What developments can we expect in the area of antimonopoly legislation in the near future?

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One of the steps of "The Nation’s Plan – 100 Specific Steps to Implement Five Institutional Reforms" is to change the concept of the activity of the antimonopoly service of the Republic of Kazakhstan (the RK) and to bring it into conformity with the standards of the Organization for Economic Co-operation and Development (OECD). Within the implementation of the Plan, a 2-stage approach to the change of the concept of the activity of the antimonopoly service, antimonopoly legislation and bringing it into conformity with the standards of the OECD is planned.

At the first stage it was planned to develop proposals on amendments to RK Laws and draft the Entrepreneurial Code (hereinafter, the RK EC). At the second stage further amendments to the RK antimonopoly legislation are proposed. According to the RK Draft Law On Amendments to Some Legislative Acts of the Republic of Kazakhstan on Issues of Competition, the following is planned to:

- Include in the RK EC a separate chapter regulating the procedure for the activity of the antimonopoly body. For example, according to the OECD standards, the antimonopoly body must act independently. Therefore, one of the main ways to provide for the independence of the antimonopoly body is the stability of officials’ term of office. The latter would allow building antimonopoly practice in Kazakhstan.

- Increase the time for investigating the facts of violations to the antimonopoly legislation. At the same time, it is proposed to reduce the time for the approval of investigation reports, which is done by an order of the antimonopoly body.

- Change the approach to the calculation of the aggregate share of market participants in the commodity market, which must not exceed twenty percent, in the analysis of exemptions applicable to vertical agreements. It has more than once been noted that it is difficult to calculate the aggregate share of the buyer and the seller, as these markets are separate.

- Expressly establish that anti-competitive agreements may be executed/reached in writing and/or verbally.

- Provide for the right of individuals or legal entities, the actions of which are being investigated, to apply to the antimonopoly body seeking review and discussion by the conciliation commission of the draft investigation report on violations of the law and increase the minimum period for presenting such draft investigation reports for review by the conciliation commission.

- Increase the number of the constituent elements of anticompetitive concerted actions.

- Change the approach to the application of prohibitions in respect of anti-competitive agreements and actions. Changes, in particular, will affect anti-competitive agreements and anti-competitive concerted actions, including in respect of agreements on the exercise of exclusive rights (for example, if agreements on the exercise of exclusive rights to intellectual property items are of an anti-competitive nature, and such agreements lead or may lead to restriction or elimination of competition.)
Particular attention should be paid to the introduction of the institute of antimonopoly compliance. It is proposed to introduce the institute of antimonopoly compliance in the legislation in order to minimize the risks of violations of antimonopoly legislation (i.e. as an instrument of prevention of violation of antimonopoly legislation). This innovation will enable the antimonopoly body to offer market participants to develop a code of business ethics, business practice and adhere to the general principles and rules of behavior in the commodity market by which it is guided. The advantages of the introduction of this institution is prevention of violations at an early stage, doing business according to ethical principles, prevention of damage to reputation and the possibility of mitigation of administrative responsibility (in case of default). Acceptance by entities of antimonopoly compliance will be obligatory taken into consideration by the antimonopoly body.

On the basis of the foregoing, and also in connection with the proposed amendments to legislation, Dentons will keep you informed of all changes. We can also offer a service for the development of practical recommendations/rules in the area of compliance with the antimonopoly legislation to be used by all your employees as a “reference book”.

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