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

Out-of-Market Efficiencies in Competition Enforcement – Note by Kazakhstan

6 December 2023

This document reproduces a written contribution from Kazakhstan submitted for Item 12 of the 141st OECD Competition Committee meeting on 5-8 December 2023.

More documents related to this discussion can be found at
<https://www.oecd.org/daf/competition/out-of-market-efficiencies-in-competition-enforcement.htm>.

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1. While Kazakhstan's competition legislation and regulatory framework do not explicitly recognize out-of-market efficiency within antimonopoly regulation, practical applications often involve such considerations. When approving mergers and acquisitions, the antimonopoly authority can impose requirements and obligations on transaction participants to mitigate the negative impact of economic concentration on competition, often relating to out-of-market efficiency.
2. For instance, in approving a merger transaction of mobile cellular operators into a single group, the antimonopoly authority mandated the expansion of 4G network coverage in urban areas, improvements in network quality for cellular service consumers, and the introduction of 5G services. This approach demonstrates a commitment to enhancing technological infrastructure and service quality, thereby offsetting potential competitive disadvantages.
3. In the rail transportation sector, the antimonopoly authority imposed a requirement that at least 80% of dividends over a five-year period be directed towards capital investments in the fixed assets of the acquired companies. This stipulation aims to foster long-term sectoral growth and infrastructure development.
4. Another noteworthy case involved antimonopoly oversight of a major international airport, where the authority considered the airport's efforts in constructing and expanding terminals. This was seen as a positive development for future passengers and airlines, thus contributing to a broader, out-of-market efficiencies.
5. Hence, in practice, the adverse effects on competition can be counterbalanced by the introduction of new technologies, modernization of assets, and offering additional consumer benefits.
6. However, given the limited number of cases available for establishing legal conditions and principles adequately, we consider it is premature to legislatively enshrine out-of-market efficiencies in antimonopoly regulation at this stage.