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INDEPENDENCE OF COMPETITION AUTHORITIES – FROM DESIGNS TO PRACTICES

Contribution from Kazakhstan

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INDEPENDENCE OF COMPETITION AUTHORITIES--FROM DESIGNS TO PRACTICES

-- Kazakhstan --

1. Competition policy is a highly complex policy, success of which depends on institutional potential of the authorities implementing competition legislation.
2. The “efficiency” of competition legislation to a big extent on one hand depends on the status, organization, financial circumstances of the department that enacts norms of the substantive law, the staff competence, and on the other hand, it depends on procedural opportunities, collection of evidence, and last but not least on the level of gravity and adequacy of sanctions.
3. The independence of competition authorities and the transparency of their work are considered to be the fundamental factors rendering the efficiency of antimonopoly legislation, which also signify that the department has an institutional authority in introducing such decisions and implementing them in the future.
4. The independence of competition authority is conditioned by the following factors:
 - Presence of an independent legal status;
 - Consistent terms of office for competition executives;
 - Financial independence in terms of providing monetary means and management of its own resources.
5. To have real independence in planning its work independently of external interference, competition authorities should have formal self-sufficiency, which means that it should have a legal incorporation that is separate from other state authorities.
6. In the Republic of Kazakhstan, like in practice of many developed countries, one of the main mechanisms of increasing competition of national economy is efficient competition policy.
7. In June of this year, the competition authority of the Republic of Kazakhstan has marked its 25th year of work. From the first days of Kazakhstan’s independence, competition policy is being paid with special attention from the Head of the state and the government. Initially, the policy of development and fair competition has been prioritized in economic development of Kazakhstan.
8. The basics of competition law in the Republic of Kazakhstan have been established on 11th of June in 1991, when the first law “on development of competition and restriction of monopolistic activities” was enacted. This law has laid fundamental approaches in regulating monopolies, curbing unfair competition and anti-competition actions of state authorities. In the same period, first Antimonopoly authority was established in Kazakhstan - State Committee of Kazakh SSR on supporting new economic structures and restricting monopolistic activities.

9. In the following years, the competition law has evolved absorbing the best international practices in the field of antimonopoly regulations. In 25 years, the legislation on competition has gone through a range of changes prescribed by life itself. At one hand, creating condition for the development of entrepreneurial activity and the development of competition, at the other hand - the government has set up a stricter control of entrepreneurial subjects' behavior on trade markets and has defined the measures of antimonopoly action.

10. Also, it is worth noting that the antimonopoly organ has had its own ups and downs during its political existence coherently with the changes in competition legislation and politics of Kazakhstan. It started its work as a state committee on supporting new economic structures and restrictions of monopolistic activity under direct management of the President (the exceptional status for a state authority in terms of political structure of Kazakhstan). Later, it was lowered in status to that of subordinate organ to first agency of strategic planning and reform, responsible for industrial policies and then came back to the central government becoming subordinate to the Ministry of industry and trade in 2007. However, in 2014, the Committee on regulation of natural monopolies and protection of competition at the ministry of national economy of the Republic of Kazakhstan (later as Committee) and the antimonopoly organ came back to the subordinate position under the Ministry of national economy of the Republic of Kazakhstan.

11. It is necessary to note that the given decision was taken in order to consolidate governmental structures responsible for economic direction and the powers of the antimonopoly organ are aimed at the growth of the economy with the help of the use of antimonopoly regulatory instruments.

12. In turn, the antimonopoly committee in the structure of the ministry of national economy of the republic of Kazakhstan is authorized to take independent decisions within its area of competence directed at implementing competition policy in the Republic of Kazakhstan.

13. Another question of administrative character in the work of antimonopoly organ are means of appointing head managers of that authority as well as terms of their service. The procedures of appointment for the given position and the impeachment from it are usually defined by special conditions. In addition, the consistent terms of service are one of the ways to provide transparency and efficiency of work of the antimonopoly organ.

14. In accordance with OECD standards, terms of office for head managers of antimonopoly organ and their deputies should be clearly defined and last long enough to secure consistency and eliminate any contradictions in terms of enforcement activities.

15. Furthermore, appointing a head manager for a certain term will allow him or her to realize the regulatory powers of antimonopoly policy without a risk of losing the position because of short-term political interests.

16. In addition, a short term of office set for managers exacerbates staff turnover and negatively impact continuity in the organization.

17. The management of antimonopoly agency in Kazakhstan is led by the Chairman of the Committee.

18. The Chairman of the Committee is appointed by the Minister of National Economy of the Republic of Kazakhstan with the consent of the Head of the Office of the Prime Minister of the Republic of Kazakhstan and the term of office for such a position is connected with the terms of office in the Government of the Republic of Kazakhstan.

19. In order to achieve the best institutional standards at antimonopoly service of the Republic of Kazakhstan, it is necessary to develop a pack of amendments in competition policy that prescribes the appointment of the managing director of the competition authority for the term of office of 4 years.

20. It is worth noting that this amendment hasn't found support in the Parliament of the Republic of Kazakhstan, which is explained by the peculiarities of the current system of appointment and terms of office in the executive branch of Kazakhstan, established by the Constitution of the Republic of Kazakhstan.

21. Also, financing impacts virtually all of the main issues that the competition authority faces; therefore, financing is a major problem of institutional development. The availability of resources is necessary for rendering quality service, which raises credibility in front of the public. Efficient decisions on competition require sufficient funding for their realization. The presence of independent legal status can appear as a simple formality, if the competition authority won't have enough funds to implement its plan of actions. Financial independence plays a big role in securing real independence of the agency from governmental interference.

22. Subsidies for the antimonopoly organ of the Republic of Kazakhstan come from the republican budget of the Republic of Kazakhstan. The competition authority's budget is planned independently within limits of 3 year-periods set by the ministry of national economy of the Republic of Kazakhstan. With that in mind, there can be amendments made to the approved 3-year budget.

23. Moreover, the ministry of national economy of the Republic of Kazakhstan will oversee the execution of the budget plan of the committee.

24. The Annual budget of the antimonopoly organ of the Republic of Kazakhstan is comparable to that of other authorities of similar scale in the executive branch of Kazakhstan. In 2014, it amounted to 11.7 million dollars, in 2015 - 6.3 million dollars and in 2016 - 6.5 million dollars.

25. Additionally, today Kazakhstan's goal is to fit principles and standards of OECD in competition issues, which means creating better conditions for competition on trade markets of the country.

26. Fundamentally, the work of the antimonopoly organ hinges on five institutional reforms "100 concrete steps", which prescribes the necessary changes to be made in the work of the antimonopoly service and bringing it to the compliance with OECD standards, and on the message of the President of Kazakhstan in 2015, in which the objective was set to strengthen antimonopoly activity and regulating its status and the operating procedures of the antimonopoly organ.

27. In relation to that matter, OECD has made a review of antimonopoly practices in Kazakhstan. The results were presented on the Global forum on competition by OECD in October 2015 in Paris; the official report of the review was presented on 25th of May at IX AEF, at which OECD experts called Kazakhstan, where the competition legislation is progressing

28. The outcome of high evaluation of the launched policy has been OECD's approval of efforts and achievements made in the area of competition. On 17th of June 2016 Kazakhstan was accepted as a member to the OECD competition committee. Responding to the requirements set by OECD on competition issues is the interim outcome in entering the organization as a full member.

29. As a result of the review done by OECD, as an option to change the current competition policy in Kazakhstan a suggestion was made to set off the antimonopoly agency as an independent organ from the structure of the Ministry of national economy.

30. It is necessary to say that recommendations made by OECD have been used as a basis for transformation of the work of the antimonopoly organ and antimonopoly legislation.

31. Thus, in the period of 2014-2016, OECD review has become a basis for launching a wide-scale liberalization in legislation aimed at simplifying works in business, its development and adaptation in the state of integration.

32. Currently, the Parliament of Kazakhstan has a pack of normative amendments that prescribe detalization directed at facilitating the power of competition authority, regulation of its status and operating procedures, and revision of separate norms.