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Directorate for Financial and Enterprise Affairs  
**COMPETITION COMMITTEE**

## Annual Report on Competition Policy Developments in Kazakhstan

-- 2022 --

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

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## *Kazakhstan<sup>1</sup>*

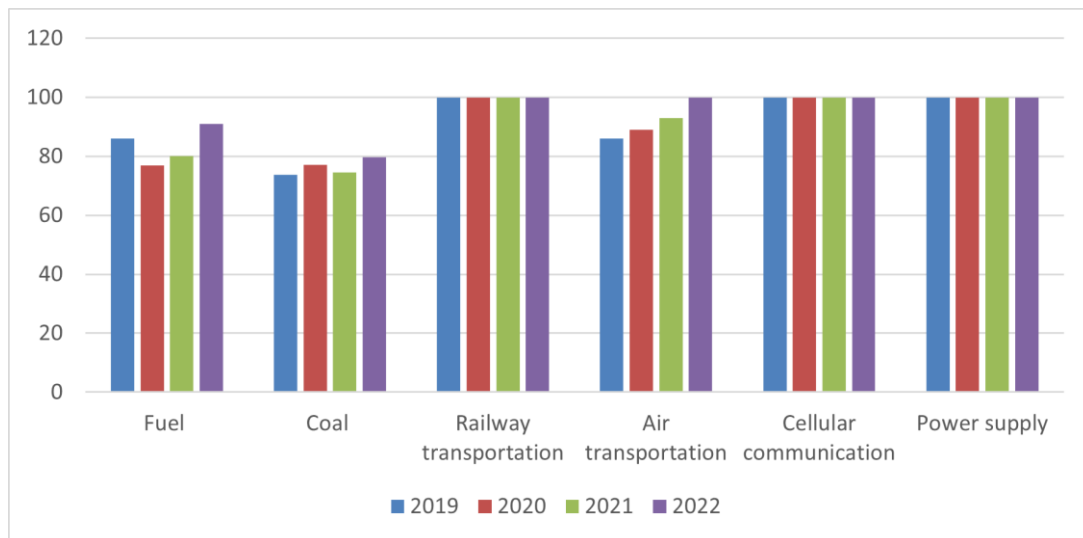
### 1. Competition Policy in the Republic of Kazakhstan

#### 1.1. General Trends of Competition Policy in the Republic of Kazakhstan

1. The analysis of the state of competition at commodity markets in basic sectors of the country's economy (*markets of fuel and energy sector, transport, telecommunications, and communications*) shows that the aggregate share of main market entities ranges from 70 to 100%, a number of markets showing **increased market power concentration ratio** (*low level of competition*) (*Figure 1*).

**Figure 1. Dynamics of changes in market power concentration ratio**

Concentration ratio of the three (CR-3) largest suppliers, %.



2. Moreover, there is a new trend in the economy of the Republic of Kazakhstan: state participation in entrepreneurial activities **is expanding**, and **new monopolies with state participation are emerging**.

3. As a result, formed **monopolistic / oligopoly structure** of key commodity markets favors banned monopolistic activities, increasing marginal costs of entrepreneurs and costs for the population: according to experts of the Organization for Economic Co-operation

<sup>1</sup> A full version of this report can be found at the following webpage:  
<https://www.gov.kz/memleket/entities/zk/documents/details/516109?lang=en>

and Development (*OECD*), **weak competition** can lead to price increases of **up to 10%**<sup>2</sup> on average. In this regard, the development of fair competition and general demonopolization of the economy has become a national task and priority of Kazakhstan's state policy.

4. On this background, a number of systemic documents adopted in 2022 define key areas of developing state policy in competition protection and development, including, inter alia, improvement of legislation, and adoption of documents of state planning system on competition issues.

5. Thus, one of the important events at the beginning of 2022 was the signing of Law "On Amendments and Supplements to Some Legislative Acts of the Republic of Kazakhstan on the Competition Development"<sup>3</sup>, the so-called "**fifth antimonopoly package**", by the Head of State (*hereinafter referred to as the Law dated 3 January 2022*).

6. The Law dated 3 January 2022 ensures execution of the main directions set out in Presidential Decree No. 484 dated 31 December 2020<sup>4</sup> (*hereinafter referred to as Decree 484*).

7. Also in 2022, the Head of State by his Decree approved the **Concept of Competition Protection and Development in the Republic of Kazakhstan**<sup>5</sup> (*hereinafter referred to as the Concept*). The Concept is designed to provide a **vision** of further development of antimonopoly regulation, as well as issues of competition development in the country, building a holistic competition policy integrated into an overall economic policy of the country.

8. Taking into account the tasks outlined in system documents, active work on the following **strategic directions** was started in 2022:

1. limiting state participation in entrepreneurship;
2. increasing coverage of state support measures for private entrepreneurs on competitive principles;
3. working with the Government to promote competition.

## 1.2. Improvement of Competition Protection Law

9. In 2022, the Agency continued work on improving competition protection legislation, in particular, the following Laws were developed and adopted:

1. dated 3 January 2022 "On Amendments and Supplements to Some Legislative Acts of the Republic of Kazakhstan on Competition Development" (*hereinafter referred to as the Law dated 3 January 2022*);

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<sup>2</sup> Davies, S. (2013). Assessment of the impact of competition protection authorities' activities. (February 2013) OECD;

<sup>3</sup> Law of the Republic of Kazakhstan No. 101-VII dated 3 January 2022 "On Amendments and Supplements to Some Legislative Acts of the Republic of Kazakhstan on the Competition Development" // <https://adilet.zan.kz/rus/docs/Z2200000101>;

<sup>4</sup> Decree of the President of the Republic of Kazakhstan dated 31 December 2020 No. 484 "On the Main Directions of the State Policy on Competition Development" // <https://adilet.zan.kz/rus/docs/U2000000484>;

<sup>5</sup> Decree of the President of the Republic of Kazakhstan dated 22 June 2022 No. 938 "On Approval of the Concept of Competition Protection and Development in the Republic of Kazakhstan for 2022-2026" // <https://adilet.zan.kz/rus/docs/U2200000938>;

2. dated 1 July 2022 "On Amendments and Supplements to Some Legislative Acts of the Republic of Kazakhstan on Anti-Money Laundering and Counter-Terrorist Financing (AML/CTF), as well as State Price Regulation" (hereinafter referred to as the Law dated 1 July 2022);
  3. dated 30 December 2022 "On Amendments and Supplements to Some Legislative Acts of the Republic of Kazakhstan on Implementation of Certain Instructions of the Head of State" (hereinafter referred to as the Law dated 30 December 2022).
10. The law dated January 3, 2022, provides for the following:
1. providing access to **essential facilities**.  
The laws of the Republic of Kazakhstan lacked clear regulation of entry into the relevant commodity markets, which was used by monopolists and dominants when refusing to sell goods, including references to concluded long-term contracts with a permanent circle of entities.  
In this regard, the Law (*Articles 174, 176-1 of the Code*) defines concepts of essential facilities, criteria for attribution to essential facilities, and establishes procedures for equal access to essential facilities.
  2. **regulating activities** of public and private monopoly **entities**.  
In Kazakhstan, there is a practice for legislative granting of exclusive rights to certain market entities to carry out certain types of activities without creating a state monopoly.  
In this regard, to minimize monopoly costs, the Law extended legal regime of state monopoly, strict regulation, compensation for losses to competitors, publicity to public and private monopoly **entities**, and approved the Rules for determining a state-owned enterprise, joint stock company, limited liability partnership as a subject of special law.
  3. reducing state participation in entrepreneurship.  
The serious consequences of violating the "Yellow Pages Rules" principle are the displacement of private entrepreneurs by state-owned business entities from public procurement, and quasi-public sector procurement. Meanwhile, current grounds for state participation in entrepreneurship imply a ban on the activities of state-owned business entities in competitive commodity markets.
  4. ensuring **equal access** to state support measures.  
Much more funds are allocated to support large businesses. In this regard, a requirement has been introduced for new state support measures to be approved by the Antimonopoly Authority and criteria for determining priority areas for provision of state support measures have been established.
  5. developing antimonopoly regulation tools.  
Merger and acquisition control is one of the important components of antimonopoly regulation of market structure aimed at preventing the concentration of market power in single hands. During control over transactions, the Antimonopoly Authority may prescribe certain requirements for approval of a transaction. The OECD notes that competition agencies in many countries use trustees to effectively facilitate the enforcement of transactions and independent monitoring. In this regard, to ensure monitoring and facilitate enforcement of the Antimonopoly Authority's decisions on actions aimed at ensuring competition, the Law introduced a trustee institution to monitor compliance with terms of economic concentration transactions and approved procedure for keeping a register of trustees.

11. **Law dated 1 July 2022** was drafted and adopted for executing instruction from the Head of State.

12. In January 2022, the Agency, based on instructions from the Head of State, introduced temporary state price regulation for retail sales of liquefied petroleum gas (*hereinafter referred to as LPG*).

13. Under provisions of the Code then in effect, the total period of applying such regulation could not exceed **one hundred eighty calendar days in any single year**. In order to extend price regulation of retail LPG sales, the Law dated 1 July 2022 excludes the norm concerning the overall period of price regulation.

14. Thus, this amendment made it possible to exclude risks of sharp price increases and, as a consequence, the emergence of social tension in society.

15. **A law dated 30 December 2022** was drafted and adopted for executing instruction from the Head of State.

16. In January 2022, during a meeting with representatives of large domestic businesses, the Head of State instructed to establish at the legislative level **a ban** on the exercise of economic functions of the state by private monopoly **entities**.

17. In pursuance of this instruction, the Law dated 30 December 2022 amended the Code, providing that only a legal entity with one hundred percent of shares (*interests in the share capital*) directly or indirectly owned by the state can be a subject of special law (*Article 193 of the Code*). Thus, the procedure for establishing private monopoly **entities** has been made as complicated as possible at the legislative level.

### 1.3. Limiting the Share of State Participation in Entrepreneurship

18. To promote private entrepreneurship and competition, the most important task is to reduce state participation in entrepreneurial activity. Work in this direction is carried out through privatization, and restriction of activities of quasi-public sector entities.

#### 1.3.1. Privatization

19. In accordance with the instruction of the Head of State, given after the results of the meeting on the stabilization of the socio-economic and socio-political situation dated 5 January 2022, the Agency has developed proposals to **improve privatization processes** taking into account competition policy. To date, these recommendations have been partially adopted. In particular, the privatization plan includes **criteria** (*principles*) according to which enterprises are included in the list of privatized entities.

20. Analysis of the privatization process shows that there are a number of **problems** arising from the sale of state assets. Due to a lack of clear criteria, privatization plans are formed on a residual principle or based on the results of an independent assessment that does not take into account issues of competition development:

1. in the first case, privatization objects are unprofitable enterprises providing social services (*facilities of life support, culture, sports, education*) and, if the object is not sold after three tenders, it is subject to liquidation according to requirements of the legislation.
2. in the second case, to maximize profits, vertically integrated structures of Samruk-Energy JSC type are included in the privatization plan as one lot. This leads to the establishment of new "private monopolies" or to the strengthening of existing dominants' positions.

21. To systematize and prevent similar facts in the future, the Agency has proposed a number of measures:

1. legislative regulation of the procedure for forming privatization plan **in coordination with the Antimonopoly Authority**.
2. consolidation of the "**privatization on application**" principle, which gives the entrepreneur the right to choose the object of the privatization. In the case of a private initiative, the object can be sold;
3. to ensure transparency of decisions of the State Commission on Economic Modernization in terms of approval of direct targeted sales or exclusion of objects from the privatization plan, the Agency proposed to make publicly available relevant **justifications** signed by the CEO of the authorized state body;
4. proposals of Antimonopoly Authority based on results of **sectoral analysis** will be a mandatory basis for inclusion in the privatization plan.

22. Relevant amendments were made to the draft Law "On Amendments and Supplements to Some Legislative Acts of the Republic of Kazakhstan on Development of the Quasi-Public Sector", developed by the Ministry of National Economy.

### *1.3.2. Reducing the list of activities authorized for quasi-public sector entities*

23. In 2022, based on the results of the analysis, the Agency established absence of quasi-public sector entities in certain types of activities or presence of only one quasi-public sector entity in relevant commodity markets for 45 types of activities.

24. In this regard, upon the Agency's initiative, on 21 July 2022, the Government Resolution was adopted<sup>6</sup>, providing for **reduction of activities carried out by state-owned enterprises, legal entities with more than fifty percent of shares (interests in the share capital) owned by the state, and their affiliates (hereinafter referred to as the List 1095), by 45 types of activities (11%)**, including industry, construction, finance, consulting services, transportation. Thus, out of 410 previously authorized activities, **365** will be authorized for quasi-public sector entities

## **1.4. Monitoring state support measures**

25. Issues of accessibility to state support measures was noted by the Head of State at the meeting of Majilis of the Parliament on January 11, 2022: "Existing system is focused mainly on servicing large structures, based on the principle: "everything for friends, for others - according to the law". In fact, this system further reinforces oligopoly in the economy. Large businesses enjoy special privileges, stifling competition and hindering reform."<sup>7</sup>

26. In this area, the Agency analyzed activities of Baiterek National Managing Holding JSC (*hereinafter referred to as Holding*) in terms of ensuring equal access to state support measures.

<sup>6</sup> Resolution of the Government of the Republic of Kazakhstan No. 510 dated 21 July 2022 // <https://adilet.zan.kz/rus/docs/P2200000510>;

<sup>7</sup> Speech by the Head of State Kassym-Jomart Tokayev at the meeting of the Majilis of the Parliament of the Republic of Kazakhstan dated 11 January 2022 "LESSONS OF TRAGIC JANUARY": UNITY OF SOCIETY - GUARANTEE OF INDEPENDENCE" // <https://adilet.zan.kz/rus/docs/K2200002022>;

27. Based on the results of analysis, actions of Holding's subsidiaries **showed signs of violation** expressed in:

- creation of **unequal conditions** of access to support measures for final recipients, application of different lending rates for large infrastructure projects;
- **favoritism** in actions of Holding subsidiaries in terms of priority, accelerated consideration of applications for support measures;
- **creation of privileged position** by not providing counter-obligations to certain businesses or continued provision of support measures when obligations were not fulfilled.

28. In this connection, Holding has been issued prescription to take actions aimed at ensuring competition. Also, KazakhExport JSC and Development Bank of Kazakhstan JSC, entities of state support measures, has been notified about signs of violations of the laws in their actions. Currently, the Agency's arguments have been taken into account by the Holding and the entities, and work is underway to bring processes of providing state support measures into compliance with competition protection legislation.

29. At the same time, in addition to identifying signs of violations, the Agency also identified a number of industry-specific problems affecting development of competition.

1. **lack of planning** for allocation of funds to specific areas of support within the framework of one state program (*national project*). At present, when developing program documents, sectoral ministries determine main approaches and tools to stimulate entrepreneurship, but do not take into account allocation of funds to specific areas of support.
2. **low efficiency** of state support measures due to absence of unified system for monitoring counter-obligations.

## 1.5. Working with the Government to promote competition

30. For a long time, there has been **weak involvement of sectoral government bodies** on adoption of measures to promote competition for implementing government policy in relevant sectors of the economy. As a result, administrative barriers to development of competition remain in country's economy.

31. In 2022, as part of Concept implementation, the Agency, together with the Government, started **joint work on development of competition** in certain commodity markets in order to optimize interaction between competitive and sectoral policies. In particular, competition development roadmaps are being adopted in this direction. As of today, Kazakhstan has already adopted **competition development roadmaps** (*posted at the Agency's official website*)<sup>8</sup>:

1. **oil and oil products** market. The Action Plan provides for a number of measures to ensure access to resources, analyzing exchange trading in oil products with a view to increasing it to 20%, approving Rules of Equal Access to Essential Facilities for Wholesale Sales of Oil Products, approving KMG Aero JSC's activities on jet fuel sales by antimonopoly compliance certificate (*retail sales*), developing forecast plan for convergence of cost of fuels and lubricants within the EAEU by 2025 (*mechanism of balanced price regulation*);

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<sup>8</sup> Sectoral roadmaps for the development of competition // <https://www.gov.kz/memleket/entities/zk/documents/details/435863 ?lang=ru>;

2. **coal** sales market. It is planned to **eliminate** "unproductive" intermediaries. To cover demand of domestic market in a timely manner, priority will be given to rolling stock for utility coal purchased by regional entities at commodity exchange. In addition, mechanism of regional supply bases for utility coal will be introduced (*preservation of FCA conditions with division of trades by regions*), with a possibility to switch to RoK supply basis in case of non-demanded volumes". In addition, primary wholesale market of coal for energy producing organizations will be analyzed for classification as a publicly important market;
3. **civil aviation** sector. The Roadmap envisages measures aimed at eliminating key barriers to competition development in civil aviation (*excessive state participation, limited access to infrastructure*) and including, inter alia, the implementation of the state block of shares in **QazaqAir JSC, AirAstana JSC**, separation of **FlyArystan Airlines** as separate market entity until privatization, extension of "**open skies**" regime until 2028, as well as **consolidation of non-discriminatory access** of aviation fuel retailers to fueling complexes of airports, developing issues on construction of alternative fueling complexes in the airports of the Republic;
4. **agro-industrial sector**. To stimulate agricultural producers, **new approaches to subsidies** are envisaged with a focus on problematic commodity markets. Conceptual **revison** of state regulation of prices for food staples is expected. The plan is to remove barriers in delivering agricultural producers' products to consumers **through trade networks/facilities**, to balance interests of domestic producers and food trade organizations, and develop **exchange trade** in agricultural products;
5. **housing construction** sector. By the end of 2023 it is planned to solve the problem of **non-competitive allocation** of land plots through mechanisms of special economic zones and socio-entrepreneurial corporations, responsibility of akimats for failure to place information on vacant land plots shall be hardened, **checks** for compliance with the laws in terms of attracting funds of shareholders will be introduced. Measures have been included providing for **digitalization** of acquisition of residential and non-residential premises, shares and units in residential buildings under construction, increasing transparency of Single Monopoly entities activities (*Kazakhstan Housing Company JSC*) for selection of engineering companies, attributing monopoly entities services to public services;
6. **health care** sector and in the market of **medicines** storage and transport services. The plan is **to reduce excessive price regulation** for medicines in commercial segment, to provide access to state procurement of medicines within guaranteed volume of free medical care and/or Compulsory Social Health Insurance system. In addition, it is envisaged to **reduce state participation** in health care sector and **eliminate administrative barriers** to health care services. The business processes of medicines' entry to the market will be digitized. It is also envisaged to reduce share of single-source procurement for storage and transport of medicines and medical devices;
7. **telecommunication** sector. The roadmap includes measures aimed at **reducing state's share** in telecommunications market, including, inter alia, analysis of current procedure for conducting auctions for radio frequency allocation (*taking into account international experience*), demonopolization of **Kazakhtelecom Group** by means of phased establishment of subsidiaries (*cellular operators*). The measures are also aimed at ensuring **equal access to infrastructure**, including establishing competence of authorized body in telecommunications to reallocate radio frequency spectrum (*RFS*), introducing mandatory sharing of RFS,

infrastructure (*sharing*), analyzing procedure for connection and interaction of telecommunication networks of telecommunication operators, determining competence to approve competitive procedure for transfer of cable channels built at the expense of budgetary funds.

## 1.6. Identifying and suppressing anti-competitive practices

32. Important feature of the new competition policy was its focus on transition from **punitive** orientation ("*ex-post*") to active use of "**ex-ante**" **measures** stimulating market entities to pro-competitive behavior.

33. Such measures include, inter alia, notices of signs of violation in actions (*inactions*), warnings about inadmissibility of anti-competitive practices, antimonopoly compliance.

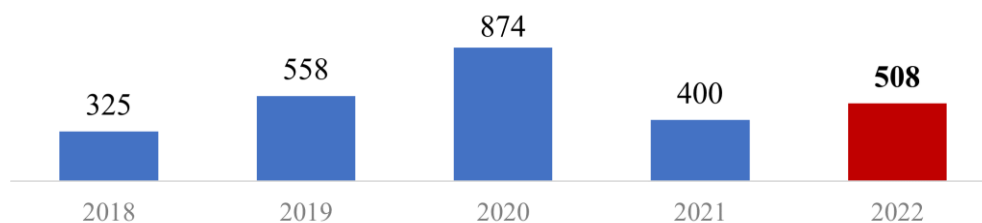
34. Thus, the focus of the Agency's activities is shifted to **prevention of anti-competitive practices**.

35. The relevant approaches are enshrined in Decree 484<sup>9</sup> and Concept, which **prioritizes preventive antimonopoly regulation measures** as one of principles of state policy for competition development.

36. In general, in 2022, antimonopoly authority issued **508 notices** on signs of violation in actions (*inactions*) in competition protection area (*Figure 2*), of which 430 notices or 84.6% were closed (*79.2% in 2021*).

37. However, there is an increase (*relative to 2021*) in the number of notices issued in 2022 (*27% increase*).

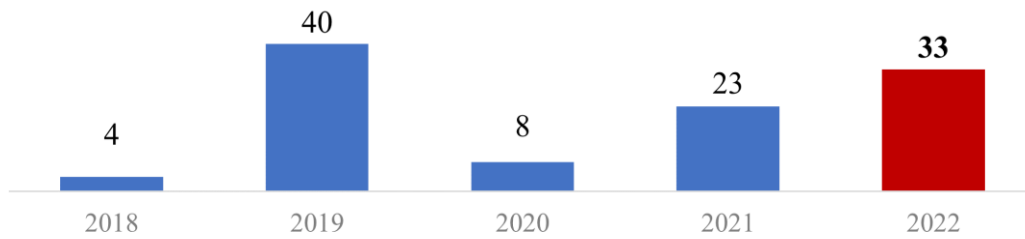
**Figure 2. Dynamics of issued notices**



38. In addition, in 2022, **33 warnings** on inadmissibility of violating competition protection legislation were issued (*Figure 3*), with 43% increase in number of **warnings** compared to 2021.

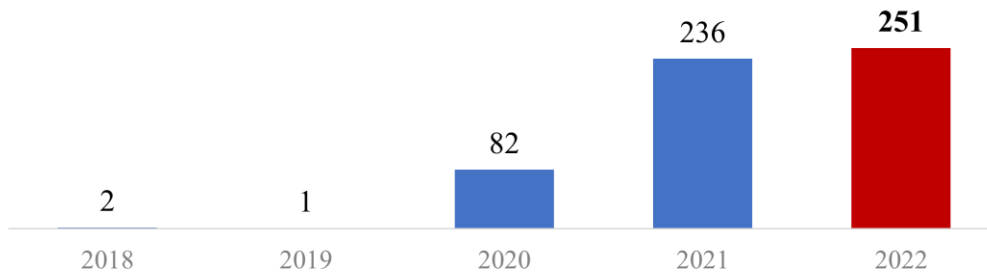
<sup>9</sup> Decree of the President of the Republic of Kazakhstan dated 31 December 2020 No. 484 "On the Main Directions of the State Policy on Competition Development"// <https://adilet.zan.kz/rus/docs/U2000000484>;

Figure 3. Dynamics of issued warnings



39. Stable growth is also observed in the number of agreed drafts of external **antimonopoly compliance acts**. In 2022, **251 drafts** of external antimonopoly compliance acts were agreed, in 2021, 236 drafts were agreed, and in 2020, 82 drafts were agreed (Figure 4).

Figure 4. Dynamics of agreed drafts of external antimonopoly compliance acts



40. The antimonopoly authority focuses on more **“malicious” anti-competitive practices** that cause the most tangible economic damage, including anti-competitive agreements, abuse of dominant or monopolistic position.

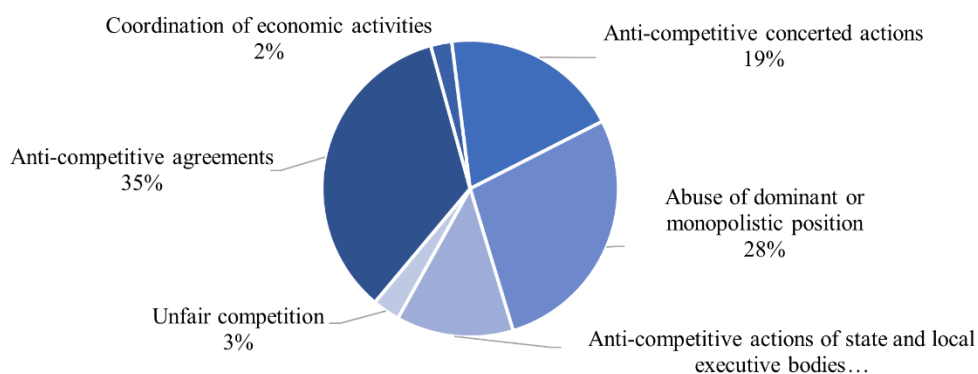
41. OECD experts estimate that violations related to cartels and abuse of dominant or monopolistic position can lead to unjustified **price increases up to 15% on average**<sup>10</sup>.

42. As a result, for example, in 2016 the Antimonopoly Authority's investigations into **anti-competitive agreements** accounted for **3%** of total investigations structure, by the end of 2022 this indicator has reached **35%**, leading this list.

43. Second place is occupied by investigations related to abuse of dominant or monopolistic position.

<sup>10</sup> Davies, S. (2013). Assessment of the impact of competition authorities' activities. (February 2013) OECD;

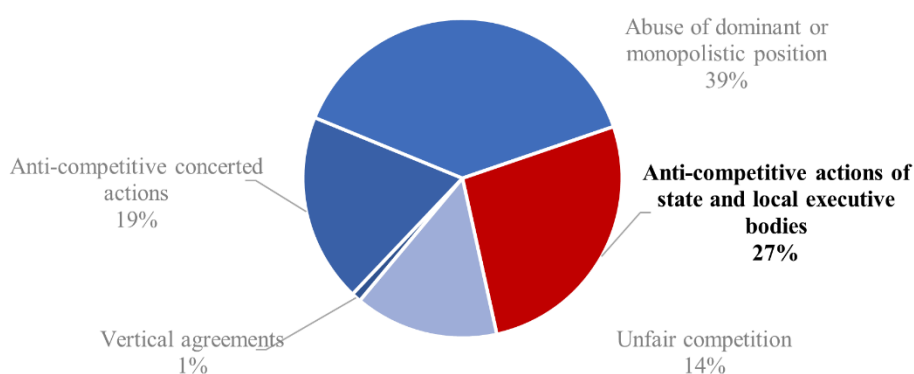
Figure 5. Structure of investigations by type of violations in 2022



44. In turn, the Agency's practice on investigations of **unfair competition** facts that do not have significant impact on general conditions of goods circulation in relevant commodity market for the last 3 years shows opposite dynamics.

45. With that, as statistics of notices issued by the Agency show, one of significant factors distorting competition is **anti-competitive actions of state bodies**, this indicator reached **27%** in 2022 (Figure 6).

Figure 6. Structure of notices by type of violations in 2022



46. In this case, it should be noted that by virtue of possessing power-administrative competence, the state, local executive bodies, organizations vested with regulating activities of market entities have the ability to influence state of competition.

47. In this regard, favoritism and creation of unequal conditions for doing business **by the state** cause significant damage to entrepreneurship and investment climate. The main risks of such actions lie in procedures for granting state support measures, land plots, public procurement, and business regulation. Thus, implementation of investment projects with involvement of Social and Entrepreneurial Corporations (SECs) empowered with the right to provide land plots and other support measures, due to absence of strict selection rules, has become the most common practice of creating a privileged position for certain market entities.

48. Overall, investigations completed in 2022 resulted in decisions to:

- initiate administrative offence proceedings and issue orders to eliminate violations of law in 65 investigations;

- terminate investigations on grounds provided for in Article 223 of the Code for 34 investigations;
- issue prescriptions to eliminate violations of law in 10 investigations;
- transfer materials to law enforcement agencies for pre-trial investigation in 24 investigations.

49. For 2022, fines totaling **KZT 2.1 billion** were imposed for violations of competition protection legislation, of which **KZT 1.9 billion** or 90.5 per cent were recovered. The upward trend in amount of fines is related to number of investigations into cartel agreements and abuse of dominant or monopolistic position. With that, as part of joint work with law enforcement authorities on anti-competitive practices, more than **KZT 12 billion** in damages were **reimbursed** to state income.

## 1.7. Regulating economic concentration

50. At the same time, significant work has been done in *regulating economic concentration*.

1. For example, joint audit (*with Atyrau Oblast Prosecutor's Office*) has been completed regarding legality of alienating 50% interest in LPG Storage Park LLP (*hereinafter - the Storage Park*) from Atyrau Oil Refinery LLP (*hereinafter - Atyrau Oil Refinery*) in favor of Joint Technologies LLP.

As a result of audit in Storage Park's actions, abuse of dominant position was revealed, that is a violation of the requirements.

2. Also previously, by Order No. 257/NK dated 16 September 2022 of the Chairman of the Agency (*hereinafter referred to as the Consent Order*), TEK Acquisition Corp LLP (*hereinafter referred to as the Buyer*) has been granted a consent to economic concentration subject to a number of conditions.

One of the conditions was to develop and agree with the Antimonopoly Authority a system of measures to prevent violations of competition protection legislation (*external and internal antimonopoly compliance*), providing for sales and pricing policy aimed at ensuring equal and non-discriminatory conditions at the market for acceptance, storage and dispensing of liquid, bulk and tare cargoes (*diesel fuel*) until 31 November 2022.

In turn, due to existence of arbitration dispute between Kamkor Management LLP (*hereinafter referred to as the Seller*) and the Buyer in respect of sale and purchase agreement due to the Seller's waiver of its contractual obligations, it is not possible for the Buyer to fulfil this condition.

Thus, due to the Buyer's lack of control over executive body of Fuel and Energy Complex - KAZAKHSTAN Trade House LLP, it is not possible to agree external and internal antimonopoly compliance act. Consequently, the Buyer is not in compliance with conditions of Economic Concentration Consent Order.

3. Another example is the revision of Order No. 170-OD dated 10 July 2018 of the Chairman of the Committee for Regulation of Natural Monopolies, Protection of Competition and Consumer Rights of Ministry of National Economy of the Republic of Kazakhstan "On Granting Consent to Economic Concentration upon Application of Kazakhtelecom JSC".

So, order was amended to ensure alienation of 100% of participation shares of KazNet Media LLP, Kcell JSC's subsidiary, on contractual terms determined taking into account cost of their acquisition, subject to interest in purchasing 100% of participation shares by market entities, not included in Kazakhtelecom JSC Group

and not participating in Agreement on transfer of at least 20 MHz for reception / at least 20 MHz for transmission in 2500-2570/2620-2690 MHz bands, as well as at least 20 MHz in 2570-2620 MHz band to other entities of commodity market for provision of cellular communication services.

In total, in 2022, Antimonopoly Authority received 80 requests for public service "Consideration of applications for consent to economic concentration", of which 29 transactions were consented and 1 transaction was banned, 2 transactions were terminated due to revocation.

## 1.8. Monitoring commodity exchanges

51. Exchange trading in accordance with international practice in conditions of stable monopolistic / oligopolistic market structure acts as a key tool to ensure **equal access** to limited resources of monopolists for all categories of business, mainly small and medium-sized businesses, and to form informative (*transparent*) **market pricing** with indicators that can be used by all market entities and regulators (*benchmarking*).

52. With that, for many years in Kazakhstan the situation in exchange trading market has been characterized by systemic gaps that cause **non-transparent operation** of commodity exchanges and **focus on large business**, that does not allow proper use of all positive effects (*advantages*) of exchange trading.

53. In particular, the following systemic problems should be noted:

- **excessive diversity** of commodity exchanges given small capacity of commodity markets in Kazakhstan, that leads to fluctuations in exchange quotations and does not allow forming reliable price indicators;
- **non-compliance** of electronic trading system (*ETS*) of most commodity exchanges with information security requirements, that creates conditions for manipulation of trading results for interests of certain groups of persons;
- **circumvention** of mandatory requirements of public procurement laws;
- **circumvention** of mandatory requirements of subsoil use laws (*for local content*) allows concluding deals with suppliers, known beforehand;
- **lack** of state control over activities of clearing organizations, that creates conditions for "unproductive" intermediaries and artificially created monopoly structures;
- **absence** of single authorized state body ensuring comprehensive and effective state regulation of exchange trading sphere.

54. The imperfection of current exchange trading system is **abused** by bad-faith commodity exchanges and traders. These facts were confirmed by the results of **audit** conducted in 2022 by the Prosecutor's Offices with concerned state bodies, following instructions of Head of State.

55. In addition, violations of requirements of legislation on commodity exchanges were revealed in commodity exchanges, expressed in:

- violation of requirements for re-issuance of licenses;
- non-compliance with qualification requirements;
- participation of commodity exchange employees in exchange transactions.

56. On these facts, the Agency initiated 19 cases on administrative offences against commodity exchanges with imposition of fines for a total amount of only KZT 2.2 million,

and judicial bodies did not apply additional measure of administrative penalty in form of license suspension, however, payment of administrative fines **does not ensure further actual elimination of violations**.

57. On the Agency's initiative, authorized body for regulation of trading activities sent lawsuits to judicial bodies **for forced liquidation** of 8 commodity exchanges, whose activities do not meet legal requirements.

58. Existing problems can be solved through set of measures aimed at ensuring proper state control in exchange trading, improving operations of commodity exchanges and increasing transparency of trading, including:

1. **amendments** to existing legislation, providing for:
  - more strict requirements for commodity exchanges and their ETSs;
  - removal of commodity exchanges from SME category;
  - ban on sale of non-standardized goods through commodity exchanges;
  - exclusion of procurement method "through commodity exchanges" from public procurement legislation;
  - extension of state control to integral participants of exchange trading - exchange brokers and clearing organizations;
  - increased administrative liability for violation of Commodity Exchanges Act, etc.;
2. definition of **single regulator** in exchange trading represented by the Agency, since one of its main functions is development and protection of competition, that is confirmed by actual results in this area.

59. According to the Agency's estimates, implementation of these measures will create healthy competitive environment and contribute to development of import substitution processes and the development of regional entrepreneurship.

## 1.9. International cooperation

60. The Agency is working to strengthen international cooperation with foreign Antimonopoly Authorities, both through international integration associations and on a bilateral basis.

### 1.9.1. Interaction with OECD

61. The Agency is preparing for **Second OECD Expert Review** "Competition protection legislation and Policy in Kazakhstan": it is planned to sign an agreement with OECD on the Second Review. The purpose of Second Review is to obtain OECD experts' recommendations **for improving competition policy system** based on the analysis of existing competition protection legislation of the Republic of Kazakhstan (*identifying advantages and disadvantages*) and experience of other countries. The recommendations will provide a useful basis for revising laws, changing procedures and strengthening institutions in the country.

62. The review is also useful for documenting country's progress since the first OECD review. The first expert review was conducted in Kazakhstan in 2015, and its results served as a basis for radical reformatting of antimonopoly service's work and antimonopoly regulation system of the economy as a whole.

### ***1.9.2. Interaction in the context of cooperation with EAEU and CIS***

63. On 25 May and 6 September 2022, the Agency participated in the meetings of the Eurasian Economic Commission (*hereinafter referred to as EEC*) (in "5+1" format) together with heads of Antimonopoly Authorities of EAEU member states and member of the Board (*Minister*) for Competition and Antimonopoly Regulation. On this platform, the parties discussed issues of participation of the authorized bodies of EAEU member states in implementing list of measures to improve regulatory legal framework and methodological foundations in competition protection, both in national legislation of EAEU member states and EAEU legislation on antimonopoly regulation, as well as state regulation of prices for food staples.

64. The Agency has also developed **amendments to Agreement** on procedure for protection of confidential information and responsibility for its disclosure in the exercise by the EEC of its powers to control compliance with uniform competition rules dated 12 November 2014 (*hereinafter referred to as the Agreement*). On 16 March 2022, the Law on ratification of protocol on amendments to the agreement was signed by the Head of State. The ratified Protocol is aimed at bringing text of the Agreement in line with provisions of EAEU Treaty.

65. In 2022, the Agency participated in the 53rd meeting of **Interstate Council** on Antimonopoly Policy of CIS Member States (*hereinafter referred to as ICAP*) and **Headquarters** for Joint Investigations of Violations of Antimonopoly regulations of CIS Member States.

66. The parties discussed issues of competition development in digital era, tools of antimonopoly and price regulation in modern conditions, as well as the need to conduct research on markets of medicines and food staples in the CIS. As part of the Headquarters' activities, research was initiated in CIS countries on unfair competition, application of competition protection legislation to intellectual property objects.

67. The work within ICAP allows developing common approaches to harmonizing competition protection legislation, improve law enforcement practice, and exchange experience in combating anti-competitive practices.

## **1.10. Implementing operational measures**

68. Implementing a number of operational measures, on which depends overall quality of Antimonopoly Authority's work is important for effective implementation of competition policy.

### ***1.10.1. Digitalization of Antimonopoly Authority's activities***

69. Development of new approaches to **digitalization of the Agency's activities** is an important area of focus, taking into account leading international practices.

70. Thus, one of Antimonopoly Authority's main tasks is to prevent, detect and investigate, suppress violations of competition protection legislation. With that, the Agency's fundamental tool in executing this task is collection of necessary information and evidence to confirm or refute violation.

71. In practice, analyses conducted under old scheme have a number of disadvantages related to lengthy procedure of information retrieval, drawing conclusions and, as a result, making decisions *ex post facto*, when effect of such actions loses its relevance (*individual cases take 2-3 years*). Today, the Antimonopoly Authority is focused on re-engineering its activities with an emphasis on automated monitoring and analyzing commodity markets.

72. The Agency jointly with the Bureau of National Statistics of the Agency for Strategic Planning and Reforms of the Republic of Kazakhstan (*hereinafter referred to as the BNS*) started work on creating **analytical map of the state of competition**. The analytical map of the state of competition is a dashboard. The dashboard is at testing stage.

73. The Agency has worked with Bureau of National Statistics to develop a list of 16 commodity markets with historically problematic issues to be included in dashboard at the initial stage. The markets will be quoted by 15 basic indicators.

74. The list of commodity markets will be continuously expanded and scaled up. In addition, possibility of integrating data from other information sources, including data on export and import operations, data on economic activity, data from service aggregators, marketplaces, etc., into the dashboard is being developed.

75. Also, in order to effectively identify cartels in public procurement, the Agency has introduced **Ormek Search Information System**. This system was created on the platform of "Single Procurement Window" of Atameken National Chamber of Entrepreneurs of the Republic of Kazakhstan and allows identifying signs of bid rigging. Ormek system analyzes behavior and establishes indirect links between bidders with automatic notification of possible signs of bid rigging.

### *1.10.2. Introducing corporate governance principles*

76. As is well known, Antimonopoly Authorities in all developed countries have successfully operated for a long time based on **corporate governance** principle, which contributes to increased transparency and efficiency. Kazakhstani Antimonopoly Authority has also felt the need to develop corporate governance. In this regard, taking into account the best international practices, the Agency started work on introduction of **corporate governance** principles.

77. Since November 2022, the Agency has launched institute of **Management Board**, consisting of the Agency's management.

78. In 2022, 9 Management Board meetings were held. Since the beginning of 2023, 7 Management Board meetings have already been held. Board determines the Agency's short-term and long-term goals, makes decisions on the most key issues, for example, mergers and acquisitions, the opening of antimonopoly investigations are discussed and determined collectively. It is also planned to establish the Supervisory Board. Its main function will be to make recommendations to the Management Board within the scope of the Agency's activities.

79. For subsequent introduction of corporate processes, the Agency has adopted **Corporate Governance Implementation Plan**, within its framework a memorandum of cooperation has been signed between the Agency and Qazaq Independent Directors Association<sup>11</sup>. The parties agreed to establish partnership relations and develop long-term cooperation aimed at implementing joint projects in corporate governance.

## **2. Analysis of state of competition in certain commodity markets**

80. In total, more than 80 commodity market analyses were conducted in 2022. With that, in most cases, this includes unscheduled analysis of commodity markets conducted as prompt measures, which is due, inter alia, to execution of instructions related to January

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<sup>11</sup> CORPORATE GOVERNANCE PRINCIPLES HAVE BEEN IMPLEMENTED IN THE APDC  
// <https://www.gov.kz/memleket/entities/zk/press/news/details/468468?lang=ru>;

events, measures provided for by Anti-Inflationary Response Package, as well as instructions from President's Administration, the Government of the Republic of Kazakhstan. In addition, unscheduled analyses of commodity markets were conducted on the basis of incoming requests from individuals and legal entities.

81. It should be noted that in 2022, the Agency had conducted planned analysis for only 20 commodity markets: wholesale market of petroleum products; retail market of petroleum products; wholesale electricity market; retail electricity market; wholesale coal market; retail coal market; market of construction and installation services for connecting consumers to natural gas networks; market for technical, maintenance services and overhaul of locomotives; railcar repair services market; digital Terrestrial Broadcasting services market; copper Sales Market; Lead Sales Market; zinc Sales Market; Aluminum Sales Market; Processed milk sales market; sugar sales market; medicines sales market; market of services for conducting PCR diagnostics of coronavirus infection; market of services for collection, removal, sorting and disposal of solid waste; auto loan financing services market.

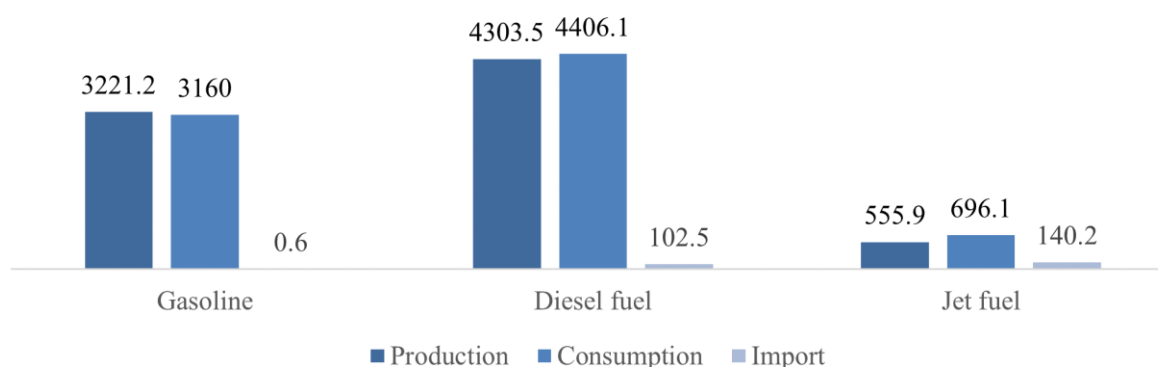
## 2.1. Wholesale and retail markets of petroleum products

82. Analysis of wholesale and retail markets of petroleum products was carried out in accordance with the Agency's Work Plan for 2022 and covers certain types of fuel and energy-oriented petroleum products such as: gasoline RON-92 and RON-95, jet and diesel fuel (*hereinafter referred to as petroleum products*).

83. In accordance with the Law "On State Regulation of Manufacturing and Turnover of Specific Types of Oil Products", fuel oil and road bitumen also belong to certain types of petroleum products. Fuel oil has limited use as start-up fuel for heat and power plants, and therefore was not covered by analysis. Road bitumen is used as construction material, and is not a fuel and energy commodity.

84. According to their properties and areas of use (*groups of buyers*), gasoline of RON-92 and RON-95 grades, diesel fuel (*summer / winter*) and jet fuel are not interchangeable.

Figure 7. Market balance for 2022, tons

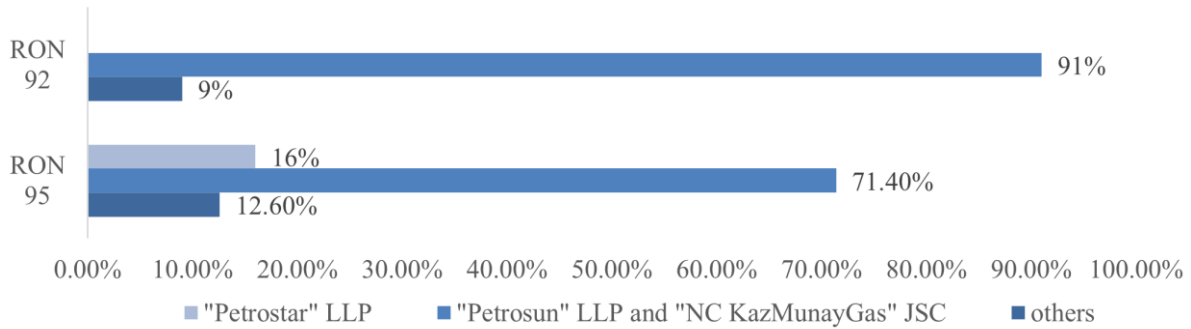


85. All petroleum products are produced from crude oil prepared for processing, supplied by the same organizations. Thus, the largest market shares are accounted for by "Petrosun" LLP, "KMG" JSC and "Petrostar" LLP:

- gasoline RON-92: Petrosun LLP – 58.7%, NC KazMunayGas JSC - 32.6%;

- gasoline RON-95: LLP "Petrosun" – 47.3%, "NC KazMunayGas" JSC – 24.1%, "Petrostar" LLP – 16.5% (Figure 8).
- Jet fuel: Petrosun LLP - 56.8% share; NC KazMunayGas JSC - 24% share. Diesel fuel: Petrosun LLP - 51.1%, NC KazMunayGas JSC - 29.9%.

**Figure 8. Shares of wholesale sellers of gasoline for the period from October 2021 to September 2022, %.**

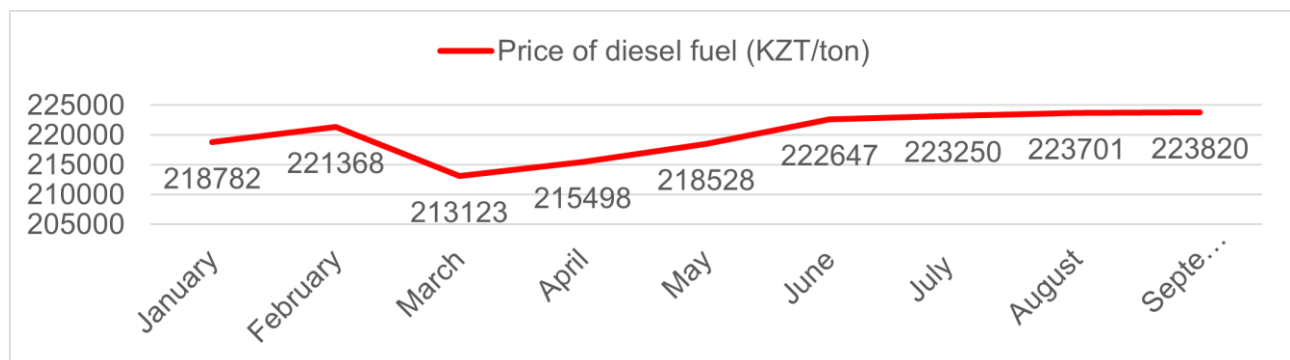


86. Compared to earlier analysis of commodity market, for the period from September 2021 to September 2022, number of market entities increased from 36 to 55.

87. With that, for RON-95 gasoline (*non-regulated price*), there is a market deconcentration, due to new market entity, Petrostar LLP, which occupies a market share of 16%.

88. During analysis, dynamics of prices for petroleum products from two large wholesale distributors - "Petrosun" LLP and "KazMunayGas" JSC was studied.

**Figure 9. Price of diesel fuel, KZT / ton**



89. In this connection, in accordance with paragraphs 4 and 6 of Article 172 of the Entrepreneurial Code, Petrosun LLP, NC KazMunayGas JSC are recognized as entities occupying a dominant position in the market.

90. Taking into account new norms of the Code on ensuring equal access to key capacity, as well as shares, occupied at the market, according to analysis results, Petrosun LLP and NC KazMunayGas JSC were recognized as owners of key capacity.

### 2.1.1. Barriers for competition development

1. over the past 3 years, despite 13% increase in diesel fuel production, **negative balance of the market** persists. Domestic consumption increased from 4.7 to 5.5 million tons, or 15%. The main increase is in agricultural production, where consumption increased by 26%. The second reason is illegal export of petroleum products (*5% of market volume*) and transit transport (*up to 10%*).
  2. high **difference** between wholesale (*227 KZT/l.*) and retail prices (*from 295 to 450 KZT/l.*) is the main reason for dissemination of shadow schemes. The main volume of diesel fuel (*45%*) is sold to large gas station networks, and during agricultural season – to agricultural producers (*up to 30%*). The rest of the market remains **uncontrolled** (*"in the shadows"*).
  3. fuel distribution among agricultural producers is also carried out **non-transparently**, according to distribution lists. **There is no control** over targeted use of preferential fuel.
  4. no less serious consequences arise in retail market, where the share of SMEs decreases annually in conditions of strict price control. In particular, small gas stations have indirect access to resources of oil suppliers, that means higher cost of purchasing fuel;
  5. if price control is established at wholesale and retail markets, then monopoly oil refining services remain **excluded from price regulation**.
  6. **poor quality** of refinery's state management is characterized by the number of unscheduled repairs.
  7. **gradual increase in prices** is a necessary measure to eliminate imbalances at domestic market.
  8. data collection is carried out by SRC of Ministry of Finance, Ministry of Energy and "NIT" JSC.
91. Tax returns for SRC and reports for MoE are generated by gas stations and oil tank farms independently, that **reduces data reliability**, while data collection of "NIT" JSC is carried out automatically through metering devices. However, the system of "NIT" JSC is related only to remainders at gas stations.
92. Thus, there is **no single platform** for collecting and accounting turnover of petroleum products, there is no process automation.

### 2.1.2. Proposals and recommendations for competition development

93. Based on results of analysis, the following proposals were developed for market under consideration:
1. development of petroleum products exchange trading up to 20% of market volume;
  2. regulation of access to oil refining services within the Rules of Equal Access to Key Capacity;
  3. regulation of petroleum products sale within the framework of the Rules of Equal Access to Key Capacity;
  4. return to state regulation of prices for oil refining services, which was in effect until 2017;

5. recognition of oil refining services as licensed activity with qualification requirements of integrated technological process;
6. introduction of full cycle accounting for turnover of petroleum products on the basis of "NIT" JSC, including sales by feedstock suppliers and oil tank farms with budget financing;
7. gradual increase in wholesale and retail prices for petroleum products with increase in excise duty and prices for purchasing oil from subsoil users and subsequent deregulation of the market;
8. changing market model focused on competition of large and small vertically integrated companies;
9. implementation of a set of measures to reduce state participation in market of sale and processing of petroleum products in order to demonopolize market due to inefficiency of state monopoly entity.

## 2.2. Wholesale and retail markets of electric energy

94. Analysis of wholesale and retail markets of electric energy was carried out in accordance with the Agency's Work Plan for 2022.

95. In accordance with paragraph 3 of Article 14 of the Law "On Electric Power Industry", electric energy market consists of two levels: wholesale and retail electric energy markets.

96. According to KEGOC JSC, as of September 1, 2022, **53 Energy-Producing Organizations** (*hereinafter referred to as EPO*) carried out wholesale electricity sales.

97. Also, there are more than 80 market entities operating in wholesale electricity market that supply electricity generated from renewable energy sources (*hereinafter referred to as RES*).

98. However, conditions for sale of RES electricity differ. Thus, according to the Law "On Support for Use of Renewable Energy Sources", all electricity supplied to the grid from RES EPOs is guaranteed to be paid by **Single Buyer** (*FSC for support of RES LLP*) at established tariffs for 1 kWh (*ceiling price until 2018 or auction price after 2018*).

99. **About 20 organizations** that provide services of transmitting electric energy through power lines at the regional level participate in wholesale electricity market.

### 2.2.1. Wholesale electricity market

100. Information about wholesale electricity market entities that occupy dominant or monopolistic position is given in the following table.

**Table 1. Wholesale electricity market entities that occupy dominant or monopolistic position.**

№	Geographical boundaries	Name of EPO (groups of entities)	Market share	Competition level	
				2021	2022 (January-August)
1	Almaty power center	"Samruk-Energy" JSC	93 %	2000 <HHI 8681 <10000	2000 <HHI 8301 <10000
2	Taldykorgan power center	"Samruk- Energy" JSC TEK LLP	70-73 % 12 %	70 <CR(3) 85 <100 2000 <HHI 5580 <10000	70 <CR(3) 92 <100 2000 <HHI 5057 <10000

3	Kyzylorda region	"Samruk-Energy" JSC State Enterprise "Kyzylordatepoelectrocenter"	67 % 19 %	70 <CR(2) 85 <100 2000 <HHI 4837 <10000	70 <CR(3) 90 <100 2000 <HHI 3586 <10000
4	Zhambyl region	"Samruk-Energy" JSC "Zhambyl GRES-1" named T.I. Baturov" JSC	62 % 27 %	70 <CR(2) 89 <100 2000 <HHI 4662 <10000	70 <CR(2) 90 <100 2000 <HHI 4447 <10000
5	Kokshetau power center	"Samruk-Energy" JSC Stepnogorsk CHP LLP	60 % 23 %	70 <CR(2) 83 <100 2000 <HHI 4204 <10000	70 <CR(3) 89 <100 2000 <HHI 3423 <10000
6	Kostanay region	"Samruk-Energy" JSC Group consisting of "EEC" JSC, CHP of "Aluminum of Kazakhstan" JSC and Rudnenskaya CHP SevKazEnergo JSC	> 55 % 24,32 % 18,20 %	70 <CR(3) 97 <100 2000 <HHI 3959 <10000	70 <CR(2) 80 <100 2000 <HHI 4027 <10000
7	Pavlodar region	"Samruk-Energy" JSC Group consisting of SevKazEnergo JSC and Pavlodarenergo JSC	47 % 39 %	70 <CR(2) 86 <100 2000 <HHI 3784 <10000	70 <CR(2) 91 <100 2000 <HHI 4164 <10000
8	Turkestan region and Shymkent city	"Samruk-Energy" JSC Group consisting of "3-Energoportalyk" JSC and "Eurasian Energy Corporation" JSC	65 % 15 %	70 <CR(2) 80 <100 2000 <HHI 4465 <10000	70 <CR(3) 84 <100 2000 <HHI 3329 <10000
9	Zhezkazgan power center	"Samruk-Energy" JSC Group consisting of GRES Topar LLP, Balkhash CHP and Zhezkazgan CHP of Kazakhmys Energy LLP	29-35 % 35,60 %	70 <CR(3) 81 <100 1000 <HHI 2393 <2000	70 <CR(3) 82 <100 2000 <HHI 2448 <10000
10	Akmola region and Astana	"Samruk-Energy" JSC Astana-Energia JSC	> 39 % 50 %	70 <CR(2) 89 <100 2000 <HHI 4036 <10000	70 <CR(2) 90 <100 2000 <HHI 4134 <10000
11	Aktobe region	"Samruk-Energy" JSC "Aktobe CHP" JSC Zhanazholskaya GTPP	> 29 % 29,5 % 28,5 %	70 <CR(3) 87 <100 2000 <HHI 2528 <10000	70 <CR(3) 87 <100 2000 <HHI 2771 <10000
12	East Kazakhstan region	Group consisting of "AES Shulbinskaya HPP" LLP and "AES Ust-Kamenogorsk HPP" LLP Ust-Kamenogorsk CHP LLP "Samruk-Energy" JSC	50,5 % 18,6 % 12 %	70 <CR(2) 70 <100 2000 <HHI 2897 <10000	70 <CR(2) 73 <100 2000 <HHI 2796 <10000
13	Karaganda power center	Group consisting of Karaganda Energy Center LLP and Ust-Kamenogorsk CHP LLP "Samruk-Energy" JSC	56 % 18 %	70 <CR(2) 73 <100 2000 <HHI 3463 <10000	70 <CR(2) 92 <100 2000 <HHI 3384 <10000
14	North Kazakhstan region	SevKazEnergo JSC	100 %	2000 <HHI 9941 <10000	2000 <HHI 5348 <10000
15	West Kazakhstan region	BatysPower GTPP-200 LLP Ural GTPP	39 % 20 %	70 <CR(2) 58 <100 2000 <HHI 1883 <10000	70 <CR(3) 60 <100 2000 <HHI 2448 <10000
16	Atyrau region	Atyrau CHP JSC GTPP OF "KUS" LLP	56 % 25 %	2000 <HHI 3761 <10000	2000 <HHI 3827 <10000
17	Mangystau region	MAEK-Kazatomprom LLP GTPP OF "KUS" LLP	76 % 23 %	2000 <HHI 6323 <10000	2000 <HHI 5577 <10000

101. As can be seen from the table, wholesale electricity market is a highly **concentrated** market.

### 2.2.2. Retail Electricity market

102. Information about retail electricity market entities that occupy dominant or monopolistic position is given in the following table.

**Table 2. Retail electricity market entities that occupy dominant or monopolistic position**

Geographical boundaries	ESO	Market share	Competition level	
			2021	2022 (1st half of the year)
Astana city	PRIME ENERGY	74,7	70<CR(1)	70<CR(2)

	RESOURCES LLP AstanaEnergosbyt LLP	% 14,1 %	75 <100	87 <100
Almaty city	Almatyenergoby LLP	91,3 %	70<CR(1) 91 <100	70<CR(1) 83 <100
East Kazakhstan region	Shygysenergotrade LLP AB Energo LLP	56,1 % 15,6 %	70<CR(2) 72 <100	45<CR(1) 48 <100
Zhambyl region	ZhambylZharykSauda- 2030 LLP	68 %	70 % < CR(3) 90,14 < 100	70 % < CR(3) 85,18 < 100
Mangystau region	Mangystau Zharyk LLP MangystauEnergoMunay LLP AktauEnergoSbyt LLP	43,6% 27,9 % 20,5%	70 % < CR(3) 92 < 100	70 % < CR(3) 91 < 100
West Kazakhstan region	Batys Energy Resources LLP Batys Power LLP	55 % 33 %	70 % < CR(2) 88 < 100	70 % < CR(2) 88 < 100
Pavlodar region (with the exception of Ekibastuz city, aviators' settlement of Pavlodar city)	Pavlodarenergosbyt LLP AB Energo LLP	39,5 % 38,3%	70 % < CR(2) 78 < 100	70 % < CR(1) 79 < 100
Aktobe region	Aktobeenergossnab LLP	76 %	70 % < CR(1) 76 < 100	70 % < CR(1) 81 < 100
Almaty region	Almatyenergoby LLP	99,43 %	70 % < CR(1) 99 < 100	70 % < CR(1) 99 < 100
Atyrau region	Atyrau Energosat LLP Karabatan Power LLP	68 % 24 %	70 % < CR(2) 92 < 100	70 % < CR(2) 93 < 100
Shymkent	Energopotok LLP EnergoSnab XXI LLP Yugenergoimpulse LLP	57 % 12,5 % 11,1 %	70 % < CR(3) 80 < 100	70 % < CR(3) 81 < 100
Turkestan region	Energopotok LLP	82,4 %	70 % < CR(1) 82 < 100	70 % < CR(1) 82 < 100

103. It follows from the above table that retail electricity market in most regions of the country is also highly *concentrated market*.

### 2.2.3. Barriers for competition development

104. The main obstacle to development of competition in electricity markets is **state regulation of prices** for power plants and regulated ESOs. This, in turn, reduces incentives for both power plant owners and new investors to upgrade existing and build new capacities, that generally hinders industry development and keeps the situation with shortage of electricity.

105. In this regard, Government needs to ensure **gradual deregulation of prices** in the industry in order to form market principles of functioning that allow investors to respond to market signals and consider the possibility of building new capacities and ensuring equal conditions of competition between ESOs.

106. In addition, for thermal power plants, which are also producers of thermal energy and are regulated under legislation on natural monopolies, **cross-subsidization** of thermal energy is applied at the expense of electricity tariffs. Thus, thermal power plants are now **in unequal conditions** of competition with other energy enterprises that produce only electricity.

107. The level of state participation in generation also remains high. The share of **18 state-owned companies** in supply of electricity to the grid is 42% or ~0.4% of GDP.

108. There is **still high concentration** in retail electricity market, where shares of ESOs, vertically integrated with electric network and (*or*) energy-producing organizations vary from 55-75% to 75-100%, depending on the region.

109. Currently, the Agency receives numerous requests from ESOs who cannot conclude an agreement on provision of electricity transmission services through networks of Regional Electric Grid Companies (*hereinafter referred to as REC*).

110. RECs, carrying out electricity transmission activities, are subjects of natural monopolies and are regulated by authorized body for natural monopolies in terms of providing equal access to electric grid for consumers and setting tariffs for their services.

111. Since introduction of competitive model until today, the state has issued more than **300 licenses** for purchase of electricity for energy supply purposes. In each region, in addition to guaranteeing electricity supplier, there are at least 5 independent ESOs. With that, there is a positive trend in emergence of new market participants, over the past 5 years, more **than 50 new ESOs** have entered the market.

112. However, due to affiliation of RECs with ESOs, that are guaranteeing suppliers of electricity, occupying dominant positions, RECs are not interested in admitting new ESOs to the market, since new ESOs start servicing legal entities due to existing practice of tariff differentiation.

113. Thus, **RECs refuse** for various reasons to conclude contracts for transmission of electricity with new ESOs.

114. Existing differentiation of ESO tariffs limits competition struggle of both regulated ESO for non-household consumers and unregulated ESO for household consumers. This eventually leads to overflow of legal entities from regulated to unregulated ESOs, increased expenditures of SMEs on utilities, influencing cost of their final products, inefficient use of budget funds in terms of supporting all segments of population, but not socially vulnerable segments of population.

115. Separate factor of low level of competition between ESOs, in addition to differentiation and regulation of ESO tariffs and limited access to REC networks, is **lack of available mechanisms for changing ESOs**. In this regard, it is necessary to create conditions for simplifying procedure for consumers to change his ESO.

116. National Project provides for measures aimed at eliminating price distortions at electricity markets and ensuring access for new suppliers. One of the main tasks is to increase share of consumers who have switched to alternative electricity suppliers, as well as to reduce time for changing suppliers by creation of online platform (*marketplace*).

#### ***2.2.4. Proposals and recommendations for competition development***

117. The Agency proposes the following to ensure development of competition at electricity market.

1. in order to reduce risks of violation of antimonopoly legislation, as well as in order to preserve competition between ESOs, it is necessary to **ensure transparent and equal access** to electricity volumes at Single buyer by digitalizing its services for ESOs and other consumers at uniform prices.
2. ensuring introduction of amendments and additions to legislative acts regarding **exclusion of recognizing own income formed as a result of Single Buyer activities**, and collecting corporate income from this entity.
3. ensuring **gradual abolition of tariff differentiation** by consumer groups for electricity supply in order to create equal conditions of competition between regulated and unregulated ESOs with point subsidization of electricity costs for socially vulnerable segments of population.
4. in order to **reduce cost of switching** for consumers, as well as to strengthen competition between ESOs for consumers, it is necessary to run pilot test of online digital platform of "KOREM" JSC on changing electricity suppliers in one of country's regions for its subsequent scaling-up, with the condition that other developers can be provided services of **marketplace** for online switching of ESOs by consumers;
5. in order to ensure **unhindered access to REC networks**, it is necessary to introduce a practice with legislative consolidation of service model for provision of electricity transmission services, which provides for services on the basis of electricity sales contracts with Single buyer;
6. in order to reduce concentration at wholesale market and develop competition in retail market, it is proposed to **privatize** subsidiaries of Samruk Energy JSC in separate lots with mandatory conditions:
7. in order to increase investment attractiveness and competition, it is necessary to ensure **consolidation of EPO into groups** when approving marginal tariffs;
8. in order to provide equal conditions for competition at electricity market between thermal power plants and other types of plants, it is necessary to take measures to **eliminate cross-subsidization of thermal energy at the expense of electricity**.

### 2.3. Wholesale and retail markets of coal sales

118. Coal industry is one of the most important resource sectors of Kazakhstan. In terms of coal reserves, Kazakhstan is among the top ten leading countries. State balance sheet takes into account reserves for 49 deposits, amounting to 33.6 billion tons, including hard coal – 21.5 billion tons, brown coal – 12.1 billion tons. More than 90% of the proven coal reserves are concentrated in the north and central part of Kazakhstan.

119. According to the information of Ministry of Industry and Infrastructure Development for analyzed period there were **46 contracts** and **1 license for** subsoil use. **27 main market entities** carry out the extraction and primary wholesale sale of coal in the republic.

120. There are enterprises that are at the stage of exploration and preparatory work and, accordingly, do not produce and sell coal.

121. The Agency has developed **Recommendations** (*sectional rules*) for sale of municipal coal through commodity exchanges (*hereinafter referred to as Sectional Rules*).

122. This innovation is registered by the order of the Minister of Trade and Integration No. 498-NK dated August 13, 2021.

123. The main purpose of introduction of this exchange trading scheme is to provide population with "cheap" municipal coal without unproductive intermediaries in the pricing scheme.

124. Provision of direct access for regional monopoly entities for amount of 544 thousand tons in 2021 allowed reducing costs of coal monopoly entities in amount of approx. 5.6 billion KZT.

125. With that, **16 acts of antimonopoly compliance** aimed at reducing risks of violation of antimonopoly legislation by market entities have been agreed with regional owners of coal bases (dead ends) who purchase coal for resale to population for household needs.

126. The issue of selling coal to population has a social nature, in this connection the Agency conducts weekly monitoring of coal selling prices at railway dead ends in order to prevent unjustified price increases.

127. If power-generating coal is sold directly to energy-producing and industrial enterprises, then municipal coal is sold through a network of intermediaries.

128. To do this, coal mining companies use stock trading, where huge volumes (*up to 3 million tons or up to 71% of the annual shipment volume*) are sold within a few minutes to a limited number of suppliers, which do not change for several years (*from 2 to 17*).

129. For example, in December 2022, "Halyk Komir" LLP buys 120 thousand tons of coal at weighted average price of 6,500 KZT/ton through commodity exchange of "TB "Caspian" JSC from "Karazhyra" JSC and resells it for 12,595 KZT/ton.

**Table 3. Primary sale through commodity exchange**

Seller	Stock market	Volume, tons.	Buyer	Transaction amount, KZT	Weighted average. price, KZT/ton.
"Karazhyra" JSC	"TB "Kaspiy" JSC	120,000	Halyk Komir LLP	780 000 000	6 500

**Table 4. Secondary sale through commodity exchange**

Seller	Stock market	Volume, tons.	Buyer	Transaction amount, KZT	Weighted average. price, KZT/ton.
Halyk Komir LLP	"TB "Kaspiy" JSC	1 000	Halyk komir IE	12 595 000	12 595

130. Thus, the mark-up of Halyk Komir LLP, which does not own technically equipped railway dead end on ownership right or other legal grounds, is about 94%.

131. The task of such intermediaries, who do not have storage infrastructure, is to find buyers. Exchange transactions are concluded by brokers who simultaneously represented interests of sellers and buyers, and access to trading is maximally limited for independent suppliers.

132. Some commodity exchanges were opened for the purpose of bidding by certain narrow circle of sellers and buyers, being so-called "pocket" exchanges.

133. The analysis highlights several areas of coal use in the domestic market of the Republic of Kazakhstan: for electric power industry, for municipal needs of population, for industrial enterprises.

134. Bogatyr Komir LLP occupies a dominant position in the market of coal sales for energy-producing organizations (*2018 – 86.07%, 2019 – 86.47%, 2020 – 84.84%, 2021 – 86.33%, the first half of 2022 – 83.1%*).

**Table 5. The share of dominance at the market of coal sales for energy-producing organizations**

N°	Name	2021	First half of 2022
		Share, %	Share, %
1	Bogaty Komir LLP	86.33	83.1
2	"Karazhyra" JSC	7.12	8.91
3	Kazakhmys Coal LLP	3.16	3.41
4	"Eurasian energy corporation" JSC	2.57	0.83
5	"Angrenor Energo" JSC	0.32	3.43
6	Other market entities	0.5	0.32
	Total	100	100

135. At the market of coal sales for EPO needs, Bogaty Komir LLP occupies constant dominant, almost monopolistic share of more than 80% on average.

**Table 6. Price dynamics (weighted average) for power generating coal in 2018-2021 and the first half of 2022, KZT per 1 ton without VAT**

N°	Coal mining companies	2018	2019	2020	2021	I half of 2022
1	Bogaty Komir LLP	1 940	1 940	2 132(9,9%)	2 077(-2,6%)	2 228(7,3%)
2	Eurasian Energy Corporation JSC	3 206	2 260(-29,51%)	3 707(64,03%)	2 765(-25,41%)	3 292(19,06%)
3	"Karazhyra" JSC	3 146	3 330(5,85%)	3 458(3,84%)	3 599(4,08%)	3 903(8,45%)
4	Kazakhmys Coal LLP	3 757	3 846(2,37%)	2 814(-26,83%)	3 334 (18,48%)	3 635 (9,03%)
5	"Angrenor Energo" JSC	2 730	2 533(-7,22%)	2 797(10,42%)	3 931(40,54%)	4 960(26,18%)

136. In addition, in 2022, Bogaty Komir LLP increased selling price for power-generating coal from August 1 to 2,282 KZT/ton, from September 1 to 2,396 KZT/ton, from October 1 to 2,516 KZT/ton, from November 1 to 2,642 KZT/ton; from December 1 up to 2,774 KZT/ton, and from January 1, 2023 up to 2,968 KZT/ton.

137. Taking into account existing signs of violation of legislation in the field of competition protection, issue of taking antimonopoly response measures against Bogaty Komir LLP is currently being considered for establishing monopolistically high price for power-generating coal, namely, exceeding growth rates of prices for power-generating coal in January-December 2022.

138. "Karazhyra" JSC and "Shubarkol Komir" JSC occupy a dominant position in market of coal sales for needs of municipal consumers with combined dominant share more than 60%.

**Table 7. The share of dominance at the market of coal sales for municipal consumers**

N°	Name	2021	First half of 2022
		Share, %	Share, %
1	"Karazhyra" JSC	29.08	30.26
2	"Shubarkol Komir" JSC and Eurasian Energy Corporation JSC	33.94	34.12
3	"Maykuben-West" JSC	11.42	12.57
4	"GRK "Sat Komir" JSC	4.01	2.77
5	Sherubai Komir LLP	2.61	3.65
6	STS-1 LLP	3.38	4.27
7	Coal Resource LLP	2.47	2.07
8	Transkomir LLP	1.79	3.04

9	Kulan Komir LLP	1.53	0.58
10	Gamma Sarykol LLP	1.54	1.47
11	Bogatyr Komir LLP	1.25	0.78
12	"Razrez "Kuznetsky" LLP	1.54	1.59
13	"Firm "Rapid" LLP	1	1.16
14	Other market entities	4.44	1.67
	Total	100	100

139. Degree of monopolization of the market for extraction and wholesale sale of coal for municipal needs is **highly concentrated**.

140. At wholesale market of municipal coal, share of three coal mining companies is 74.4%.

### 2.3.1. Proposals and recommendations for competition development

#### 1. elimination of intermediaries:

- establishment of requirements for wholesale and retail suppliers of coal for availability of storage infrastructure, as well as ban on sales of coal between intermediaries;
- making changes to the List of exchange-traded goods and the Rules of exchange trading in terms of regulating sale ratio of 50% of municipal coal through commodity exchanges: 90% long-term annual contracts, 10% spot trading;

141. The recommendation has been implemented. Ministry of Trade and Integration adopted Order No. 294 dated July 19, 2022, which provides for increase in exchange trading of municipal coal for regional monopoly entities up to 50%. With that, for the Rules of exchange trading to correspond to List of exchange-traded goods, Ministry of Trade and Integration amended the List in terms of increasing the exchange trading of municipal coal for regional monopoly entities **to 50%**, and also introduced obligation to offer their volumes at exchange trading for market entities engaged in coal processing (*enrichment*).

#### 2. reduction of market concentration by:

- compulsory joint use (*sharing*) of large coal deposits by sites through revising contractual territories and holding auction for granting rights to alternative market entities on these sites.
- coordination of transactions on transfer of subsoil use rights for coal mining for economic concentration;

#### 3. timely and full **coverage of demand** in the domestic market through:

- priority provision of rolling stock for transportation of municipal coal purchased by regional monopoly entities at commodity exchange;
- implementation of the mechanism of regional bases for the supply of municipal coal with possibility of switching to basis of supply of the Republic of Kazakhstan in case of unclaimed volumes;

## 2.4. Communication services market

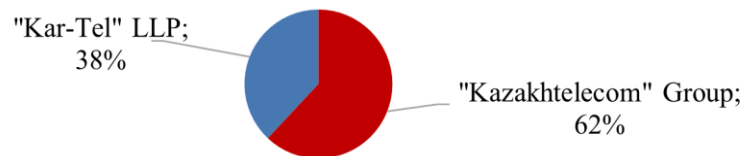
142. According to BNS, in 2022 the volume of telecommunications market in Kazakhstan amounted to 1.106 trillion KZT, that is 8% more than volume of communication services in January-December 2021. Volume of local telephone services in January-December 2022, according to BNS, amounted to 29.1 billion KZT, that is 16.6%

less than the volume of 2021, Internet services – 474.1 billion KZT (15.4% more) and cellular services – 250.6 billion KZT (2.2% less).

143. Today, cellular communication market in Kazakhstan is **duopolistic**, with only **2 market entities** – Kazakhtelecom JSC group (*Kcell JSC, Mobile Telecom Service LLP: Tele2/Altel*) with share of over 60%, as well as private monopoly entity represented by Kar–Tel LLP (*Beeline*).

144. The structure of shares in cellular communication market is as follows:

Figure 10. Share in cellular communication market, %.



145. The market is characterized by **high concentration** with predominant share of **state participation** and absence of free radio frequencies. **High share of state participation** remains in the market, that negatively affects state of the market.

146. Thus, due monopolization by the state and high concentration of the market, there is decrease in competition for the client between monopoly entities, **complaints** about unilateral price increases, imposition of unnecessary services for consumers, as well as poor quality of communication and Internet services have increased.

#### 2.4.1. Barriers for competition development

147. Distribution of radio frequency spectrum. Radio frequency spectrum (*hereinafter referred to as RFS*) is a **limited resource**. Until 2022, the RFS was distributed among telecom operators mainly according to recommendations of the interdepartmental commission on radio frequencies. According to the Agency, this mechanism for distribution of limited resource was **non-transparent** and, in this regard, the need to introduce an **auction** mechanism that eliminates barrier to access limited resource has appeared.

148. The Agency initiated a project to develop competition at cellular communication market, including through auctions, back in 2020 as part of implementing Roadmap for Development of Competition in key commodity markets. So, during implementation of the abovementioned Roadmap, non-competitive procedure for distribution of radio frequencies for organization of new types and technologies of communication was **canceled**.

149. In addition, after the Agency provided information on how to distribute radio frequency bands through auctions, the Head of State instructed Ministry of Digital Development, Innovation and Aerospace Industry (*hereinafter – MDDIAI*) to introduce, together with the Agency, **transparent mechanism for distribution of RFSs** by the end of 2022.

#### 2.4.2. Proposals and recommendations for competition development

150. Taking into account identified barriers for development of competition, the Agency proposes:

1. following the results of auction on allocation of frequency bands for 5G, the Agency **made a number of recommendations** to the Government regarding the holding of the next **auction in a new format**;
2. **demonopolization** of Kazakhtelecom JSC group of companies through phased implementation of subsidiaries (*mobile operators*), as well as amendments to Rules for Provision of Cable Channels for Use. These proposals are reflected in Action Plan for implementation of the Concept.

### 2.4.3. Use of cable channels

151. In 2022, Council for Development of Competition in Telecommunications under the Agency, which includes representatives of MDDIAI, Association and telecom operators, jointly developed separate amendments to Rules for Provision of Cable Channels for Use.

152. Changes in legislation propose **new procedure for dealing** with complaints from applicants in case of refusal to provide access to cable channels. In such cases, the applicant has the right to file a complaint with MDDIAI. Based on the complaint, an **inspection is appointed with involvement of special commission**, which includes representatives of MDDIAI, National Chamber of Entrepreneurs and industry associations, to conduct a technical inspection.

153. The amendments are aimed at regulating interaction of the lessor and the lessee when using cable channels, setting deadlines for concluding contracts, signing land provision certificate, as well as deadlines for acceptance of construction and installation works in cable channels.

154. With that, in order to ensure access to a regulated service, Rules for Activities by natural monopolies have been supplemented with a norm ensuring use of **no more than 75% of the total volume of cable channels** (*for their own needs*) by natural monopoly entity, which is also a consumer of these services, within twelve months from the actual start of operation, remaining 25% (*in reserve*) for consumers.

155. Based on results of work in 2022, the Agency jointly with MDDIAI approved **Roadmap for development of competition in the telecommunications market**, which included such measures as:

- analysis of current procedure for conducting auctions for distribution of radio frequencies (*taking into account international experience*) in order to create conditions for reducing market concentration;
- reduction of state participation in communications market;
- analysis of connection procedure and interaction of telecommunications networks of telecom operators;
- determination of procedure for competitive transfer of cable channels, built at the expense of budgetary funds, etc.

## 2.5. Railway freight transportation services market

156. Since 1999, since the adoption of Law "On Railway Transport", market of railway transportation of goods has been withdrawn from natural monopoly into competitive environment in order to develop competition.

157. With that, the market of railway transportation of goods remains one of the most highly **concentrated** with undeveloped competition. Share of main player represented by KTZ-Cargo Transportation LLP (*hereinafter – KTZ-CT*), which dominates the market, is **over 95%**.

158. In the period from 2014 to 2022, Ministry of Industry and Infrastructure Development issued **48 licenses** for the transportation of goods by rail. With that, as of today, only **2 private carriers** gained access to mainline railway network (*hereinafter referred to as MRN*) as part of pilot project since 2019.

### 2.5.1. Barriers for competition development

1. Presence of **vertically integrated group** of railway transport companies.  
 KTZ is **National Infrastructure monopoly entity**. In accordance with the Law "On Natural Monopolies", services of mainline railway network are classified as natural monopoly. Access to the MRN services for carriers is provided by the infrastructure monopoly entity represented by KTZ.  
**KTZ delegates** its functions provided for by Law to its **affiliated company KTZ-CT**, which has a **priority right** compared to other carriers to participate in the process of organizing access to MRN services, namely, to consider carriers' applications, as well as approve draft contracts for provision of MRN services. So, for example, **KTZ-CT, to which National Infrastructure monopoly entity delegated part of its powers under a separate contract, participates in considering applications** submitted by private carriers for access to the MRN, that leads to **limited access to MRN** for private carriers.  
 Thus, KTZ's ownership of 100% share in KTZ-CT **without completing functional and organizational allocation** of National Infrastructure monopoly entity allows it to provide **exceptional advantages** to its subsidiary – KTZ-CT in transportation market and providing deliberately **discriminatory conditions** for other carriers. This circumstance leads to **privileged position** of KTZ - CT LLP in this market compared to other carriers at obtaining right of access to MRN services and transportation process, **creating obstacles** to access to market for other participants;
2. "Kedentransservice" JSC, "KTZ Express" JSC, "Kaztemirtrans" JSC and others are subsidiaries of KTZ. KTZ-CT provides **benefits and preferences, discounts, credit conditions** to its companies in competitive market, that are the signs of **limiting competition**.
3. barriers during **inspection of containers** with cargo at Dostyk and Altynkol station tracks lead to long downtime of railway cars and additional costs;
4. at the end of 2020, Ministries of Industry and Infrastructure Development and National Economy, KTZ and private carriers developed and adopted **Regulations** for Technological Interaction between National Infrastructure monopoly entity and cargo carriers during in organization and performance of transportation. According to private carriers, practical application of this Regulation has not revealed any critical problems. With that, the abovementioned Regulations have **not been prolonged** for new period, and therefore there is currently **no procedure** regulating operations National Infrastructure monopoly entity in plurality of cargo carriers;
5. **inefficient organization** of transportation process and absence of **KTZ's interest in admitting** private carriers. According to KTZ, expansion of routes for private carriers entails decrease in throughput and processing capacity of stations and sections, increase in downtime of trains and locomotives of both National carriers

and private carriers, massive oncoming reserve runs of locomotives of both National carriers and private carriers, increase in underweight and incomplete trains, that would entail a decrease in carrying capacity railway infrastructure of the country, abandonment of trains due to congestion on infrastructure and lack of locomotives.

6. **significant wear** (*up to 70%*) of fleet and **insufficient provision** of locomotive traction create seasonal shortages in carrying capacity of the railway transport system, contributing to increase in delivery time of passengers and cargo. Technological obsolescence of significant part of locomotive fleet increases costs and reduces overall efficiency of transportation, as well as exacerbates negative impact of railway transportation on the environment;
7. absence of **long-term access to MRN services** is a significant barrier preventing private carriers from using borrowed financing necessary for multimillion-dollar investments and purchase of traction rolling stock the infrastructure monopoly entity denies conclusion of long-term contracts with private carriers for access to MRN services.

### *2.5.2. Proposals and recommendations for competition development*

159. Taking into account identified barriers for development of competition, the Agency proposes:

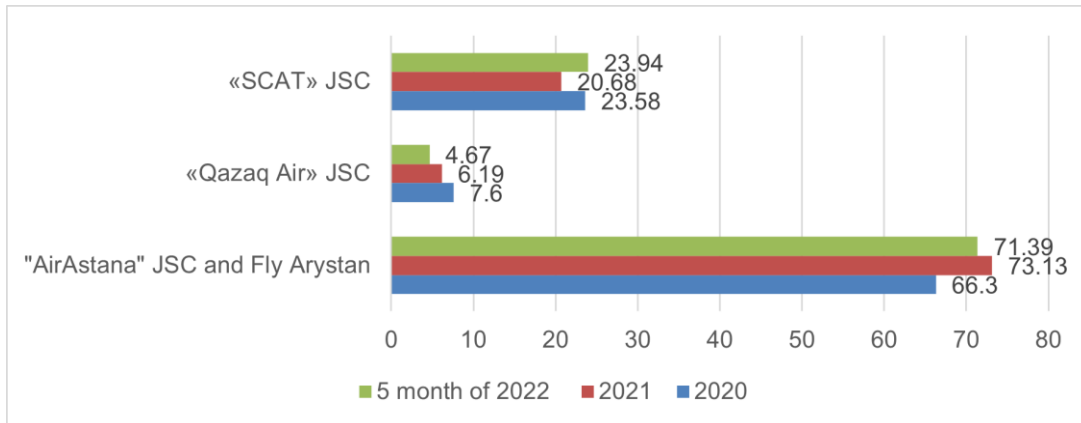
1. **completion** of functional and organizational **separation** of National Infrastructure monopoly entity with dispatching regulation functions, **to segregate it as independent legal entity**. So, for example, in Germany there is **organizational division** of infrastructure block, transportation and logistics activities into separate organizational and independent segments. The organization of DB Group's activities is characterized by control over infrastructure block from state regulator to ensure non-discriminatory access to MRN and related services, demonstrating **high effectiveness** of this approach;
2. **completion** of pilot project and providing **access to services for private carriers** during transportation of goods **in long-term periods** with necessary amendments and additions to the regulatory legal acts regulating the access of carriers to the services of Ministry of Transport. In accordance with the Concept of development of transport and logistics potential until 2030, it is planned to increase share of private carriers in the railway transportation of goods by at least 30% in 2030.
3. **determination of KPI** for KTZ in order to improve throughput capacity of railway infrastructure, subject to plurality of carriers;
4. work **to improve KTZ information systems**, providing for change in MRN infrastructure operator's system, **with open services for integration of private carriers**, as well as automation of planning processes;
5. revision of current tariff system **in terms of plurality of carriers** and, if necessary, development of new approaches taking into account results of an economic analysis of risks and benefits.

## **2.6. The market of services for regular passenger transportation by air**

160. Analysis of market of regular passenger air transportation was carried out on the basis of price monitoring results, identified signs of violation of competition protection legislation.

161. Domestic air transportation is carried out on more than **40 routes**. Regular commercial transportation is carried out by **3 airlines**, main share is occupied by "AirAstana" JSC and Fly Arystan, "Qazaq Air" JSC, "SCAT" JSC.

**Figure 11. Distribution of airlines's shares between "AirAstana" JSC and Fly Arystan, "Qazaq Air" JSC, "SCAT" JSC**



162. With that, due to different conditions of market access, qualification requirements, regulatory regulations for airlines, domestic and international air transportation cannot be considered as one commodity market.

163. Results of analysis, as well as calculation of coefficient and market concentration showed that market for passenger air transportation services by regular (*domestic*) flights for analyzed period belongs to 1 type of market – highly **concentrated** with insufficiently developed competition.

164. In addition to the above, the main share in this market is occupied by "AirAstana" JSC and Fly Arystan, "Qazaq Air" JSC, "SCAT" JSC, while 2 companies belong to "National Welfare Fund "Samruk-Kazyna" JSC. In turn, FlyArystan is a division of "AirAstana" JSC, created according to the low-cost carrier system, carries out regular transportation without being a legal entity. Thus, we believe that presence of airlines with state participation leads to decrease in competition between market participants, absence of interest from foreign investors, that generally negatively affects competition.

### ***2.6.1. Conclusions, suggestions and recommendations on development of competition at commodity markets under consideration***

1. it is necessary to accelerate sale of state share in "QazaqAir" JSC and "AirAstana" JSC;
2. prior to sale of "AirAstana" JSC, it is necessary to single out FlyArystan as a separate market entity;
3. eliminate restrictions on "open skies" mode for passenger flights "on routes that are not operated by designated Kazakhstani carriers", and also extend them to all international airports. Also, in order to strengthen competitiveness and improve quality of provided services, increase profitability of airports, it is proposed to gradually switch to long-term, multilateral agreements;
4. develop regulatory legal act regulating use of dynamic pricing in air transport;

5. introduce amendments to legislation providing for excluding collection of fuel surcharge.

## 2.7. Medicines sales market

165. Analysis of medicines sales market was carried out in accordance with the Agency's Work Plan for 2022.

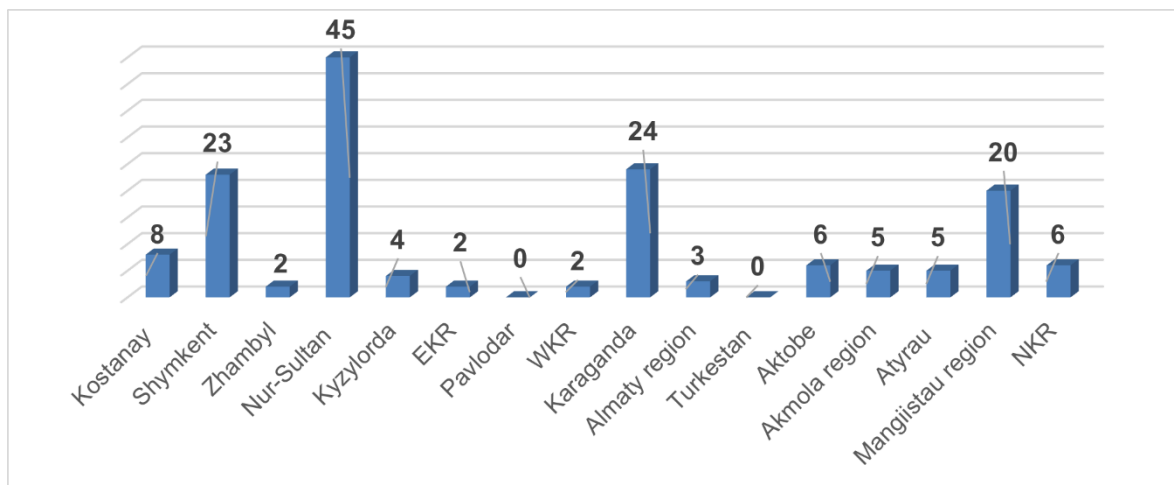
166. Boundaries of commodity market for medicines sales are defined by regions - in wholesale sales, cities of regional significance – in retail sales.

167. In commodity market under consideration, **22 domestic manufacturers** of medicines operated during analyzed period.

168. Share of domestically produced medicines in proportion to volume of (*imported*) medicines from 2019 to 2021 increased from 20.7% to 31.9%. Share of imported products accounts for 71%.

169. 155 licenses were issued in country's **wholesale market**, according to results of analysis, **149 entities** were identified.

Figure 12. Number of licenses issued by region



170. Market entities that occupy dominant position in wholesale market of medicines within borders of individual regions

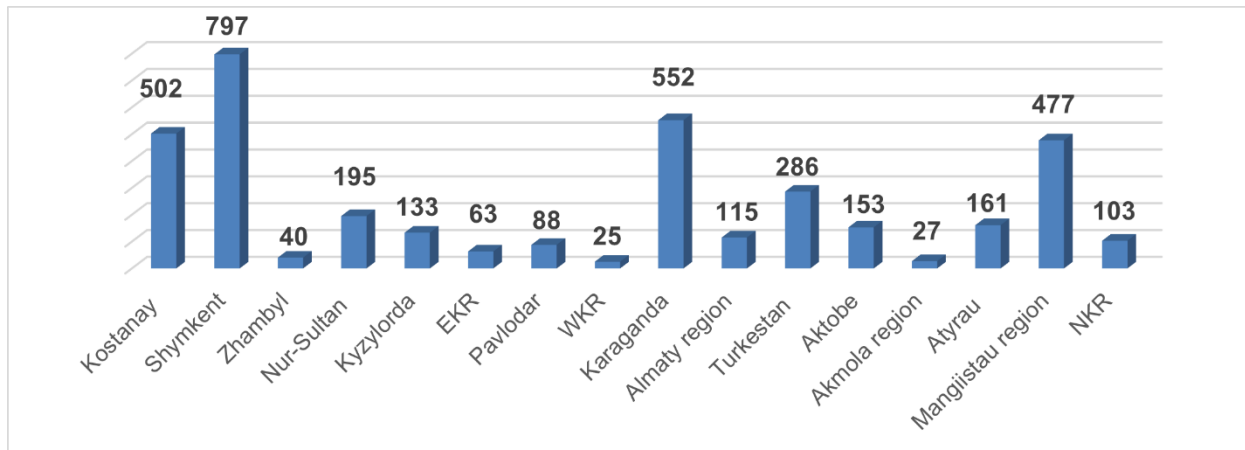
171. The wholesale market is characterized as:

- highly **concentrated** with undeveloped competition in the following regions: Kostanay, Pavlodar, West Kazakhstan, Karaganda, Almaty, Aktobe, Atyrau, Mangistau, North Kazakhstan regions and Astana.
- **moderately** concentrated in East Kazakhstan region.

172. According to analysis results, 16 market entities occupying dominant positions were identified in wholesale market of medicines.

173. In **retail market**, 3,717 licenses were issued across the country, according to results of the analysis, **1,108 entities** were identified. In 2022, number of pharmacies and pharmacy outlets was **9,861**.

Figure 13. Number of licenses issued by region in retail medicines market



174. The retail market is characterized as:
- highly **concentrated** with undeveloped competition in the following regions: Kostanay, Shymkent, Zhambyl, Pavlodar, WKR, Aktobe, Atyrau, Mangystau, Almaty;
  - **moderately** concentrated in Astana, East Kazakhstan region, Turkestan, Akmola, North Kazakhstan Region, Almaty;
  - low-**concentrated** in Karaganda region.

175. According to results of analysis, 34 entities occupying dominant position were identified in the retail sale of medicines.

176. Despite large number of licenses issued throughout the republic (*wholesale market - 155, retail market - 3717*), allowing sales of medicines, the market in most regions is highly **concentrated**.

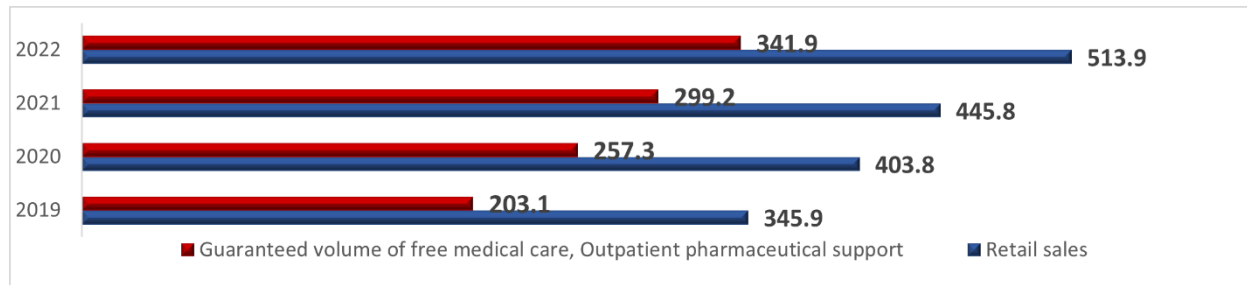
177. In accordance with Article 247 of the Code "On Health of People and Healthcare System", within the framework of guaranteed volume of free medical care and (*or*) in system of compulsory social health insurance, a single distributor represented by SK-Pharmacy LLP performs centralized procurement for 2 thousand medical organizations (inpatient and outpatient provision), providing patients with equal high-quality medicines at equal price.

Figure 14. Dynamics of purchase of medicines by SK-Pharmacy LLP, billion KZT



178. Out of 62 suppliers, which supply medicines, purchased by single distributor in 2021 and 2022, more than 45% was supplied by "Nobel Almaty Pharmaceutical Factory" JSC, "Chimpharm" JSC, "AK NIET" LLP, "KFK "MEDSERVICE PLUS" LLP, "Karaganda Pharmaceutical Complex" LLP, "STO-PHARM" LLP.

Figure 15. Distribution of volume of medicines by consumption groups, billion KZT

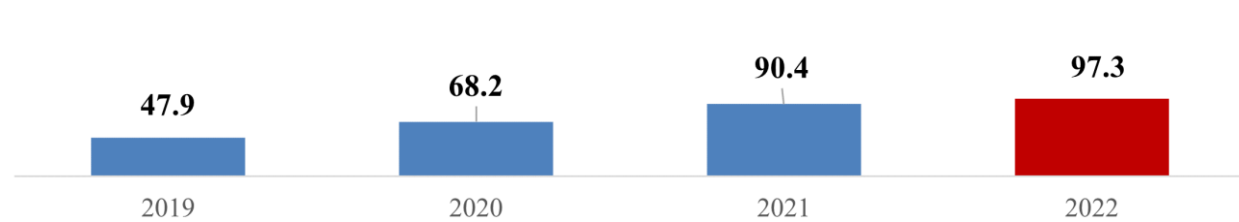


179. In 2022, in comparison with 2019, there is an increase in volume of procurement of domestically produced medicines, increase amounted to 49.4 billion KZT. For 13 years of domestic manufacturers' support in the form of long-term contracts, production of 317 medicines or 39.3% of range of medicines has been established.

180. Volume of medicines purchased at the expense of public funds amounted to 203.1 billion KZT in 2019, 257.3 billion KZT in 2020, 299.2 billion KZT in 2021.

181. One of tools for supporting and developing pharmaceutical industry is conclusion of long-term contracts within Guaranteed Volume of Free Medical Care and Compulsory Social Health Insurance system with domestic manufacturers.

Figure 16. Purchase of domestic medicines under long-term contracts, billion KZT



182. In 2022, in comparison with 2019, there is an increase in volume of procurement of domestically produced medicines, increase amounted to 49.4 billion KZT. For 13 years of domestic manufacturers' support in the form of long-term contracts, production of 317 medicines or 39.3% of range of medicines has been established.

### 2.7.1. Barriers for competition development

1. **excessive price regulation**, that does not correspond to international practice. Kazakhstan is the only country that regulates prices of all medicines. If compared with other partners in the EAEU, in the Republic of Belarus only medicines used for treatment of oncological and cardiovascular diseases are regulated, in Kyrgyzstan - medicines for treatment of COVID 19, in Russia only vital and important medicines are regulated, in Armenia there is no price regulation;
2. **long term** for entry of medicines into country's market ranging from 3 to 5 years, which is due, among other things, to non-compliance with deadlines regulated in NLA, absence of possibility for simultaneous passage of procedure for inclusion of medicines in various lists of medicines, absence of deadlines for meetings of Formulary Commission, as well as absence of transparency in drug registration procedures;
3. import **dependence** of about **71%** due to absence of effectively built system for support and development of domestic manufacturers of medicines;

4. individual wholesale pharmaceutical companies sell medicines to their affiliated retail chains **at lower retail prices** than wholesale ones, that, according to small pharmacy organizations, limits competition in the market.
5. requirement stating that retail pharmaceutical market entities need to comply with **standard of good pharmacy practice**, provided for in Code "On Health of people and healthcare system". According to representatives of pharmacy business, non-compliance with GPP standards could lead to withdrawal of significant number of pharmacies and monopolization of market from January 1, 2023.

### 2.7.2. *Proposals and recommendations for competition development*

183. Taking into account identified barriers for development of competition, the Agency proposes:

1. until 2026, in stages, to **abandon state intervention in pricing** of medicines, while maintaining price regulation for medicines purchased within guaranteed volume of free medical care and (or) in compulsory social health insurance system.  
As systemic measures in work carried out by the Agency to improve pricing of medicines in 2022, amendments were made to the Code "On Health of People and the Healthcare System", under which Ministry of Health approves maximum prices for retail and wholesale sales of medicines included in list of medicines subject to price regulation by agreement with antimonopoly authority no more than once every six months, as well as in relevant Rules (*hereinafter referred to as Rules 247*)<sup>12</sup> regarding definition of criteria for inclusion in the list of medicines subject to price regulation.  
With that, the first stage of withdrawing medicines from state regulation should be decisive for making decisions on the rest. In fact, since January 2023, prices for 376 trade names of over-the-counter medicines have been deregulated. Deregulation of prices for medicines will open access to the market of Kazakhstan to many analogues of medicines, will promote competitive pricing, return of medicines that have left the market;
2. to simplify **entry into market**, it is necessary to amend Code "On Health of People and Healthcare System" and Rules 247, to approve uniform rules for formation of KNF, register of ceiling prices for medicines for INN purchased within guaranteed volume of free medical care and (or) compulsory social health insurance system, parallel inclusion into list of IPS and ID, to regulate periods of meetings of formulary commission;
3. to ensure complete **digitalization** of all business processes of "entry" of medicines and medical devices into Kazakhstan's market according to "one window" principle as public service.

184. Implementation of proposed measures will lead to emergence of new innovative medicines, attraction of BIG PHARMA, localization of production, reduction of import dependence.

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<sup>12</sup> Order of the Minister of Health dated December 11, 2020 No. KR DSM-247/2020 "On approval of Rules for regulation, formation of ceiling prices and margins for medicines, as well as medical devices within guaranteed volume of free medical care and (or) in the system of compulsory social health insurance" // <https://adilet.zan.kz/rus/docs/V2000021766>;

### 3. Tasks of antimonopoly authority

185. In 2023, the Agency's activities will continue in the following **key areas**.

#### 3.1. Improvement of competition protection legislation

186. Despite the consistent development of competition protection legislation, the rapidly changing external environment actively creates new challenges for competition and requires measures to further improve competition protection legislation. In 2023, taking into account the execution of instructions to **improve the efficiency of competition regulation in order to change the structure of commodity markets and business development**, given by the Head of State at an expanded Government meeting on the country's socio-economic development on April 19, 2023, the Agency plans to develop a number of legislative measures forming the basis for "**sixth antimonopoly package**", including the following areas:

1. obtaining **access to information bases** of state bodies.  
The main activity of antimonopoly authority is based on collecting and processing data (*information*), which makes it possible to determine the structure of markets and take antimonopoly response measures. Taking into account that access to departmental information of state bodies is legally limited, the Agency is working on legislative provision of **access** to information and databases of state bodies. With that, for the purpose of information-and technical access to data, it is planned to develop **a digital ecosystem** for the Agency;
2. **reducing the administrative burden** on market entities and business development.  
Violation of competition protection legislation is expressed in monopolistic activities limited by the Code, carried out by market entities, including micro and small business entities.  
In order to identify and suppress violations committed in commodity markets where large business entities operate, it is proposed to **exclude micro and small businesses** from the sphere of antimonopoly control.
3. **strengthening** antimonopoly response measures.  
In order to fulfill urgent orders of the Head of State, it is proposed to carry out an analysis to identify the dominant or monopoly position of a market entity **during the investigation** itself.
4. measures to **demonopolize** entities of commodity markets.  
In order to **activate** a mechanism for demonopolization of market entities that restrict competition, it is proposed to **increase** the period of repeated abuse by a market entity of its dominant or monopoly position from one calendar year to five years. An increase in the period of repeated abuse will be the basis for applying to court with a claim for a **forced split** of the market entity. Today, the use of the current mechanism is not possible due to the long period (*up to 2-3 years*) associated with proving the existence of violation;
5. consolidation of legal status and powers of the Agency's Management Board at the legislative level, the introduction of preliminary public discussion of transactions on economic concentration, and its optimization.  
To increase the transparency of the Agency's decisions, it is proposed to determine the status and powers of the Agency's **Management Board** at the legislative level. In turn, it is planned to adopt legislative measures aimed at introducing measures provided for roadmaps for the development of competition adopted jointly with the

sectoral central state bodies, which, among other things, provide for point solutions for demonopolization of commodity markets. These are deregulation, including price deregulation, separation of monopoly groups with state participation, privatization of state-owned companies, measures to ensure direct and equal access to monopoly resources and infrastructure, increased exchange trading, evaluation of efficiency of use, and competitive distribution.

187. A separate direction for improving competition protection legislation is related to executing instructions announced in the Presidential Address dated September 1, 2022.

188. In his speech, the Head of State K.K. Tokayev noted that "institutional solutions are required for further demonopolization of the economy. It is necessary to define the concept of "**conglomerate**" at the legislative level. Inter-related market entities are required to obtain permission for economic concentration. All their transactions should be carefully checked, including signs of using non-market prices."

189. Taking into account these instructions, the Agency proposed a **definition of conglomerate** that is relevant from an antimonopoly regulation point of view, in particular, the following **qualifying features of conglomerate** are identified:

- the presence of dominant (*monopoly*) position in the commodity market;
- simultaneous presence of an entity in adjacent commodity markets.

190. The formation of conglomerates leads to a high degree of market concentration, the emergence of barriers to entry into commodity markets, selective patronage, and favoritism from the state. Monopoly groups of companies, using limited resources and infrastructure, restrict access of other entities to relevant and adjacent commodity markets.

191. In addition to the concept of conglomerate, the Agency proposed to maintain a **register of conglomerates**, as well as analyze and monitor their activities. In order to ensure control over the creation of conglomerates, an amendment to Article 205 of the Code on analysis of vertical Mergers and Acquisitions has been proposed.

### 3.2. Restriction of state participation in entrepreneurial activity

192. Taking into account the observed trend of increasing state participation in entrepreneurial activity, it is extremely important **to change the current role of the state** in the economy by selectively reducing it and ensuring equal conditions for all market participants. In this regard, **limiting the state's participation in entrepreneurial activity** is identified as one of the key areas in the Agency's activities.

#### 3.2.1. Privatization

1. An important task is to ensure **an effective and balanced privatization process**. There are successful examples in international practice, for example, "rapid" privatization in Poland, balance is needed between "shock therapy" and planned IPO. It is necessary to use basic **selection indicators**, upon reaching which the entity will be subject to privatization. Decisions on sales options should be made taking into account the current **market structure**. One of the new approaches is **privatization "on request"**, it gives the entrepreneurs the right to choose the object of privatization. The object is subject to sale if there is a private initiative.
2. In addition, there is a task to conduct an analysis of state property in order to form a list of new objects **for transfer to a competitive environment**. With that, in order to prevent the increasing presence of the state in entrepreneurship, the Government needs to regulate the procedure for **excluding enterprises from**

**privatization plan** in coordination with antimonopoly authority, providing for the responsibility of political officials for its non-fulfillment.

3. In order to prevent monopolization **in the private sector**, it is necessary to legislate developed amendments to the Agency for Privatization of Large Facilities. Execution of the Agency's proposals will reduce the share of state participation in the economy, becoming an additional incentive for the development of private entrepreneurship and competition.
4. Along with this, there is a task to ensure the implementation of all projects with a state participation share of less than 50% **in enterprises that have already paid off** and the introduction of a **limit on the period of state participation** in such projects to 5 years.

### 3.3. Improving activities of antimonopoly authority

193. The development of competition policy requires significant improvement in quality of measures to protect and promote competition, further improvement of law enforcement practice. In this regard, work will continue on improving activities of antimonopoly authority.

194. In particular, one of the main tasks is conducting full-fledged multi-factorial economic analysis of market situation, taking into account current trends in development of competition protection legislation. In this regard, methodology of conducting planned analyses will be revised <sup>13</sup>in order to improve quality of assessing mechanisms of state, normative regulation of markets, economic conditions of their functioning, impact of competition measures on economic macro indicators, using econometric methods of analysis.

195. To improve efficiency of antimonopoly authority, a functional analysis of the Agency will be carried out. Based on the results of analysis, an algorithm of interaction between central office and territorial divisions will be developed, eliminating duplication and aimed at strengthening internal control. For this purpose, forms of collecting information, reports, automated accounting, deadlines for submission of information and its analysis, range of issues to be rechecked and monitored, will be developed. Investigations and analyses will be conducted on ongoing annual basis.

196. Conditions for selecting commodity markets and their participants for analysis and monitoring will be specified. Procedure for conducting unscheduled analyses will be optimized taking into account practice and new requirements of price control at commodity markets.

197. Special attention will be paid to applying current methodology for analysis of competition in relation to digital economy. Emergence of new digital products offered under new monetization models, mechanisms of interaction between suppliers and buyers leads to change in market structures, and antimonopoly authorities of many countries face the need to change traditional sets of tools used by regulatory authorities to perform their functions.

198. Practice of conducting investigations will be strictly regulated through adoption of appropriate instructions, which will determine signs of each type of antimonopoly violations, timing of examinations, requesting and studying requested information.

199. In order to optimize the process of collecting information necessary for analysis and response measures, work will be carried out to expand indicators and the list of commodity markets of the dashboard "analytical map of competition state", which will allow monitoring changes in the concentration of commodity markets, dynamics of sales volumes, prices and basic costs of participants in real-time.

200. Taking into account the corporate governance mechanism implemented in the Agency, which provides for a collegial format of coordinating results of investigations, analyses, economic concentration, and types of activities, this will increase the transparency in making key decisions.

201. Measures developed to improve mechanisms for protection and development of competition will be aimed at reducing a number of violations by increasing the effectiveness of **preventive measures** of antimonopoly regulation, as well as improving quality of decisions taken by the antimonopoly authority.

202. An important task for effective competition policy, proceeding from the President's instructions, given at an extended meeting of the Government with the participation of the President on April 19, 2023, is to **improve the qualifications of judges** specializing in cases involving violations of the antimonopoly legislation.