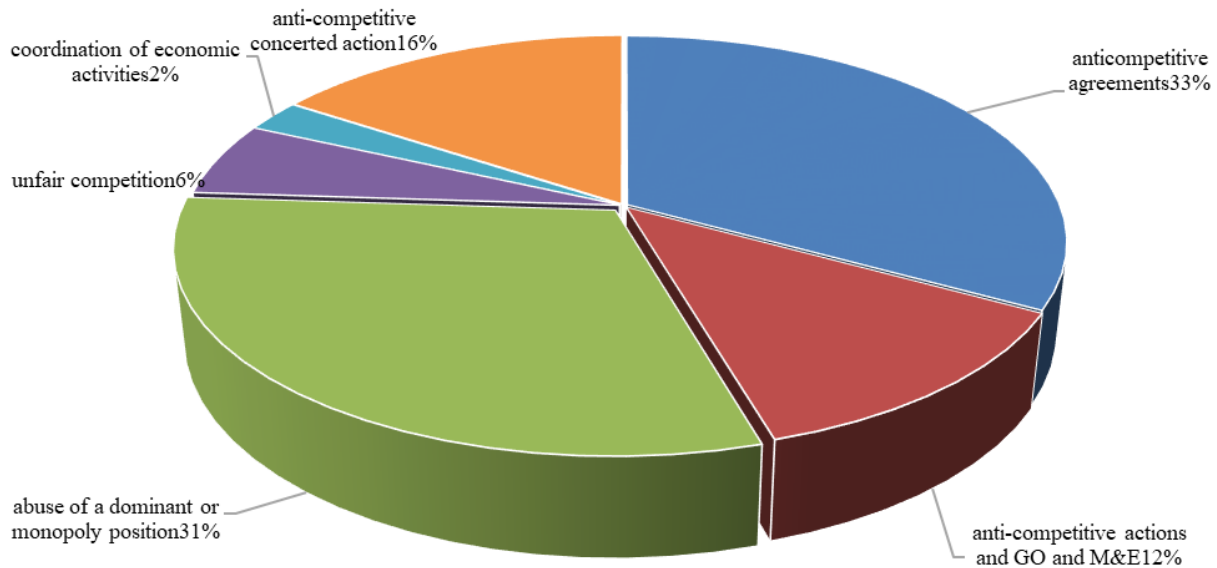
553. *For reference: The new version of paragraph 1 of Article 177 of the Entrepreneurial Code (shall be enforced from March 6, 2022) “Unfair competition is any action of a market entity (group of persons) or several market entities (group of persons) aimed at acquiring advantages in entrepreneurial activity that contradicts the legislation of the Republic of Kazakhstan, the customs of business turnover, the requirements of integrity, reasonableness and fairness, and have caused or may cause damage to other market entities - competitors, or have caused or may cause damage to their business reputation.*

#### **4.2. Identification and suppression of violations of legislation in the field of competition protection**

554. In total, in 2021, 121 investigations were completed in relation to more than 134 market entities and 15 state central or local executive bodies (in 2020 - 109 investigations in relation to more than 264 market participants and 13 state central or local executive bodies, in 2019 - 87 investigations in relation to more than 128 market entities and about 19 state or local executive bodies), of which:

- 40 investigations into anticompetitive agreements;
- on the fact of anti-competitive actions (inaction), state, local executive bodies 15 investigations;
- on the fact of abuse of a dominant or monopoly position 37 investigations;
- on the fact of unfair competition 7 investigations;
- on the fact of coordination of economic activity 3 investigations;
- on the fact of anticompetitive concerted actions 19 investigations.

Figure 11. Structure of investigations by types of violations



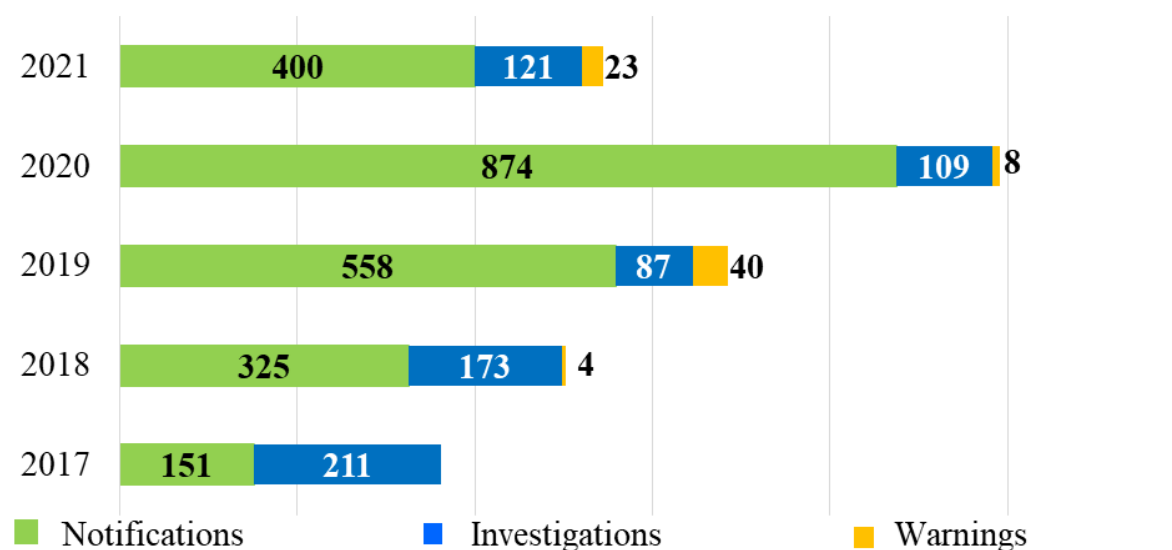
555. Based on the results of the investigations completed in 2021, the following decisions were made:

- on initiating a case on an administrative offense and issuing orders to eliminate violations of the legislation of the Republic of Kazakhstan in 50 investigations (in 2016 - 169, in 2017 - 134, in 2018 - 117, in 2019 - 50);
- on termination of the investigation on the grounds provided for in Article 223 of the Civil Code of the Republic of Kazakhstan on 43 investigations (in 2016 - 51, in 2017 - 23, in 2018 - 28, in 2019 - 18, in 2020 - 51);
- on the initiation of proceedings on an administrative offense in 62 investigations (in 2016 - 93, in 2017 - 52, in 2018 - 0, in 2019 - 6, in 2020 - 2);
- on issuing orders to eliminate violations of the legislation of the Republic of Kazakhstan in 10 investigations (in 2016 - 57, in 2017 - 53, in 2018 - 23, in 2019 - 5, in 2020 - 8);
- on the transfer of materials to law enforcement agencies for pre-trial investigation on 4 investigations (in 2016 - 2, in 2017 - 2, in 2018 - 3, in 2019 - 0, in 2020 - 0).

556. Regarding the amount of penalties imposed by the court, at the end of 2021, it amounted to more than 1.1 billion tenge (2020 675 million tenge, 2019 1.3 billion tenge, 2018 2.4 billion tenge, 2017 3.2 billion tenge).

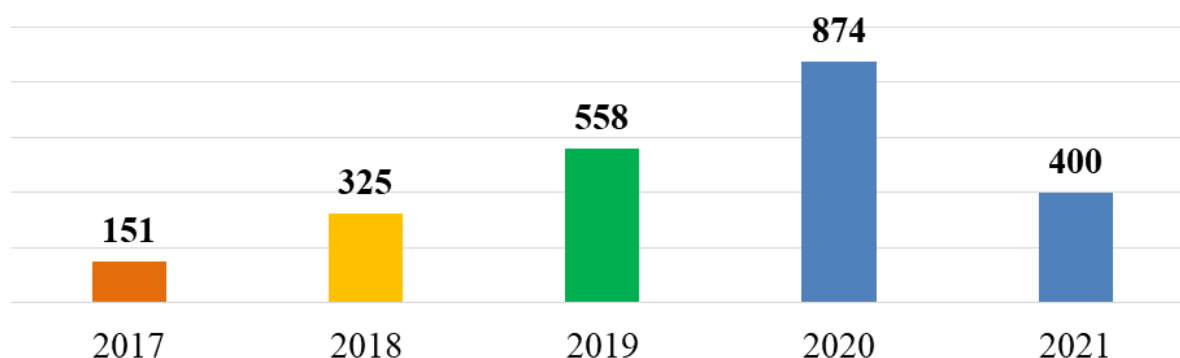
557. It should be noted that the downward trend in penalties is due to the introduction of a moratorium on inspections with visits to small businesses, incl. microbusiness entities in accordance with the Decree of the President of the Republic of Kazakhstan dated December 26, 2019 No. 229, as well as an increase in the number of notifications issued.

Figure 12. Dynamics of investigations, notifications and warnings for 2017-2021



558. At the same time, in 2021, the antimonopoly authority issued 400 notifications, of which 79.25% (317 notifications) were executed and 20.75% (83 notifications) were not executed.

Figure 13. Dynamics of issued notifications for 2017-2021

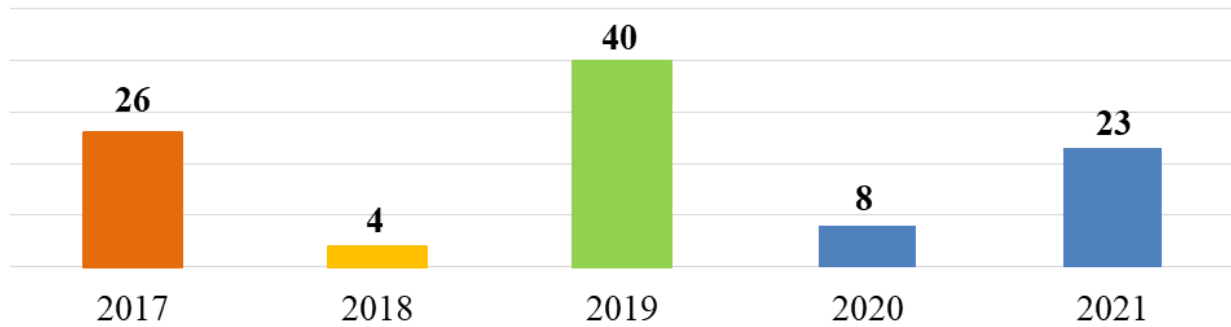


559. In terms of types of violations, the statistics of notifications issued are as follows:

- 72 on the grounds of anti-competitive actions (inaction), agreements of state, local executive bodies, organizations endowed by the state with the functions of regulating the activities of market entities;
- 196 on the basis of anticompetitive concerted actions of market entities;
- 100 on the grounds of abuse of a dominant or monopoly position (with the exception of the grounds specified in subparagraph 1) of Article 174 of the Entrepreneurial Code of Republic of Kazakhstan (EC RK);
- 32 on the grounds of unfair competition;
- 0 on the grounds of anti-competitive vertical agreements provided for in paragraph 2 of Article 169 of the EC of the RK;

560. In addition, 23 warnings were sent in 2021, 12 of which were on the grounds of anticompetitive concerted actions (under article 170 of the EC RK), 6 on the grounds of abuse of a dominant or monopoly position (under article 174 of the EC RK), 4 on the grounds of unfair competition (under article 177 EC RK), 1 on the grounds of anti-competitive actions of state bodies.

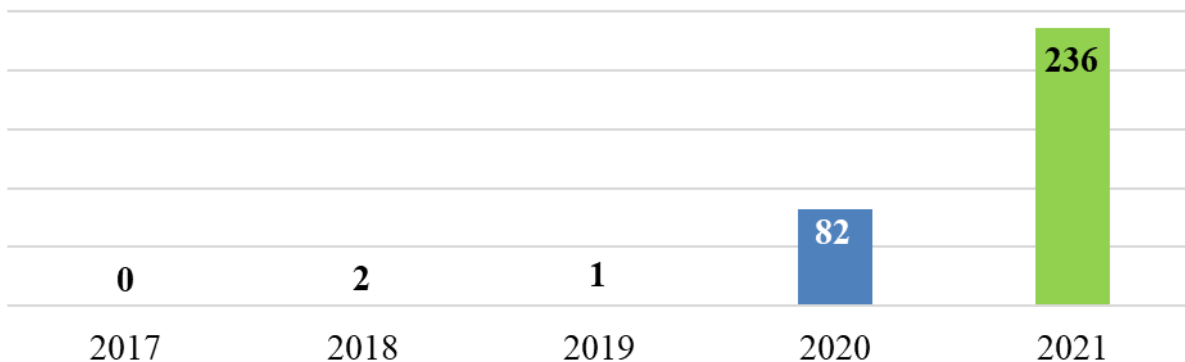
**Figure 14. Dynamics of issued warnings for 2017-2021**



561. Exponential growth is noted in the number of approved projects of the external act of antimonopoly compliance: 236 projects of the external act of antimonopoly compliance were approved in 2021, 82 projects were approved in 2020, and 1 project was approved in 2019.

**Figure 15. Dynamics of agreed drafts of an external act**

antimonopoly compliance for 2017-2021



562. 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.

563. During the reporting period, the Conciliation Commission held 17 meetings, as a result of which the members of the Conciliation Commission recommended:

- in 17 cases - to support the revealed facts of violations of the legislation of the Republic of Kazakhstan with the finalization of the draft conclusion, taking into account the voiced comments and proposals of the members of the Commission;
- 0 cases - to stop the investigation.

#### 4.2.1. Claim-related work.

564. The number of court proceedings in which the antimonopoly authority took part in the reporting period decreased to 236 (in 2016 - 425, in 2017 - 253, in 2018 - 250, in 2019 - 158, in 2020 - 310), including 149 in cases of administrative offenses and 87 civil and administrative cases.

565. Based on the results of court proceedings in 2021, in 195 cases, the court made decisions in favor of the antimonopoly authority (in 2016 - 370, in 2017 - 204, in 2018 - 217, in 2019 - 134, in 2020 - 264), of which - 110 in cases of administrative offenses and 85 - in civil and administrative cases.

566. At the same time, the number of court decisions not in favor of the antimonopoly authority decreased and amounted to only 41 cases (in 2016 - 55, in 2017 - 40, in 2018 - 31, in 2019 - 24, in 2020 - 43), including 36 in cases of administrative offenses and 5 in civil and administrative cases.

## 5. Tasks facing the antimonopoly authority

567. In his speech in the Mazhilis of the Parliament on January 11, 2022, the Head of State K.K. Tokayev noted: “The existing oligopolies have seriously limited the development of the free market and reduced the competitiveness of the country”, “Many fair issues raise the effectiveness and availability of state support measures. The current system is focused mainly on serving large structures on the principle: “everything to friends, the rest - according to the law.” In fact, this system further strengthens the oligopoly in the economy. Large enterprises enjoy special privileges by suppressing competition and hindering reform.

568. In this regard, a number of important tasks were set for the Agency in 2022, including:

1. 1) conducting a comprehensive analysis of monopoly commodity markets (oil and petroleum products, commercial gas, electricity, transport and communications, financial markets) for their demonopolization and development of competition, monopoly groups in order to assess the impact of their activities on related commodity markets, economic efficiency and availability monopoly costs, operators (public and private, who are granted special rights) for the expediency of their further functioning.

In pursuance of this instruction, a comprehensive analysis was carried out, the results of which showed the existence of a number of problematic issues, such as the dominance of state-owned operators, the lack of price competition, the presence of “unproductive” intermediaries, their high marginality, limited access to related markets, non-competitive purchases, fragmentation of technologically related assets, and others.

Based on the results of the analysis, a number of measures have been developed in order to demonopolize the basic commodity markets and develop competition on them.

In the markets of the fuel and energy complex, are the exclusion of intermediaries, ensuring equal access to resources through exchange trading, and the abolition of the preemptive rights of operators. In the transport and communications markets, are the organizational separation of infrastructure operators, their withdrawal from related markets, the sale of state assets. In the financial services markets, are a reduction in the participation of the state in financing the economy, the replacement of financial instruments with other support measures, the introduction of software interfaces Open Banking, Open API, a reduction in

the participation of the Industrial Development Fund and the National Bank in financial markets.

The corresponding detailed analysis and proposals for the indicated commodity markets were sent to the Presidential Administration. It is planned to work out these proposals, including within the framework of the Commission for Demonopolization of the Economy;

2. together with the Government, the development and implementation of a set of measures to reform the system of production and distribution of fuels and lubricants;
3. together with the Government, review the procedure for public procurement and procurement of NWF Samruk-Kazyna JSC and its portfolio companies.

569. On January 21, 2022, the Head of State held a meeting with representatives of domestic business. In his speech, the Head of State outlined a number of key principles. The third principle, mentioned in the speech of the President, is fair competition: “Here, first of all, it is necessary to analyze artificially created monopolies. Operators, especially private ones, should be a thing of the past. If you remember, there used to be such a term - "dealers". A private company, for an appropriate fee, bought off the performance of a number of economic functions of the state. It didn't lead to anything good. I instruct the Government to ensure that such activities are prohibited by law. All niches must be open to competition. Numerous intermediary chains artificially created in the markets should be eliminated. An old problem that no one wants to solve. We need a tough policy to deligopolize the economy.”

570. In this regard, the Agency was given tasks, including on:

1. conducting, together with the Government, an analysis to identify artificially created monopolies and excessively created intermediary chains, as well as analyzing all previously made decisions regarding such operators and taking measures to cancel them. Thus, the analysis revealed artificially created monopolies and excessive intermediary chains in various sectors of the economy. The presence of an unproductive intermediary link in the chain of pricing for final products is a consequence of the imperfection of the market structure, its monopolization, where a limited resource is distributed by monopoly groups through affiliated intermediaries.

Based on the results of the analysis, a number of measures have been proposed in order to create markets with developed competition, form an optimal structure for the supply of goods and pricing, eliminate unproductive intermediation and overstatement of costs. It is planned to work out these proposals, including within the framework of the Commission on Demonopolization of the Economy with the adoption of prompt response measures;

2. establishment at the legislative level of a ban on the implementation of the economic functions of the state by private monopoly operators;
3. addressing the issue of ensuring equal, prompt and adequate cost of business access to key production factors (key capacity): land, electricity, infrastructure and raw materials;
4. checking the conditions of access to existing infrastructure facilities (“last kilometer”): railway sidings, sidings and overpasses, cable ducts, fiber optic lines, seaports in order to ensure equal and adequate cost of business access to them, take systematic measures to enlarge facilities infrastructure of the "last kilometer" and their transfer to user enterprises through the mechanism of tariff formation and the establishment of new requirements;

5. ensuring compliance with the principles of market competition in the areas of providing petroleum products, telecommunications services, pharmaceuticals and others.

571. The National Project for the Development of Entrepreneurship for 2021-2025 in 2021 set tasks for the implementation of the following projects:

1. increase in the volume of electrical energy sold at centralized auctions;
2. the launch of pilot projects for the gradual equalization of tariffs between groups of consumers for electricity services.

This project is subject to implementation, including taking into account the instructions given by the Head of State following the meeting on the development of energy and engineering infrastructure (dated March 2, 2022).

In particular, it is necessary to improve the mechanisms for providing housing assistance in order to increase the amount of compensation for paying utility bills for low-income citizens, to study the issue of digitalization of all processes for providing housing assistance to low-income families to cover the costs of utilities in a proactive format, and pilot project;

3. introduction of an online digital platform (market place) to change the energy supply organization;
4. increase in the share of sales of gasoline, diesel fuel, jet fuel and bitumen through commodity exchanges in the total volume of sales;
5. reduction in the number of monopoly entities;
6. increase in the volume of goods (works, services) purchased in a competitive way;
7. reduction in the number of state assignments.

572. In accordance with the instruction of the Head of State dated November 5, 2021 No. 21-4788, the Concept for the Protection and Development of Competition in the Republic of Kazakhstan for 2022-2026 will be adopted and further implemented.

573. In order to create a holistic policy in the field of protection and development of competition, synchronized with other state policies that directly or indirectly affect competition and integrated into the general economic policy of the country, the Agency for the Protection and Development of Competition has developed a draft Concept for the Protection and Development of Competition in the Republic Kazakhstan for 2022-2026 (hereinafter referred to as the Concept). The implementation of the Concept involves the elimination of systemic barriers that hinder the development of competition, the improvement of approaches and mechanisms for protecting competition in order to create a favorable competitive environment for market entities.

574. It is expected that the implementation of the Concept will help ensure non-discriminatory access of business entities to essential production factors, state support measures; reduction and elimination of regulatory barriers to the development of competition, switching costs; limiting the participation of the state in competitive industries; involvement of all central state and local executive bodies in the work to promote the development of competition and the introduction of a proactive competition policy; improving the effectiveness of preventive measures of antimonopoly regulation and the quality of decisions made by the antimonopoly authority based on economic analysis.

575. The roadmap for the implementation of the Electoral Program of the AMANAT party assigned the Agency the target of removing at least 10 barriers (annually) to business and the development of competition by 2025.

576. Also , by the end of 2022, a number of tasks stipulated by the Roadmap for the Development of Competition <sup>20</sup>(hereinafter referred to as the Roadmap ), including the implementation of paragraphs 10, 21, 27, 49, 70, 102 of the Roadmap, will have to be implemented.

577. In general, the Roadmap includes 104 activities, the implementation of which is provided for in the period from 2020 to 2022. In the period from 2020 to 2021, 100 events are planned to be carried out. By January 2022, 94 items have been completed.

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<sup>20</sup>The roadmap (detailed plan) for the development of competition in the key commodity markets of the Republic of Kazakhstan was approved by the First Deputy Prime Minister of the Republic of Kazakhstan on January 14, 2020;