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Global Forum on Competition

Use of Economic Evidence in Cartel Cases – Contribution from Kazakhstan

- Session III -

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This contribution is submitted by Kazakhstan under Session III of the Global Forum on Competition to be held on 7-8 December 2023.

More documentation related to this discussion can be found at: oe.cd/egci.

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Use of Economic Evidence in Cartel Cases

- Contribution from Kazakhstan –

1. Introduction

1. The Antimonopoly Authority of the Republic of Kazakhstan prioritizes addressing the most detrimental antimonopoly violations that result in significant economic harm, including anti-competitive agreements and the abuse of a dominant or monopoly position.

2. Application of Economic Evidence in Cartel Cases

2. During the second half of 2020, with the adoption of the Administrative Procedural Code of the Republic of Kazakhstan, the administrative justice system has become fully operational.

3. This development led to significant changes in judicial practice concerning anti-competitive agreements. In 2021, indirect evidence (such as one shared IP address, offices, employees) and behavioral analysis of bidders sufficed to indicate the existence of joint work. However, from 2022, courts require the antimonopoly authority to prove a comprehensive set of circumstances to establish an anticompetitive agreement (cartel), such as:

- evidence of influence on general goods circulation conditions, necessitating competition analysis prior to the investigation;
- proof of competition restriction in the commodity market by cartel participants;
- demonstration of negative market impacts or the potential possibilities for such effects;
- establishment of a causal link between the concrete actions of agreement parties.

4. In response, the antimonopoly authority has adopted a new approach to establishing economic evidence during investigations. For instance, in a tender case involving the procurement of engine oils for locomotives, discriminatory practices against alternative suppliers were uncovered, favoring a specific supplier. To assess market damage in this case, a "but for" pricing methodology was employed. This method compares the hypothetical price in a cartel-free scenario with the actual cartel-influenced price to determine the damage extent.

5. Economic evidence is crucial in cartel cases to provide objective data on the existence and scope of an agreement that artificially restricts market competition. It helps ascertain whether an agreement led to price increases and reduced market supply, revealing connections between cartel participants, their communication mechanisms, the extent of competition restrictions, and the damage inflicted on consumers.

6. This evidence encompasses price and volume data analysis, price comparisons of suspicious products with similar market items, analysis of existing price parameters and dynamics of their changes, examination of price characteristics and their fluctuations, and evaluation of other economic factors indicative of inter-company agreements.

7. Additionally, expert opinions from economists, grounded in economic theory, contribute to understanding enterprise behaviors, price formation mechanisms, market structures, and supply-demand dynamics.