

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

The Relationship between Competition and Innovation – Note by Kazakhstan

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More documents related to this discussion can be found at
<https://www.oecd.org/competition/the-relationship-between-competition-and-innovation.htm>

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1. Introduction

1. The promotion of fair competition is a key priority for economic development in Kazakhstan, as it serves as a driving force for the introduction of innovations.
2. Innovations play a crucial role in enhancing a company's productivity, qualitative growth, and added value in a highly competitive environment, resulting in benefits such as increased profits, market leadership, and qualitative superiority.
3. In order to reduce production costs and penetrate new markets, manufacturers must constantly seek new approaches and mechanisms. Companies that are at the forefront of innovation gain a significant advantage over their competitors. However, it is important to note that gaining such advantages through non-competitive means, including lobbying, can have significant negative effects. Companies that gain an unfair advantage may subsequently abuse their position and hinder the development of their competitors. This paper will present cases from the practice of the Kazakhstan antimonopoly authority that highlight such instances.

2. Innovation as a Driver of Competitive Advantage

4. One of the primary tasks of Kazakhstan's antimonopoly authority is to improve the efficiency and competitiveness of market participants and enhance consumer welfare. This is achieved by ensuring equal access to goods, works, and services required for business activities, as well as by stimulating innovative activities among market participants. In accordance with the provisions of Kazakhstan's competition law, sectoral state bodies are obligated, within their respective domains, to take measures that promote competition in line with the state policy in relevant sectors of the economy. Additionally, they should refrain from actions or omissions that negatively affect competition.
5. However, practical experience has shown that one of the significant factors distorting competition in Kazakhstan is the anti-competitive decisions made by state authorities. State regulators possess the power to influence the state of competition through their command and control powers. According to the Kazakhstan antimonopoly agency, investigations into anti-competitive actions by state authorities accounted for 27% of the total violations in 2022, second only to cases involving the abuse of dominant or monopolistic positions (39%). The main risks associated with such actions have recently emerged in the field of innovation, where regulators have created a privileged position for certain market players.
6. Consequently, artificial monopolies created through the use of administrative resources have emerged.

3. Anti-competitive Actions by Public Authorities

7. The Kazakhstan Antimonopoly Authority received an appeal from a second-tier Kazakhstan bank regarding the Ministry of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan (the Ministry). The appeal stated that

the Ministry granted preemptive rights to two financial institutions to integrate with the state information service «Digital Documents».

8. On March 24, 2022, the Minister of Digital Development, Innovation and Aerospace Industry issued an order that approved forms of agreement on the use of integration services by owners of non-state information systems for the provision of public services. These agreements were mandatory for owners of non-state information systems and established qualification requirements for parties involved. According to clause 4.4 of the Order, owners of information objects seeking to use the integration service must confirm the popularity of their resource by having at least 100,000 registered users. This requirement restricts access to the «Digital Documents» service for other owners of information objects with a lower number of registered users.

9. However, the current rules do not clearly regulate the grounds for refusal to connect to the service, creating risks of unjustified refusal. Consequently, the actions of the Ministry were deemed indicative of anti-competitive actions (or inaction) by state authorities. As a result, the Agency issued a prescription against the Ministry, urging them to take measures aimed at ensuring competition. These measures include the cancellation of the aforementioned order, the definition of an exhaustive list of grounds for refusal to connect to services in the Rules of integration of e-government information objects, and the exclusion of unreasonable requirements imposed on owners of information objects regarding the presence of registered users.