

Unclassified

English - Or. English

10 June 2026

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

Case Prioritisation and Prosecutorial Discretion – Note by Kazakhstan

25 June 2026

This document reproduces a written contribution from Kazakhstan submitted for Item 6 of the 149th OECD Competition Committee meeting on 24-26 June 2026.

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JT03589039

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1. One of the main tools of the competition authority is the **analysis of the state of competition in commodity markets**.
2. This tool is used for the purposes of regulating economic concentration, determining the dominance share of market participants, as well as assessing the appropriateness of state participation in the economy.
3. The Agency for Protection and Development of Competition annually approves a **plan for conducting analyses** of the state of competition in commodity markets **for the upcoming year**.
4. The indicated plan is published on the **official website** of the Agency and is publicly available.
5. When developing the plan, **general and specific criteria** established by an official **regulatory legal act**¹ are applied.
6. The general criteria, **in descending order of priority**, include:
 1. the social significance of a good (works, services) for which there is demand from the largest number of consumers, including those determined by regulatory legal acts;
 2. instructions of the President and his Administration;
 3. instructions of the competition authority (for territorial subdivisions);
 4. substantiated complaints, appeals of individuals and/or legal entities, and publications in the mass media;
 5. the impact of the commodity markets of the Eurasian Economic Union on national commodity markets;
 6. import dependence exceeding 35%;
 7. the ration to the consumer basket used for calculating the consumer price index;
 8. the existence of a state need in connection with the implementation of documents of the State Planning System in the Republic of Kazakhstan;
 9. amendments to legislation;
 10. changes in market infrastructure;
 11. instructions and recommendations of the Interstate Council for Antimonopoly Policy and others;
 12. the specific characteristics of the regional economy;
 13. oligopolization and monopolization of the production of goods (works, services);
 14. violations of the legislation of the Republic of Kazakhstan in the field of competition protection;

¹ Methodology for Conducting Analyses of the State of Competition in Commodity Markets, approved by Order No. 13 of the Chairman of the Agency for Protection and Development of Competition of the Republic of Kazakhstan of 3 May 2022.

15. reorganization of a particular market participant through merger or accession;
 16. changes in the composition of market participants due to the exit of some and the entry of new one's participants;
 17. changes in a participant's market share;
 18. fluctuations in the market conditions of goods, works and services of market participants holding a dominant or monopoly position;
 19. other cases requiring the prompt suppression of unlawful monopolistic activities.
7. The above criteria demonstrate that the determination of the priority areas of activity of the competition authority is carried out on the basis of the approach established by a regulatory legal act.
8. At the same time, priority is given to markets having the greatest socio-economic significance, as well as to markets where there are indications of restrictions on competition or where there is a high risk of violations of antimonopoly legislation.
9. In turn, the specific criteria include the financial services market, liquefied petroleum gas and liquefied natural gas, as well as transport and communication services.
10. Thus, the prioritization of the Agency's activities is primarily carried out on the basis of a combination of quantitative and qualitative factors that make it possible to identify markets requiring priority attention from the regulator.
11. The existence of approved approaches excludes arbitrary selection of objects for analysis and ensures the transparency of the process.
12. At the same time, the Agency is entitled to determine priority areas of activity based on the provisions of the legislation; however, it may not arbitrarily disregard complaints containing information on possible violations of competition protection legislation. The grounds for refusing to consider a complaint or terminating an investigation are exhaustive and established by law.
13. In turn, the accountability system is ensured through administrative and judicial review of the Agency's decisions, as well as through legislative requirements.
14. An additional control mechanism is the publication of adopted decisions and the Public Council under the Agency, consisting of representatives of the business community.