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Working Party No. 3 on Co-operation and Enforcement

**Optimal Design, Organisation and Powers of Competition Authorities – Note by
Kazakhstan**

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This document reproduces a written contribution from Kazakhstan submitted for Item 2 of the 138th meeting of Working Party 3 on 4 December 2023.

More documents related to this discussion can be found at
<https://www.oecd.org/competition/optimal-design-organisation-and-powers-of-competition-authorities.htm>.

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1. Introduction

1. In the new age, the efficacy of competition policy hinges on the antimonopoly authority's capacity to adapt to rapidly evolving environment. Given these conditions, the methodological development and enhancement of competition legislation, along with the expansion of the antimonopoly authority's powers, have become increasingly crucial.

2. Structure and Powers of the Antimonopoly Authority of Kazakhstan

2. The main direction of competition policy in Kazakhstan in recent years has been a change in the concept of the antimonopoly authority's activities. To enhance the effectiveness of implementing competition policy, the institutional status of the antimonopoly authority in Kazakhstan has been strengthened. In 2020, the Agency for Protection and Development of Competition (hereafter - the Agency) was established, reporting directly to the President of the Republic of Kazakhstan, which is in line with the main recommendations of the OECD.

3. This newly formed Agency has assumed the competition protection functions and powers. These functions include oversight of monopolistic activities in various commodity markets and control and regulation of state monopoly-related activities.

4. Currently, the Agency's jurisdiction extends through its territorial Departments across 20 regions of the country, with a total staff count of 385 persons in the central office and its departments. These local territories are empowered to conduct investigations and assess the state of competition at the regional level.

3. Stages of Development and Enhancement of the Antimonopoly Authority

5. Over the past 30 years, Kazakhstan's competition law has evolved significantly.

6. A pivotal moment in the advancement of antimonopoly regulation was the 2015 OECD Review "Competition Law and Policy in Kazakhstan". The recommendations from this review spurred changes in the concept of the antimonopoly authority, aligning it more closely with OECD standards.

7. Since 2015, modernization of antimonopoly legislation has undergone several stages: a) the Entrepreneurship Code was adopted, which is aimed to reduce administrative barriers and the business burden; b) legislatively defined the antimonopoly authority's status, tasks, and competencies, along with its interaction with law enforcement and antimonopoly authorities of other countries; c) reform of work continued with the strengthening of the antimonopoly authority's powers to detect cartels in tenders (auctions) and procurements; d) amendments were made to develop means of preventing antitrust law violations; e) the Law "On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on the Development of Competition" introduced several key changes, including the European "essential facilities doctrine" for equal access to dominant market entities' facilities and mandatory competition assessments for regulatory norms.

8. Currently a draft law has been developed to provide for the non-revocation of Agency actions upon court appeals, the introduction of a collegial decision-making body in the Agency, and tools for the demonopolization of market entities that restrict competition.

4. Contemporary Challenges Impacting the Effectiveness of the Antimonopoly Authority

9. The Agency is currently undergoing a digital transformation, marked by the following key initiatives:

- key business processes of the antimonopoly authority are reengineered for the purpose of their future automation;
- work is underway to introduce an information and analytical system (hereinafter - IAS) to analyze the state of competition on commodity markets on the basis of Smart Data Ukimet, set to launch in 2024;
- issues of accelerated implementation of the Agency's Information System (IS) are being worked out for digitizing office workflows, including analyses, investigations, issuing directives, notifications, and integrating various data sources identified in the process reengineering;

10. Also, an analytical competition map (Dashboard) has been created. This Dashboard is an information panel, which is a tool for structuring, analyzing and representing statistical data and indicators in order to promptly assess the situation on commodity markets (more than 40 commodity markets), identify potential problems and take timely preventive measures.

11. To further enhance the Antimonopoly Authority's effectiveness, it is crucial to ensure its high degree of independence through financial autonomy and the ability to attract skilled experts. Current challenges, such as the market power of large corporations in digital markets and the need for special attention to data exchange platforms and online markets, underscore the importance of recruiting qualified experts in these fields.

12. To bolster its expertise in market analysis and control, the Agency has established an analytical research centre for competition promotion. The centre's primary functions include expert analysis, consulting, methodological support, and information support of competition policy, as well as conducting analytical and applied research.

13. The Agency's review of M&A notifications is a public service offered free of charge on the "eLicense" portal. The next developmental phase involves partially automating the data collection process to streamline the information provided by service recipients. Proposed regulatory changes include adjusting thresholds for economic concentration and considering intra-group transactions, prompted by specific transaction cases that bypassed existing legislative provisions.

14. In response to modern challenges, the Agency is focusing on incorporating new market analysis tools, such as big data analytics, artificial intelligence (AI), and machine learning (ML) algorithms. These tools can reveal non-obvious patterns and prevent monopolistic behaviors at early stages. To achieve this, hiring trained specialists and fostering employee development in modern market analysis techniques is essential.

15. Additionally, the Agency aims to reduce the administrative burden on market entities. Two main directions are being pursued: ensuring legislative-level access of Agency to databases of other state authorities and proposing the unification of all relevant government agencies into a single information exchange ecosystem in the G2G

(Government-to-Government) format. These measures are expected to streamline interactions between government agencies, enhance information reliability, and ensure effective market control under antimonopoly regulation.

5. Main conclusions

16. Adaptation to the Digital Economy. Adapting antimonopoly controls to the digitalization of the economy is imperative. This requires a focus on refining legislation, developing clear "rules of the game", and reducing barriers to entry into commodity markets (including small and active companies, startups).

17. Combating Monopolistic Behavior. Implementing strict standards for economic policy in markets, particularly when companies control significant databases or hold a key role in the online services market. Regulation must ensure these entities do not exploit their monopolistic position or data to the detriment of competition and consumers.

18. Information Collection and Data Protection. Implementing and monitoring indicators (such as the number of users and network effects) will help assess the state of digital markets, identify dominant players, and substantiate violations of antimonopoly legislation. Ensuring confidentiality and protection of consumer data is critical to prevent misuse by monopolistic corporations.

19. Modern Tools for Market Analysis. Utilizing modern market analysis tools like big data, artificial intelligence (AI), and machine learning (ML) can reveal subtle patterns and preempt monopolistic behavior in commodity markets.

20. Independence of the Antimonopoly Authority. Financial autonomy is essential to safeguard the effectiveness and integrity of the antimonopoly authority's operations.

21. Information Exchange. Developing a unified Government-to-Government ecosystem for information exchange among government agencies will augment the efficiency of competition analysis in commodity markets and ongoing investigations.

22. In conclusion, antimonopoly authorities must proactively adapt to the digital economy's evolving challenges. Integrating modern technologies into their operations is essential while ensuring the stability and independence of their functions.