

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Excessive Pricing in Pharmaceutical Markets - Note by Kazakhstan

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This document reproduces a written contribution from Kazakhstan submitted for Item 9 of the 130th OECD Competition Committee meeting on 27-28 November 2018.

More documents related to this discussion can be found at

www.oecd.org/daf/competition/excessive-pricing-in-pharmaceuticals.htm

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Kazakhstan

1. Excessive Pricing and the Competition Law of the Republic of Kazakhstan

1. The provisions of the Entrepreneurial Code of the Republic of Kazakhstan (hereinafter – the Code) (Article 174), prohibits the actions (inaction) of market entities that occupy a dominant or monopolistic position, which led or lead to restriction of access to the relevant commodity market, prevent, restrict and eliminate competition and (or) impair the legal rights of a market entity or an indefinite number of consumers, including actions like setting, maintaining monopoly high (low) or monopsony low prices.

2. At the same time, according to Article 174 of the Code, the monopoly high price of the goods is the price established by the market entity that occupies a dominant or monopolistic position if:

1. the price exceeds the highest price, which is set by a market entity that is not in the same group of persons with a dominant market entity in the same commodity market in a competitive environment,
or exceeds the price in a comparable commodity market that has been formed in a competitive environment;
2. the price exceeds the amount necessary for the production and sale of such goods costs and profits.

3. At the same time, according to the Article 174 of the Code, the price of the goods, established to the market entity in accordance with the laws of the Republic of Kazakhstan, cannot be recognized as monopoly high or monopoly low.

4. The methodology for identifying monopoly high (low) prices was approved by the Order of the Minister of National Economy of the Republic of Kazakhstan dated May 4, 2018 No. 173.

5. In addition, according to Article 170 of the Code, coordinated actions of market entities engaged in the production, sale of goods, aimed at restricting competition, including establishing and (or) maintaining prices or other conditions for the purchase or sale of goods, are prohibited.

6. Thus, the above violations of the Competition Law of the Republic of Kazakhstan are the grounds for initiating an investigation procedure.

7. In the presence of these signs of violation of the Competition Law of the Republic of Kazakhstan, the Competition authority analyzes the state of competition in commodity markets in order to determine the share of dominance of the market entity and identify the dominant or monopolistic position of the market entity.

8. When the fact of violation of the Competition Law of the Republic of Kazakhstan is confirmed under the above articles, the Competition authority decides to initiate an administrative offense case and issue a prescription.

9. The provisions of Article 226 of the Code provide for the right of the Competition authority to issue a prescription to market entities on:

- termination of violation of the provisions of the Code and (or) elimination of its consequences;
 - restoration of the initial position;
 - termination or amendment of contracts contrary to the Code;
 - the need to cancel merger by cancellation or invalidation when regulating economic concentration.
10. Also, the Competition authority has the right to issue a mandatory prescription to cancel or change the acts adopted by them, eliminate violations, as well as terminate, cancel or change their agreements and mergers, contrary to the Code, and the performance of actions aimed at ensuring competition to state and local executive bodies, organizations endowed with state functions of regulating the activities of market entities.
11. Anti-competitive concerted actions of market entities prohibited by the Code shall be punished by a fine:
- for small or medium-sized businesses or non-profit organizations in the amount of three percent of the income (revenue) received as a result of monopolistic activity, with confiscation of monopoly income received as a result of monopolistic activity, not more than in one year;
 - for large business - in the amount of five percent of the income (revenue) received as a result of monopolistic activity, with confiscation of the monopoly income received as a result of monopolistic activity, not more than in one year.
12. Abuse of dominance by establishing and maintaining monopoly high (low) or monopsony low prices, prohibited by the Code, shall be punished by a fine:
- for small or medium-sized businesses or non-profit organizations in the amount of three percent of the income (revenue) received as a result of monopolistic activity, with confiscation of monopoly income received as a result of monopolistic activity, not more than in one year;
 - for large business - in the amount of five percent of the income (revenue) received as a result of monopolistic activity, with confiscation of the monopoly income received as a result of monopolistic activity, not more than in one year.

Box 1. Investigation of violations of competition law in relation to Kazteleradio JSC in terms of establishing and maintaining monopoly high prices for services for the storage of telecommunications equipment.

Competition authority conducted an investigation of violations of the Competition Law of the Republic of Kazakhstan in relation to Kazteleradio JSC (hereinafter – the Company), in terms of abuse of the dominant or monopoly position, expressed in establishing and maintaining monopoly high prices for telecommunication equipment storage services.

The investigation was completed in May 2018. The fact of violation of the Competition Law of the Republic of Kazakhstan was revealed.

The resolution of the Specialized Interdistrict Administrative Court of the city of Almaty from July 31, 2018, found the Company guilty of committing an offense and subjected to an administrative fine in the amount of USD 32 000 (KZT 11,618,205.36), with

confiscation of monopoly income received as a result of monopolistic activity, in the amount of USD 440 000 (KZT 160 911 109.64) (entered into force).

In addition, the prescription was addressed to the Company to cease violations of the provisions the Code and to eliminate their consequences.

2. Pharmaceutical markets, Pharmaceutical regulation and Price Regulation

13. According to the Code of the Republic of Kazakhstan “On people's health and the health care system” (hereinafter – the Health Code), pharmaceutical activities include professional activities of individuals who have completed higher or secondary professional pharmaceutical education, as well as legal entities engaged in the field of health care.

14. Pharmaceutical activities include the following types:

- the production of medicines;
- the production of medical products;
- the production of medical equipment;
- the manufacture of drugs;
- the manufacture of medical products;
- wholesale sales of medicines;
- wholesale of medical products;
- wholesale of medical equipment;
- retail sales of medicines;
- retail sales of medical products;
- retail sales of medical equipment.

15. State regulation in the field of public health is carried out by:

- state control over medical, pharmaceutical activities and state sanitary and epidemiological surveillance;
- licensing of medical and pharmaceutical activities;
- accreditation in the field of public health;
- certification in the field of public health;
- certification of health professionals;
- state registration, re-registration of medicines, medical products and medical equipment;
- state regulation of prices for medicines, medical products and medical services within the guaranteed volume of free medical care.

16. The functions of the Government of the Republic of Kazakhstan in the field of public health include:

- determining the procedure for organizing and conducting the purchase of medicines, medical devices within guaranteed free medical care and in the system of compulsory social health insurance, pharmaceutical services, and medical equipment to provide guaranteed free medical care, treatment and prevention of epidemiological diseases and the compulsory social health insurance system;
- determining the procedure for procurement of services for the storage and transportation of medicines and medical products, services for accounting and sale of medicines and medical products by a single distributor within the guaranteed volume of free medical care and in the system of compulsory social medical insurance.

17. Thus, in the Republic of Kazakhstan there is a state regulation of prices for medicines, medical products and medical services only within the guaranteed volume of free medical care.

18. Additionally according to the Health Code there are the terms:

- "authorized generic" - a drug identical to the original drug, manufactured by the same manufacturer, but with a different trade name and price.
- "reproduced drug (generic)" is a drug identical to the original drug by the composition of the active substances, the dosage form, quality indicators, safety, efficacy, produced by different manufacturers.

3. Competition enforcement against Excessive pricing in Pharmaceuticals

19. There was one case of competition law violations in terms of establishing and maintaining monopoly high (low) or monopsony low prices in pharmaceuticals markets, which Competition authority of the Republic of Kazakhstan considered in the period 2014-2018.

20. Competition authority conducted an investigation in the market of distribution of speech processors within the borders of the Republic of Kazakhstan in 2017.

21. According to the results of the analysis, it was established that a company had the exclusive right to import and further distribution of components of cochlear implant systems, speech processors and other parts produced by the company in accordance with distribution agreements for 2016, 2017.

22. At the same time, speech processors to cochlear implants of different companies are not interchangeable, and therefore only speech processors from the same manufacturer of CI systems can be installed to cochlear implants of a manufacturer's company.

23. In accordance with the provisions of the Code and Methodology for identifying monopoly high (low) prices, the comparable market was not found.

24. So, monopoly high price was calculated in accordance with the amount necessary for the production and sale of such goods costs and profits.

25. Taking the above into account, the company was found by Competition authority as holding monopoly position in the market and establishing and maintaining monopoly high prices for distribution of speech processors.

26. The decision of Competition authority was appealed to the court and the court canceled it.