

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2022 – Kazakhstan

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A year of establishing crucial goals and flourishing development

The previous year was flourishing and fruitful for the development of competition law in Kazakhstan. According to the [annual report](#) of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan (the “Agency”) on the state of competition and measures to limit monopolistic activity, there were several outstanding achievements: the adoption of a law on the development of competition, and the successful handling of 10 cases regarding barriers to the development of competition.

But now it is time to make a conclusion for 2022. What has happened in one of Central Asia’s most progressive countries this year in terms of competition law?

Legislative trends and developments

This year in Kazakhstan has been full of legislative amendments and initiatives related to competition legislation.

The Law on introducing amendments and additions to some legislative acts of the Republic of Kazakhstan on the development of competition

Since the beginning of 2022, the competition legislation had been amended by the [Law](#) dated January 3, 2022 “*On introducing amendments and additions to some legislative acts of the Republic of Kazakhstan on the development of competition*”.

The Law introduces the Essential Facilities Doctrine into Kazakhstani law for the first time. According to the law, a key capacity is a product, an infrastructure object of a market entity that occupies a dominant or monopoly position, without access to which other market entities cannot produce and (or) sell goods on the relevant or related product market. A product or infrastructure can be recognized as a key capacity under a combination of individual conditions: it is inappropriate or impossible to duplicate a product or infrastructure; the owner reserves all rights to possession, use and disposal; the owner has the ability to grant access; the unjustified refusal of the owner to provide access will have a negative impact on competition; there is no way to access through exchange trading.

The introduction of the Essential Facilities Doctrine was one of the key innovations during the discussion of the draft Law. Historically and in European and US-American competition law, the Essential Facilities Doctrine has been used to denationalize the spheres of natural monopolies. In the case of the use of the Essential Facilities Doctrine in markets that are not related to natural monopolies, the norm becomes extremely corruptible and can be used in an unfair struggle with competitors.

Furthermore, the new law changed the concept of unfair competition, and hence the regulator's approach to assessing the relevant actions of market entities. If earlier the list of actions recognized as unfair competition consisted of 14 types and was exhaustive, now the list is open. Unfair competition is any action of a market entity (group of persons) or several market entities (group of persons) aimed at acquiring advantages in entrepreneurial activities that are contrary to the legislation of the Republic of Kazakhstan, business practices, the requirements of integrity, reasonableness and fairness and has caused or may cause damage to others market entities – competitors have either caused or may cause damage to their business reputation. Thus, according to the innovations, any actions of a market entity that caused or may cause damage or harm to the business reputation of competitors, even if they are not provided for by the Entrepreneurial Code of the Republic of Kazakhstan, can be recognized by the regulator as unfair competition.

Moreover, the role of “*soft regulation*” remains and will continue to be strengthened in Kazakhstan's competition policy. Currently, regulatory tools include notice, warning, and . Timely detection of potential antitrust violations is certainly beneficial for all parties: market participants, for whom the risk of being held liable is reduced, for the regulator and courts, the burden of investigating and reviewing cases is reduced. In order to popularize competition law compliance, the Agency provides for the development of Methodological recommendations for the development and implementation of an internal act of competition law compliance.

It should be noted that not all plans of the regulator are reflected in the new legislation. The final version of the Law did not include, in particular, provisions regulating the digital economy since the wording proposed did not solve the intended tasks.

The Concept for the Protection and Development of Competition in the Republic of Kazakhstan

In the middle of summer, the President of the Republic of Kazakhstan approved by [Decree No. 938](#) the Concept for the Protection and Development of Competition in the Republic of Kazakhstan for 2022-2026 (the “Concept”). As part of the Concept, the Agency plans, among other things, to work on reforming the existing procedures for obtaining the consent of the Agency for mergers.

First of all, it was pointed out that there is a continued high level of state participation in the economy of Kazakhstan, the dominance of companies with state participation in the most important sectors of the economy.

It also indicates the presence of problems associated with the asymmetry of information – a situation where the supplier of the goods knows more about its characteristics, as well as about the available offers on the market, than the buyer. As a result, asymmetric information creates barriers to the reorientation of demand: it limits the conditions for entry into the relevant product market for new participants, as well as the ability of consumers to search for more profitable offers. The housing and communal services markets can serve as an example. Moreover, the asymmetry of

information creates the prerequisites for the manifestation of unfair trade pricing practices based on the analysis of consumer behaviour and forces them to make an irrational choice.

In turn, the document outlines a vision for the development of the spheres of protection and the development of competition. The Republic of Kazakhstan is focused on the transition from the punitive focus of the state policy on the protection and development of competition to the formation of a pro-competitive environment in the commodity markets.

Register for state monopolies

On July 1, 2022, amendments to the Entrepreneurial Code came into force, providing for the creation of an institution of a special law to oversee state monopolies. The Agency for the Protection and Development of Competition of the Republic of Kazakhstan formed and approved the first state register for subjects of special law and state monopoly. This register consists of two sections, including 17 subjects of special law and 17 subjects of state monopoly. In accordance with the Entrepreneurial Code, public and private operators authorized to implement economic functions, included in the register of subjects of special law, are subject to competition regulation on the following five principles: price regulation, prohibition to engage in other activities, prohibition of participation in other legal entities, compensation for lost profits to the business, a grace period of six months to prepare market participants.

In accordance with paragraph 3 of Article 193 of the Entrepreneurial Code, a state enterprise, a joint-stock company, a limited liability partnership may be the subject of a special law. At the same time, the Agency, on an annual basis, will analyze the activities of individual subjects of a special law in order to prepare proposals for the transfer to a competitive environment of activities related to the field of special law. In this regard, the register of subjects of special law will be further adjusted.

Investigations of the Agency for Protection and Development of Competition of Kazakhstan

The Agency performed outstandingly. In 2022 several competition law investigations significantly influenced the market.

Market for aggregators

The agency, for example, investigated Yandex.Taxi for tariff setting. According to the Agency, Yandex.Taxi charges a commission of 17-20%, and also applies dynamic pricing – in bad weather, as well as on holidays, trips are much more expensive given the increased demand. It accused Yandex.Taxi of establishing a high monopoly price, is prohibited by Article 174 of the Entrepreneurial Code of Kazakhstan. According to paragraph 1 of Article 175 of this Code, a high monopoly price of a product is the price set by a market entity that holds a dominant or monopoly position if this price exceeds the amount of expenses and profits required for the production and sale of such goods and the price formed in competitive conditions on the corresponding or comparable commodity market.

While this investigation is still ongoing, in April 2022, Yandex.Taxi was fined by the Agency due to the fact that the entity did not provide the Agency with full information regarding its corporate structure (in keeping with the assessment of the company's market share) and the court reaffirmed the position of the Agency.

Market for freight transportation

Another investigation deals with KTZ – Freight Transportation. Since March, an investigation has been underway on the basis of abuse of a monopoly position in terms of applying different prices to equivalent agreements, namely the concluded agreement on the provision of special tariff conditions for the transportation of goods by railway in Kazakhstan. According to the Agency, KTZ – Freight Transportation provides benefits to its customers in a competitive market, which leads to limited competition, given that it occupies 95 per cent of the market.

There is no final decision as to the investigation, but as in the Yandex.Taxi example, KTZ- Freight Transportation already had to pay a fine in 2022 for not providing information to the Agency in a timely manner. This decision was subsequently sustained by the appeal instance.

All in all, 2022 was very progressive through the lens of Kazakhstani competition regulation and there is a hope that this tendency will be further strengthened.

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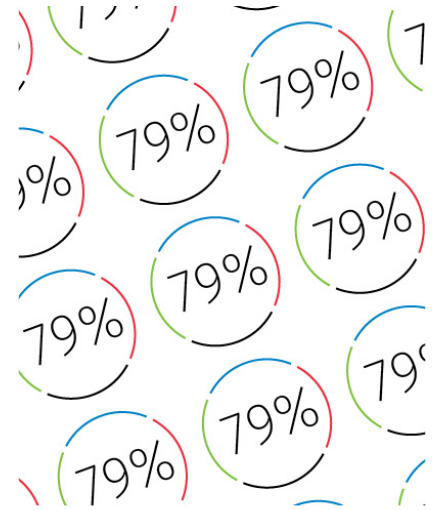
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