

To our clients and friends

INFORMATION LETTER

Concerning Amendments to the RK Legislation on Competition and Natural Monopolies

Late December 2016 marked the adoption of the Law¹, which introduces amendments into normative and legal acts of the Republic of Kazakhstan (RK) regulating, among other things, the issues of competition. The key amendments were introduced into the RK Entrepreneurial Code.

1. Dominants' Reporting and Register Cancelled

Starting 1 January 2017, Kazakhstan cancelled the register of entities occupying dominant or monopolistic positions on the RK regulated markets. The criteria used to recognize an entity as a dominant or monopolistic entity remain the same.

Previously, the legislation did not precisely determine the moment when an entity was to be recognized as a dominant and had to fulfill statutory requirements attributable to such status, i.e. submit reports on its activities and do business without the abuse of a dominant position.

The expected amendments were to clarify this issue; however, the Law only cancelled the necessity to keep the register of dominants and necessity to keep and submit reporting by dominants, which releases market entities and antimonopoly authority from substantial scope of bureaucracy. From now on, market entities must *themselves* monitor over the occupied commodity market share and, in case of reaching (exceeding) certain indices of the share, fulfill necessary requirements provided for by legislation with respect to entities occupying dominant (monopolistic) positions on the market; otherwise, activities of such entities may be recognized as monopolistic activities, which will entail imposition of relevant fines².

It is worth mentioning that the antimonopoly authority will analyze the competition condition, including in the course of exercising control over economic concentration, i.e. when considering applications for economic concentration, and will determine the entity's dominant share when considering indications of anti-competitive agreements and coordinated actions, and other abuse of a dominant or monopolistic position.

2. Pricing Control for Certain Markets Cancelled

The Law cancelled a general provision on pricing control for certain markets, which, according to the head of the antimonopoly authority, is a measure to create equal conditions within EEU. Such markets include services on harbor activities, telecommunications and postal communications.

¹ Law No. 34-VI of the Republic of Kazakhstan "On Introduction of Amendments into Certain Legislative Acts of the Republic of Kazakhstan on Competition and Support of Housing Construction" dated 28 December 2016.

² For the large-scale entrepreneurship entities, the fine is 5% of the income (proceeds) gained as a result of carrying out monopolistic activities with the confiscation of monopolistic income gained as a result of carrying out monopolistic activities for not more than one year.



Despite the amendments introduced by the Law, relevant requirements establishing state pricing control with respect to such services, as stipulated by other legislative acts, have not been cancelled³ yet, which may give rise to certain complexities in practice.

The law introduced an additional norm, pursuant to which state regulation of price formation is allowed at certain markets upon the antimonopoly authority's resolution as a temporary control measure. The total term of the temporary regulation of price formation cannot exceed in such cases 180 days within one calendar year.

The concept of "regulated market" was substituted by the concept of "publicly important markets," where the pricing control will be preserved until 2020 and performed in accordance with the approved procedure. The regulation of publicly important markets will be performed in the sphere of civil aviation, railway transport, electrical energy industry and gas supply industry.

3. Antitrust Compliance

Another novelty is the antitrust compliance, which means, according to the Law, a *system of measures to prevent from violations of the competition legislation*.

The law-maker proposes for market entities to elaborate an external and/or internal acts regulating the policy of good faith competition of a market entity on the respective commodity market, and determining the methods and approaches to organize the market entity's work in a way to minimize the violations of the RK competition legislation.

The draft external act may be submitted to the antimonopoly authority to establish its consistence with the model external act on antitrust compliance. The external act on antitrust compliance, adopted as complying with the model external act and considered by the antimonopoly authority, will be recognized as the act clarifying the RK legislation in the sphere of competition protection with respect to a specific market entity or as applied to a specific situation, which will be taken into consideration in case of antimonopoly authority's investigations, if any.

As of today, the model external act on antitrust compliance has not been approved yet at the statutory level, and we expect the antimonopoly authority to draft such document soon.

Moreover, the legislation neither contains the concept of "external act" or "internal act," nor establishes approximate content of such acts, i.e. a market entity is to compile and adopt such documents based on systemic analysis of legislation, existing practice and normal business practices.

The compliance institute has been for a long time existing in business practices of western countries, and major companies carrying out activities in the Kazakhstan territory adopt compliance policies regulating different spheres of activities. In case of competent interpretation of legislation and use of available practice of other countries with a view to the Kazakhstan market's competition reality, professionally compiled acts on antitrust compliance may help companies to minimize or avoid violations of the RK competition legislation and, accordingly, to avoid situations which may entail administrative violations and financial charges.

Based on our long-term experience in drafting various compliance documents for companies and our professional knowledge, we are happy to assist our clients in preparing and coordinating antitrust compliance acts with the antimonopoly authority, and to render any other legal advice in the antitrust regulation sphere.

Best regards,
AEQUITAS Law Firm

³ Order No. 547 of the Minister of the National Economy of the Republic of Kazakhstan "On Approval of the List of Goods (Work, Services) of Market Entities of Regulated Markets Covered by the State Price Controls" dated 20 July 2015.