LAW OF THE REPUBLIC OF KAZAKHSTAN
ON COMPETITION AND RESTRICTION OF MONOPOLISTIC ACTIVITIES

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This Law regulates the public relations in the area of protection of competition and restriction of monopolistic activities, protection of consumers' interests.

CHAPTER 1. GENERAL PROVISIONS

Article 1. Basic definitions used in the Law
The present Law uses the following basic definitions:
1) competition shall mean competitiveness of market agents, under which their independent actions effectively restrict the possibility of each to impact unilaterally on the general conditions of commodity turnover at relevant commodity market;
2) fungible goods shall mean a group of goods, which can be compared by their functionality, application, qualitative and technical characteristics, price and other parameters in such a manner that a customer can substitute them in the process of consumption (production);
3) agreement (concerted actions) shall mean any contractual relationships of parties purposed on restriction or removal of competition, gaining unjustified benefits in the business activity;
4) monopolistic high price shall mean a price set by market agent dominant at the relevant commodity market in order to compensate unjustified costs and (or) acquisition of extra revenue as a result of abuse of dominant (monopolistic) position.
5) antimonopoly authority shall mean a government authority in the area of protection of competition and restriction of monopolistic activities;
6) monopolistic activities shall mean anti-competitive agreements (concerted actions) of market agents, abuse of dominant (monopolistic) position, anti-competitive actions by government authorities;
7) monopolistic revenue shall mean revenue obtained by market agent as a result of their monopolistic activity;
8) monopolistic low price shall mean a price deliberately set by market agent dominant at the relevant commodity market, the purpose of which is to restrict the competition by means of removal of competitors from the commodity market;
9) market agent shall mean residential and (or) business entities of the Republic of Kazakhstan, as well as foreign business entities (their branches and representative offices) running business activities;
10) goods (works, services) shall mean property, which is a subject of business;
11) commodity market shall mean area of turnover of commodities or fungible goods, which is determined on the assumption of economical, territorial and technological capability of customer to purchase the goods;
12) investigation shall mean application of anti-monopoly legislation by investigating the cases of its violation;
13) State Register of market agents dominant at the relevant commodity market shall mean a list of names of market agents running the business and dominant in the relevant commodity market;
14) fixed price shall mean price set by the antimonopoly authority, where there are violations of the present Law;
15) dominant (monopolistic) position shall mean a position of market agent or some market agents enabling to have significant impact on general conditions of commodity turnover in the relevant commodity market.

Article 2. Scope of the Law
This Law is effective on the territory of the Republic of Kazakhstan and applied to relations, which have impact or can impact on the competition in the commodity markets of the republic, where residential and business entities, foreign business entities (their subsidiaries and representative offices), as well as central executive authorities and local authorities (hereinafter, government authorities).
This Law is not applied to relations concerned with the subjects of exclusive rights, except when agreements regarding their use are directed on restriction of competition.

Article 3. Antimonopoly Legislation of the Republic of Kazakhstan
1. Antimonopoly legislation of the Republic of Kazakhstan is based on the Constitution of the Republic of Kazakhstan and consists of this Law and other secondary legal acts of the Republic of Kazakhstan.
2. If there are other rules established by the International Treaty, which is ratified by the Republic of Kazakhstan, rather than those provided in this Law, the rules of the International Treaty are applied.

CHAPTER 2. FUNCTIONS, POWERS OF ANTOMONOPOLY AUTHORITY

Article 4. System of the antimonopoly authority
The system of the antimonopoly authority is formed by the antimonopoly authority and its subordinate regional offices.
The regional offices perform the activities within their powers determined by the antimonopoly authority.

Article 5. Functions of the Antimonopoly Authority
The antimonopoly authority has the following functions:
1) provision and implementation of the government policy on promotion of competition and restriction of the monopolistic activities;
2) suppression of acts, actions (inactions) of the government authorities aimed on restriction of competition;
3) exclusion of economic concentration contradictory to the requirements of this Law;
4) prevention and removal of abuses of dominant (monopoly) positions in the commodity market:
5) prevention and suppression of anticompetitive agreements, unfair competition;
6) encourage to development of market relations based on the promotion of competition and entrepreneurship;
7) state control after the implementation of the antimonopoly legislation of the Republic of Kazakhstan.

Article 6. Powers of the Antimonopoly Authority
1. In accordance with the functions defined the antimonopoly authority has right to:
1) develop actions on improvement of antimonopoly legislation of the Republic of Kazakhstan, and summarize the practice of its application;
2) agree with draft normative and legal acts related to the functioning of commodity markets, promotion of competition and restriction of monopolistic activities;
3) coordinate the activities of government authorities for protection of competition and restriction of monopolistic activities;
4) exercise monitoring of pricing of market agents dominant in the relevant commodity market;
5) arrange the coordination and cooperation of state, authorities and organizations of foreign countries, international organizations, as well as to participate in the process of development and implementation of international projects and programs about the issues within its mandate;
6) keep State Register of market agents dominant in the relevant commodity market (hereinafter, the Register);
7) develop and approve normative and legal acts on protection of competition and restriction of monopolistic activities;
8) submit proposals to the Government of Kazakhstan on:
   major aspects of public policies on promotion of competition and restriction of monopolistic activities;
   bill of goods subject to public regulation of pricing;
9) arrange and hold awareness events, as well as meetings on issues of promotion of competition and restriction of monopolistic activities;
10) approve the rules on determination of monopoly revenue, monopoly high (low) prices;
11) approve the rules on taking measures of antimonopoly regulation in response to violations of antimonopoly legislation of Kazakhstan;
12) approve the instructions on detection of agreements (concerted actions) of market agents restricting competition;
13) approve the methodological recommendations on analysis and assessment of competition environment at the commodity market;
14) make examinations to find as to whether government authorities, market agents comply with the antimonopoly legislation of Kazakhstan by in accordance with procedures established by the Law and other normative and legal acts;
15) provide binding notices to market agents to:
   stop violation of this Law and (or) to remove its consequences;
   reinstate original position;
   terminate or change agreements conflicting to the Law;
   conclude agreement with other market agent;
   repair damages to consumers and (or) transfer monopoly revenues to the budget;
16) give binding instructions to government authorities to abolish or to change earlier approved regulations, to cease violations, as well as to terminate or to change earlier concluded agreements conflicting to the Law;
17) consider cases on administrative violations in the protection of competition and restriction of monopolistic activities and impose penalties in accordance with the procedures established by the Code of the Republic of Kazakhstan on Administrative Offences;
18) appeal to the court, as well as participate in the process of review by courts the cases related to the application and violation of antimonopoly legislation of Kazakhstan;
19) submit to the law machinery the materials for decision on commencement of prosecution by evidences related to the violation of antimonopoly legislation of Kazakhstan;
20) give recommendations to government authorities on measures aimed to promote competition at the commodity markets of Kazakhstan;
21) investigate cases of violation of antimonopoly legislation by government authorities, market agents and their officials;
22) have free access to premises and areas of market agents following the requirements of the legislation of Kazakhstan;
23) in order to fulfill the imposed obligations to request and obtain information from government authorities, market agents, their officials following the requirements set by the legislative acts of Kazakhstan on disclosure of information of commercial or any other secured by the law secret;
24) introduce fixed prices for market agents violating the Law.

2. Antimonopoly authority is obliged to:
   1) annually no later the 1st June submit to the Government of Kazakhstan Annual Report on the status of competition at certain commodity markets and measures taken in order to restrict monopolistic activities;
   2) review status of commodity market, level of competition there and based on this basis develop measures to prevent, restrict and suppress monopolistic activities;
   3) control the compliance to the antimonopoly legislation of Kazakhstan at the commodity markets of Kazakhstan;
   4) make analysis in order to reveal market agents dominant at the relevant commodity markets;
   5) provide explanations about the antimonopoly legislation of Kazakhstan:
6) review appeals of individuals and businesses about the issues within its mandate and inform applicants on decisions made in accordance with the procedure and within the time established by the legislation of Kazakhstan,
7) ensure security of given data of commercial and any other secured by the Law secrets, as well as other information received in the course of its performance.

CHAPTER 3. MONOPOLISTIC ACTIVITIES

Article 7. Anti-competitive agreements (concerted actions) by the market agents
1. The agreements achieved in any form (concerted actions) between the market agents are forbidden and in the procedure established by the legislation of the Republic of Kazakhstan are acknowledged invalid fully or partially, that have or may have as a result the restriction of the competition, including the agreements (actions), referred to:
   1) establishment (maintenance) of the agreed prices or other terms of procurement or sale of commodities;
   2) distortion of bidding results as a result of increase, decrease or maintenance of prices or other agreements between the bidders;
   3) allotment of commodity markets into territories, by the range of goods, volume of their sale or procurement, by the circle of sellers or purchasers or by other features;
   4) ungrounded restriction of the production or sale of goods, including allocation;
   5) ungrounded refuse to make agreements with specific sellers or purchasers;
   6) restriction of access to the commodity market or removal from the market of other market agents as sellers of certain goods or their purchasers;
   7) application of discriminating terms to the equivalent agreements with other agents;
   8) making agreements under condition of taking by the counteragents of additional obligations that do not refer to the subject of these agreements either by its contents or by the practice of business circulation (unjustified requirements to transfer the financial assets or other property, interests or others).
2. Coordination of economic activities of market agents is forbidden by individuals, by commercial or non-commercial organizations that results or may result in the consequences listed in Para 1 of this Article.
3. Restrictions provided by this article are not applied to the agreements (concerted actions) on:
   license contracts;
   contracts of complex entrepreneur license (franchise);
   contracts related to technology transfer;
   contracts on cooperation in research and development;
   other contracts related to the transfer of intellectual property rights.

Article 8. Group of Persons
1. Group of persons is a group of individuals and (or) legal entities for whom one of the following conditions is met:
   1) a person or several persons together, due to agreement (concerted actions), have the right to directly or indirectly (through third parties) to manage twenty five per cent or more of voting shares (participation interest) of a legal entity;
2) a person or several persons contractually or otherwise obtained an opportunity to affect decisions made by other person or persons, including to determine conditions of other person’s or persons’ business activities or to exercise functions of an executive body;

3) one and the same individuals, their spouses, close relatives and relatives by marriage represent fifty and more per cent of membership of an executive body and (or) Board of Directors (supervisory body) of two or more legal entities;

4) one and the same individuals, their spouses, close relatives and relatives by marriage contractually or otherwise obtained an opportunity to affect decisions made by other person or persons, including to determine conditions of other person’s or persons’ business activities or to exercise functions of executive bodies;

5) individuals working in the legal entity at the same time: represent fifty and more per cent of membership of an executive body and (or) Board of Directors (supervisory body) of another legal entity;

obtained an opportunity to affect decisions made by other legal entities, including to determine conditions of other entities’ business activities or to exercise functions of their executive bodies;

6) one and the same individuals, their spouses, close relatives and relatives by marriage and (or) legal entities have the right to manage, either independently or through their representatives, twenty five percent or more of voting shares (participation interest) of two and more legal entities;

7) individuals and (or) legal entities have the right to manage, either independently or through their representatives, twenty five percent or more of voting shares (participation interest) of one legal entity and at the same time these individuals, their spouses, close relatives and relatives by marriage represent fifty and more per cent of membership of an executive body and (or) Board of Directors (supervisory body) of another legal entity.

2. The provisions of this Law related to market entity are also applied to group of persons.

Article 9. Dominating (monopolistic) position

1. A dominating (monopolistic) position is a position of a market entity, which share at the relevant commodity market is thirty five and more per cent, as well as position of market entities in the aggregate share at the relevant commodity market if the conditions stipulated in Paragraph 2 of this Article are met.

2. The position of each of several market entities is considered as dominating if:

1) aggregate share of not more than three market entities having largest shares at the relevant commodity market is fifty and more per cent;

2) aggregate share of not more than four market entities having largest shares at the relevant commodity market is seventy and more per cent.

Position of a market entity cannot be considered is dominating if its share at the relevant commodity market does not exceed fifteen per cent.

3. The commodity market is analyzed based on the data provided by government authorities, market entities and their associations in the format established by the antimonopoly authority.
4. The geographic boundaries of commodity market determine the area where buyers buy or can buy goods or substitute goods and have no opportunity to buy it outside of the area due to economic, technological, administrative or other reasons.

5. The borders of a commodity market are determined with regard to the availability of goods (works and services) against the following criteria:
   1) possibility to buy goods (works and services) at the given area;
   2) reasonability of transportation costs comparatively to the cost of goods (works and services);
   3) quality, reliability and other consumer features of goods (works and services) preserved during its transportation;
   4) absence of limitations (prohibitions) for purchase and sell and import and export of goods (works and services);
   5) availability of equal conditions for competition at the area where the goods (works and services) are sold or delivered.

6. The antimonopoly authority determines borders of relevant commodity markets:
   1) when analyzing the status of commodity markets;
   2) to form and to maintain State Register of market agents dominant (monopolistic) at the relevant commodity market;
   3) if a market entity makes a justified request;
   4) when discovering facts of violations against the antimonopoly legislation of the Republic of Kazakhstan.

7. The volume of a commodity market is determined as a sum of sell of substitute goods by market entities within the geographic borders of the market, in physical indicators (in exceptional cases – in cost indicators) with regard to the volume of imports and exports of goods or substitute goods.

8. A market entity’s share at the relevant commodity market is calculated as a ratio of a volume of sell of goods or substitute goods by the market entity within the geographic borders of the market to the volume of the commodity market.

9. If a market entity uses part of its production for own needs, the volume of sell includes the volume of sell at the commodity market.

**Article 10. Abuse of dominant (monopolistic) position**

Actions of a market entity with a dominant (monopolistic) position which limit access to the relevant commodity market or limit or remove competition and/or infringe upon consumers’ legitimate interests shall be prohibited and considered as illegitimate, including such actions as:

1) fixing of monopolistically high (low) prices;
2) application of different prices or different conditions to equivalent agreements with entities without objective reasons;
3) fixing of limitations for resale of goods bought from it for specific regions, buyers, conditions of sell, as well as for quantity and price;
4) cause or imposition of an agreement when a market entity undertakes additional responsibilities which, by their content or business practice, are not related to the subject of such agreements;
5) unreasonable refusal to conclude a contract with some buyers when relevant commodity can be produced and sold;
6) delivery of goods subject to assumed limitation of goods produced or sold by competitors;
7) unreasonable limitation of production output or termination of production of goods for which there is a demand or orders from consumers when there are possibilities for production or delivery;
8) violation of pricing procedures established by the legal regulations.

Article 11. Anti-competitive actions of government authorities

1. Anti-competitive actions of government authorities include adoption of enactments or decisions, written or verbal directions, making agreements and (or) other actions, which resulted or may result in the restriction of competition.
2. Anti-competitive actions of government authorities, in particular, include:
   1) prohibition or preventing of the establishment of market agents in any sphere of activities, as well as establishment of bans for certain activities, for production, purchase or sale of specific goods, unless otherwise established by the legislative acts of the Republic of Kazakhstan;
   2) direct or indirect coercion of market agents to prioritized agreements making, to top priority supply of goods for specific consumers from specific sellers;
   3) any action aimed at centralized distribution of goods, as well as distribution of markets between market agents by region, range of goods, volume of sale or purchases or by consumers or sellers, unless otherwise established the legislative acts of the Republic of Kazakhstan;
   4) establishment of prohibition for sale (exports) of certain goods from one to another region of the Republic of Kazakhstan, unless otherwise established by the legislative acts of the Republic of Kazakhstan;
   5) granting of benefits or other advantages to individual market agents, which place them into the privileged position as compared to their competitors, which results or may result in restriction of competition;
   6) action as a result thereof some individual market agents get unfavorable or discriminating terms of activities as compared to their competitors;
   7) action that establishes prohibitions not provided by the legislation of the Republic of Kazakhstan or restriction of independence of market agents, including those related to purchase or sale of goods, pricing, making action and development plans and command of profits from sale of goods.

CHAPTER 4. GOVERNMENT CONTROL OVER ECONOMIC CONCENTRATION

Article 12. Economic concentration
1. Economic concentration includes:
   1) establishment of a market agent, the share thereof at the relevant commodity market will exceed thirty five percent;
   2) reorganization (amalgamation, joining, reorganization) of a market agent, having dominating (monopolistic) position at the relevant commodity market;
3) purchase by a person (group of persons) of shares carrying voting rights (market shares, shares) in the authorized capital stock of a market agent, herewith such a person (group of persons) gets a right to dispose twenty five and more percent of the mentioned shares (market shares, shares), if before the purchase such a person (group of persons) has not disposed the shares (market shares, shares) of this market agent or has disposed less than twenty five percent of the shares carrying voting rights (market shares, shares) in the authorized capital stock of the mentioned market agent. This requirement is not applied to the founders of a legal entity when the entity was founded;

4) receipt into property, ownership and use, including on account of payment (transfer) of authorized capital by the market agent (by group of persons) of the fixed production or intangible assets of another market agent, if the book value of the property that is the subject of a deal (interchangeable deals), exceeds ten percent of the book value of the fixed production or intangible assets of the market agent alienating or transferring the property;

5) acquisition by a market agent of rights as a result of one or more deals (including those on the basis of an agreement on asset management, agreement on joint activity, contract of agency) or in any different way, of rights allowing to determine the terms of entrepreneurship by the market agent or to carry out the functions of his/her executive authority;

6) involvement of the same individuals in the executive authorities, boards of directors (supervisory boards) of two and more market agents.

2. The following is not acknowledged as economic concentration:

1) purchase of shares (market shares, shares) of a market agent by the financial organizations, if this purchase is made with a view of further re-sale under the condition that the mentioned organization does not participate in voting in the management boards of the market agent;

2) appointment of the rehabilitation or competitive manager, temporary administration (temporary administrator).

Article 13. Government control over economic concentration

1. In order to prevent potential abuse by the market agents of their dominating (monopolistic) position or to restrict competition, the antimonopoly authority performs government control over economic concentration in the way of granting preliminary consent by the antimonopoly authority for making deals (actions) provided for in Article 12 of this Law.

2. Preliminary consent of the antimonopoly authority for making deals mentioned in Subpara 3), 4), 5) and 6) of Para 1, Article 12 of this Law is required in cases if book value of assets involved in relevant deals of persons or if the total volume of sales of goods for the last fiscal year exceeds the 1.5 million-fold rate of the monthly settlement index, or if one of the dealers is a market agent having dominating (monopolistic) status in the relevant commodity market, or purchaser is a group of persons controlling activities of the market agents mentioned in this Para.

The Antimonopoly authority on the basis of the analysis of the relevant commodity markets has a right to establish higher rates of the value of assets and volumes of the goods sale for these markets, for which the antimonopoly authority should grant the approval of the deals mentioned in this Para.
3. The permit for economic concentration with involvement of financial organizations is given in case if the value of assets or the own capital value of the financial organization exceeds the rate established by the antimonopoly authority together with the government authority responsible for the regulation and supervision of the financial market and financial organizations.

4. When the volumes of the goods (work, services) sale are calculated in compliance with Para 2 of this Article, the amount of income (receipts) from the sale of goods (work, services) is used less value added tax and excise for the last fiscal year preceding the submission of the application for issue of a permit for economic concentration.

5. In case if a market agent existed within the time less than the last fiscal year preceding the submission of the application for issue of a permit for economic concentration, for calculation of the volumes of the sold goods (work done, services provided) in compliance with Para 2 of this Article, the amount of income is used that was received during the application submission period, but not more than one year.

6. Government registration, re-registration of the market agents in cases provided by Subpara 1)-4), Para l, Article 12 of this Law, is made by a registration authority with the preliminary approval by the antimonopoly authority.

Government registration, re-registration of the market agent that was made in defiance of this article may be acknowledged invalid judicially at the suit of the antimonopoly authority.

7. Economic concentration made without permit from the antimonopoly authority may be acknowledged invalid by the court at the suit of the antimonopoly authority.

**Article 14. Granting a permit for economic concentration**

1. Antimonopoly authority issues permits for economic concentration in case, if it does not give rise to establishment or increase of the dominating (monopolistic) status of the market agent (group of persons) and (or) competition restriction.

2. Antimonopoly authority has a right to grant a permit for economic concentration with possible restriction of competition in case if relevant dealers prove that the positive effects from their actions will exceed the negative consequences in the relevant commodity market.

**CHAPTER 5. REVIEW OF APPLICATIONS ON GETTING A PERMIT FOR ECONOMIC CONCENTRATION**

**Article 15. Submission by the market agents of applications for economic concentration permits**

1. Market agents intending to put economic concentration into effect shall submit their applications to the antimonopoly authority for getting permits for economic concentration.

Participants of economic concentration present their common application. Confidential information required for the consideration of the applications may be provided to the antimonopoly authority by these persons individually.

2. In case if economic concentration is made with application of the competition procedures (auctions, biddings, competition), the application can be submitted both
before the beginning of the competition procedure and after it, but not later than thirty days from the date of declaring the winner, if other is not provided by the legislation of the republic of Kazakhstan.

3. Procedure of submission and consideration of the applications for getting permits for economic concentration is established by the antimonopoly authority.

**Article 16.** Consideration of applications for getting permits for economic concentration

1. Application is considered as accepted for consideration on the expiry of seven workdays from the day of its receipt if during this time the antimonopoly authority did not return the application to the applicant with the notification that the application and other documents do not meet the requirements established by the antimonopoly authority.

2. Antimonopoly authority may request from the applicant and other persons additional information if its non-availability prevents from consideration of the application, as well as appoint its examination.

3. Period of application consideration must not exceed thirty days. In case of appointment of an examination the mentioned period must not exceed sixty days from the day of accepting the application into consideration. During the mentioned period the antimonopoly authority must take a relevant decision concerning economic concentration.

The day of making decision to allow economic concentration is considered the last day of the application consideration period provided for in part 1 of this Paragraph.

4. Consideration of an application for economic concentration is suspended in case if it cannot be considered before a decision is taken by the antimonopoly authority or by the court on the different application related to it. The decision to suspend application consideration and its recommencement is taken by the antimonopoly authority; the applicant is notified about such decisions.

The antimonopoly authority renews the consideration of the application after removal of the circumstances that were the reason for its suspension.

The course of the application consideration period is suspended from the date of taking a decision by the antimonopoly authority on suspension of the application consideration. From the day of the recommencement of the consideration the course of the application consideration goes on.

5. Third parties may participate in the consideration of the applications for the permit of the economic concentration if a decision by the antimonopoly authority can significantly affect their rights and interests that are protected by this Law.

The issue of involving third parties in the consideration of the application for the permit of economic concentration is settled by the antimonopoly authority. The parties that will be involved in the consideration of such application are to be notified.

**Article 17.** Decision on the applications for the permit of economic concentration

1. On the results of the consideration of the applications for economic concentration the antimonopoly authority takes one of the following decisions:

1) to permit economic concentration;

2) to prohibit economic concentration with a justified conclusion.

2. Decision of the antimonopoly authority to grant a permit for economic concentration may be conditional to the fact that participants of economic concentration meet some
specific requirements and obligations that remove or mitigate negative influence of economic concentration on the competition. Such conditions and obligations may refer, in particular, to restrictions in property management, use or disposal.

3. Economic concentration shall be made during a year from the day when the decision on permit of the economic concentration is taken by the antimonopoly authority unless otherwise determined in the antimonopoly authority’s decision. If economic concentration is not made within the established period of time, participants of economic concentration shall submit a new application for a permit for economic concentration.

4. The applicant is sent a decision or an excerpt from the decision if it contains the official, commercial or other secrecy protected by the law.

**Article 18.** Grounds for suspension of application consideration

1. The consideration of the applications for a permit for economic concentration is subject to suspension in cases if:
   1) any notifications from the applicants are received to recall the application;
   2) the applicant fails to provide information within the period established by the antimonopoly authority if the non-availability of such information prevents from consideration of the application;
   3) the applicant provides inadequate information.

2. Should the application consideration be suspended, the applicant has the right to appeal to the antimonopoly authority with a new application on permit of the economic concentration.

**CHAPTER 6. SUBJECT OF AUDITS ON THE ISSUES RELATED TO THE RK ANTIMONOPOLY LEGISLATION COMPLIANCE**

**Article 19.** Types and subject of audits on the issues related to the RK antimonopoly legislation compliance

1. The subject of audits held by the antimonopoly authority is compliance of market agents and government authorities (hereinafter, audited entities) with the antimonopoly legislation of the Republic of Kazakhstan.

2. Compliance audits carried out by the antimonopoly authority may be scheduled and nonscheduled.

**Article 20.** Scheduled audits

1. Scheduled audits cover the whole range of issues related to compliance of audited entities with the antimonopoly legislation.

2. Scheduled audits are held not more often than once a year.

3. Scheduled audits may be held in the location of a verified entity or in the location of its structural unit.

4. The ground for holding a scheduled audit is an action plan of the antimonopoly authority approved by its head once a year. The plan shall contain a list of entities that are scheduled for audits and audit timing.
Article 21. Nonscheduled audits

1. Nonscheduled audit is an audit that is not scheduled for in the action plan of the antimonopoly authority and is held to verify the information, received or independently discovered by the antimonopoly authority, that the antimonopoly legislation of the Republic of Kazakhstan is violated.

2. Grounds for holding a nonscheduled audit include:
   1) applications from individuals and business entities on the violation of their rights and legitimate interests as a result of the monopolistic activities;
   2) materials on violation of the antimonopoly legislation of the Republic of Kazakhstan received from other government authorities;
   3) initiative of the antimonopoly authority on the ground of its review of the commodity markets, information from the mass media and other materials.

Article 22. Specifics of compliance audit procedures

1. To carry out an audit, the antimonopoly authority issues a notice on the letterhead which is subject to strict accountability signed by the head of the antimonopoly authority, attested by a seal and registered in the legal statistics and special registrations authority in accordance with the procedures established by the legislation, the antimonopoly authority shall also issue an order and approves audit plan.

2. A notice of audit is made in two copies that are provided to the legal statistics and special registrations authority, for registration. One copy with a registration note is filed to the case materials.

3. A copy of the notice with a note of registration in the legal statistics and special registrations authority, as well as an audit plan is provided to the head of an audited entity on the day of audit.

   A copy of the notice of audit provided to the audited entity without a note of registration in the legal statistics and special registrations authority is invalid.

4. To carry out an audit, the antimonopoly authority may form a working group by an order issued by the head of the antimonopoly authority, approve its membership and appoint head and deputy head of the working group.

5. In case if an audited entity refuses to accept the notice of audit or prevents from access by the officials of the antimonopoly authority carrying out the examination to the materials, the minutes are made. The minutes are signed by an official of the antimonopoly authority carrying out the audit and by the authorized person of the audited entity. The authorized person of the audited entity may refuse to sign the minutes and provide with a written justification of the reasons of his/her refusal.

   The refusal from accepting the notice of audit cannot cancel the audit.

   The audit is carried out only by that official (officials) of the antimonopoly authority who is (those are) mentioned in the notice of audit.

Article 23. Audit plan and timing

1. Audit plan shall include:
   1) audit duration;
   2) major tasks and objectives of the audit, procedure of their implementation;
3) a list of issues and circumstances to be determined during the audit;
4) audit schedule;
5) other information as per specifics of the activities of the audited entity.

2. The audit duration is determined after consideration of the scope work to be done and tasks set and shall not exceed thirty calendar days from the moment of registration of the notice of audit in the legal statistics and special registrations authority.

3. In cases when due to the specific activities of the audited entity and significant scope of work, the audit cannot be completed within the time established by the law, the official of the antimonopoly authority responsible for the audit presents an office memorandum to the head of the antimonopoly authority with the description of the results of the work done and justifications for the extension of the audit duration.

4. The head of the antimonopoly authority has a right to issue an order to extend the audit duration. The head of the antimonopoly authority makes a note that the audit is extended in the audit notice and order as well as in the audit plan.

5. The audit cannot be extended for more than thirty calendar days.

6. A copy of the order to extend the audit is passed to the head of the audited entity on the day of its registration.

6. The end of the audit term is a day when an opinion with the audit findings is handed to the audited entity but not later than the end of the audit term specified in the audit notice.

Article 24. Rights of the antimonopoly authority during the audit
1. Officials of the antimonopoly authority during the audit have a right:
1) for a free access to the territory and premises of the audited entity;
2) for access to automated databases (information systems) of the audited entity in compliance with the audit subject;
3) to request and receive from the heads, officials and other employees of the audited entity all required information, documents or their copies related to the audit subject, explanations in the verbal and written way on the issues arisen during the audit.

2. In case if the head and officials of the audited entity refuse to provide with the information, documents or their copies in response to oral request of the official of the antimonopoly authority responsible for the audit, they are handed with a relevant written request. In case if the written request cannot be handed to the head of the audited entity it is sent by mail to the head of the audited entity as a registered letter with a notice.

3. Commercial secret required to implement the functions imposed on the antimonopoly authority cannot be a ground to refuse to provide information to the officials of the antimonopoly authority carrying out the audit.
Any information on the audited entity that was received by the antimonopoly authority during the audit shall not be disclosed except for cases when it is provided to another government authority in compliance with the laws of the Republic of Kazakhstan.

4. The antimonopoly authority has a right to involve specialists from other government authorities in the audit, as well as scientists and experts.

5. The officials of the antimonopoly authority carrying out the audit cannot make requirements and address with the requests that are not referred to the subject of the audit.

Article 25. Results of audits
1. In case if violations of the antimonopoly legislation are found out during the
audit, the official of the antimonopoly authority has a right to take all the required
measures of antimonopoly response in relation to the audited entity before the end of the
audit in compliance with this Law and Code of the Republic of Kazakhstan on
Administrative Offences.
2. Results of the audit are set out in the reference paper. It also contains the analysis,
conclusions and suggestions on all the issues examined. It is made in two copies. One is
passed to the head of the audited entity.
3. Results of the audit are set out in the reference paper on the basis of the verified data
and facts that should be confirmed by the relevant documents. Conclusions, suggestions
and data not verified by the documents cannot be included into the reference paper.
4. In case if no violations of the antimonopoly legislation of the Republic of Kazakhstan
are found out, the relevant notes are made in the reference paper to reflect the results of
the audit.
5. In case if there are comments and (or) objections on the results of the audit the head of
the audited entity sets them out in the written form.
Comments and (or) objections may be attached to the reference paper on the results of the
audit, hereabout the relevant note is made.
6. In case if the head of the audited entity refuses to sign the reference on the results of
the audit, the official of the antimonopoly authority responsible for the audit makes a
relevant note in the reference.
7. The second copy of the reference is passed to the head of the audited entity after audit
is over by the official of the antimonopoly authority responsible for the audit.
In case if the reference cannot be passed to the head of the audited entity, it is sent to the
head of the audited entity by mail service as a registered letter with a notice.

CHAPTER 7. INVESTIGATION OF THE VIOLATION OF THE
ANTIMONOPOLY LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN

Article 26. Obligation and grounds for investigation of violations of the antimonopoly
legislation of the Republic of Kazakhstan

1. The antimonopoly authority makes investigation of violations provided by articles 7,
10 and 11 of this Law.
2. Ground for investigation of the violations of the antimonopoly legislation of the RK is
a result of the audit that was carried out by the antimonopoly authority.

Article 27. Investigation procedures

1. Investigation is carried out after the antimonopoly authority issues a decision to carry
out an investigation.
The decision of the antimonopoly authority on investigation shall contain:
1) position, last name, first name and patronymic of a person (persons) who will carry out
the investigation;
2) the ground for holding an investigation;
3) list of market agents, government authorities involved in the violation of this Law;
4) investigation timing.

2. Decision on the investigation is signed by the head of the antimonopoly authority or by other person authorized by him, attested by the seal of the antimonopoly authority and registered in a special log in compliance with all the requirements provided by the legislation of the Republic of Kazakhstan.

3. The antimonopoly authority has a right to take a decision on holding one investigation on the facts that were found out during several audits, or on combining several investigations into one.

4. The antimonopoly authority takes a decision on investigation not later than fifteen days from the day when a ground for holding an investigation arose.

5. The antimonopoly authority has a right to involve specialists from other government authorities of the Republic of Kazakhstan, as well as scientists and experts in the investigation.

6. An official of the antimonopoly authority has to present within three workdays a decision on investigation and certificate of employment to the market agent, to the government authority in relation thereof the investigation is held, or the antimonopoly authority has send this decision by mail service as a registered letter with notice to the head of the market agent, to the official of the government authority.

7. When the decision on investigation and certificate of employment is presented, the market agents, government authorities in relation thereof the investigation is held shall allow the official of the antimonopoly authority to the territory or to the premise, provide with all required information.

8. If an access to the territory or to the premise is not allowed for the official of the antimonopoly authority carrying out the investigation, the minutes are made. The minutes are signed by the official of the antimonopoly authority carrying out the investigation and by the head of the audited entity, as well as by the official of the government authority. If the head of the audited entity and the official of the government authority refuse to sign the minutes mentioned, they have to give a written explanation of the refusal.

9. The investigation is completed by conclusion on the results of the investigation. The conclusion on the investigation results shall contain the description of the violations of the antimonopoly legislation of the Republic of Kazakhstan with the reference to the relevant provisions of this Law.

In case if the investigation does not confirm the fact of the violations of the antimonopoly legislation, a relevant note about it is made in the conclusion on the investigation results.

10. The evidence of the facts of violations of this Law is only proven data and facts that are confirmed by the relevant documents.

11. The conclusion is made in two copies. One is handed to the head of the market agent or to the official of the government authority in relation thereof the investigation was carried out.

12. The investigation shall be finished not later than two month period from the day when the decision on the investigation is taken.

If some additional investigation is required, the official of the antimonopoly authority responsible for the investigation presents to the head of the antimonopoly authority an office memorandum where he/she sets out the results of the work done and justifications for extension of the investigation time.
13. The head of the antimonopoly authority has a right to take a decision on the extension of the investigation time. The investigation cannot be extended for more thirty calendar days.

14. A copy of the decision on extension of the investigation is sent as a registered letter with notice to the head of the market agent or to the official of the government authority in the relation thereof the investigation is to be held.

15. Investigation termination is a day of passing a conclusion on the investigation results to the market agent and to the government authority in relation thereof the investigation was held.

16. The investigation procedure is established by the Government of the RK.

Article 28. Decisions of antimonopoly authority on results of investigations of violation of the antimonopoly legislation of the Republic of Kazakhstan

1. Based on the results of investigation of violation of the Law the antimonopoly agency makes the following decisions:
   1) there is no ground to initiate a case on administrative offence;
   2) to initiate a case on administrative offence;
   3) to submit materials to the law-enforcement authorities to initiate a criminal case;
   4) to issue a notice of improvement to remove the violation of the Law.

2. Decision of the antimonopoly authority is brought into notice of applicant, government authority, relevant market agent and other stakeholders:

3. Cases of administrative offences are examined in accordance with the Code of the Republic of Kazakhstan on Administrative Offences.

CHAPTER 8. SPECIAL FORM OF GOVERNMENT REGULATION AND CONTROL

Article 29. Forced split up or detachment of dominant market agent

In cases when the dominant (monopolistic) position of market agent does not allow to the antimonopoly authority to efficiently restrict the negative consequences of such position, the antimonopoly authority has right to appeal to the court with the forced split up or detachment of one or some of its businesses based on the organization departments, if this is leading to the promotion of competition.

Article 30. Introduction of fixed price

1. Fixed price is introduced only when there is an abuse by dominant market agent expressed by the set monopoly high (low) prices, use of different prices to equal agreements with market agents, violation of procedures for pricing established by the normative and legal acts, as well as anticompetitive agreements (concerted actions) related to the concerted prices, use of discriminating prices toward equal agreements with other market agents.

2. Introduction of fixed price is applied in case of repeated actions mentioned in Paragraph 1 of this Article during one year after the administrative penalty has been imposed.
3. Setting the fixed price is made in the form of defined value, profit level and (or) upper (lower) level of prices for goods for the period no more than a year in accordance with the procedure establishment by the Government of Kazakhstan.
4. Decision on introduction of fixed price is taken by the antimonopoly authority.

**Article 31.** Additional obligations of market agents to submit information to the antimonopoly authority

1. In order to control and monitor the activities of market agents the antimonopoly authority is keeping the Register.
2. Market agents listed in the Register must submit to the antimonopoly authority the following:
   1) quarterly financial report in accordance with the legislation of the Republic of Kazakhstan on accounting and financial reporting;
   2) information on sale and trust management of more than 10% of its voting shares;
   3) monthly information on volumes of production (selling), sale prices and level of profit from produced (sold) goods.
3. Market agents listed in the Register are obliged to inform the antimonopoly authority in written before 30 calendar days about the forthcoming increase of prices for goods (works, services), according to which market agents are included into the Register, reasons for increase with compulsory submission of materials justifying the reasons of increase in accordance with the order established by the antimonopoly authority.

**CHAPTER 9. EXECUTION, FOLLOW-UP, REVISION AND APPEAL OF DECISIONS (NOTICES) ISSUED BY THE ANTIMONOPOLY AUTHORITY**

**Article 32.** Antimonopoly authority decision (order) execution procedure

1. Decision (order) of the antimonopoly authority is executed by the market agent, by the government authority within the period mentioned in the decision (order) issued by the antimonopoly authority.
2. In case if the antimonopoly authority decision (order) was not executed, the antimonopoly authority has a right to bring a suit against the market agent, the government authority to make them execute the decision (order) of the antimonopoly authority.

**Article 33.** Follow-up on decisions (orders) issued by the regional offices of the antimonopoly authority

1. Decisions (orders) issued by the regional offices of the antimonopoly authority may be examined by requests of the interested people or by the own initiative of the antimonopoly authority in the procedure established by it.
2. The antimonopoly authority may stop the execution of the decision (order) issued by the regional office during its follow-up on the decision (order) until the end of the examination. The interested people are notified about it in writing.
3. On the results of the audit of the decision (order) by the regional office of the antimonopoly authority has a right:
   1) to leave the decision (order) without changes;
   2) to change the decision (order);
   3) to cancel the decision (order);
   4) to take a new decision (order).

Article 34. Revision of decisions (orders) of the antimonopoly authority

1. The antimonopoly authority by its own initiative or by request of an interested person may revise its decision (order) in case:
   1) if significant circumstances were not or could not be known to the antimonopoly authority and it resulted in making an illegitimate or unjustified decision;
   2) if the decision was made on the basis of unreliable information and it resulted in making an illegitimate or unjustified decision;
   3) if participants of economic concentration did not execute the requirements and obligations that had stipulated the decision of the antimonopoly authority;
   4) if circumstances on the basis thereof the decision on granting a permit for economic concentration already do not exist;

The antimonopoly authority after making a decision may stop the execution of the decision before the end of its review. The persons involved in this case are notified about it in writing.

2. On the results of the revision the antimonopoly authority may:
   1) to leave the decision (order) without changes;
   2) to change the decision (order);
   3) to cancel the decision (order);
   4) to take a new decision (order).

3. In case if as a result of the review the antimonopoly authority takes a decision to cancel its permit for economic concentration, the government registration of the marked agents established as a result of economic concentration may be acknowledged invalid judicially by the suit of the antimonopoly authority.

Article 35. Appeal against decision (order)

1. Decisions (orders) by the antimonopoly authority may be appealed against in the court in the procedure established by the legislation of the RK.
2. Grounds for appeals in the antimonopoly authority of decisions (orders) issued by the regional office include:
   1) incomplete clarification of circumstances that are important for the case;
   2) if circumstances that are important for the case and acknowledged as established failed to be proven;
   3) inconsistency between the conclusions set out in the decision and circumstances of the case;
   4) violation and incorrect application of the provisions of the legislation of the RK.
3. Decision (order) of the regional office of the antimonopoly authority may be appealed against by the market agent in the antimonopoly authority or in the court within three
months from the day when the market agent gets aware of the violation of its rights, freedoms and interests protected by the law, in the procedure established by the legislation of the RK.

**Article 36.** Procedure of appealing against the actions (inactivity) of the officials of the antimonopoly authority making an audit or an investigation

1. In case of violation of rights and legitimate interests of the audited entities during the audit, or of the market agents, or of the government authorities in relation thereof the investigation was held, the audited entity has a right appeal within ten days of action (inactivity) of the official of the antimonopoly authority making the audit in the procedure established by the legislative acts of the Republic of Kazakhstan.

2. Wrongful acts (inactivity) of the officials of the antimonopoly authority during audits entail the responsibility established by the laws of the Republic of Kazakhstan.

**CHAPTER 10. VIOLATIONS OF THIS LAW**

**Article 37.** Violations of this Law

Violations of this Law include:

1) anticompetitive agreements (coordinated actions);
2) abuse of dominating (monopolistic) status;
3) anticompetitive acts of the government authorities;
4) non-fulfillment of decision (order) of the antimonopoly authority or incomplete fulfillment;
5) economic concentration without getting a relevant permit from the antimonopoly authority in case if such a decision is required;
6) non-presentation of the information to the antimonopoly authority within the established time frame or incomplete presentation of information;
7) presentation of unreliable and (or) false information to the antimonopoly authority;
8) putting obstacles in the way of officials of the antimonopoly authority related to the access to the territory of the market audited entity, of the government authority in relation thereof the investigation is held when the officials of the antimonopoly authority fulfill their functions;
9) non-fulfillment by the participants of the economic concentration of the requirements and obligations that were initial conditions for the decision issued to allow the economic

**Article 38.** Obligation to fulfill the decisions (orders) of the antimonopoly authority

1. If this Law is violated the market agents and government authority are obliged:

   1) in compliance with the orders of the antimonopoly authority to discontinue the violation and to remove its consequences, to restore the previous position, to cancel the contract, to make a contract with another market agent or to make amendments into it, to cancel an act that fell short of the antimonopoly legislation of the RK in the view of the antimonopoly authority, to carry out other actions provided by its order;

   2) to reimburse the caused damages in compliance with the civil legislation of the Republic of Kazakhstan;
3) to execute the order issued by the antimonopoly authority on imposing the administrative penalty in the procedure established by the Code of the RK on administrative infringements;
4) to transfer to the budget the monopolistic income received as a result of violations of this Law.

2. Violations of requirements mentioned in article 7 of this Law are a ground for taking measures, towards the market agents to the extent of the liquidation by the suit of the antimonopoly authority in the judicial way.

Article 39. Liability for the violation of antimonopoly legislation of the Republic of Kazakhstan

Violation of the antimonopoly legislation of the Republic of Kazakhstan entails the liabilities established by the laws of the Republic of Kazakhstan.

CHAPTER 11. FINAL PROVISIONS

Article 40. Final Provisions
1. This Law becomes effective after ten calendar days following its official publication.

President
Of the Republic of Kazakhstan
N.Nazarbayev
Astana, Akorda
July 7, 2006
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