



Kazakhstan is a large land-locked central Asian country, which shares borders with Russia, China, Kyrgyzstan and Uzbekistan. Though Kazakhstan does not border an ocean, it has part or whole of the three Central Asian water bodies – the Aral Sea, the Caspian Sea and Lake Balkash – within its boundaries.

The Kazakh natives were conquered by Russia in the 18th century and Kazakhstan became a Soviet Republic in 1936. During the 1950s and 1960s “Virgin Lands” programme, Soviet citizens were encouraged to help cultivate Kazakhstan’s northern pastures. The influx of immigrants skewed the ethnic mix and non-Kazakhs outnumbered natives. The *Perestroika* in 1991 caused many of these newcomers to emigrate. Kazakhstan is the largest of the former Soviet Republics after Russia and extremely sparsely populated (6 per km²).

Economy

Kazakhstan possesses enormous fossil fuel reserves and plentiful supplies of other minerals and metals. The industrial sector rests on the extraction and processing of these natural resources. In 1995-97, the pace of the government programme of economic reform and privatisation quickened, resulting in a substantial shifting of assets into the private sector. Kazakhstan enjoyed near double-digit growth for four years from 2000 onwards, largely thanks to its booming energy sector, but also due to economic reform, good harvests, and high foreign investments. However, investors continue to complain about moving goalposts and rampant corruption.

The government has been involved in several disputes with foreign oil companies over the terms of production agreements, and tensions continue. The local currency, the *Tenge*, continued to appreciate through 2005 due to massive oil-related foreign-exchange inflows. The country has, therefore, embarked upon an industrial policy

PROFILE	
Population:	15.2 million*
GDP (Current US\$):	26.93 billion**
Per Capita Income: (Current US\$)	1,780 (Atlas method)** 6,671 (at PPP)**
Surface Area:	2.7 sq. km
Life Expectancy:	66.5 years*
Literacy (%):	98.4 (of ages 15 and above)**
HDI Rank:	80***
<i>Sources:</i> - World Development Indicators Database, World Bank, 2004 - Human Development Report, UNDP, 2004 (* For the year 2005 (**) For the year 2003	

designed to diversify the economy away from over-dependence on the oil sector, by developing light industry.

Kazakhstan has not completed its accession to the WTO, though the application was made in 1996 and a Working Party was established in the same year. Negotiations are on-going, on the basis of revised offers on goods and services. The Working Party prepared a draft report in May 2005 and was scheduled to meet again in the first quarter of 2006.

Kazakhstan is a member of the Central Asia Cooperation Organisation, the Conference for Interaction and Confidence-Building Measures in Central Asia, the Eurasian Economic Community, the Shanghai Cooperation Organisation, the Organisation for Security and Co-operation in Europe, and most importantly the Commonwealth of Independent States (CIS). This last membership has a predominant influence on the development path of the competition regime in Kazakhstan.

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Competition Evolution and Environment

One of the most important CIS treaties, the Treaty on the Creation of the Economic Union of CIS Countries, mandates the creation of a free trade area, formation of a customs union, and creation of a common market of goods, services, capital and labour. These tasks can be achieved only if common competition principles are observed in these countries; hence the Treaty on the Implementation of a Coordinated Competition Policy¹ was concluded in 1993, with the main objective of creating a legal basis for the prevention, limitation and elimination of monopolistic activities and unfair competition among companies in the common CIS economic area. This Treaty also provides for close cooperation among CIS antimonopoly authorities, with the following goals:

- Coordination of joint activities;
- Rapprochement of the antimonopoly laws of the Parties to the extent needed for the implementation of the Treaty;
- Creation of favourable conditions for the development of competition, effective functioning of the goods markets and consumer rights protection;
- Elaboration of common procedures for the investigation and evaluation of monopolistic activities of economic entities and executive/governing bodies; and
- Creation of a mechanism for cooperation.

The definitions and rules fixed in the Treaty *vis-à-vis* competition were later used in individual country contexts by CIS countries while drafting their national laws. This not only resulted in many CIS countries adopting their own competition laws, in the form of antimonopoly laws, subsequently. It is also the reason behind the high level of similarity between those countries' antimonopoly laws at the initial stage of their drafting, thus facilitating the further process of competition law harmonisation.²

The antimonopoly regime in Kazakhstan, as such, is fairly well-developed, and is, in many respects, very similar to those of the other Central Asian CIS countries. The country has an old law called the 'Law on Unfair Competition' passed in 1998, which was subsequently amended by Law No. 125 of 2000 of the Republic of Kazakhstan, effective from 2001. This law, the concurrent competition law of Kazakhstan is titled, 'Law No. 144 of 19th January 2001 of the Republic of Kazakhstan Concerning Competition and Restriction of Monopoly Activities' (hereinafter referred to as the Anti-monopoly Law).

Similarly as other CIS countries, Kazakhstan has another relevant piece of legislation – the Law on Natural

Monopolies of July 1998, which regulates the activities of natural monopolies in Kazakhstan and provides for one of the functions of the anti-monopoly authority.

A natural monopoly is defined by this Law as a market situation in which the creation of competitive conditions for satisfying demand in a market for particular types of services or goods is impossible or economically impracticable due to the technical features of the production and provision of the service or good. The Law on Natural Monopolies also lists eight services that may be called natural monopolies and hence are not subject to control under the Anti-monopoly Law.

An important exception to the scope of the Law on Natural Monopolies is the regulation of entrepreneurs and legal entities conducting activity involving a natural monopoly, but which is connected with the construction and exploitation of objects intended exclusively for their own needs. This situation often arises in connection with petroleum exploration and production companies that must construct pipelines and other facilities for the purpose of transporting their own production to port terminals or main export pipelines.

Competition law

The Anti-monopoly Law 2001 of Kazakhstan establishes the national anti-monopoly organisational framework, which is composed of the central anti-monopoly body (hereinafter referred to as the AMB) and its local divisions. It also describes the tasks and competencies of the AMB, and addresses issues related to the definition of market dominance, the state control over dominant undertakings and market mergers, the responsibilities of operators, the right of appeal against the authority's decision, etc.

The stated objectives of the Anti-monopoly Law are as follows:

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 associated with support to entrepreneurship, the prevention, restriction, suppression, and regulation of monopoly activities.

¹ See footnote 2 on page 97

² <http://r0.unctad.org>

No provision of the Anti-monopoly Law suggests any extra-territorial effect. The jurisdiction of the law is restricted to only the territory of the Republic of Kazakhstan.

Monopolistic activities are defined as actions of “market entities, state bodies [...] which are aimed at the non-admission, restriction, or elimination of competition, and (or) those which infringe the legitimate interests of consumers”.

With regard to horizontal collusion, the Anti-monopoly Law fully or partially prohibits any agreement between market entities that may have an aggregate market share of the definite goods of more than 35 percent, in cases where such agreements may lead to restriction of competition. Such agreements may be aimed at restriction or termination of production, withdrawal of goods from circulation to create an artificial deficit in the market or rise in prices by way of collusion, territorial or volume sharing of the commodity market, restriction of entrance to the market, fixing prices, discounts, mark-ups or increase or decrease of prices at auctions and tenders.

The Law also prohibits, fully or partially, any agreement between “non-concurrent market entities, one of which holds the dominant (monopolistic) position and the other is a supplier or buyer (customer) of such entity” (vertical collusion), when such an agreement may “result in the restriction of competition and (or) infringement of the interests of physical persons and legal entities”.

Violation of these requirements may result in “measures to market entities, right up to liquidation in a judicial procedure pursuant to a lawsuit of the antimonopoly body”.

The dominant position of a market entity is defined in the Law as having a share of a relevant commodity market in excess of “a maximum value to be established annually by the Anti-monopoly body”. In the form of some guidelines given to the AMB, the Law suggests that “the position of the market entity, whose share at a relevant commodity market does not exceed 35 percent, may not be recognised as dominant (monopolistic)”. But a market entity may be considered to have a dominant position even though its share in the relevant commodity market is less than the established value, in view of factors such as stability of the share, relative size of competitors and entry barriers. The onus for this decision, as well as the one regarding the boundaries of the relevant market are decided by the AMB.

Further conditions that deem market entities dominant are that the aggregate share of not more than two market entities in a commodity market is at least 50 percent, and at least 70 percent for not more than three market entities.

The AMB maintains “State Registers of Market Entities Holding the Dominant (Monopolistic) Position at the Commodity Markets of the Republic, Provinces, the Cities of Astana and Almaty”, in accordance with the procedure determined by the central body. The market entities that are included in the Register are subject to severe control and must provide the AMB with information regarding financial and business activities, dealings in shares, volumes of production, sales and profitability. These entities are also required to pre-notify any planned increase in prices and the reasons thereof.

The Law also forbids those mergers or agreements between enterprises that would result in the controlling share of more than 35 percent of the relevant market by the said enterprises and if those mergers or agreements aim at impeding a free play of competition in the Republic.³

Competition Institutions and Competencies

The governmental body in Kazakhstan, which is authorised to develop commodity markets and competition, prevent, restrict and suppress monopolistic activities, protect the rights of consumers, supervise compliance, regulate prices and co-ordinate the activities of the other state bodies in the sphere of anti-monopoly policy, is the AMB, as mentioned before. It is a system composed of the central executive body and the territorial units subordinated to the AMB. The AMB also has a council of experts attached to it, comprising of scientists, specialists and representatives of state bodies and market entities.

The AMB is required to:

- carry out analyses to identify market entities that hold the dominant position,
- evaluate other laws that relate to the development of competition,
- submit reports to the Parliament and Government of the Republic of Kazakhstan, and
- hear and decide on cases concerning the violation of anti-monopoly legislation.

The AMB is also responsible for price policy in areas where there is insufficient competition or ones that require special attention from a development perspective – a function that is generally the prerogative of the ministry concerned with the product in question. Some other such

3 mkacddb.cec.eu.int

duties include alteration of licensing procedures for export and import transactions, adjustment of customs duties, etc.

When the share of a market entity in the relevant market exceeds 35 percent, the AMB must issue mandatory instructions to the market entity and also to the heads of such entities. It has the right to impose fines on the market entities, their heads or even official persons of state bodies that may obstruct the process of competition.

Official persons of state bodies, market entities and their heads, and also physical 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”. Market entities may exercise their rights to commercial secrecy, as established by the law, and not be subject to disclosure.

The territorial state bodies are obliged to assist the development of markets and competition, “carry out purpose-oriented investment”, “stimulate the activities of concurrent production lines in monopolised sectors”, undertake “re-organisation of market entities” and “promote the creation of new enterprises in order to expand competition in the commodity market”.

The Anti-monopoly Law also has clear restrictions on the kind of activities that state bodies may take up and kind that they may not, in the interest of competition. “The state bodies shall be prohibited to adopt acts and (or) to commit actions whose 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”.

Such actions include the introduction of unreasonable restrictions on the creation of new market entities, their performance, sale of goods and their rights, or, conversely, the creation of associations with market entities by sharing markets or delegating powers, which may lead to the creation of a dominant market player.

State bodies are not allowed to issue instructions to market entities on priority supply of goods to a certain group of buyers unless otherwise provided for by the laws of the Republic of Kazakhstan. Any decision of state bodies concerning issues of the creation, re-organisation, and liquidation of market entities shall be subject to agreement with the AMB.

Any physical person or legal entity that wishes to purchase shares/voting rights/intangible assets of another entity, is

obliged to present a petition to the AMB expressing this intention and providing all the information required for the adoption of a decision in accordance with the list of information to be approved by the AMB. The AMB has the right to accept or decline the petition on the basis of whether its acceptance will lead to an assurance of competition, or the strengthening of the dominant position of an entity/restricting competition.

If a market entity commits two or more violations of the antimonopoly legislation in one calendar year, then the AMB has the right to “bring a lawsuit for the compulsory division or segregation out of their membership of one or several legal entities”. All market entities and even state bodies are obliged to comply with the prescriptions/decisions of the AMB. If they do not, the AMB has the right, in an administrative procedure, to impose fines in accordance with the laws of the Republic of Kazakhstan. Any state body/market entity has “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” within six months from the day the decision was issued.

Regulatory Framework

The competition rules of Kazakhstan do not at all address the crucial issue of the overlap between national competition law and sectoral regulation.

Telecommunications Sector⁴

Kazakhtelecom (KT) was created in 1994 on the basis of the telecommunication infrastructure belonging to the state, represented by the Ministry of Communication of Kazakhstan. Almost 60 percent of KT’s equity is owned by the government. The company has the status of a unique national operator in charge of ensuring the development, implementation and management of the public telecommunications network. KT has also the status of an operator of the public telecommunications network and an exclusive provider of the long distance and international services in Kazakhstan.

Apart from the incumbent KT, there are also some private companies operating in the fixed telephony market in Kazakhstan. Most of them are the owners of so-called governmental networks that have received a telecommunications licence. Others have built their own network. Those private companies are basically dealing with the corporate market and their market share remains small.

The provision of services via the local telecommunications network (local voice telephony, fax etc.) is considered as a natural monopoly under the Law on Natural Monopolies.

4 <http://mkaccdb.cec.eu.int>

According to this law, the tariffs for the provision of these services are fixed by the government.

All major policy and regulatory functions were delegated to the state regulation body – the Committee on Communications and Information (CCI), which was established in 2000 as a department of the Ministry of Transport and Communications. Its activities are financed by the state's budget and it is not an independent body, though one such regulatory body is planned in 2006.

The CCI carries out the national regulatory activities in the fields of telecommunications and postal services, like:

- elaboration of national infrastructure development programmes;
- granting telecommunications licences, and permissions for the use of radio frequencies;
- exercises the control over the licensees' activities;
- establishing rules related to the distribution of the national telecommunications numbers and of the attribution of the Kazakh Internet addresses; and
- laying down conditions for international telecom traffic and the tariff principles.

In principle, no sectors of the Kazakh economy are closed to investors. However, sectors apart from natural resources, and in particular telecom, are perceived as rather unattractive. An investor does not need to obtain a special permission, neither is there a (minimum/maximum) foreign participation limit. An investor can freely choose an appropriate structure (representative office, a particular legal entity or a joint venture) for doing business.

In principle, several pieces of Kazakh legislation, both general (e.g. the Anti-monopoly Law) and sector specific (e.g. the Communications Law), deal with competition issues. Nevertheless, several exceptions impede the accurate implementation of the said principles in the telecommunications sector.

The Anti-monopoly Law, for example, does not cover the area of the exclusive rights (article 2§2). In this context, it is worthy to note that the Kazakhtelecom (KT) has been granted with exclusive rights for the provision of the long distance and international telecommunications services. In other words, the KT's exclusive provision of these services can not be considered as violating the competition rules. Considering the state of development of the market, there was thus no decision taken by the competition authorities regarding telecommunications.

The Communications Law states that the activities in the area of communications must respect, among others, the principle of fair competition. Besides, the Law on Licences also provides that the granting of licences by the state shall respect the principle of non-discrimination. It forbids reservation of priority treatment for the state enterprise while granting licences, except for the activities that are considered as state monopoly. Licensing must not strengthen the monopolistic behaviour of operators nor must it limit the freedom of business activities.

Consumer Protection

Kazakhstan does not have a specialised consumer protection agency. The Anti-monopoly Law 2001 has as one of its objectives, "the protection of the interests of consumers", and this phrase is reiterated several times in the text of the Law. But this is only meant to be a broad philosophy that the agency is expected to respect when acting in the interest of competition. There are no direct provisions for the redressal of the grievances of consumers in the Law. To make up for this gap, recently, a Consumer Rights Law has been passed in Kazakhstan.

The Consumer Rights Law regulates the interactions between consumers and producers, providers, and sellers of goods and services. The Law protects the rights of consumers to get goods of good quality that are safe for human life, health, property and the environment; supports the right of consumers to get correct and full information about products and services and their providers; defines protection of consumer rights and ways to achieve it in reality.

Concluding Observations and Future Scenario

Much of the increased attractiveness of Kazakhstan as a destination for foreign investment can be attributed to the relative success with which its government has restructured its centrally-planned economy to move towards a more free-market based system. Its successes include the creation from scratch of a sophisticated financial services sector (the most advanced in the former Soviet Union), introduction of a private pension plan, privatisation of the electricity industry, civil service reforms, decentralisation to give greater autonomy to local government and the creation of a National Oil Stabilisation Fund.⁵

In spite of all the achievements, a number of challenges remain to be dealt with if Kazakhstan is to maintain its current high rates of growth, FDI and government spending and make it to the top 50 developed countries in

5 www.cisstat.com

the world, such as that of diversifying the economy, promoting the competitiveness of non-oil exports, addressing the severe income inequalities, improving the corruption record, developing innovative technologies and human capital, and of course, no less importantly, that of strengthening and developing the competition regime in

the country. This is crucial to ensure that the benefits gained from liberalisation, global and regional integration and privatisation accrue to a large part of the society, as well as to ensure long-term dynamic efficiency and improved consumer welfare.