Recent major amendments to the antimonopoly legislation

January 16, 2017

On 1 January 2017, the Law of the Republic of Kazakhstan “On Amendments to Certain Legislative Acts of the Republic of Kazakhstan on Competition and State Support to Housing Development” (the Law) came into effect. The amendments were made in the framework of implementing five institutional reforms "100 concrete steps" which clearly defined the necessity to change the concept of Antimonopoly Service work and antimonopoly legislation and bring them into accordance with the standards of the Organization for Economic Cooperation and Development (OECD). The further improvement of the legislation in general was caused by the necessity to bring its provisions in line with the best international practice.

Please find below the most important and major amendments made by the Law to the antimonopoly legislation and, inter alia, to the Entrepreneurship Code of the Republic of Kazakhstan dated 29 October 2015, No. 375-V (the Code).

Antimonopoly authority

- The Code has been amended by a separate chapter devoted to the antimonopoly authority. The said chapter spells out the objectives and competence of the antimonopoly authority, addresses the interaction between the antimonopoly authority and other authorities, including, but not limited to, the law-enforcement authorities of the RK, and also states clearly the rights of employees of the antimonopoly authority. For instance, the understanding and full awareness of the competence and rights of the antimonopoly authority’s employees will allow you to respond correctly to any inquiry and/or action thereof during investigations.

Monopoly activities

- The approach has been changed as to the application of prohibitions in respect of anticompetitive agreements. In particular, the amendments relate to the mitigation of prohibitions established by the Code. However, there is no absolute exception as from now in respect of anticompetitive agreements on transfer of intellectual property rights (e.g., if an agreement on exclusive rights to items of intellectual property leads or may lead to the restriction or elimination of competition, such agreement could also become a subject of prohibitions imposed by the Code.)

- The approach has been changed as to the calculation of an aggregate share of market entities in the commodity market, which should not exceed 20%, when analyzing exceptions applicable to vertical agreements. A share of market entities is now assessed separately by each commodity market in question. The prior version of the Code did not provide for the necessity to consider separately the share of a buyer and a seller at respective markets.

- The Law clearly enshrined that anticompetitive agreements may be executed/reached in writing and/or orally.

- In accordance with the Code, actions of market participants may be deemed concerted if they meet certain criteria
Protection of competition

- More specific grounds have been set for conducting an analysis of commodity markets, including necessary stages thereof.

- The approach has been changed as to the state control over economic concentration. In particular, the period of examination of a notice (not application) of economic concentration has been reduced from 45 down to 30 calendar days.

Detection of violations/investigations

- The time of investigations into violations of the antimonopoly legislation has been increased from 2 up to 3 months.

- From now, the antimonopoly authority should, at least 30 calendar days prior to the completion of an investigation, send an object of investigation a draft opinion on the findings of investigation into violations of the antimonopoly legislation.

In addition, the Law more precisely sets the time lines and rights of individuals and legal entities under investigation to apply to the antimonopoly authority with respect to the said draft opinion on the findings of investigation for consideration and discussion by the conciliation commission (the members of which shall include, in addition to employees of the antimonopoly authority, independent experts, including on the part of the object of investigation).

- If there are signs of prohibitions established by the Code in respect of anticompetitive agreements or concerted actions, prior to investigation, an analysis of competition at commodity markets in order to determine a dominant share of a market participant shall be conducted. In such case, the measures of antimonopoly response apply to such market participant for the period of actual domination thereof.

 Introduction of the antimonopoly compliance institute

- The institute of antimonopoly compliance (as a tool for preventing violations of the antimonopoly legislation) has been introduced to minimize risks of violation of the antimonopoly legislation. The novelty will allow market entities to develop their business ethics and business practice code and adhere to the common principles and rules of behavior at a commodity market. The advantages of such introduction include the prevention of violations at an earlier stage, the conduct of business in accordance with ethical principles and the prevention of damage to reputation. The antimonopoly authority will be taking into account the adoption of antimonopoly compliance by market participants.
In view of the above and in connection with the amendments to the antimonopoly legislation, Dentons Kazakhstan LLP would like to offer its services to you in respect of the development of recommendations/rules in the area of compliance with the antimonopoly legislation to be used as bible by all of your employees.

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Dentons’ lawyers in Kazakhstan would be happy to answer any question you may have on the above amendments.

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