

[ZK010144.DOC]\* **LAW No. 144 OF 19th JANUARY 2001 OF  
THE REPUBLIC OF KAZAKHSTAN**

**CONCERNING COMPETITION AND RESTRICTION OF  
MONOPOLY ACTIVITIES**

**Chapter 1. General Provisions**

**Article 1. Objectives**

1. The development of free competition, entrepreneurship, protection of the interests of consumers, and assurance of conditions for the efficient functioning of commodity markets shall be recognised as the objectives of this Law.

2. The Law shall define the institutional and legal measures of state-directed regulation those associated with support to entrepreneurship, the prevention, restriction, suppression, and regulation of monopoly activities.

**Article 2. Scope**

1. This Law shall have an effect in the territory of the Republic of Kazakhstan and it shall be applicable to the relations affecting competition at the commodity markets of the Republic wherein Kazakhstani and foreign legal entities (their affiliates and representations), individual entrepreneurs, central and local executive bodies (henceforth - state bodies), and physical persons take part.

2. This Law shall not apply to the relations associated with the objects of exclusive rights, except for the cases where the agreements connected with the use of such rights are aimed at the restriction of competition.

**Article 3. Antimonopoly Legislation**

1. Antimonopoly legislation shall be based on the Constitution of the Republic of Kazakhstan and it shall consist of the rules of the Civil Code of the Republic of Kazakhstan, this Law, and other regulatory legal acts of the Republic of Kazakhstan those which contain the provisions concerning the prevention, restriction, and

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suppression of monopoly activities, unfair competition, and concerning the regulation of the activities of subjects of natural monopoly.

2. In cases where an international treaty ratified by the Republic of Kazakhstan establishes rules other than those contained in this Law, then the rules of such international treaty shall apply.

### **Article 4. Principal Definitions**

The following principal definitions shall be used in this Law:

1) substitute goods shall mean a group of goods those which may be comparable in their functional designation, application, qualitative and technical characteristics, and other parameters in such a manner that a buyer in fact replaces or is ready to replace such goods one for another in the process of consumption;

2) the State Register of Market Entities Holding a Dominant (Monopolistic) Position at a Certain Commodity Market shall mean a nominal list of market entities those which carry out entrepreneurial activities in a competitive sphere, those whose share in a relevant commodity market exceeds a maximum amount to be established annually by the antimonopoly body;

3) state regulation of prices shall mean the regulation of prices to be carried out pursuant to a decision of the antimonopoly body, for goods (work, services) of market entities those which hold the dominant (monopolistic) position at a relevant commodity market;

4) competition shall mean the competitiveness of market entities when the independent actions of such entities efficiently restrict the possibility of each of them to unilaterally affect general conditions of circulation of goods (work, services) at a relevant commodity market and when such actions stimulate the production of goods (work, services) necessary for consumers.

5) monopoly activities shall mean actions (inaction), those which contradict this Law, of market entities, state bodies, those which are aimed at the non-admission, restriction, or elimination of competition, and (or) those which infringe the legitimate interests of consumers;

6) exclusively high price shall mean a price to be established by market entities those which hold the dominant (monopolistic) position at a relevant commodity market in order to compensate unreasonable costs and (or) to gain additional revenue owing to the abuse of such dominant (monopolistic) position;

7) exclusively low price shall mean a price for goods to be established by market entities deliberately, by those which hold the dominant (monopolistic) position at a

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relevant commodity market, that is established for the purposes to restrict competition by way of removal of competitors from the commodity market;

8) monopolistic income shall mean income gained by any market entity through monopoly activities;

9) a maximum share value of the market entity at a relevant commodity market shall mean an index that is the basis for the inclusion into the State Register of Market Entities Holding the Dominant (Monopolistic) Position;

10) a collusion shall mean actions agreed between market entities, those which are aimed at establishing a single price for goods (work, services) or at sharing the commodity market, those which lead and (or) may lead to negative consequences at the commodity market;

11) market entities shall mean physical persons, legal entities, their affiliates and representations, those which carry out activities associated with the manufacture, sale, purchase of goods (work, services);

12) goods (work, services) shall mean the product of activities (including work, services) intended for sale or barter;

13) commodity market shall mean a sphere of circulation of goods, those which have no substitutes or of mutually replaceable goods (work, services), to be determined on the basis of the economic possibility and also territorial and technological possibility of buyers to purchase such goods (work, services).

### **Article 5. The Antimonopoly Body**

1. The implementation of the national policy for the development of commodity markets and competition, the prevention, restriction, and suppression of monopoly activities, protection of the rights of consumers, supervision of compliance with antimonopoly legislation, regulation of prices, as well as coordination of the activities of other state bodies in this sphere shall be carried out by the authorised body for protection of competition and restriction of monopoly activities that is the antimonopoly body of the Republic of Kazakhstan.

The principal assignments, functions, powers, and responsibility of the antimonopoly body of the Republic of Kazakhstan shall be defined by this Law and other legislative acts of the Republic of Kazakhstan.

The single system of the antimonopoly body shall be composed of the central executive body in the sphere of antimonopoly policy and the territorial units subordinated to said body (henceforth - antimonopoly body). Such territorial units shall

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carry out their activities within the boundaries of the authority as established by the central executive body in the sphere of antimonopoly policy.

2. The Regulations concerning the Central Executive Body in the Sphere of Antimonopoly Policy and the authority of said body shall be approved by the Government of the Republic of Kazakhstan.

### **Article 6. The Assignments of the Antimonopoly Body**

The following shall be recognised as the assignments of the antimonopoly body:

- 1) support to entrepreneurship, the development of competition at the market of goods (work, services);
- 2) taking measures for the prevention, restriction, and suppression of monopoly activities, abuse of the dominant (monopolistic) position at the commodity market, suppression of unfair competition;
- 3) regulation of the activities of the subjects of natural monopoly;
- 4) regulation and supervision of the procedure for rendering services by state bodies;
- 5) supervision of compliance with antimonopoly legislation and price formation procedure;
- 6) control of the dominant (monopolistic) position of market entities at commodity markets;
- 7) coordination of the activities of state bodies for protection of the interests of consumers.

### **Article 7. Functions of the Antimonopoly Body**

The antimonopoly body, in accordance with the assignments entrusted to it, shall within the boundaries of its authority, perform the functions as follows:

- 1) to carry out the analysis for the purposes to identify market entities those which hold the dominant (monopolistic) position, restrict competition, and carry out monopoly activities at the commodity market;
- 2) to carry out expert evaluation of draft laws and other regulatory legal acts concerning functioning of the commodity market, development of competition, issues of price formation, and protection of the interests of consumers;
- 3) to submit to the President of the Republic of Kazakhstan and to the Parliament and Government of the Republic of Kazakhstan reports concerning

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commodity market situation, competition at such market, and proposals concerning the improvement of antimonopoly legislation and the practice of its application;

4) to consider within the boundaries of its authority cases concerning violation of antimonopoly legislation and to adopt decisions with regard to such cases;

5) to carry out state-directed supervision of compliance of market entities with antimonopoly legislation;

6) to elaborate and approve regulatory legal acts obligatory for execution by market entities.

### **Article 8. The Activities of the Antimonopoly Body**

1. For the purposes to maintain and develop competition, the antimonopoly body shall:

1) study commodity market situation, the level of competition at such market, and elaborate on this basis measures for support to entrepreneurship, and also for the prevention, restriction, suppression and regulation of monopoly activities;

2) issue recommendations to state bodies those concerning the implementation of measures aimed at the development of the commodity market and competition at such market;

3) work out measures for the creation of parallel structures, as well as the division of legal entities (their affiliates and representations) those which hold the dominant (monopolistic) position at the commodity market.

2. The antimonopoly body shall submit to the relevant state bodies the proposals which shall be obligatory for consideration concerning the following:

1) improvement of price policy in the areas where sufficient competition is not available, as well as in those which require priority development, in particular the proposals concerning establishing, in accordance with the procedure established by the legislation of the Republic of Kazakhstan, of fixed state prices (tariffs) for goods (work, services) in order not to admit exclusively high prices;

2) attraction of investors and creation of joint ventures, the alteration of licensing procedures for export-import transactions and the adjustment of customs duties, in particular the proposals concerning the introduction of obligatory licensing, and the prohibition or suspension of export-import transactions of market entities in cases where such entities violate antimonopoly legislation.

### **Article 9. The Authorities of the Antimonopoly Body**

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The antimonopoly body, within the boundaries of its authority and in accordance with this Law, shall have the following rights:

1) to elaborate and approve regulatory legal acts concerning issues of antimonopoly legislation, those which are mandatory for state bodies and market entities;

2) to ascertain the availability of the dominant (monopolistic) position of market entities;

3) to issue statements concerning the creation of market entities if this leads to the appearance of business entities, those whose share at a relevant commodity market will exceed thirty five per cent, as well as concerning re-organisation, liquidation of market entities, those which hold the dominant (monopolistic) position at a relevant commodity market;

4) to perform reviews of issues of compliance with antimonopoly legislation by state bodies, market entities;

5) to issue mandatory instructions to state bodies and their official persons, to market entities those whose share at a relevant commodity market will exceed thirty five per cent, or to those which hold the dominant (monopolistic) position at a relevant commodity market, and also to the heads of such entities;

6) to adopt decisions concerning the imposition of fines on market entities and their heads, as well as on the official persons of the state bodies those which obstruct the development of competition, the execution of the instructions of the antimonopoly body, as well as for other violations as provided for by this Law and other legislative acts;

7) to appeal to the court with lawsuits for the purposes to eliminate the violations of antimonopoly legislation, and also legislation concerning protection of the interests of consumers;

8) to address and to submit to the relevant law enforcement bodies materials for the solution of issues concerning the institution of criminal cases bearing the signs of crimes associated with violation of antimonopoly legislation;

9) to provide explanations on issues of antimonopoly legislation;

10) to submit to state bodies proposals concerning the abolition or amendment of acts adopted by such bodies, those which violate antimonopoly legislation;

11) to direct to the bodies of the Procurator Office the materials and regulatory legal acts those which contradict legislation;

12) to hear at the sessions of the antimonopoly body the reports of the official persons of state bodies, market entities those whose share at a relevant commodity market will exceed thirty five per cent, or those which hold the dominant (monopolistic)

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position at a relevant commodity market concerning issues included into the authority of the antimonopoly body;

13) to exercise other powers as provided for by the legislation of the Republic of Kazakhstan.

### **Article 10. The Right of the Antimonopoly Body to Access to Information**

1. The workers of the antimonopoly body, within the boundaries of their authority, and for the purposes to perform the functions entrusted to them shall have the right to access to state bodies and other market entities.

2. To receive from the official persons of state bodies, market entities and their heads, and also physical persons necessary information, documents or their copies, written (verbal) explanations on the occasion of the committed violations of antimonopoly legislation.

3. Market entities, those whose share at a relevant commodity market will exceed thirty five per cent, or those which hold the dominant (monopolistic) position at a relevant commodity market, their heads, state bodies and their official persons shall be obliged pursuant to the demand of the antimonopoly body to present reliable documents, written and verbal explanations, and any other information required for the antimonopoly body for the performance of its activity.

4. Information constituting a commercial secret as received in the course of the exercise of the rights as established by this Law, shall not be subject to disclosure.

The workers of the antimonopoly body, for the disclosure of information constituting a commercial secret shall bear responsibility in accordance with the procedure as provided for by the legislative acts of the Republic of Kazakhstan.

### **Article 11. Councils of Experts Attached to the Antimonopoly Body**

1. Councils of Experts to be formed from amongst scientists and specialists, the representatives of the state bodies and market entities shall be created and function at the antimonopoly body.

2. Councils of Experts shall carry out their activities in accordance with the Regulations to be approved in accordance with the established procedure.

## **Chapter 2. Monopoly Activities and Protection of Competition**

**Article 12. Obligations of the State Bodies with respect to the Protection of Competition**

The state bodies shall be obliged as follows:

- 1) to assist the development of commodity markets and competition;
- 2) to carry out purpose-oriented investing to those market entities which develop competitive activities in the sectors wherein certain commodity producers hold a monopolistic position;
- 3) to stimulate the activities of concurrent production lines at monopolised sectors;
- 4) to carry out re-organisation of market entities, those which are under the jurisdiction of such bodies and those which hold the dominant (monopolistic) position at a relevant commodity market;
- 5) to promote the creation of new enterprises in order to expand competition at the commodity market.

**Article 13. Acts and Actions of the State Bodies Aimed at the Restriction of Competition**

1. The state bodies shall be prohibited to adopt acts and (or) to commit actions those which restrict business independence, create discriminating conditions, or, on the contrary, favourable conditions for the activities of certain market entities, in cases where such acts or actions lead or may lead to the restriction of competition. In particular the following shall be prohibited:

- 1) to introduce restrictions and (or) to unreasonably impede the creation of new market entities in any area of activities, as well as to establish prohibition of the performance of certain types of activities or manufacture of certain types of goods (work, services), except for the cases as established by the legislative acts of the Republic of Kazakhstan;
- 2) to unreasonably obstruct the performance of the activities of market entities in any sphere;
- 3) to establish prohibition of sale (purchase, barter, acquisition) of goods (work, services) from one province of the Republic to another, or to restrict in any other manner the rights of market entities to the sale (purchase, barter, acquisition) of goods (work, services), unless otherwise is established by the legislative acts of the Republic of Kazakhstan;

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4) to issue to market entities instructions on priority supply of goods (performance of work, rendering of services) for a certain group of buyers (customers), or instructions on the priority conclusion of agreements, unless otherwise is provided for by the legislative acts of the Republic of Kazakhstan;

5) to create the associations with market entities in cases where it leads to the emergence of the dominant (monopolistic) position of such entities at the commodity market;

6) to carry out sharing of the commodity market under the territorial principle, volume of sale or purchase, assortment of goods (work, services), or depending on a group of sellers or buyers;

7) to delegate (in particular temporarily) to market entities the powers, the exercise of which, leads or may lead to the above mentioned violations as provided for by subparagraphs from 1) to 6) of this Article;

8) to unreasonably grant to a certain market entity or to several market entities preferences and (or) exclusive rights those which give to such entities the advantageous position in relation to other market entities.

2. The decision of state bodies concerning issues of the creation, re-organisation, and liquidation of market entities in the cases, as provided for by antimonopoly legislation, shall be subject to agreement with the antimonopoly body.

### **Article 14. Agreements (Agreed Actions) of Market Entities Restricting Competition**

1. Any agreements (agreed actions) attained in any form by the competitive market entities (potential competitors) those which have or may have in aggregate a share at the market of a definite goods of more than 35 per cent shall be fully or partially prohibited and recognised as invalid in accordance with the procedure established by legislation, in cases where such agreements (agreed actions) lead or may lead to the restriction of competition, in particular the agreements (agreed actions) aimed at the following:

1) restriction of production, withdrawal of goods from circulation for the purposes to create or maintain artificial deficit at the commodity market, or rise in prices, in particular by way of collusion;

2) unreasonable reduction in volumes of production or termination of the production of goods (work, services) those which are in demand, or of orders of consumers, when there is a possibility of the production or supply of said goods (work, services);

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3) sharing of the commodity market depending on the territorial principle, volume of sale and purchase, assortment of goods (work, services) to be marketed, or depending on a group of sellers or their buyers (customers);

4) restriction of the entrance to the commodity market (withdrawal from the market) or removal from the market of other market entities as sellers of certain goods (work, services) or their buyers (clients);

5) denial to enter into agreements with certain sellers or buyers;

6) establishment (support) of uniform prices (tariffs), discounts, markups (additional payments), extra charges at the commodity market, in particular by way of collusion;

7) increase, decrease, or support of prices at auctions and tenders.

2. Agreements (agreed actions) shall be prohibited and recognised as invalid fully or in part, in accordance with the procedure established by legislation, those which are attained in any form by non-concurrent market entities one of which holds the dominant (monopolistic) position and the other is a supplier or buyer (customer) of such entity, when such agreements (agreed actions) result in or may result in the restriction of competition and (or) infringement of the interests of physical persons and legal entities.

3. Violation of the requirements, as indicated in this Article, shall be recognised as the basis to apply measures to market entities, right up to liquidation in a judicial procedure pursuant to a lawsuit of the antimonopoly body.

### **Article 15. Agreements (Agreed Actions) of the State Bodies Those Which Restrict Competition**

Any agreements (agreed actions) attained in any form by a state body with another state body, or with a market entity, shall be fully or partially prohibited and recognised as invalid in accordance with the established procedure, those which result in or may result in the restriction of competition, including the agreements (agreed actions) aimed at the following:

1) increase, decrease, or support of prices (tariffs);

2) sharing of the commodity market under the territorial principle, volume of sale and purchase, assortment of goods (work, services) to be marketed, or depending on a group of sellers or buyers (customers);

3) granting of exclusive rights to a certain market entity;

4) restriction of access to the commodity market (withdrawal from the market) or removal from such market of market entities.

**Article 16. The Dominant (Monopolistic) Position of a Market Entity**

1. An exclusive position of any market entity, that affects adversely competition, obstructs access to the commodity market of other market entities, or that, in any other manner, restricts freedom of the economic activities of market entities shall be recognised as the dominant (monopolistic) position.

The position shall be recognised as dominant (monopolistic) of any market entity whose share at a relevant commodity market exceeds a maximum value to be established annually by the antimonopoly body.

Therewith, the position of the market entity whose share at a relevant commodity market does not exceed 35 per cent, may not be recognised as dominant (monopolistic).

The position shall be also recognised as dominant (monopolistic) of any market entity whose share at a relevant commodity market is less than a maximum value to be established annually by the antimonopoly body, in cases where it is established by the antimonopoly body on the basis as follows:

- stability of a share of the market entity at a relevant commodity market;
- a relative size of shares at the market belonging to competitors;
- a possibility for new market entities (competitors) to enter a given market .

The procedure for determining the boundaries of a relevant commodity market and the recognition of the market entity as holding the dominant (monopolistic) position shall be determined by the central body authorised in the sphere of antimonopoly policy.

In the event that an international treaty or a contract provides to the market entity the dominant (monopolistic) position, such treaty or contract must be agreed upon with the antimonopoly body.

The position shall be also recognised as dominant (monopolistic) of any of several market entities, provided the following conditions are met with regard to such entities:

- an aggregate share of not more than two market entities at a certain commodity market is 50 or more than 50 per cent;
- an aggregate share of not more than three market entities at a certain commodity market is 70 or more than 70 per cent.

2. In order to control and regulate the activities of market entities, the antimonopoly body shall form and maintain State Registers of Market Entities Holding the Dominant (Monopolistic) Position at the Commodity Markets of the Republic,

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Provinces, the Cities of Astana and Almaty, Cities (henceforth - Register), in accordance with the procedure to be determined by the central body authorised in the sphere of antimonopoly policy.

3. The market entities those which are included into the Register, shall be obliged to present to the antimonopoly body the following information:

- 1) report concerning the results of financial and business activities;
- 2) information on sale and (or) transfer for management of shares (portions, stakes) of enterprises;
- 3) information on monopoly types of produce: volumes of production, sale prices, and profitability of a given business.

Market entities included into the Register shall be obliged to notify the antimonopoly body about the forthcoming rise in prices for monopoly goods (work, services) and also about the reasons of such rise.

4. The actions of any market entity that holds the dominant (monopolistic) position at the commodity market shall be prohibited and recognised as invalid, those which result in or may result in the restriction of competition, abuse of a given entity's dominant (monopolistic) position, in particular such actions as follows:

- 1) set up of exclusively high (low) prices;
- 2) imposition on a counteragent of the provisions which do not pertain to the subject matter of a given agreement, inclusion to the agreement of discriminating provisions those which put the counteragent into unequal position as compared to other market entities, consent to enter into agreement just when such provisions are included into it;
- 3) withdrawal from circulation of goods (work, services) in order to create or support deficit at the commodity market, or to raise (reduce) prices;
- 4) creation of obstacles for other market entities to enter the market;
- 5) violation of the procedure of price formation as established by regulatory legal acts;
- 6) unreasonable reduction in volumes of production or termination of production of goods (work, services) those which are in demand, or orders of consumers, when the possibility exists to produce or supply such goods (work, services).

### **Chapter 3. Certain Types of State Supervision**

#### **Article 17. State Supervision of the Creation, Re-organisation, Liquidation of Market Entities and Their Associations**

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1. For the purposes to prevent potential abuse by market entities of their dominant (monopolistic) position, the antimonopoly body shall carry out state-directed supervision of the following:

creation of market entities those whose share at a relevant commodity market will exceed thirty five per cent;

re-organisation of market entities those which hold the dominant (monopolistic) position at a relevant commodity market;

liquidation of market entities those which hold the dominant (monopolistic) position at a relevant commodity market, except for the cases where the liquidation is carried out pursuant to a court decision that has entered into force.

2. In the cases, as provided for by paragraph 1 of this Article, state bodies and legal entities in cases of liquidation, re-organisation of market entities shall submit to the antimonopoly body, in addition to the documents to be presented to the registering body, in accordance with the legislation of the Republic of Kazakhstan, a petition concerning the consent to create the market entities those whose share at a relevant commodity market will exceed thirty five per cent, the re-organisation, liquidation of market entities those which hold the dominant (monopolistic) position at a relevant commodity market, information on the main types of activities and volumes of goods (work, services) to be produced and marketed at relevant commodity markets.

The list of documents, the procedure for their presentation and consideration shall be determined by the central executive body in the sphere of antimonopoly policy.

The antimonopoly body within 30 days from the day when appropriate documents are received shall notify an applicant in writing about a decision adopted.

3. The antimonopoly body shall have the right to decline the petition in cases where the satisfaction of such petition may lead to the emerging or strengthening of the dominant (monopolistic) position of the market entity, and (or) to the restriction of competition, or when in the course of consideration of documents presented it is discovered that information contained in such documents, that is of importance for the decision to be adopted, is unreliable.

The antimonopoly body shall have the right to satisfy a given petition, provided the requirements are met those which are aimed at the assurance of competition. In this case, the requirements indicated, as well as the terms for the fulfillment of such requirements must be contained in the decision of the antimonopoly body concerning the consent to the performance of actions as provided for by paragraph 1 of this Article.

4. The antimonopoly body must be notified by the market entity in the case of full or partial acquisition of the assets of another market entity, if it may lead to the

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emergence of a business entity whose share at a relevant commodity market will exceed thirty five per cent.

5. In the event that the antimonopoly body, after preliminary study of information, comes to the conclusion that the creation, mergence, affiliation of the market entity, the antimonopoly body was notified about, may lead to the restriction of competition, the antimonopoly body shall take a decision to carry out an additional review of compliance of such market entity's creation, mergence, affiliation with the requirements of antimonopoly legislation.

Said decision shall be directed to the applicant within 15 days from the day when the antimonopoly body receives the application concerning notification.

A final decision shall be adopted by the antimonopoly body within the dates as provided for by paragraph 2 of this Article, the applicant being notified appropriately in writing.

6. In cases where the creation, mergence, affiliation of the market entity may lead to the restriction of competition, the foundation parties of such entity, the persons or the state bodies those which have taken a decision concerning such creation, mergence, affiliation, shall be obliged pursuant to the request of the antimonopoly body to take steps for the restoration of appropriate conditions of competition.

7. In cases, as provided for by paragraph 4 of this Article, the persons or the state bodies those which take a decision concerning creation, mergence, affiliation, shall have the right, before such decisions are taken, to inquire the consent of the antimonopoly body that is obliged to consider appropriate petitions in accordance with the procedure as established by paragraph 2 of this Article.

8. In cases, as provided for by paragraph 1 of this Article, the state registration of market entities, as well as inclusion of an entry concerning the exclusion from the Single State Register of Legal Entities shall be carried out by the registering body only upon prior consent of the antimonopoly body.

State registration of market entities and their associations, those which were created or re-organised without prior consent of the antimonopoly body, may be recognised, in a judicial procedure, as invalid, pursuant to the lawsuit of the antimonopoly body.

9. The creation, mergence, affiliation of market entities in violation of the procedure, as established by paragraph 4 of this Article, in cases where such creation, mergence, affiliation lead to emerging or strengthening of the dominant (monopolistic) position of market entities and (or) to the restriction of competition, and a failure to meet the requirements of the antimonopoly body as applicable in accordance with

paragraph 6 of this Article, shall be the basis to recognise the state registration as invalid in a judicial procedure pursuant to the lawsuit of the antimonopoly body.

**Article 18. State Supervision of Compliance with Antimonopoly Legislation in Cases of Acquisition of Shares (Portions, Stakes) in the Authorised Capital of Market Entities and in Other Cases**

1. Upon prior consent of the antimonopoly body on the basis of a petition of a physical person or legal entity the following shall be carried out:

1) acquisition by a person (a group of persons) of shares (portions, stakes) with the voting authority in the authorised capital of any market entity that holds the dominant (monopolistic) position at a relevant commodity market, under which such person (group of persons) is granted the right to dispose of more than 20 per cent of said shares (portions, stakes). This requirement shall not be applicable to the foundation parties of such market entity when this entity is being formed;

2) acquisition for ownership or use by one market entity (group of persons) of the fixed production assets or intangible assets of another market entity, when the balance sheet value of the property, that is the subject matter of a given transaction, exceeds 10 per cent of the balance sheet value of the fixed production assets and intangible assets of the market entity that alienates the property;

3) acquisition by the person (a group of persons) of the rights allowing to determine the terms of the performance by the market entity of such entity's entrepreneurial activities, or to exercise functions of such entity's executive body.

2. The prior consent to carry out the transactions, as indicated in paragraph 1 of this Article, shall be required in cases where an aggregate balance sheet value of the assets of the persons indicated in paragraph 1 of this Article exceeds 100000-times size of the monthly assessment index, or when one of such persons is the market entity included into the Register, or when the acquirer is a group of persons that controls the activities of the market entities indicated in this paragraph.

3. In order to effect the transactions, as indicated in paragraph 1 of this Article, physical persons and legal entities shall be obliged to present to the antimonopoly body a petition concerning giving consent for the performance of such transactions, and to provide information required for the adoption of a decision in accordance with the list of information to be approved by the antimonopoly body.

State supervision of the performance of transactions, as provided for by this Article, shall be carried out by the antimonopoly body in accordance with the procedure, as provided for by paragraph 2 of Article 17 of this Law.

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4. The antimonopoly body shall have the right to decline the petition in cases where the satisfaction of such petition may lead to strengthening of the dominant (monopolistic) position of the market entity (group of persons) and (or) to restricting of competition, as well as in the event that unreliable information is provided that is of importance for the adoption of a given decision. The antimonopoly body shall have the right to satisfy the petition in cases where the requirements are met those which are aimed at the assurance of competition. In this case, said requirements as well as the dates for their fulfillment must be contained in the decision of the antimonopoly body concerning the consent for the performance of actions as provided for by paragraph 1 of this Article.

5. If the transactions indicated in paragraph 1 of this Article are effected by the persons whose assets balance sheet value exceeds 50000-times size of monthly assessment index, then such persons shall be obliged to notify the antimonopoly body within 15 days after the transactions are effected.

In cases where a physical person is a member of the executive body, board of directors (supervisory board) of two or more than two market entities, those whose assets aggregate balance sheet value exceeds 50000-times size of monthly assessment index, or of a market entity included into the Register under one and the same commodity group, or a market entity included into the Register under the groups of goods of different stages of one and the same production-and-sale process, such person must appropriately notify the antimonopoly body within 15 days after such person is included (elected) to said bodies or councils. When giving notice to the antimonopoly body, the applicant shall present to such body, in addition to the application, information as provided for by paragraph 3 of this Article.

6. In the event that the antimonopoly body after preliminary study of information, comes to the conclusion that the performance of the transaction, the antimonopoly body was notified about, may lead to emerging or strengthening of the dominant (monopolistic) position of the market entity (group of persons), and (or) to the restriction of competition, the antimonopoly body shall take a decision to carry out an additional review of compliance of said transaction with the requirements of antimonopoly legislation. Said decision shall be directed to the applicant within 15 days from the day when the antimonopoly body receives the application concerning notification.

A final decision shall be adopted by the antimonopoly body within the dates as provided for by paragraph 2 of Article 17 of this Law, the applicant being notified appropriately in writing.

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7. In the event that the actions, as provided for by paragraph 5 of this Article, may lead to emerging or strengthening of the dominant (monopolistic) position of the market entity, and (or) to the restriction of competition, the persons those which carry out such actions shall be obliged pursuant to the request of the antimonopoly body, within the dated established by this body, to take steps for restoration of necessary conditions of competition.

8. In cases, provided for by paragraph 5 of this Article, said persons shall have the right to preliminary inquire the consent to carry out such actions from the antimonopoly body, that shall be obliged to consider appropriate applications in accordance with the established procedure.

9. The transactions as effected in violation of the procedure established by this Article those which lead to emerging or strengthening of the dominant (monopolistic) position of the market entity and (or) to the restriction of competition, may be recognised as invalid in a judicial procedure pursuant to the lawsuit from the antimonopoly body.

A failure to execute the prescription and decision of the antimonopoly body as passed in accordance with paragraphs 4 and 7 of this Article shall be the basis to appeal to the court in order to recognise a given transaction as invalid pursuant to the lawsuit of the antimonopoly body.

Violation of the requirements of this Article with regard to receiving consent (notification) of the antimonopoly body for the performance of transactions shall be recognised as the basis to impose penal sanctions in accordance with legislative acts.

### **Article 19. Compulsory Division, Segregation of Market Entities Holding the Dominant (Monopolistic) Position at a Certain Commodity Market**

1. In the event that market entities those which hold the dominant (monopolistic) position commit two or more than two violations of antimonopoly legislation during a calendar year, those which are aimed at the restriction of competition, the antimonopoly body shall have the right to bring a lawsuit for the compulsory division or segregation out of their membership of one or several legal entities on the base of structural subdivisions, if it leads to the development of competition.

2. The compulsory division, segregation of any market entity may be carried out in cases where a set of the following conditions is available:

1) a possibility of institutional and territorial split-off of the structural subdivisions of such entity;

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2) a lack between such entity's structural subdivisions of close technological interrelation (in particular if the volume of goods (work, services) of such entity's structural subdivision to be consumed by the market entity does not exceed 30 per cent of the total volume of goods (work, services) to be produced by such structural subdivision);

3) a possibility of a legal entity separated as a result of re-organisation to independently work at the market of certain goods.

3. A decision concerning compulsory division, segregation of the market entity shall be subject to execution by the owner or the body authorised by such owner, subject to the requirements as provided for in the mentioned decision, and within the period of time as determined therein, that may not be shorter than six months.

4. In cases where it is impossible or inexpedient to divide or segregate the market entity that is the monopolist at the market or that holds at such market the dominant (monopolistic) position, other measures of antimonopoly coercion shall be applied to such entity, in particular the establishment of fixed prices.

5. In the event that the dominant (monopolistic) position of the market entity has emerged as a result of organisation of release of goods (work, services) those which have no analogs at the commodity market, the decision concerning compulsory division, segregation may be adopted not earlier than one year after such dominant (monopolistic) position emerged.

### **Article 20. Introduction of the State Regulation of Prices**

The decision concerning the introduction of the state regulation of prices for goods (work, services) of the market entities holding the dominant (monopolistic) position at the commodity market shall be adopted by the antimonopoly body in accordance with the rules to be established by the Government of the Republic of Kazakhstan.

## **Chapter 4. Responsibility for Violation of Antimonopoly Legislation**

### **Article 21. Obligatory Nature of the Execution of Prescriptions and Decisions of the Antimonopoly Body**

1. In the case of violation of antimonopoly legislation, market entities (their heads), state bodies (their official persons) in accordance with the prescriptions, decisions of the antimonopoly body shall be obliged to stop the violation, in particular:

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- 1) to execute the prescription, decision of the antimonopoly body within the dates as established by such body;
- 2) to recover damage caused;
- 3) to transfer to the budget the monopoly income as received as a result of the violation of antimonopoly legislation;
- 4) to terminate the violation of this Law and (or) eliminate the consequences of such violation;
- 5) to restore the situation existing prior to the violation committed, or to carry out other actions as indicated in the prescription, decision;
- 6) to abolish the acts recognised by the antimonopoly body as being not in compliance with antimonopoly legislation;
- 7) to cancel the agreement or to introduce amendments to such agreement;
- 8) to enter into agreement with any other market entity;
- 9) to carry out re-organisation in the form of division or segregation, the established provisions and dates being complied with;
- 10) to carry out other actions as provided for by the prescription, decision.

2. In the case of violation of antimonopoly legislation, the antimonopoly body shall have the right, in an administrative procedure, to impose fines in accordance with the legislative acts of the Republic of Kazakhstan.

### **Article 22. Responsibility for Violation of Antimonopoly Legislation**

Persons guilty of the violation of antimonopoly legislation shall bear responsibility in accordance with the procedure as established by the legislative acts of the Republic of Kazakhstan.

### **Article 23. Responsibility of Market Entities**

1. Market entities shall bear responsibility in the form of fines for the following violations:

- 1) a failure to timely execute the prescription, decision of the antimonopoly body;
- 2) commitment of actions (inaction) in violation of the procedure, as provided for by Articles 17 and 18 of this Law;
- 3) a failure to comply with the legitimate requirements of the antimonopoly body as applicable in accordance with paragraph 3 of Article 17 and paragraph 4 of Article 18 of this Law;

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4) a failure to timely present upon the request from the antimonopoly body of the documents or any other information that is subject to presentation in accordance with Articles 17 and 18 of this Law;

5) presentation of unreliable information to the antimonopoly body;

6) violation of the procedure established for presentation of information on the basis of petitions and notices as provided by Articles 17 and 18 of this Law.

2. The collection of fines, as provided for by paragraph 1 of this Article, shall be carried out pursuant to a decision of the antimonopoly body in accordance with the procedure as established by the legislation of the Republic of Kazakhstan.

### **Article 24. Responsibility of the Heads of Market Entities, Official Persons of State Bodies**

1. The heads of market entities, the official persons of state bodies, legal entities (their affiliates and representations) shall be responsible in an administrative procedure for the following violations of the law:

1) a failure to timely execute the prescription, decision of the antimonopoly body;

2) a failure to timely present pursuant to the demand of the antimonopoly body of the documents or any other information required for the performance of their activities;

3) obstruction of the performance by the workers of the antimonopoly body of the duties entrusted to them;

2. The official persons of the state bodies those who have registered without the consent of the antimonopoly body any market entity in cases, as provided for by Article 18 of this Law, shall bear administrative responsibility in accordance with the procedure as established by the legislative acts of the Republic of Kazakhstan.

3. Individual entrepreneurs shall bear administrative responsibility for the following violations of the law:

1) a failure to timely present upon the demand of the antimonopoly body of the documents or any other information required for the performance of their activities;

2) commitment of actions (inaction) those which violate the procedure as established by Articles 17 and 18 of this Law;

3) a failure to comply with the legitimate requirements of the antimonopoly body applicable in accordance with paragraph 3 of Article 17 and paragraph 4 of Article 18 of this Law.

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4. The collection of fines, as provided for by paragraphs 1, 3 of this Article, shall be carried out pursuant to a decision of the antimonopoly body in accordance with the procedure as established by the legislative acts of the Republic of Kazakhstan.

### **Chapter 5. The Procedure for Adoption, Appeal, and Execution of the Prescriptions and Decisions of the Antimonopoly Body**

#### **Article 25. Grounds for Considering Cases of Violation of Antimonopoly Legislation by Antimonopoly Bodies**

1. The antimonopoly body shall consider the facts of violation of antimonopoly legislation and it shall adopt in connection with such facts prescriptions and decisions within the boundaries the authority of such antimonopoly body.

The following shall be recognised as the grounds to review the facts of violation of antimonopoly legislation:

- analysis of commodity markets;
- applications of physical persons, legal entities, and any other interested persons;
- information of state bodies;
- reports of law enforcement bodies;
- applications of public associations;
- announcements of mass communication media;
- joint reviews together with other state bodies;
- own initiative of the antimonopoly body.

2. Applications shall be filed with the antimonopoly body in writing, the documents being attached thereto those which testify the facts of violation of antimonopoly legislation.

3. The consideration of cases of violation of antimonopoly legislation shall be carried out by the antimonopoly body in accordance with the procedure as established by the legislative acts of the Republic of Kazakhstan.

#### **Article 26. The Procedure for the Execution of the Prescriptions and Decisions of the Antimonopoly Body**

1. Any prescription and decision of the antimonopoly body shall be subject to execution within the dates as established in such prescription or decision. A failure to timely execute such prescription or decision shall entail the consequences as provided for by this Law and the legislation of the Republic of Kazakhstan

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In the case of a failure to execute the prescription or decision concerning the restoration of the situation existing prior to the commitment of violation, the antimonopoly body shall have the right to appeal to the court with the application concerning the coercion to restore the situation existing prior to given violation.

In the case of a failure to execute the prescription and decision concerning full or partial abolishing of the acts contradicting antimonopoly legislation, the antimonopoly body shall have the right to bring a lawsuit for recognition of such acts as invalid fully or partially.

In the case of a failure to execute the prescription and decision concerning alteration or cancellation of any agreement that contradicts antimonopoly legislation, or concerning the conclusion of an agreement with any other market entity, the antimonopoly body shall have the right to bring a lawsuit for the recognition of such agreement as invalid fully or partially, or concerning the coercion to enter into the agreement.

In the case of a failure to execute the prescription and decision concerning transfer to the budget of income obtained as a result of the violation of antimonopoly legislation, the antimonopoly body shall have the right to bring a lawsuit for the recovery to the budget of income obtained as a result of the violation of antimonopoly legislation.

2. In cases of evasion from payment of fines, within the established dates, or in case of non-payment of fines in full, the antimonopoly body shall have the right to appeal to the court with the application for exacting of the amount of fines, as well as of penalties in an amount of 1 per cent of the amount of given fine or its outstanding portion for each day of delay.

The amounts of fines to be collected by the antimonopoly body from guilty persons shall be paid to the Republic's budget out of the personal funds of such persons.

Payment of fines shall not release from the duty to execute the prescription and decision of the antimonopoly body, or to carry out any other actions as provided for by antimonopoly legislation.

3. In the case of a failure to execute the prescription and decision, the antimonopoly body shall have the right to apply to the court for compulsory execution of its prescription and decision.

### **Article 27. The Procedure for Appeal against the Prescriptions and Decisions of the Antimonopoly Body**

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1. The state bodies (their official persons), market entities (their heads) shall have the right to address to the court with the application for the recognition as invalid, fully or partially, of any prescription or decision of the antimonopoly body, or for the abolition or alteration of a decision concerning the imposition of an administrative punishment.

Filing of such application shall suspend the execution of a given prescription and decision of the antimonopoly body for the time such application is being considered by the court, until the court decision comes into force.

2. The prescription and decision of the antimonopoly body may be challenged during 6 months from the day such prescription and decision are issued, except for the requirements to which statute of limitations is not applicable.

**President of the Republic of Kazakhstan**

**N. Nazarbaev**

*the city of Astana*