

22 June 2015

To our clients and friends

INFORMATION LETTER

Concerning Important Amendments to the Competition-Relevant Legislation

On 5 May 2015, Kazakhstan adopted a Law on Introduction of Amendments to Certain Legislative Acts of the Republic of Kazakhstan on the Issues of Natural Monopolies and Regulated Markets¹. This Law (except for its certain provisions) entered into force on 18 May 2015 and amended a number of legislative acts, including the Administrative Code², RK Law on Natural Monopolies and Controlled Markets³, RK Law on Competition⁴, and other.

In our letter below, we are addressing the key amendments made to the RK Law on Competition (hereinafter, the Law), which are generally intended to liberalize the antimonopoly legislation and harmonize the national legislation with the legislation of the Customs Union.

1. Changes in the Conceptual Framework

As a result of the adopted amendments, the Law now defines the concept of "*cartel*." Previously, the legislation did not consider cartels separately from other anticompetitive agreements and concerted actions of market entities.

According to the Law, "*cartel*" must be understood as the anticompetitive agreements or concerted actions between market entities which are competitors or potential competitors on the same commodity market. Qualified as a cartel are:

Horizontal agreements between market entities, which infringe upon the legitimate rights of the customers and/or lead or may lead to:

- establishment or maintaining of prices (tariffs), discounts, surcharges (additional payments) and mark-ups;
- increase, decrease or maintaining of prices at tenders or distortion of the results of tenders, auctions or competitive bidding, including via division by lots;
- division of a commodity market according to the territorial principle, volume of sales or purchase of goods, assortment of goods sold or the composition of sellers or purchasers (customers);
- reduction or cessation of goods production;
- refusal to enter into contracts with certain sellers or purchasers (customers).

Concerted actions of market entities aimed at the limitation of competition and/or infringement on customers' legitimate rights, including those related to:

- establishment and/or maintaining of prices or other conditions of goods sale or purchase;

¹ Law No. 312-V of the RK "On Introduction of Amendments to Certain Legislative Acts of the Republic of Kazakhstan on the Issues of Natural Monopolies and Regulated Markets" dated 5 May 2015.

² Code No. 235-V of the RK "On Administrative Violations" dated 5 July 2014 (as amended as of 19 May 2015).

³ Law No. 272-I of the RK "On Natural Monopolies and Regulated Markets" dated 9 July 1998 (as amended as of 5 May 2015).

⁴ Law No. 112-IV of the RK "On Competition" dated 25 December 2008.



- unjustified limitation of goods sale or production;
- unjustified refusal to enter into contracts with certain sellers (suppliers) or purchasers;
- application of discriminatory conditions to equivalent contracts with other entities.

The Law now also includes the concept of "*discriminatory conditions*" – conditions of access to a commodity market or conditions of production, exchange, consumption, acquisition, sale or other transfer of goods whereunder a market entity or several market entities are put in an unequal position as compared to another (other) market entity (entities). The Law did previously contain the concept "discriminatory conditions" without, however, defining it.

2. Prevention of Antimonopoly Legislation Violations

The Law introduces a new institute of antimonopoly legislation violations prevention – warning regarding inadmissibility of antimonopoly legislation violation.

Warnings are to be submitted to market entities based on their public announcements of planned actions, if such planned actions can lead to a violation of antimonopoly legislation, but no grounds for investigation are in place.

3. Economic Concentration

As a result of amendments to the Law, recognized as economic concentration is the acquisition of more than 50% of shares (participation interests) in a market entity. Previously, the threshold was much lower and recognized as economic concentration was acquisition of 25% or more.

The Law expressly states that establishment of a legal entity does not constitute economic concentration. This amendment has resolved one of the most disputable issues of the legislation previously in effect. For a long time, neither the antimonopoly agency officers, nor legal advisors have had a unified opinion on this issue. The legislator has closed the chapter on this discussion.

The Law has come to include an additional exception from the requirement to obtain the antimonopoly agency's consent when acquiring a market entity's shares.

Now the antimonopoly agency's consent to transactions involving acquisition of shares (participation interests) in a market entity is not required where the consummation of transactions is expressly stipulated by laws, Presidential edicts and/or resolutions of the Government of the Republic of Kazakhstan.

Also changed was the period for considering the applications for antimonopoly agency's consent to economic concentration, which now cannot exceed 30 calendar days of the date the application has been accepted for consideration, unlike the previously effective period of 50 days.

4. Other Amendments

The Antimonopoly Agency has been granted a right to request law enforcement authorities to conduct operational-and-investigative activities in respect of the subject of investigation. Based on the results of the operational-and-investigative activities, the Antimonopoly Agency may decide to transfer materials to the law enforcement authorities to institute criminal proceedings.

Should you have any further questions in connection with this Information Letter, we will be happy to provide more detailed information.

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ЗАҢ ФИРМАСЫ
ЮРИДИЧЕСКАЯ ФИРМА
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Best regards,

ÆQUITAS Law Firm