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Private Enforcement of Competition Law – Note by Kazakhstan

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Kazakhstan

1. Private enforcement of competition law is a mechanism whereby persons who have suffered harm as a result of an infringement of competition legislation protect their rights and legitimate interests by bringing proceedings on their own initiative before a court or an arbitral tribunal, seeking compensation for the damage sustained, restoration of the infringed rights, cessation of the unlawful conduct or other civil-law remedies.

2. In the Republic of Kazakhstan, private enforcement has not yet gained widespread practical application. The primary responsibility for ensuring compliance with competition legislation continues to rest with the competition authority, the Agency for Protection and Development of Competition of the Republic of Kazakhstan (hereinafter referred as – APDC, Agency).

3. Nevertheless, the legislation of Kazakhstan already provides a legal basis for injured parties to protect their interests independently. In particular:

- Article 9(4) of the Civil Code of the Republic of Kazakhstan (General Part) enshrines the right to full compensation for damage;
- Article 917 of the Civil Code (Special Part) sets out the general grounds of liability for causing harm;
- Articles 169, 170 and 174–176 of the Entrepreneurial Code prohibit anticompetitive agreements and concerted practices, as well as the abuse of a dominant or monopoly position, including the setting of monopolistically high (or low) prices or monopsonistically low prices;
- Article 177 of the Entrepreneurial Code defines the concept and forms of unfair competition;
- Article 226(2)(2) of the Entrepreneurial Code provides that an infringer shall compensate the damage caused in accordance with civil legislation.

1. How has private enforcement of competition law evolved in Kazakhstan, and what factors have supported or constrained its development?

4. Private enforcement in Kazakhstan has evolved primarily as part of the broader development of competition legislation and the strengthening of civil-law protection mechanisms.

5. The adoption of the Entrepreneurial Code in 2015 consolidated the legislation on the protection of competition and laid down the powers of the competition authority, together with the mechanisms for addressing abuse of a dominant position, anticompetitive agreements and unfair competition.

6. In the years that followed, increasing attention was paid to the protection of consumers harmed by the conduct of undertakings holding a dominant or monopoly position.

7. The debate on introducing class actions has acquired particular importance. In December 2023, the APDC submitted for public consultation a draft law on competition matters, one of the key elements of which was the introduction of class actions to ensure that large numbers of consumers can obtain compensation for the harm suffered.

8. The draft Law "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Competition Matters" was submitted by the Government to Parliament in February 2025 and is currently under consideration.

9. The principal factors supporting the development of private enforcement are:

- the improvement of competition legislation and the increased effectiveness of antitrust investigations;
- greater legal awareness among businesses and consumers;
- the publication by the APDC of information on detected infringements of competition legislation;
- the growing attention of the State to protecting the interests of consumers in monopolised markets.

10. The principal factors constraining its development are:

- the lack of established case law on the recovery of damages specifically for infringements of competition legislation;
- the difficulty of proving a causal link between the anticompetitive conduct and the resulting damage;
- the difficulty of the economic quantification of harm;
- the limited access of injured parties to the files of antitrust investigations;
- the absence of an operational, dedicated class action mechanism for competition disputes.

11. Accordingly, the conditions are emerging in Kazakhstan for a shift from a predominantly public model of competition protection towards a model involving more active participation by those directly harmed. In practice, however, this shift has yet to materialise: to date, no consumer has filed an individual claim for reimbursement in an antitrust case.

2. Is the potential for private enforcement taken into account when the competition authority sets its priorities?

12. The APDC's key priorities in Kazakhstan remain the detection, termination and prevention of infringements of competition legislation, the demonopolisation of the economy, the development of competition and the reduction of barriers to entry into product markets.

13. The potential for injured parties to seek private redress at a later stage is, however, taken into account only indirectly when determining the focus of competition policy.

14. This is particularly relevant to markets in which an infringement affects a wide range of consumers, such as the markets for fuel, electricity, transport, telecommunications, utilities, essential goods and other socially significant goods.

15. The detection of an infringement and the establishment of the relevant facts by the competition authority may provide an evidentiary basis for injured parties to bring subsequent court proceedings.

16. The APDC has officially informed the public that individuals may bring proceedings before the courts on their own initiative to claim damages on the basis of final

court decisions holding market participants administratively liable for infringements of competition legislation.

17. Nevertheless, private enforcement does not yet constitute an independent or decisive criterion in the prioritisation of antitrust investigations.

3. To what extent does Kazakhstan make use of follow-on and stand-alone actions?

18. The legislation of Kazakhstan permits both models of private enforcement.

19. Follow-on actions are damages claims brought after an infringement has been established by the competition authority or a court.

20. This model appears to hold greater promise for Kazakhstan, as the injured party is not required to prove all the circumstances of the anticompetitive conduct from the outset.

21. For instance, where the APDC has established an abuse of a dominant position and the relevant decision has become final, a consumer or competitor that has suffered damage as a result of such conduct may bring a separate claim for compensation before the court.

22. Stand-alone actions are claims in which the injured party itself proves the infringement of competition legislation, the harm caused and the causal link between them, without relying on a prior decision of the competition authority.

23. This model is likewise permissible under the general provisions of civil legislation.

24. To date, Kazakhstan lacks a sufficiently developed and consistent body of case law for either category of claims. From a practical standpoint, however, follow-on actions offer greater potential for development.

4. What is the significance of infringement decisions by the competition authority and the courts for subsequent private actions?

25. APDC decisions carry considerable evidentiary weight in subsequent civil proceedings.

26. At the same time, a distinction must be drawn between two matters:

- establishing the fact of an infringement of competition legislation;
- establishing the existence of damage, its amount and its causal link with the infringement.

27. A decision of the competition authority does not, in itself, give rise to an automatic obligation to compensate a particular injured party. In order to recover damages, the claimant must prove the fact of harm, its amount and the causal link with the infringer's conduct.

28. In particular, Article 9(4) of the Civil Code (General Part) provides for a person's right to claim full compensation for the damage caused to them.

29. Procedural specifics must also be taken into account: an APDC decision should not automatically be equated with a judicial act having preclusive (prejudicial) effect. Its evidentiary weight is assessed by the court in light of the applicable provisions of the Civil Procedure Code of the Republic of Kazakhstan (CPC) and the circumstances of the case.

30. A final court ruling imposing administrative liability has preclusive effect as regards the establishment of the offence itself: under Article 76(5) of the CPC, a person's guilt of an administrative offence, as established by a final court ruling, need not be proved again when a case concerning the civil-law consequences of that offence is heard. This relieves the claimant of the burden of proving the infringement and the infringer's fault, but not the damage, its amount or the causal link.

31. Thus, APDC decisions may considerably facilitate proof of the infringement, but they do not relieve the claimant of the need to prove the damage it has sustained.

5. What role does the APDC play in private enforcement?

32. The APDC plays a predominantly supporting and evidentiary role in private enforcement.

33. Its activities include:

- detecting infringements of competition legislation;
- conducting antitrust investigations;
- establishing the circumstances of infringements;
- issuing orders to cease unlawful conduct;
- informing consumers of their right to bring proceedings before the courts;
- participating in court proceedings concerning the application of competition legislation.

34. Pursuant to Article 226(1)(4) of the Entrepreneurial Code, the APDC is entitled to bring claims and applications before the courts and to participate in court proceedings relating to the application and infringement of competition legislation.

35. There are currently no court rulings on private damages claims in cases in which the APDC has established an infringement, as no consumer has yet filed an individual claim for reimbursement in an antitrust case. The examples below therefore relate to the Agency's own practice and initiatives.

5.1. Examples of practice and initiatives:

5.1.1. Compensation of consumers for damage in antitrust cases.

In December 2023, the APDC issued a dedicated explanatory note entitled "Compensation of Consumers for Damage in Antitrust Cases".

In this note, the Agency stated that consumers are entitled to bring proceedings before the courts on their own initiative to claim damages on the basis of final court decisions holding market participants administratively liable for infringements of antitrust legislation.

The Agency also drew attention to the possibility of joining similar claims in accordance with the CPC.

This example illustrates a shift from an exclusively state-led response to infringements towards the recognition of consumers' independent right to compensation for the harm suffered.

5.1.2. The APDC's initiative to introduce class actions.

Within the framework of the draft law, the Agency proposes to introduce a class action mechanism enabling consumers to seek compensation jointly for harm caused by anticompetitive conduct.

Particular attention is given to situations in which an infringement affects a large number of consumers, while the individual harm suffered by each of them is relatively small.

Over the past three years, antitrust fines totalling more than KZT 18 billion *(approximately USD 40 million)* have been paid into the state budget, yet consumers have received no compensation from these funds.

This example clearly demonstrates the existing gap between the infringer's public liability and the private compensation of injured parties.

6. What collective redress mechanisms exist in Kazakhstan, and how effective are they?

36. The CPC currently provides for several procedural mechanisms that allow the rights of several persons to be protected jointly.

37. The first mechanism is joinder of parties.

38. Under Article 49 of the CPC, a claim may be brought jointly by several claimants against one or more defendants.

39. Such joinder is permitted, in particular, where:

- the subject matter of the dispute concerns the common rights and obligations of several claimants;
- the rights and obligations arise from the same basis;
- the subject matter of the dispute concerns similar rights and obligations.

40. The second mechanism is the consolidation of cases.

41. Under Article 167(3) of the CPC, a judge may consolidate similar cases pending before the same court, including claims by different claimants against the same defendant, into a single set of proceedings where joint consideration is deemed appropriate.

42. The third mechanism is bringing proceedings on behalf of others.

43. Under Article 56 of the CPC, in cases provided for by law, state bodies, organisations and individuals may bring a claim before the court to protect the rights, freedoms and legally protected interests of other persons at their request, as well as public and state interests. In practice, however, such claims are currently brought mainly to remedy infringements rather than to obtain compensation for consumers.

44. Consequently, consumers harmed by the same anticompetitive conduct may use the existing procedural instruments to protect their rights jointly.

45. It should be emphasized, however, that joinder of parties and consolidation of cases do not amount to a fully-fledged class action mechanism, as they do not provide for the automatic representation of an indeterminate group of injured persons.

6.1. Prospects for class actions.

46. The APDC proposes to introduce a dedicated class action mechanism that would enable a group of consumers to bring a single claim for damages.

47. That said, as of 9 November 2026, a dedicated class action regime in the field of competition protection cannot yet be regarded as an operational mechanism under the CPC: the current version of the Code retains only the general provisions on joinder of parties and consolidation of cases.

48. The class action initiative is still at the legislative drafting stage. Debate continues regarding the range of persons entitled to initiate such actions, the allocation of litigation costs and the risk of abuse of the collective redress mechanism.

6.2. Assessment of effectiveness.

49. The existing mechanisms allow claims to be combined, but their effectiveness is limited by the requirement that each claimant participate individually and substantiate its own claims.

50. The introduction of a fully-fledged class action regime could significantly enhance access to justice, particularly in cases of widespread overcharging resulting from cartel agreements or abuse of a dominant position.

7. How is access to the case file in antitrust cases addressed?

51. In Kazakhstan, access to the files of antitrust investigations is governed by the Entrepreneurial Code.

52. Under Article 220(1) of the Entrepreneurial Code, persons participating in an investigation have the right to inspect the case file, take extracts and make copies.

53. However, this right is restricted with respect to materials containing confidential information and trade secrets of other market participants.

54. In addition, Article 90-8 of the Entrepreneurial Code requires the competition authority to safeguard commercial, official and other legally protected secrets obtained in the exercise of its powers.

55. Article 28 of the Entrepreneurial Code also governs the protection of trade secrets.

56. There is therefore a balance between the right to obtain evidence and the need to protect confidential business information.

57. The main practical difficulty is that a potential claimant that did not participate in the antitrust investigation does not automatically enjoy the same rights of access to the case file as the parties to that investigation.

58. As a result, the injured party may encounter difficulties in obtaining information on the mechanism of the infringement, pricing, sales volumes and other circumstances required to quantify the damage.

59. Accordingly, a promising area for legislative development is the improvement of judicial mechanisms for the disclosure of evidence, while ensuring the protection of trade secrets.

8. How is the amount of damages determined, and are presumptions and expert opinions used?

60. In Kazakhstan, the amount of damages is determined on the basis of the general provisions of civil legislation.

61. Under Article 9(4) of the Civil Code (General Part), damages comprise:

- actual loss (damnum emergens), i.e. expenses that a person has incurred or will have to incur to restore the infringed right, as well as the loss of or damage to property;
- lost profits (lucrum cessans), i.e. income that a person would have received under ordinary conditions of civil commerce had its right not been infringed.

62. Furthermore, Article 917(1) of the Civil Code (Special Part) enshrines the principle of full compensation for harm caused by unlawful conduct.

63. In competition disputes, drawing on international practice, harm may be quantified using the following methods:

- comparison of prices before and after the infringement;
- comparison with prices in similar competitive markets;
- cost and profitability analysis;
- determination of the difference between the actual price and the estimated competitive (counterfactual) price;
- calculation of lost profits.

64. There is as yet no established case law in Kazakhstan applying these methods in disputes concerning infringements of competition legislation.

65. For example, in the case of a cartel agreement between suppliers, consumer harm may be calculated as the difference between the actual price of the product and the estimated competitive price, multiplied by the volume of the product purchased.

66. In complex economic disputes, opinions of specialists and experts with expertise in economics, finance, statistics and product market analysis may be used.

67. An expert opinion, however, has no predetermined weight and is assessed by the court together with the other evidence.

8.1. Use of presumptions.

68. Kazakhstan has no specific general presumption whereby any person harmed by a cartel or by the abuse of a dominant position is automatically deemed to have suffered damage of a certain amount.

69. The claimant must therefore substantiate both the existence of harm and its amount.

70. At the same time, a general presumption of the tortfeasor's fault applies: under Article 917(2) of the Civil Code, the tortfeasor is released from liability to compensate the harm if it proves that the harm was not caused through its fault.

71. The principal difficulty lies in constructing a hypothetical (counterfactual) market scenario, that is, in determining how market participants would have behaved and what the price level would have been in the absence of the infringement.

9. To what extent can competition disputes be resolved through arbitration?

72. The legislation of Kazakhstan allows certain competition-related disputes to be resolved through arbitration.

73. Under Article 1 and Article 8(5) of the Law of the Republic of Kazakhstan "On Arbitration", disputes arising from civil-law relations between natural and/or legal persons may be referred to arbitration by agreement of the parties, save for disputes that are non-arbitrable.

74. Accordingly, two categories of disputes must be distinguished.

75. The first category comprises private-law property disputes.

76. For example, where a dispute arises within a contractual relationship between two companies concerning compensation for damage resulting from conduct that one of the parties considers anticompetitive, such a property dispute may potentially be referred to arbitration, provided that a valid arbitration agreement exists and the statutory requirements are met.

77. The second category comprises public-law antitrust disputes.

78. Questions such as whether an undertaking has infringed competition legislation, the lawfulness of APDC decisions, the imposition of administrative sanctions and the exercise of the competition authority's public powers cannot be referred to private arbitration in lieu of the procedure established by law.

79. Nor can arbitration substitute for the competition authority in the exercise of its public powers.

80. Moreover, private-law competition disputes are subject to the restrictions laid down in the Law on Arbitration. In particular, under Article 8(8) of that Law, non-arbitrable disputes include, inter alia, disputes between natural monopoly entities and their consumers, as well as disputes between state bodies and quasi-public sector entities; disputes involving state bodies, state enterprises and organisations with state participation may be referred to arbitration only with the consent of the authorised body.

81. Consequently, arbitration may be relevant to the resolution of private-law claims arising from property relations between market participants, but not to the exercise of public antitrust oversight.

10. Are any changes anticipated, and what challenges may arise in the future?

82. Further development of private enforcement of competition law in Kazakhstan can be expected in the future.

83. The central element of the reform is the introduction of a class action regime, which would allow a large number of consumers to obtain compensation within a single set of court proceedings.

84. In particular, the draft law on competition matters (the sixth antitrust package of amendments), currently before Parliament, provides for the development of collective redress mechanisms and the improvement of antitrust investigation procedures.

85. It is envisaged that a decision of the Agency or a final court ruling in an antitrust case will serve as the basis for initiating a class action.

86. The key areas for further development include:

- the introduction of class actions, which will improve access to compensation for consumers harmed by anticompetitive conduct;
- improved access to evidence, which requires an effective mechanism for obtaining materials from antitrust investigations while preserving the confidentiality of trade secrets;
- the development of a methodology for quantifying damages, in which economic models for determining the competitive price and estimating cartel harm will be of particular importance;
- the development of case law, ensuring a consistent judicial approach to assessing APDC decisions, causation and the amount of damages;
- closer cooperation between the APDC and the courts, which will improve the quality of adjudication in private competition disputes and ensure more effective protection of injured parties.

87. At the same time, certain risks must be borne in mind.

88. In particular, it is necessary to prevent unfounded class actions, the abuse of procedural rights and an excessive burden on business arising from unjustified compensation claims.

89. It is equally important to strike a balance between the interests of consumers, businesses and the State.

11. Conclusion

90. The Republic of Kazakhstan has established a legal framework for private enforcement of competition law; however, its practical development remains at an early stage.

91. Competition protection continues to rely primarily on public enforcement by the APDC. At the same time, the provisions of the Civil Code and the Entrepreneurial Code enable injured parties to seek compensation for damage on their own initiative.

92. The most significant obstacles remain the difficulty of proving causation, quantifying harm and gaining access to the files of antitrust investigations, as well as the absence of a fully-fledged class action mechanism.

93. The introduction of class actions, the development of follow-on actions, the improvement of evidence disclosure mechanisms and the formation of specialised case law could significantly enhance the effectiveness of private enforcement.

94. Private enforcement should therefore serve as a complement to public antitrust enforcement, since effective protection of competition requires not only the detection and punishment of infringers but also genuine compensation for those harmed by anticompetitive conduct.