

Doing Business: Antimonopoly Policy

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Natural Monopolies

The *Agency for the Regulation of Natural Monopolies and the Agency for the Competition Protection*, both separate bodies are responsible for the monitoring and control of competition matters in Kazakhstan.

The Agency for the Regulation of Natural Monopolies Agency together with industry-specific regulators are responsible for the regulation of entities that operate within specific enumerated industries, which are considered as natural monopolies:

- Transportation of oil, oil derivatives via trunk pipelines;
- Storing and transporting natural gas via trunk and/or distribution pipelines, operation of natural gas pipelines, usage of natural gas distribution systems;
- Transportation and/or distribution of electrical energy;
- Generation, transpiration, distribution and/or supply of heat energy;
- Provision of electricity dispatch services;
- Services relating to organizing of balancing generation and consumption of electrical energy;
- Operation of mainline railways;
- Provision of railway services under concession agreements;
- Operation of railway branch lines;
- Air navigation, airport and harbor services;
- Provision of telecommunication services, in the case where there is no other competing telecom operator due to technical impossibility, or economical unfeasibility, except for universal telecommunication services;
- Leasing to other entities of duct banks and equipment for connecting telecommunication lines to the terrestrial telecommunication network (of incumbent telecom operator);
- Operation of water and sewage systems; and
- Publicly available postal services.

The Agency for the Regulation of Natural Monopolies Agency maintains a registry of operating entities within their industries. It also approves the tariffs of natural monopolies. The Agency must be notified, in case of any acquisition of more than 10% of the shares. The written approval of *the Agency for the Regulation of Natural Monopolies Agency* or the relevant branch regulator required in case of the acquisition of assets of a natural monopoly, whose value exceeds certain established amounts, and the acquisition of any amount of shares in other entities by a

natural monopoly.

Competition Law

The Agency for the Competition Protection regulates competitive behavior of entities other than natural monopolies. This Agency maintains an entities register, having a dominant or monopoly position in the market as opposed to the registry of natural monopolies. According to the Competition Act, a legal entity is deemed to occupy a dominant position if its market share equals or exceeds 35% of the relevant market. However, in specific cases, companies whose market share is below 35% can be officially declared by the Agency as having a dominant position. Actually, each of three companies whose combined market share equals or exceeds 50%, or each of four companies whose combined market share equals or exceeds 70% of the market, can be declared as having a dominant position.

The Agency for the Competition Protection is primary responsible for the enforcement of merger control.

The agency exercise wide and large powers.

Written approval from the Competition Agency is required for carrying out the following transactions:

1. Reorganization of a company by merger;
2. Acquisition by a person or a company or by a group of persons of more than 25% of the voting shares in a company, where the acquirer had not had any shares in the company or had less than 25% of the voting shares;
3. Acquisition of main production assets and/or intangible assets of a company, in case the total balance sheet value of the transferred assets exceeds 10% of the overall value of the main production assets and intangible assets of the transferring company;
4. Acquisition by a person or a company of rights allowing the acquirer to direct the business activities of another company or to perform the functions of its managerial body; and
5. Election or appointment of an individual to the boards of directors or management boards of two or more entities.

Prior approval of the Competition Agency is required for the transactions listed above and requires at least one of the following conditions:

- The total value of the worldwide assets or the annual turnover of the companies involved is above 10,000,000 times the MCI (approximately US\$ 110 million); or
- One of the parties has a dominant or a monopolistic position in the Kazakhstani market.

Transactions within one group of companies do not require approval, even if they meet the above conditions. The Completion Act uses the principle of extraterritoriality. Subject to the provisions of the Competition Act are actions of companies and individuals conducted outside Kazakhstani borders, where (i) such actions directly or indirectly affect companies, their shares or assets in Kazakhstan; or (ii) such actions result in limitation of competition in Kazakhstan.

The period of the time to review the merger request is equal to 10 days, while a process of evaluation of the request (potential threat to the competition in the market) will take up to 50 days.

- Protection from Unfair Competition
- The following activities constitute unfair competition according to the Competition Act:
- Unauthorized use of trademarks and packaging;
- Unauthorized use of the goods of another manufacturer;
- Copying of an article's appearance;

- Discrediting of a market player;
- Flagrantly false, improper and unreliable advertising;
- Realization of goods with compulsory assortment;
- Appealing to seller (supplier) boycott;
- Appealing to discriminate against a buyer (supplier);
- Appealing to break contract with a competitor;
- Bribery of a seller's (supplier's) employee;
- Bribery of a buyer's employee;
- Unauthorized use of information that is considered to be a trade secret.

Liability for Violation of Antimonopoly Legislation

Civil, administrative, and criminal liability may be entailed, in case of violations of antimonopoly legislation (such as acts of unfair competition, failure to obtain approval of a merger when such approval is required, failure to obey the orders of the competition authorities, or monopolistic activity). Fines in the amount up to 20% of income received can be entailed, if abuse of dominance took place. In addition, abuse of dominance can also involve the potential confiscation of all such income.

In certain circumstances fines can be reduced. For example, where the offender themselves informed the Agency for the Competition Protection of the offense and assisted it.

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