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

**Working Party No. 3 on Co-operation and Enforcement**

**The Future of Effective Leniency Programmes – Note by Kazakhstan**

13 June 2023

This document reproduces a written contribution from Kazakhstan submitted for Item 5 of the 137th meeting of Working Party 3 on 13 June 2023.

More documents related to this discussion can be found at  
<https://www.oecd.org/competition/the-future-of-effective-leniency-programmes-advancing-detection-and-deterrence-of-cartels.htm>

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## *Kazakhstan*

### 1. Introduction

1. One of the primary responsibilities of the Agency for Protection and Development of Competition of the Republic of Kazakhstan (Agency) is to prevent, detect, investigate, and combat violations of competition legislation in the Republic of Kazakhstan.
2. The leniency program serves as a crucial instrument for identifying cartels and promoting the enforcement against anticompetitive behavior. It entails a scenario where a market participant, who has committed an administrative offense in the form of an anticompetitive agreement or concerted action, proactively approaches the antimonopoly authority of the Republic of Kazakhstan **before an investigation** takes place.
3. In accordance with Kazakhstan's antimonopoly legislation, a market participant can be exempt from liability if the following conditions are met **cumulatively**:
  - - **the antimonopoly authority has not obtained** information about the anticompetitive agreements or concerted actions from other sources.
  - - the market participant takes immediate **measures to cease** participation in the anticompetitive agreements or concerted actions.
  - - the market participant **provides comprehensive information** about the relevant facts throughout the investigation, starting from the time of their initial statement.
  - - the market participant **voluntarily compensates** affected consumers.
4. The primary objective of the leniency program is to enhance antitrust compliance by encouraging increased disclosure of cartels and concerted actions. This, in turn, benefits society by fostering greater competitiveness among market participants.

### 2. History of Implementation and Ineffectiveness of the Leniency Program Mechanism

5. The leniency program mechanism was introduced in Kazakhstan's antimonopoly legislation in 2013 and remains in effect. However, over the course of a decade, the leniency program has demonstrated its ineffectiveness within the Kazakhstan market.
6. According to the Agency, the primary reason for this ineffectiveness is the reluctance of market participants to voluntarily report violations of anticompetitive agreements or concerted actions before the antimonopoly authority detects signs of such violations.
7. It is important to note that the sanctions imposed on offenders for violating antitrust laws are quite severe, particularly in cases involving turnover fines calculated based on the offender's revenue or the recovery of illegally obtained income to the budget.
8. A significant contributing factor to the inefficiency of the leniency programs in the Republic of Kazakhstan is the lack of a comprehensive regulatory framework. This includes the absence of clearly defined rules outlining the application process for parties involved in an agreement to approach the antimonopoly authority and provide information about existing agreements or ongoing concerted actions.

### 3. Planned Measures to Amend the Law

9. When addressing cases of antimonopoly legislation violations, it is imperative to thoroughly and objectively examine all factual circumstances to ensure their proper resolution in accordance with the law. This includes implementing appropriate antimonopoly measures such as the leniency program and administering administrative sanctions.

10. In light of potential shortcomings in the effectiveness of the leniency program, the Agency intends to introduce amendments to the legislation to enhance its application during antitrust investigations. Under this proposed approach, individuals who have committed administrative offenses will have the opportunity to receive leniency by admitting their guilt and cooperating with the antimonopoly authority throughout the investigation. This leniency will manifest in a 50% reduction in the administrative fine.

11. Additionally, the Agency plans to develop a regulatory legal act that outlines the procedure for implementing the leniency program, including details such as the application process and template. These efforts are aimed at fostering cooperation between potential violators and the antimonopoly authority while bolstering the effectiveness of combatting unlawful anticompetitive practices in Kazakhstan's commodity markets.

12. The leniency program for cartel violations and anticompetitive actions in Kazakhstan serves as a vital safeguard, offering participants in agreements the opportunity to avoid liability. Drawing upon international experience, leading countries' practices, and recent trends and reforms in leniency programs, the Agency will review and revise the mechanism of its application to significantly enhance the disclosure of cartels in Kazakhstan.

### 4. Additional Measures to Detect and Deter Cartels

13. The antimonopoly authority in Kazakhstan is actively re-engineering its operations, placing emphasis on the automation of monitoring and analyzing commodity markets, including procurement activities and tenders. As part of these efforts, the National Chamber of Entrepreneurs of the Republic of Kazakhstan, known as «Atameken», developed the «Single Window for Procurement» portal in October 2019. This portal is integrated with the country's five largest trading platforms.

14. The portal enables businesses to expand their sales markets, assess the volume of purchases, and evaluate potential competitors. In November 2021, the Subsystem to detect signs of cartel collusion in tenders was introduced to the portal. This subsystem aggregates and processes specific data, providing the antimonopoly authority with requested information.

15. Through the subsystem, access is granted to procurement-related information and bidding processes, including bidders' tender documentation, IP addresses, and registration data. It allows for the analysis of participation behavior in procurements and the identification of indirect connections between bidders, such as shared electronic addresses, contact details, locations, IP addresses, early execution of contracts, use of the same Electronic Digital Signature (EDS) by two different organizations, and indirect affiliations through shared founders or directors.

16. Furthermore, the information system identifies various circumstances, including:

- companies that frequently win bids;

- bidding processes with minimal price reductions;
- limited participation of a small number of bidders in auctions;
- consistent wins by the same bidders in consecutive bidding processes;
- inclusion of a pocket «potential supplier» in the bidding process who does not declare a price;
- historical participation records of companies in previous bidding processes.

17. Future plans involve enhancing the information system by implementing automated notifications from the subsystem itself, alerting the antimonopoly authority to detected signs of cartel collusion.