

**THE AGENCY FOR PROTECTION AND DEVELOPMENT OF COMPETITION
OF THE REPUBLIC OF KAZAKHSTAN**

**REPORT
STATE OF COMPETITION IN CERTAIN COMMODITY MARKETS AND
MEASURES TAKEN TO LIMIT MONOPOLISTIC ACTIVITY
FOR 2022**

Astana, 2023

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Introduction

This report has been prepared by the Agency for Protection and Development of Competition of the Republic of Kazakhstan (*hereinafter referred to as the Agency, the Antimonopoly Authority*) to inform the President of the Republic of Kazakhstan and the Prime Minister of the Republic of Kazakhstan on the state of competition in certain commodity markets and measures taken to limit monopolistic activities for 2022 in accordance with subparagraph 26) of Article 90-6 of the Entrepreneurship Code of the Republic of Kazakhstan (*hereinafter referred to as the Code*).

The Report provides information on:

- the most significant events (*measures*) in antimonopoly regulation and competition policy in the Republic of Kazakhstan for 2022;
- international co-operation with foreign Antimonopoly Authorities, including within the framework of international integration associations;
- state of competition in certain commodity markets of the Republic of Kazakhstan, factors distorting competition and barriers to entry into commodity markets, information on measures to eliminate them;
- results of work to reduce participation of the state in entrepreneurial activities, detection and suppression of violation of competition protection legislation of the Republic of Kazakhstan, indicators of state regulation of economic concentration, information on ongoing work to improve competition protection legislation of the Republic of Kazakhstan;
- main tasks, set before the Antimonopoly Authority for the coming year.

Chapter 1. Competition Policy in the Republic of Kazakhstan

1.1. General Trends of Competition Policy in the Republic of Kazakhstan

The analysis of the state of competition at commodity markets in basic sectors of the country's economy (*markets of fuel and energy sector, transport, telecommunications, and communications*) shows that the aggregate share of main market entities ranges from 70 to 100%, a number of markets showing **increased market power concentration ratio** (*low level of competition*) (Figure 1).

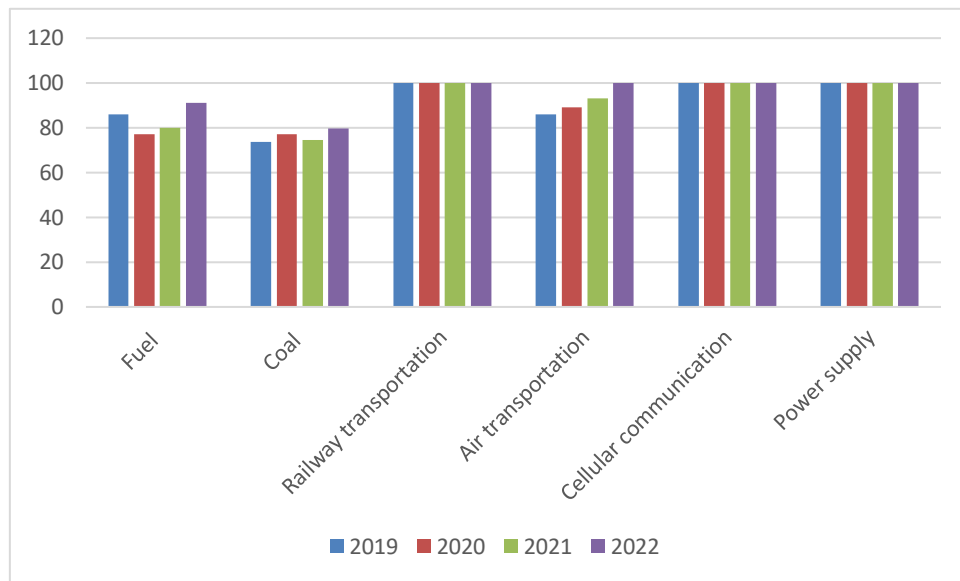


Figure 1- Dynamics of changes in market power concentration ratio (concentration ratio of the three (CR-3) largest suppliers), %.

Moreover, there is a new trend in the economy of the Republic of Kazakhstan: state participation in entrepreneurial activities **is expanding**, and **new monopolies with state participation are emerging**.

As a result, formed **monopolistic / oligopoly structure** of key commodity markets favors banned monopolistic activities, increasing marginal costs of entrepreneurs and costs for the population: according to experts of the Organization for Economic Co-operation and Development (*OECD*), **weak competition** can lead to price increases of **up to 10%**¹ on average. In this regard, the development of fair competition and general demonopolization of the economy has become a national task and priority of Kazakhstan's state policy.

Against this background, a number of systemic documents adopted in 2022 define key areas of developing state policy in competition protection and development, including, inter alia, improvement of legislation, and adoption of documents of state planning system on competition issues.

¹ Davies, S. (2013). Assessment of the impact of competition protection authorities' activities. (February 2013) OECD;

Thus, one of the important events at the beginning of 2022 was the signing of Law "On Amendments and Supplements to Some Legislative Acts of the Republic of Kazakhstan on the Competition Development"², the so-called "**fifth antimonopoly package**", by the Head of State (*hereinafter referred to as the Law dated 3 January 2022*).

The Law dated 3 January 2022 ensures execution of the main directions set out in Presidential Decree No. 484 dated 31 December 2020³ (*hereinafter referred to as Decree 484*). Decree 484, for the first time in the history of independent Kazakhstan, recognizes the active promotion of competition as **a national task**. In general, the Law dated 3 January 2022 covers the reduction of state participation in entrepreneurship, ensuring equal access of business entities to state support measures and procurement, development of small and medium enterprises, reduction of administrative and economic barriers to entry into commodity markets, as well as price regulation instruments (*provisions of the Competition protection legislation are described in more detail in Section 1.2 of this Report*).

Also in 2022, the Head of State by his Decree approved the **Concept of Competition Protection and Development in the Republic of Kazakhstan**⁴ (*hereinafter referred to as the Concept*). The Concept is designed to provide a **vision** of further development of antimonopoly regulation, as well as issues of competition development in the country, building a holistic competition policy integrated into an overall economic policy of the country.

Taking into account the tasks outlined in system documents, active work on the following **strategic directions** was started in 2022:

- 1) limiting state participation in entrepreneurship;
- 2) increasing coverage of state support measures for private entrepreneurs on competitive principles;
- 3) working with the Government to promote competition.

From the point of view of effective implementation of competition policy, it is quite important to implement a number of **operational measures** on which the overall quality of the Antimonopoly Authority's work depends, such as digitalization of its activities and introduction of corporate governance principles.

1.2. Improvement of Competition Protection Law

In 2022, the Agency continued work on improving competition protection legislation of the Republic of Kazakhstan, in particular, the following Laws were developed and adopted:

² Law of the Republic of Kazakhstan No. 101-VII dated 3 January 2022 "On Amendments and Supplements to Some Legislative Acts of the Republic of Kazakhstan on the Competition Development" // <https://adilet.zan.kz/rus/docs/Z2200000101>;

³ Decree of the President of the Republic of Kazakhstan dated 31 December 2020 No. 484 "On the Main Directions of the State Policy on Competition Development" // <https://adilet.zan.kz/rus/docs/U2000000484>;

⁴ Decree of the President of the Republic of Kazakhstan dated 22 June 2022 No. 938 "On Approval of the Concept of Competition Protection and Development in the Republic of Kazakhstan for 2022-2026" // <https://adilet.zan.kz/rus/docs/U2200000938>;

1) dated 3 January 2022 "On Amendments and Supplements to Some Legislative Acts of the Republic of Kazakhstan on Competition Development" (*hereinafter referred to as the Law dated 3 January 2022*);

2) dated 1 July 2022 "On Amendments and Supplements to Some Legislative Acts of the Republic of Kazakhstan on Anti-Money Laundering and Counter-Terrorist Financing (AML/CTF), as well as State Price Regulation" (*hereinafter referred to as the Law dated 1 July 2022*);

3) dated 30 December 2022 "On Amendments and Supplements to Some Legislative Acts of the Republic of Kazakhstan on Implementation of Certain Instructions of the Head of State" (*hereinafter referred to as the Law dated 30 December 2022*).

The law dated January 3, 2022, provides for the following:

1) providing access to **essential facilities**.

The laws of the Republic of Kazakhstan lacked clear regulation of entry into the relevant commodity markets, which was used by monopolists and dominants when refusing to sell goods, including references to concluded long-term contracts with a permanent circle of entities.

In this regard, the Law (*Articles 174, 176-1 of the Code*) defines concepts of essential facilities, criteria for attribution to essential facilities, and establishes procedures for equal access to essential facilities (*approved by Order No. 15 dated 13 June 2022 of the Chairman of the Agency*).

These norms in aggregate will ensure equal access of market entities to limited and capital-intensive resources of dominant and monopolists;

2) **regulating activities** of public and private operators.

In Kazakhstan, there is a practice for legislative granting of exclusive rights to certain market entities to carry out certain types of activities without creating a state monopoly.

In this regard, to minimize monopoly costs, the Law (*Articles 120, 172, 193 of the Code, laws on accounting and access to information*) extended legal regime of state monopoly (*institute of special law*), strict regulation (*prices, ban on other activities*), compensation for losses to competitors, publicity to public and private operators, and approved the Rules for determining a state-owned enterprise, joint stock company, limited liability partnership as a subject of special law (*Government Resolution No. 453 dated 30 June 2022*).

These amendments will make it possible to eliminate the negative impact of monopolies on adjacent markets and ensure transparency of their selection and activities;

3) **reducing state participation** in entrepreneurship.

The serious consequences of violating the "Yellow Pages Rules" principle are the displacement of private entrepreneurs by state-owned business entities from public procurement, and quasi-public sector procurement. Meanwhile, current grounds for state participation in entrepreneurship imply a ban on the activities of state-owned business entities in competitive commodity markets.

To solve this problem, monitoring activities of quasi-public sector entities has been introduced (*Article 90-6 of the Code*) and a procedure has been established for

monitoring activities of state-owned enterprises, legal entities with more than fifty percent of shares (*interests in share capital*) owned by the state, and their affiliates for obtaining approval from the Antimonopoly Authority when establishing, expanding and (*or*) changing types of performed activities, as well as carrying out only those types of activities for which approval from the Antimonopoly Authority has been obtained" (*Order of Chairman of the Agency No. 4 dated 28 March 2022*).

In addition, to reduce state participation, an exhaustive list has been defined and the grounds for allocating state assignments have been reduced (*Article 41 of the Budget Code*), procedure for issuing opinions on compliance with competition protection legislation of the Republic of Kazakhstan has been regulated (*Order of Chairman of the Agency No. 9 dated 20 April 2022*);

4) ensuring **equal access** to state support measures.

Focusing on the development of small and medium enterprises is one of the strategic directions of state support.

At the same time, in fact, much more funds are allocated to support large businesses. Unreasonably high requirements, a non-transparent access system, and lack of proper control lead to the creation of conditions for granting state support to a limited circle of entities.

In this regard, a requirement has been introduced for new state support measures (*including rules for their provision*) to be approved by the Antimonopoly Authority and criteria for determining priority areas for provision of state support measures have been established (*Article 194 of the Code*).

Practical implementation of norms will create equal conditions of access to state support measures, eliminate targeted support that distorts competition on commodity markets, and focus the state's attention on supporting new market entities and SMEs;

5) **developing antimonopoly regulation tools.**

Merger and acquisition control is one of the important components of antimonopoly regulation of market structure aimed at preventing the concentration of market power in single hands. During control over transactions, the Antimonopoly Authority may prescribe certain requirements for approval of a transaction.

The OECD notes that competition agencies in many countries use proxies to effectively facilitate the enforcement of transactions and independent monitoring. The proxy must be independent and is appointed or approved by the Antimonopoly Authority in case of both complex unbundling transactions and the need to monitor the enforcement of behavioral conditions.

Thus, the proxy institution has become widespread in the practice of Antimonopoly Authorities in foreign countries, as it ensures a professional and expert approach to the execution of the Antimonopoly Authority's decision, developing optimal solutions together with businesses and constructive interaction with Antimonopoly Authority.

In this regard, to ensure monitoring and facilitate enforcement of the Antimonopoly Authority's decisions on actions aimed at ensuring competition, the Law introduced a proxy institution to monitor compliance with terms of economic

concentration transactions (*Article 210-1 of the Code*) and approved procedure for keeping a register of proxies (*Order of the Chairman of the Agency No. 5 dated 29 March 2022*).

Law dated 1 July 2022 was drafted and adopted for executing instruction from the Head of State.

In January 2022, the Agency, based on instructions from the Head of State, introduced temporary state price regulation for retail sales of liquefied petroleum gas (*hereinafter referred to as LPG*).

Under provisions of the Code then in effect, the total period of applying such regulation could not exceed **one hundred eighty calendar days in any single year**. In order to extend price regulation of retail LPG sales, the Law dated 1 July 2022 excludes the norm concerning the overall period of price regulation (*Part 2 of Article 119 of the Code*).

Thus, this amendment made it possible to exclude risks of sharp price increases and, as a consequence, the emergence of social tension in society.

A law dated 30 December 2022 was drafted and adopted for executing instruction from the Head of State.

In January 2022, during a meeting with representatives of large domestic businesses, the Head of State instructed to establish at the legislative level **a ban** on the exercise of economic functions of the state by private monopoly operators.

In pursuance of this instruction, the Law dated 30 December 2022 amended the Code, providing that only a legal entity with one hundred percent of shares (*interests in the share capital*) directly or indirectly owned by the state can be a subject of special law (*Article 193 of the Code*). Thus, the procedure for establishing private operators has been made as complicated as possible at the legislative level.

1.3. Limiting the Share of State Participation in Entrepreneurship

The high level of state presence in entrepreneurship is a deterrent to the promotion of competition in commodity markets. To promote private entrepreneurship and competition, the most important task is to reduce state participation in entrepreneurial activity. Work in this direction is carried out through privatization, and restriction of activities of quasi-public sector entities (*approval of establishment, restriction of types of activities*). The measures being implemented to limit state participation in entrepreneurship are aimed, inter alia, at reducing public operators and state assignments.

Privatization

In accordance with the instruction of the Head of State, given after the results of the meeting on the stabilization of the socio-economic and socio-political situation dated 5 January 2022, the Agency has developed proposals to **improve privatization processes** taking into account competition policy. To date, these recommendations have been partially adopted. In particular, the privatization plan includes **criteria** (*principles*) according to which enterprises are included in the list of privatized entities.

For reference: The criteria (principles) include 1) non-compliance of activity with conditions of state participation in entrepreneurship; 2) SMEs; 3) proposals of the Antimonopoly Authority; 4) ownership of an uncontrolled block of shares; 5) non-implementation or ineffective implementation of development plan over the past 3 years; 6) beginning of project's payback period; 7) the onset of the period of presence on the commodity market recommended by the Antimonopoly Authority 8) applications from private business entities.

Amendments to the laws on privatization of large enterprises were developed and sent to the Ministry of National Economy, taking into account the Antimonopoly Authority's analysis.

Analysis of the privatization process shows that there are a number of **problems** arising from the sale of state assets. Due to a lack of clear criteria, privatization plans are formed on a residual principle or based on the results of an independent assessment that does not take into account issues of competition development:

1) in the first case, privatization objects are unprofitable enterprises providing social services (*facilities of life support, culture, sports, education*) and, if the object is not sold after three tenders, it is subject to liquidation according to requirements of the legislation. In some cases, due to a lack of alternative suppliers, local executive bodies are forced to reestablish state-owned enterprises carrying out the same activities;

2) in the second case, to maximize profits, vertically integrated structures of Samruk-Energy JSC type are included in the privatization plan as one lot. This leads to the establishment of new "private monopolies" or to the strengthening of existing dominants' positions.

To systematize and prevent similar facts in the future, the Agency has proposed a number of measures:

1) legislative regulation of the procedure for forming privatization plan **in coordination with the Antimonopoly Authority**. Before the financial assessment of the object, the Agency will make proposals on sale options, taking into account the current market structure;

2) consolidation of the "**privatization on application**" principle, which gives the entrepreneur the right to choose the object of the privatization. In the case of a private initiative, the object can be sold;

3) to ensure transparency of decisions of the State Commission on Economic Modernization in terms of approval of direct targeted sales or exclusion of objects from the privatization plan, the Agency proposed to make publicly available relevant **justifications** signed by the CEO of the authorized state body;

4) proposals of Antimonopoly Authority based on results of **sectoral analysis** will be a mandatory basis for inclusion in the privatization plan.

Relevant amendments were made to the draft Law "On Amendments and Supplements to Some Legislative Acts of the Republic of Kazakhstan on Development of the Quasi-Public Sector", developed by the Ministry of National Economy.

At the same time, there is a tendency **to reduce the Privatization Plan**. This happens due to initiatives of state authorities to exclude enterprises from the Privatization Plan for various reasons and reluctance to include new ones. As a result, in a short period, **without** analytical assessment and taking into account the market

structure, decisions are made on the expediency of filling the Privatization Plan or excluding a number of companies from it.

The role of the Antimonopoly Authority in the privatization process is to submit proposals for the transfer of quasi-public entities to a competitive environment to the Government. However, individual **privatization proposals of the Agency are not supported**. So, for example, according to the results of sectoral ⁵and antimonopoly analyses conducted at the end of 2021, 91 enterprises were proposed to the Government for privatization, of which **only 12 were supported**. In 2022, as part of the National Entrepreneurship Development Project⁶ (*hereinafter referred to as the National Project*), as well as taking into account the instructions of the Head of State, work was completed to improve the current methodology of sectoral analysis. As a result, a list of 100 quasi-public sector entities to be privatized was determined.

For reference: the list includes entities providing services in the following sectors: information and communication, construction; agriculture, forestry and fishery; transport and warehousing; financial and insurance, as well as the provision of other types of services.

At the same time, based on the results of antimonopoly analyses, the Agency proposed to include 5 market entities in information technologies, communications, and transport sectors into the Comprehensive Privatization Plan.

Thus, based on the results of analytical work carried out by the Agency in 2022, **105 enterprises** were proposed for privatization. However, the issue is still under consideration.

Reducing the list of activities authorized for quasi-public sector entities⁷

In 2022, based on the results of the analysis, the Agency established absence of quasi-public sector entities in certain types of activities or presence of only one quasi-public sector entity in relevant commodity markets for 45 types of activities.

In this regard, upon the Agency's initiative, on 21 July 2022, the Government Resolution was adopted⁸, providing for **reduction of activities carried out by state-owned enterprises, legal entities with more than fifty percent of shares (interests in the share capital) owned by the state, and their affiliates** (*hereinafter referred to as the List 1095*), **by 45 types of activities (11%)**, including industry, construction, finance, consulting services, transportation. Thus, out of 410 previously authorized activities, **365** will be authorized for quasi-public sector entities (*Figure 2*).

⁵ In 2021, a methodology for sectoral analysis to identify and prioritize economic sectors for denationalization was developed;

⁶ Resolution of the Government of the Republic of Kazakhstan No. 728 dated 12 October 2021 "On Approval of the National Entrepreneurship Development Project for 2021-2025" // <https://adilet.zan.kz/rus/docs/P2100000728>;

⁷ List of activities carried out by state-owned enterprises, legal entities with more than fifty percent of shares (interests in the share capital) owned by the state, and their affiliates (approved by Resolution of the Government of the Republic of Kazakhstan No. 1095 dated 28 December 2015) // <https://adilet.zan.kz/rus/docs/P1500001095>;

⁸ Resolution of the Government of the Republic of Kazakhstan No. 510 dated 21 July 2022 // <https://adilet.zan.kz/rus/docs/P2200000510>;

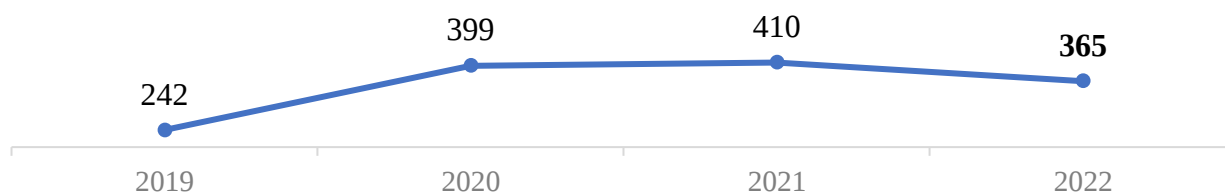


Figure 2– Number of authorized activities.

However, despite reduction of List-1095, **establishment of new quasi-public sector entities continues**. This has been facilitated, inter alia, by expiration of moratorium on establishment of quasi-public sector entities in December 2021⁹. During moratorium period from 2019 to 2022, establishment of quasi-public sector entities decreased by an average of **50%**. At the same time, after the moratorium expired, number of established quasi-public sector entities **exceeded** the number of privatized enterprises.

Monitoring of activities

At the beginning of 2022, Antimonopoly Authority received powers **to monitor** activities of quasi-public entities and issuing approvals for establishing, expanding and (or) changing activities, as well as carrying out exclusively those activities for which approval from the Antimonopoly Authority has been obtained¹⁰.

In accordance with **schedule for 2022**, monitoring was carried out at National Company Kazakhstan Temir Zholy JSC (*hereinafter referred to as KTZ*). It was found that the list of statutory activities of KTZ, including its affiliates, contained more than 400 activities.

For reference: out of 42 companies, 14 companies are not covered by monitoring, including: 7 non-residents of the Republic of Kazakhstan, and 7 joint ventures with no more than 50 percent of shares (interests).

The results of monitoring at KTZ indicate **non-compliance with "Yellow Pages Rule" principle**, enshrined in the Code¹¹. Thus, of 424 activities analyzed, **81 are carried out without approval of Antimonopoly Authority**.

Similar work was carried out in the regions, where 251 state-owned social enterprises were monitored. As part of the monitoring, **violations were identified in actions of 59 entities** and relevant improvement notices were issued to them. Similar work continues for individual enterprises that are members of Samruk Kazyna JSC.

For reference: Kazakhtelecom JSC, Kazpost JSC, Samruk-Kazyna Contract LLP, Samruk Kazyna Business Service LLP, Samruk Kazyna Invest LLP, Kazakhstan Nuclear Power Plants LLP.

⁹ Decree of the President of the Republic of Kazakhstan No. 51 dated 3 July 2019 "On Moratorium on the Establishment of Quasi-Public Sector Entities" // <https://adilet.zan.kz/rus/docs/U190000051U>;

¹⁰ Subparagraph 20-2) of Article 90-6 of the Entrepreneur Code of the Republic of Kazakhstan // <https://adilet.zan.kz/rus/docs/K1500000375>;

¹¹ Article 192 of the Entrepreneur Code of the Republic of Kazakhstan // <https://adilet.zan.kz/rus/docs/K1500000375>;

With that, according to Ministry of Finance, more than 6 thousand state-owned enterprises operate in Kazakhstan. In this regard, the Government should **review** activities of all quasi-public sector entities for compliance with the norms of the Code.

Reducing operators

The Agency continues working on reduction of single operators.

For implementing instructions of the Head of State, voiced in the Address to the People of Kazakhstan dated 01 September 2022¹² (*hereinafter referred to as the Address dated 01 September 2022*), a list of operators and subjects of state monopoly has been formed for depriving them of operator and monopoly status and further transfer to a competitive environment as part of activities for National Project.

For reference: 1) National Information Technologies JSC - deprivation of 3 operator functions out of 5 available ones; 2) Kazaviaspas JSC - limitation of operator scope of activities for Ministry of Emergency Situations; 3) Kazteleradio JSC - deprivation of status of a national broadcasting operator; 4) Kazimpex JSC - deprivation of status of operator providing economic support to national security bodies of the Republic of Kazakhstan; 5) Republican Centre for Space Communications JSC - deprivation of status of a national operator of space communications system; 6) Ural-Atyrau Sturgeon Hatchery Republican National Enterprise of the Committee of Fisheries of Ministry of Ecology, Geology and Natural Resources of the Republic of Kazakhstan – deprivation of monopoly on removal of sturgeon species from their natural habitat due to moratorium on fishing; 7) Kazakhstan Garysh Sapary JSC - operator of remote Earth observation.

The Law of 03 January 2022 amended the Code, in particular introducing norms regulating **institute of special law** governing activities of operators assigned to perform certain types of economic activities.

Seventeen operators are proposed to be regulated under the special law. These operators are recognized as subjects of special law and are included in **register of special law subjects**¹³. Remaining 24 operators are not subject to regulation because they have no impact on market or their activities are already regulated by the laws on natural monopolies.

However, state authorities do not cease to grant exclusive rights to subordinate organizations. So, the Agency has **identified 17 new operator's functions** enshrined at the legislative level and having signs of special law. This is due, inter alia, to desire to "circumvent" bidding procedures, ensuring that goods and works can be procured from "single source", from an entity defined by the laws. For example, in 2022, more than a third of all public procurement is single-source procurement (*about KZT 2.4 trillion*). Of this amount, about 8 per cent (*KZT 191 billion*) are single-source procurements from entities defined by the laws.

Reducing state assignments

Analysis of state assignments has shown an annual growth dynamics of financial indicators with systematic decrease in their number. So, in the period from 2021 to 2022, amount of funds allocated for execution of state assignments increased from

¹² Address of the Head of State Kassym-Jomart Tokayev to the People of Kazakhstan, dated 01 September 2022 "FAIR STATE. ONE NATION. PROSPEROUS SOCIETY" // https://adilet.zan.kz/rus/docs/K22002022_2;

¹³ The first register of subjects of special law and state monopoly approved in Kazakhstan // <https://www.gov.kz/memleket/entities/zk/press/news/details/443010?lang=ru>;

KZT 182.1 billion to KZT 329.1 billion, with total 157 and 119 agreed bids respectively (Figure 3).

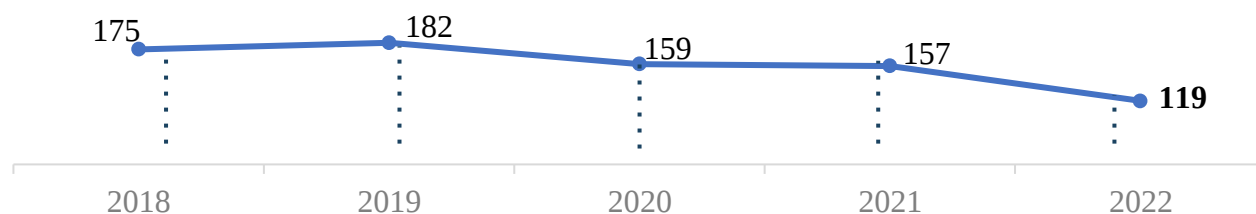


Figure 3— Number of agreed state assignments.

At the same time, number of applications from state authorities to obtain a favorable opinion of the Agency does not decrease. This happens due to existing practice of **using state assignments for upkeeping subordinate organizations**.

To involve private entrepreneurs in execution of state assignments, Antimonopoly Authority, when approving them, imposes conditions on transferring part of the work to private entrepreneurs. In addition, the Antimonopoly Authority is empowered to determine amount of work to be transferred to competitive environment through a tender (*about 5% of amounts intended for execution of state assignments*).

To limit non-competitive procurement of goods (*works, services*) from subordinate organizations through state assignments, list of areas (*sectors*) has been created, where execution of state assignments is possible. It consists of 26 items and will be reduced in the future, taking into account competition development. There is also an exhaustive list of criteria for attributing services to state assignments (*ensuring national security, state defense, maintenance of strategic facilities, critical informatization facilities, absence or low level of competition in commodity markets, or uniqueness of goods and intellectual property*). At the same time, there is a ban on inclusion into list of state assignments of orders that do not meet areas and criteria at the legislative level.

1.4. Monitoring state support measures

The most important task is to increase coverage of state support measures for private entrepreneurs on competitive principles. Currently, there is a personalization of state support measures - mainly large businesses are supported. This negatively affects country's investment attractiveness, reducing allocative efficiency of competition, contributing to emergence of so-called "zombie firms".

Issues of accessibility to state support measures was noted by the Head of State at the meeting of Majilis of the Parliament on January 11, 2022: "Existing system is focused mainly on servicing large structures, based on the principle: "everything for friends, for others - according to the law". In fact, this system further reinforces

oligopoly in the economy. Large businesses enjoy special privileges, stifling competition and hindering reform.¹⁴

In this area, the Agency analyzed activities of Baiterek Holding (*hereinafter referred to as Holding*) in terms of ensuring equal access to state support measures.

Based on the results of analysis, actions of Holding's subsidiaries **showed signs of violation** expressed in:

- creation of **unequal conditions** of access to support measures for final recipients, application of different lending rates for large infrastructure projects;
- **favoritism** in actions of Holding subsidiaries in terms of priority, accelerated consideration of applications for support measures (*instead of 7 calendar days, some projects are approved without queuing within 2-3 days from receipt, while for other projects consideration timeframe is violated and exceeds 300 days*);
- **creation of privileged position** by not providing counter-obligations to certain businesses or continued provision of support measures when obligations were not fulfilled.

In this connection, Holding has been issued prescription to take actions aimed at ensuring competition. Also, KazakhExport JSC and Development Bank of Kazakhstan JSC, operators of state support measures, has been notified about signs of violations of the laws in their actions. Currently, the Agency's arguments have been taken into account by the Holding and the operators, and work is underway to bring processes of providing state support measures into compliance with competition protection legislation.

At the same time, in addition to identifying signs of violations, the Agency also identified a number of industry-specific problems affecting development of competition.

1) **lack of planning** for allocation of funds to specific areas of support within the framework of one state program (*national project*). At present, when developing program documents, sectoral ministries determine main approaches and tools to stimulate entrepreneurship, but do not take into account allocation of funds to specific areas of support. In practice, this leads to deviation from main objective of program document, and as a consequence of which monopolized markets do not develop.

For reference: development of transport infrastructure and transit potential of the country was stated as the main objectives of the Nurdy Zhol State Programs for 2015-2019, 2020-2025. Monitoring has shown that in fact most of the state's resources are directed to a non-priority area of support - pre-export financing. Since 2015, the total amount of financial support to the above state programs amounted to KZT 711 billion, of which 18.3% was allocated for preferential lending for infrastructure projects, 2.5% for subsidizing leasing rates for the purchase of railcars, and 79.1% for pre-export financing. Only 19 enterprises received this type of incentives, with major part (55%) allocated to 3 organizations: Kazphosphate LLP, Arcelor Mittal Temirtau JSC, Kazzinc LLP.

2) **low efficiency** of state support measures due to absence of unified system for monitoring counter-obligations.

¹⁴ Speech by the Head of State Kassym-Jomart Tokayev at the meeting of the Majilis of the Parliament of the Republic of Kazakhstan dated 11 January 2022 "LESSONS OF TRAGIC JANUARY": UNITY OF SOCIETY - GUARANTEE OF INDEPENDENCE" // <https://adilet.zan.kz/rus/docs/K2200002022>;

Based on the results of analysis, it was found that within framework of one project, though receiving support measures from different operators, businesses indicate the same final results (*job creation, increased tax payments, increased production and (or) export of products*).

Today, the state authorities have developed a unified position on the need to create a monitoring system that excludes the possibility of simultaneous receipt of support measures within the framework of one project and/or enterprise without taking additional amounts of counter obligations.

At the same time, issue of national projects developers' responsibility to determine funding limits for specific areas of support will be worked out within the framework of the Concept and during development of new version of Budget Code.

1.5. Working with the Government to promote competition

For a long time, there has been **weak involvement of sectoral government bodies** on adoption of measures to promote competition for implementing government policy in relevant sectors of the economy. As a result, administrative barriers to development of competition remain in country's economy.

In this regard, in 2022, as part of Concept implementation, the Agency, together with the Government, started **joint work on development of competition** in certain commodity markets in order to optimize interaction between competitive and sectoral policies. In particular, competition development roadmaps are being adopted in this direction. As of today, Kazakhstan has already adopted **competition development roadmaps** (*posted at the Agency's official website*)¹⁵:

1) **oil and oil products** market. The Action Plan provides for a number of measures to ensure access to resources, analyzing exchange trading in oil products with a view to increasing it to 20%, approving Rules of Equal Access to Essential Facilities for Wholesale Sales of Oil Products, approving KMG Aero JSC's activities on jet fuel sales by antimonopoly compliance certificate (*retail sales*), developing forecast plan for convergence of cost of fuels and lubricants within the EAEU by 2025 (*mechanism of balanced price regulation*);

2) **coal** sales market. It is planned to **eliminate** "unproductive" intermediaries (*by setting requirements to wholesale and retail coal suppliers on availability of storage infrastructure, ban on coal sales between intermediaries; as well as amending the List of Exchange Commodities and the Rules of Exchange Trading to fix the ratio of sales of 50% share of utility coal through exchanges: 90 per cent long-term annual contracts, 10 per cent spot trades*). To cover demand of domestic market in a timely manner, priority will be given to rolling stock for utility coal purchased by regional operators at commodity exchange. In addition, mechanism of regional supply bases for utility coal will be introduced (*preservation of FCA conditions with division of trades by regions*), with a possibility to switch to RoK supply basis in case of non-demanded volumes". In addition, primary wholesale market of coal for energy

¹⁵ Sectoral roadmaps for the development of competition // <https://www.gov.kz/memleket/entities/zk/documents/details/435863 ?lang=ru;>

producing organizations will be analyzed for classification as a publicly important market;

3) **civil aviation** sector. The Roadmap envisages measures aimed at eliminating key barriers to competition development in civil aviation (*excessive state participation, limited access to infrastructure*) and including, inter alia, the implementation of the state block of shares in **QazaqAir JSC, AirAstana JSC**, separation of **FlyArystan Airlines** as separate market entity until privatization, extension of "**open skies**" regime until 2028, as well as **consolidation of non-discriminatory access** of aviation fuel retailers to fueling complexes of airports, developing issues on construction of alternative fueling complexes in the airports of the Republic;

4) **agro-industrial sector**. To stimulate agricultural producers, **new approaches to subsidies** are envisaged with a focus on problematic commodity markets. Conceptual **revision** of state regulation of prices for food staples is expected. The plan is to remove barriers in delivering agricultural producers' products to consumers **through trade networks/facilities**, to balance interests of domestic producers and food trade organizations, and develop **exchange trade** in agricultural products;

5) **housing construction** sector. By the end of 2023 it is planned to solve the problem of **non-competitive allocation** of land plots through mechanisms of special economic zones and socio-entrepreneurial corporations, responsibility of akimats for failure to place information on vacant land plots shall be hardened, **checks** for compliance with the laws in terms of attracting funds of shareholders will be introduced. Measures have been included providing for **digitalization** of acquisition of residential and non-residential premises, shares and units in residential buildings under construction, increasing transparency of Single Operator's activities (*Kazakhstan Housing Company JSC*) for selection of engineering companies, attributing operator's services to public services;

6) **health care** sector and in the market of **medicines** storage and transport services. The plan is **to reduce excessive price regulation** for medicines in commercial segment, to provide access to state procurement of medicines within guaranteed volume of free medical care and/or Compulsory Social Health Insurance system. In addition, it is envisaged to **reduce state participation** in health care sector and **eliminate administrative barriers** to health care services. The business processes of medicines' entry to the market will be digitized. It is also envisaged to reduce share of single-source procurement for storage and transport of medicines and medical devices;

7) **telecommunication** sector. The roadmap includes measures aimed at **reducing state's share** in telecommunications market, including, inter alia, analysis of current procedure for conducting auctions for radio frequency allocation (*taking into account international experience*), demonopolization of Kazakhtelecom Group by means of phased establishment of subsidiaries (*cellular operators*). The measures are also aimed at ensuring **equal access to infrastructure**, including establishing competence of authorized body in telecommunications to reallocate radio frequency spectrum (*RFS*), introducing mandatory sharing of RFS, infrastructure (*sharing*), analyzing procedure for

connection and interaction of telecommunication networks of telecommunication operators, determining competence to approve competitive procedure for transfer of cable channels built at the expense of budgetary funds.

Thus, **government agencies are involved** in promoting competition in relevant economy sectors.

The remarkable fact is that the need for **whole-of-government approach** to address excessive concentration, monopolization and unfair competition is also noted in **Executive Order on Promoting Competition in the American Economy**¹⁶. In this Order, in addition to classic antimonopoly line of defense against monopolization (*antimonopoly regulations, including Sherman and Clayton Acts*), Executive Order includes measures requiring industry regulators to protect fair competition conditions and to cooperate with Antimonopoly Authorities (*Federal Trade Commission and Department of Justice*).

1.6. Identifying and suppressing anti-competitive practices

Important feature of the new competition policy was its focus on transition from **punitive** orientation ("*ex-post*") to active use of "**ex-ante**" **measures** stimulating market entities to pro-competitive behavior.

Such measures include, inter alia, notices of signs of violation in actions (*inactions*), warnings about inadmissibility of anti-competitive practices, antimonopoly compliance.

Thus, the focus of the Agency's activities is shifted to **prevention of anti-competitive practices**.

The relevant approaches are enshrined in Decree 484¹⁷ and Concept, which **prioritizes preventive antimonopoly regulation measures** as one of principles of state policy for competition development.

In general, in 2022, antimonopoly authority issued **508 notices** on signs of violation in actions (*inactions*) in competition protection area (*Figure 4*), of which 430 notices or 84.6% were closed (79.2% in 2021).

However, there is an increase (*relative to 2021*) in the number of notices issued in 2022 (27% increase).

¹⁶ Executive Order on Promoting Competition in the American Economy // <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>;

¹⁷ Decree of the President of the Republic of Kazakhstan dated 31 December 2020 No. 484 "On the Main Directions of the State Policy on Competition Development" // <https://adilet.zan.kz/rus/docs/U2000000484>;

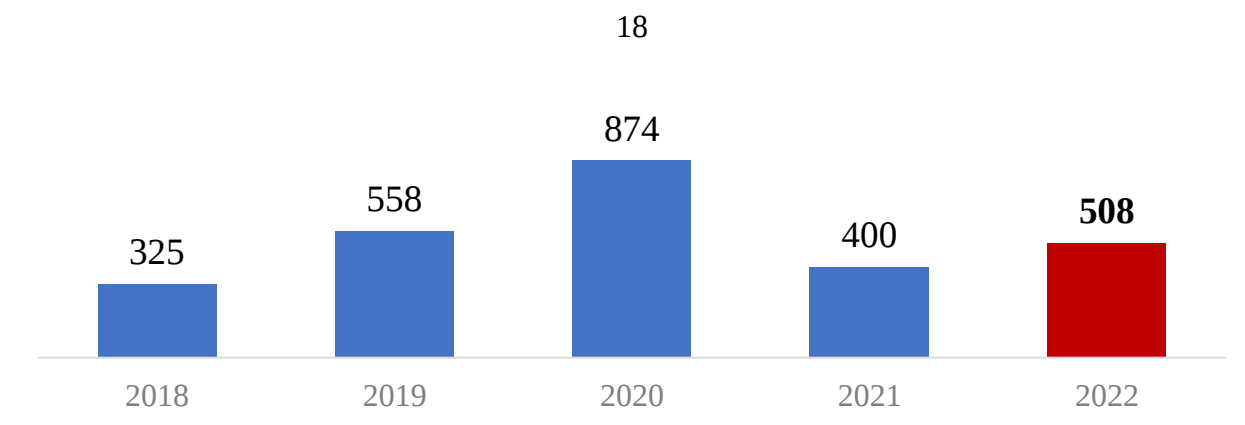


Figure 4– Dynamics of issued notices.

In addition, in 2022, **33 warnings** on inadmissibility of violating competition protection legislation were issued (*Figure 5*), with 43% increase in number of **warnings** compared to 2021.

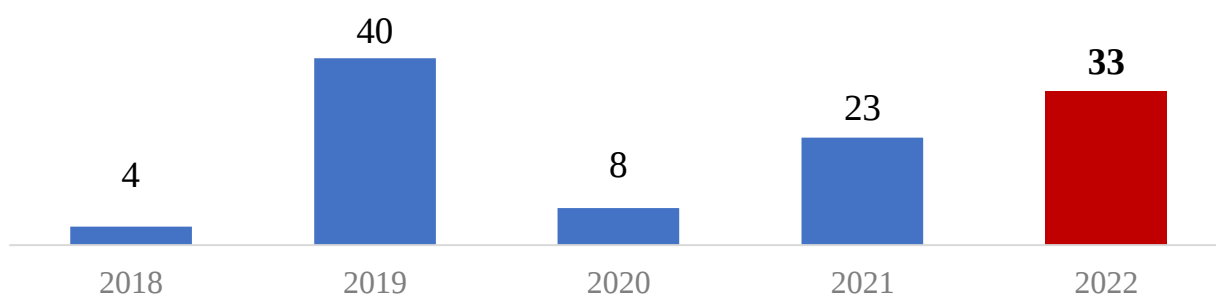


Figure 5– Dynamics of issued warnings.

Stable growth is also observed in the number of agreed drafts of external **antimonopoly compliance acts**. In 2022, **251 drafts** of external antimonopoly compliance acts were agreed, in 2021, 236 drafts were agreed, and in 2020, 82 drafts were agreed (*Figure 6*).

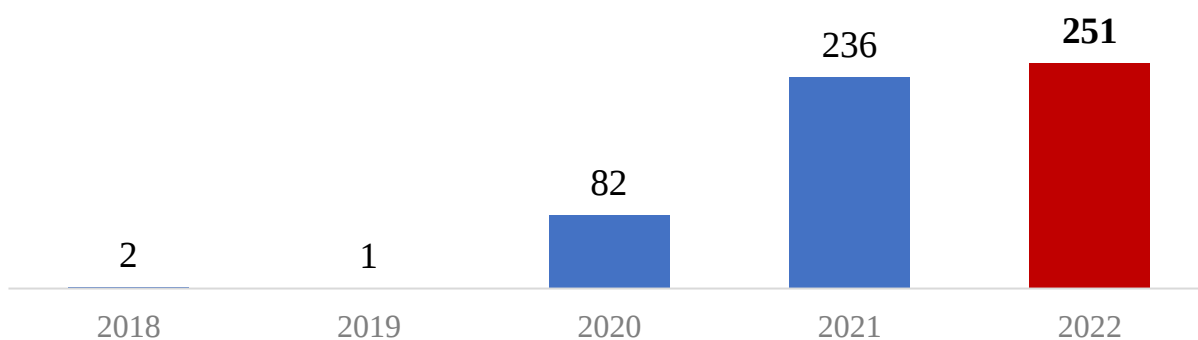


Figure 6– Dynamics of agreed drafts of external antimonopoly compliance acts.

The Agency's law enforcement practice, including antimonopoly response measures, **is being modified** in view of changes in approaches to development of competition protection and development, improvement of competition protection laws.

The antimonopoly authority focuses on more **“malicious” anti-competitive practices** that cause the most tangible economic damage, including anti-competitive agreements, abuse of dominant or monopolistic position.

OECD experts estimate that violations related to cartels and abuse of dominant or monopolistic position can lead to unjustified **price increases up to 15% on average**¹⁸.

As a result, for example, in 2016 the Antimonopoly Authority's investigations into **anti-competitive agreements** accounted for **3%** of total investigations structure, by the end of 2022 this indicator has reached **35%**, leading this list.

Second place is occupied by investigations related to abuse of dominant or monopolistic position. In general, structure of investigations by type of violations is shown in Figure 7.

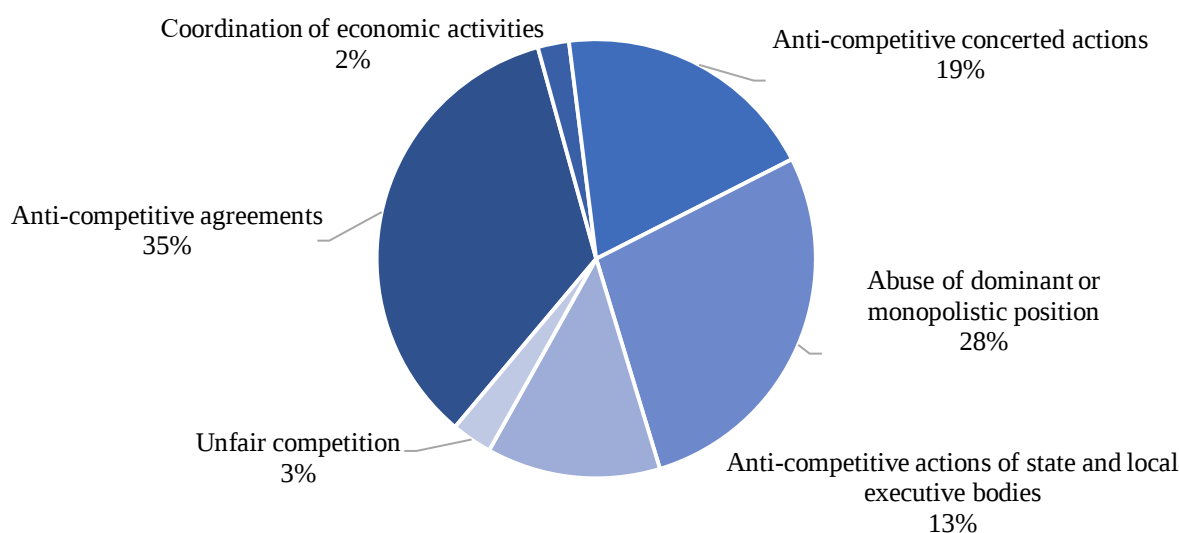


Figure 7– Structure of investigations by type of violations in 2022.

For reference: In total, 133 investigations were completed in 2022 with respect to more than 283 market entities (increase in number of market entities, subject to investigations is due to investigations against wholesale and retail sellers of liquefied gas) and 13 state, central and local executive bodies:

- 1) anti-competitive agreements - 46 investigations;
- 2) abuse of dominant or monopolistic position – 37 investigations;
- 3) anti-competitive actions (inaction) of state and local executive bodies - 17 investigations;
- 4) unfair competition – 4 investigations;
- 5) coordination of economic activities - 3 investigations;
- 6) anti-competitive concerted actions - 26 investigations.

Examples of **significant** ones include investigations of:

¹⁸ Davies, S. (2013). Assessment of the impact of competition authorities' activities. (February 2013) OECD;

- establishment of **monopolistically high prices** revealed in actions of Kamkor **Locomotive LLP**, which provides locomotive maintenance services. Court imposed an administrative penalty of **KZT 240 million** on Kamkor Locomotive LLP for these actions;

- abuse of dominant position, expressed in **systematic refusal** to sell oil products to certain buyers while satisfying requests of other buyers, revealed in actions of **Petrosun LLP** following results of joint work with prosecutor's office (*KZT 607 million was recovered*);

- **cartel agreement** revealed as a result of completed investigation of **KFK Medservice Plus LLP, Akniyet LLP, Stopharm LLP**. These companies, participating in procurement of transport and storage services for medicines conducted by SK-Pharmacy LLP, created **phantom competition** by agreeing and allocating lots in advance;

- evidence of abuse by **Halyk Bank of Kazakhstan JSC** of its dominant position, which was expressed in **imposition of life insurance services**. The investigation was initiated in connection with failure to close notice of violation of competition protection legislation in Bank's actions;

- evidence of **monopolistically high prices** for metrology services (*verification and calibration of measuring instruments*), for confirmation of conformity of goods (*testing, certification, declaration of products and services*). Investigations on these facts were initiated against **National Center for Expertise and Certification JSC**;

- evidence of **monopsonic low prices for petroleum coke**. An investigation was initiated against **UPNK-PV LLP** on this fact.

In turn, the Agency's practice on investigations of **unfair competition** facts that do not have significant impact on general conditions of goods circulation in relevant commodity market for the last 3 years shows opposite dynamics (*in 2020 - 11 investigations (10%), in 2021 - 7 investigations (5.7%), in 2022 - 4 investigations (3%)*).

With that, as statistics of notices issued by the Agency show, one of significant factors distorting competition is **anti-competitive actions of state bodies**, this indicator reached **27%** in 2022 (*Figure 8*).

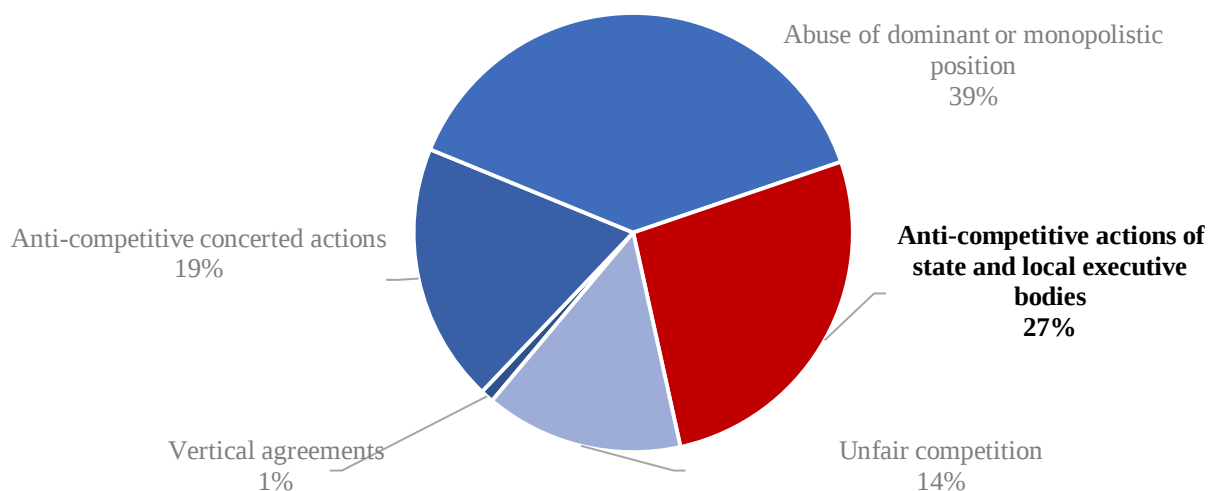


Figure 8— Structure of notices by type of violations in 2022.

For reference: By type of violation, the statistics of issued notices is as follows:

- 196 - abuse of dominant or monopolistic position (except for the grounds specified in subparagraph 1) of Article 174 of PC RoK);
- 136 - anti-competitive actions (inaction), agreements of state and local executive bodies, organizations vested by state with regulating activities of market entities;
- 97 - anticompetitive concerted actions of market entities;
- 74 - unfair competition;
- 5 - anti-competitive vertical agreements.

In this case, it should be noted that by virtue of possessing power-administrative competence, the state, local executive bodies, organizations vested with regulating activities of market entities have the ability to influence state of competition.

In this regard, favoritism and creation of unequal conditions for doing business **by the state** cause significant damage to entrepreneurship and investment climate. The main risks of such actions lie in procedures for granting state support measures, land plots, public procurement, and business regulation. Thus, implementation of investment projects with involvement of Social and Entrepreneurial Corporations (SECs) empowered with the right to provide land plots and other support measures, due to absence of strict selection rules, has become the most common practice of creating a privileged position for certain market entities.

Overall, investigations completed in 2022 resulted in decisions to:

- initiate administrative offence proceedings and issue orders to eliminate violations of law in 65 investigations (134 in 2017, 117 in 2018, 50 in 2019, 50 in 2021);
- terminate investigations on grounds provided for in Article 223 of the Code for 34 investigations (23 in 2017, 28 in 2018, 18 in 2019, 51 in 2020, 43 in 2021);
- issue prescriptions to eliminate violations of law in 10 investigations (53 in 2017, 23 in 2018, 5 in 2019, 8 in 2020, and 10 in 2021);
- transfer materials to law enforcement agencies for pre-trial investigation in 24 investigations (2 in 2017, 3 in 2018, 0 in 2019, 0 in 2020, 4 in 2021).

For 2022, fines totaling **KZT 2.1 billion** were imposed for violations of competition protection legislation, of which **KZT 1.9 billion** or 90.5 per cent were recovered (*in 2017 - KZT 3.2 billion, in 2018 - KZT 2.4 billion, in 2019 - KZT 1.3 billion, in 2020 - KZT 675 million, in 2021 - KZT 1.1 billion*). The upward trend in amount of fines is related to number of investigations into cartel agreements and abuse of dominant or monopolistic position. With that, as part of joint work with law enforcement authorities on anti-competitive practices, more than **KZT 12 billion** in damages were **reimbursed** to state income.

At the same time, **effectiveness of antimonopoly response measures** deserves special attention. Practice shows that antimonopoly investigation procedures are unreasonably prolonged, that is a consequence of unnecessary bureaucratic procedures and **abuse of procedural rights** by appealing non-burdensome administrative acts. Litigation on appealing acts of investigation can take up to two years.

1.7. Regulating economic concentration

At the same time, significant work has been done in **regulating economic concentration**.

1) For example, joint audit (*with Atyrau Oblast Prosecutor's Office*) has been completed regarding legality of alienating 50% interest in LPG Storage Park LLP (*hereinafter - the Storage Park*) from Atyrau Oil Refinery LLP (*hereinafter - Atyrau Oil Refinery*) in favor of Joint Technologies LLP.

For reference: *Earlier, on 16 March 2021, consent was granted for economic concentration, after a number of requirements was fulfilled (Consent Order).*

As a result of audit in Storage Park's actions, abuse of dominant position was revealed, that is a violation of the requirements.

For reference: *failure to fulfil one or more requirements of Antimonopoly Authority is a basis for revision of a previous ruling (Article 208(5)(3) of the Code).*

On 23 January 2023 the consent ruling was cancelled. On 8 February 2023 this ruling was appealed by Joint Technologies LLP to Astana Specialized Inter-district Administrative Court.

By the ruling of Astana Specialized Inter-district Administrative Court dated 05 April 2023, claims of Joint Technologies LLP were dismissed. Consequently, order to cancel Economic Concentration Order was held by the court to be lawful.

The Agency filed similar claim to Atyrau Oblast Specialized Inter-district Administrative Court (*to cancel ruling on re-registration of 50% share in Storage Park*).

On 3 May 2023, the Agency's claim was satisfied. The Agency's petition to reverse the ruling in terms of immediate enforcement of court ruling is also granted.

Order No. 1047 dated 3 May 2023 of the Atyrau Oblast Branch of Government for Citizens Public Corporation Non-Commercial Joint-Stock Company cancelled the ruling on state registration of Storage Park dated 13 May 2021.

Consequently, the ruling of the Specialized Inter-district Administrative Court of Atyrau Oblast entered into legal force and 50% of Storage Park's interest was transferred to Atyrau Oil Refinery.

2) Also previously, by Order No. 257/NK dated 16 September 2022 of the Chairman of the Agency (*hereinafter referred to as the Consent Order*), TEK Acquisition Corp LLP (*hereinafter referred to as the Buyer*) has been granted a consent to economic concentration subject to a number of conditions.

One of the conditions was to develop and agree with the Antimonopoly Authority a system of measures to prevent violations of competition protection legislation (*external and internal antimonopoly compliance*), providing for sales and pricing policy aimed at ensuring equal and non-discriminatory conditions at the market for acceptance, storage and dispensing of liquid, bulk and tare cargoes (*diesel fuel*) until 31 November 2022.

In turn, due to existence of arbitration dispute between Kamkor Management LLP (*hereinafter referred to as the Seller*) and the Buyer in respect of sale and purchase agreement due to the Seller's waiver of its contractual obligations, it is not possible for the Buyer to fulfil this condition.

Thus, due to the Buyer's lack of control over executive body of Fuel and Energy Complex - KAZAKHSTAN Trade House LLP, it is not possible to agree external and internal antimonopoly compliance act. Consequently, the Buyer is not in compliance with conditions of Economic Concentration Consent Order.

In accordance with Article 208(5)(3) of the Code, if participants in economic concentration fail to fulfil requirements that are contained in Antimonopoly Authority's decision, the Antimonopoly Authority shall, on its own initiative or upon request of an interested party, reconsider its decision to consent to or ban economic concentration.

Meanwhile, earlier, on 20 January 2023, at the regular meeting of the Economy Demonopolization Commission, KTZ JSC (*together with the Agency for Financial Monitoring, the Agency for Protection and Development of Competition, Ministry of Industry and Infrastructural Development, Samruk-Kazyna JSC*) was instructed to ensure return of assets to state ownership in accordance with established procedure. Similar position was expressed by Commission on 17 May this year. In this regard, the Agency has started working to cancel previously issued consent with subsequent consideration of this issue at the next meeting of the Agency's Management Board.

3) Another example is the revision of Order No. 170-OD dated 10 July 2018 of the Chairman of the Committee for Regulation of Natural Monopolies, Protection of Competition and Consumer Rights of Ministry of National Economy of the Republic of Kazakhstan "On Granting Consent to Economic Concentration upon Application of Kazakhtelecom JSC".

So, order was amended to ensure alienation of 100% of participation shares of KazNet Media LLP, Kcell JSC's subsidiary, on contractual terms determined taking into account cost of their acquisition, subject to interest in purchasing 100% of participation shares by market entities, not included in Kazakhtelecom JSC Group and not participating in Agreement on transfer of at least 20 MHz for reception / at least 20 MHz for transmission in 2500-2570/2620-2690 MHz bands, as well as at least 20 MHz in 2570-2620 MHz band to other entities of commodity market for provision of cellular communication services.

In total, in 2022, Antimonopoly Authority received 80 requests for public service "Consideration of applications for consent to economic concentration", of which 29 transactions were consented and 1 transaction was banned, 2 transactions were terminated due to revocation:

- in Q1: 0 consented;
- in Q2: 20 consented, 1 banned, 2 terminated;
- in Q3: 6 consented;
- in Q4: 3 consented;

1.8. Monitoring commodity exchanges

Exchange trading in accordance with international practice in conditions of stable monopolistic / oligopolistic market structure acts as a key tool to ensure **equal access** to limited resources of monopolists for all categories of business, mainly small and medium-sized businesses, and to form informative (*transparent*) **market pricing** with indicators that can be used by all market entities and regulators (*benchmarking*).

With that, for many years in Kazakhstan the situation in exchange trading market has been characterized by systemic gaps that cause **non-transparent operation** of commodity exchanges and **focus on large business**, that does not allow proper use of all positive effects (*advantages*) of exchange trading.

In particular, the following systemic problems should be noted:

- **excessive diversity** of commodity exchanges given small capacity of commodity markets in Kazakhstan (*as of the end of 2022, there were 13 commodity exchanges in the country, while Uzbekistan and Belarus have only one exchange each*), that leads to fluctuations in exchange quotations and does not allow forming reliable price indicators;

- **non-compliance** of electronic trading system (*ETS*) of most commodity exchanges with information security requirements (*existing mandatory requirements for ETSs are generalized, existence of ETSs is confirmed by Acceptance and Commissioning Certificates, as a result, ETSs are based on 1C Enterprise software and web interfaces*), that creates conditions for manipulation of trading results for interests of certain groups of persons;

- **circumvention** of mandatory requirements of public procurement laws (*persons without qualification and bad-faith bidders of the public procurement system may participate*) through procurement at commodity exchange (*selective monitoring by General Prosecutor's Office revealed 496 contracts with 9 bad-faith suppliers amounting to KZT 1.3 billion, as well as facts of formal procurement of brokers' services for KZT 1, that creates risks of collusion and corruption*);

- **circumvention** of mandatory requirements of subsoil use laws (*for local content*) allows concluding deals with suppliers, known beforehand;

- **lack** of state control over activities of clearing organizations, that creates conditions for "unproductive" intermediaries and artificially created monopoly structures;

- **absence** of single authorized state body ensuring comprehensive and effective state regulation of exchange trading sphere.

The imperfection of current exchange trading system is **abused** by bad-faith commodity exchanges and traders. These facts were confirmed by the results of **audit** conducted in 2022 by the Prosecutor's Offices with concerned state bodies, following instructions of Head of State (*audit of commodity exchanges have not been conducted for at least last 5-7 years, including due to current moratorium on audit of micro-businesses*).

In addition, violations of requirements of legislation on commodity exchanges were revealed in commodity exchanges, expressed in:

- violation of requirements for re-issuance of licenses;
- non-compliance with qualification requirements;
- participation of commodity exchange employees in exchange transactions.

On these facts, the Agency initiated 19 cases on administrative offences against commodity exchanges with imposition of fines for a total amount of only KZT 2.2 million, and judicial bodies did not apply additional measure of administrative penalty in form of license suspension, however, payment of administrative fines **does not ensure further actual elimination of violations**.

At the same time, in 2022, 4 commodity exchanges **before audit** voluntarily **returned licenses** for commodity exchange activities (*Shygys International Universal Commodity Exchange JSC, Universal Commodity Exchange of Eurasian Cooperation JSC, Silk Way Universal Commodity Exchange JSC and Qazaqstan Universal Commodity Exchange JSC*), 2 exchanges were **liquidated** by court ruling due to mismatch in authorized capitals (*Asian Commodity Exchange JSC, Green Climate Exchange JSC*).

On the Agency's initiative, authorized body for regulation of trading activities sent lawsuits to judicial bodies **for forced liquidation** of 8 commodity exchanges, whose activities do not meet legal requirements (*positive rulings were made on 3 lawsuits, Commodity Exchange of Agricultural Producers, Subsoil Users and State Institutions JSC, Halyk Commodity Exchange JSC, Qazaqstan Universal Commodity Exchange JSC were liquidated*).

Existing problems can be solved through set of measures aimed at ensuring proper state control in exchange trading, improving operations of commodity exchanges and increasing transparency of trading, including:

- 1) **amendments** to existing legislation, providing for:
 - more strict requirements for commodity exchanges and their ETs;
 - removal of commodity exchanges from SME category;
 - ban on sale of non-standardized goods through commodity exchanges;
 - exclusion of procurement method "through commodity exchanges" from public procurement legislation;
 - extension of state control to integral participants of exchange trading - exchange brokers and clearing organizations;
 - increased administrative liability for violation of Commodity Exchanges Act, etc.;

2) definition of **single regulator** in exchange trading represented by the Agency, since one of its main functions is development and protection of competition (*it has 5 independent structural subdivisions, territorial subdivisions*), that is confirmed by actual results in this area.

For reference: Since establishment of the Agency, transparent exchange trading in oil products

(gasoline, diesel fuel, jet fuel) and bitumen has been launched. Direct trading of utility coal from coal mines, in small batches to regional operators bypassing intermediaries have been launched, business games have been organized and held on these markets using new approaches to trading, market entities have been trained to freely enter exchange trading, sectional rules were developed, taking into account features and specifics of each market (forming the basis Exchange Trading Rules), and direct access to electronic trading systems of commodity exchanges have been provided. Under National Project, development of exchange trading is a tool to ensure access to "essential facilities" and eliminate distorted pricing. A number of roadmaps for development of competition in relevant industries have been developed, which include measures concerning priority provision of rolling stock for transportation of coal purchased by regional operators at commodity exchange, development of sectional rules for exchange trading in sugar, amendments to List of Exchange Commodities in terms exchange trading in sugar, etc.

According to the Agency's estimates, implementation of these measures will create healthy competitive environment and contribute to development of import substitution processes and the development of regional entrepreneurship.

1.9. International cooperation

The Agency is working to strengthen international cooperation with foreign Antimonopoly Authorities, both through international integration associations and on a bilateral basis.

Interaction with OECD

The Agency is preparing for **Second OECD Expert Review** "Competition protection legislation and Policy in Kazakhstan": it is planned to sign an agreement with OECD on the Second Review. The purpose of Second Review is to obtain OECD experts' recommendations **for improving competition policy system** based on the analysis of existing competition protection legislation of the Republic of Kazakhstan (*identifying advantages and disadvantages*) and experience of other countries. The recommendations will provide a useful basis for revising laws, changing procedures and strengthening institutions in the country.

The review is also useful for documenting country's progress since the first OECD review. The first expert review was conducted in Kazakhstan in 2015, and its results served as a basis for radical reformatting of antimonopoly service's work and antimonopoly regulation system of the economy as a whole.

Interaction in the context of cooperation with EAEU and CIS

On 25 May and 6 September 2022, the Agency participated in the meetings of the Eurasian Economic Commission (*hereinafter referred to as EEC*) (in "5+1" format) together with heads of Antimonopoly Authorities of EAEU member states and member of the Board (*Minister*) for Competition and Antimonopoly Regulation. On this platform, the parties discussed issues of participation of the authorized bodies of EAEU member states in implementing list of measures to improve regulatory legal framework and methodological foundations in competition protection, both in national legislation of EAEU member states and EAEU legislation on antimonopoly regulation, as well as state regulation of prices for food staples.

The Agency has also developed **amendments to Agreement** on procedure for protection of confidential information and responsibility for its disclosure in the exercise by the EEC of its powers to control compliance with uniform competition rules dated 12 November 2014 (*hereinafter referred to as the Agreement*). On 16 March 2022, the Law on ratification of protocol on amendments to the agreement was signed by the Head of State. The ratified Protocol is aimed at bringing text of the Agreement in line with provisions of EAEU Treaty.

In 2022, the Agency participated in the 53rd meeting of **Interstate Council** on Antimonopoly Policy of CIS Member States (*hereinafter referred to as ICAP*) and **Headquarters** for Joint Investigations of Violations of Antimonopoly regulations of CIS Member States.

The parties discussed issues of competition development in digital era, tools of antimonopoly and price regulation in modern conditions, as well as the need to conduct research on markets of medicines and food staples in the CIS. As part of the Headquarters' activities, research was initiated in CIS countries on unfair competition, application of competition protection legislation to intellectual property objects.

The work within ICAP allows developing common approaches to harmonizing competition protection legislation, improve law enforcement practice, and exchange experience in combating anti-competitive practices.

1.10. Implementing operational measures

Implementing a number of operational measures, on which depends overall quality of Antimonopoly Authority's work is important for effective implementation of competition policy.

Digitalization of Antimonopoly Authority's activities

Development of new approaches to **digitalization of the Agency's activities** is an important area of focus, taking into account leading international practices.

Thus, one of Antimonopoly Authority's main tasks is to prevent, detect and investigate, suppress violations of competition protection legislation. With that, the Agency's fundamental tool in executing this task is collection of necessary information and evidence to confirm or refute violation.

In practice, analyses conducted under old scheme have a number of disadvantages related to lengthy procedure of information retrieval (*sending and processing numerous requests to market entities, competent authorities, etc.*), drawing conclusions and, as a result, making decisions *ex post facto*, when effect of such actions loses its relevance (*individual cases take 2-3 years*). Today, the Antimonopoly Authority is focused on re-engineering its activities with an emphasis on automated monitoring and analyzing commodity markets.

The Agency jointly with the Bureau of National Statistics of the Agency for Strategic Planning and Reforms of the Republic of Kazakhstan (*hereinafter referred to as the BNS*) started work on creating **analytical map of the state of competition**. The analytical map of the state of competition is a dashboard (*Figure 9*).

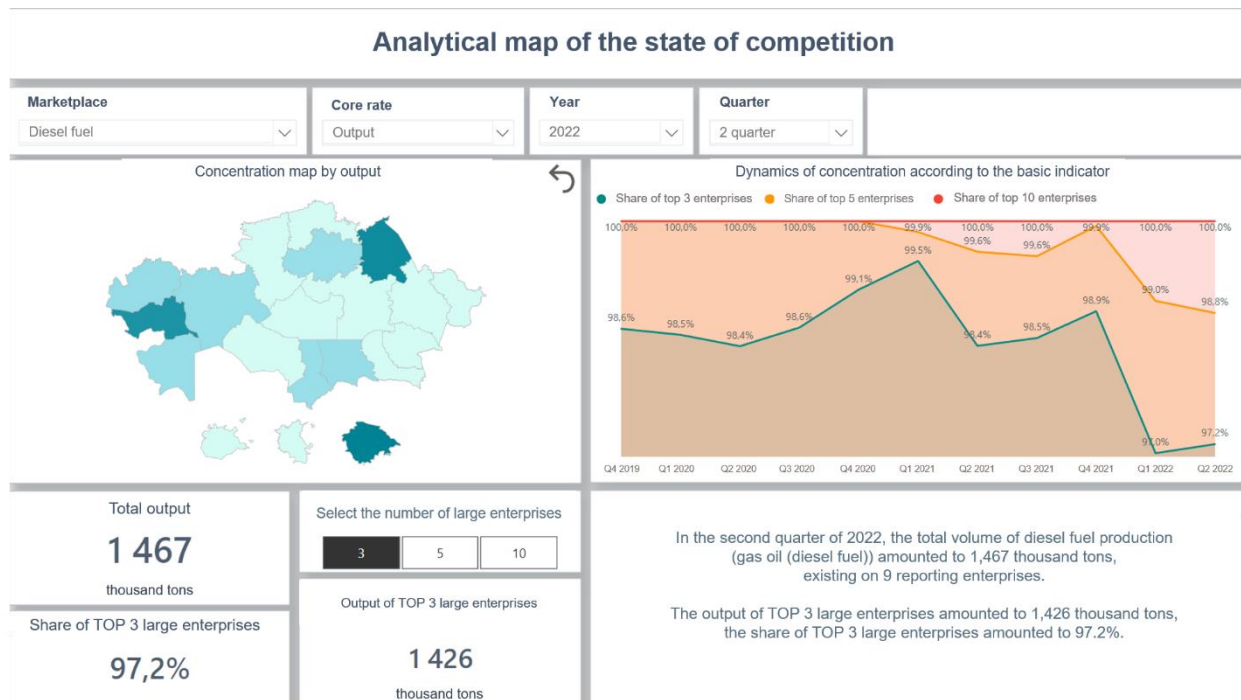


Figure 9- Dashboard interface.

The dashboard is at testing stage.

The Agency has worked with Bureau of National Statistics to develop a list of 16 commodity markets with historically problematic issues to be included in dashboard at the initial stage.

The markets will be quoted by 15 basic indicators.

Table 1. List of commodity markets and basic indicators to be included in dashboard at system launch.

Commodity markets	Basic indicators
1. RON-92, 95 (96) gasoline 2. Diesel fuel 3. Liquefied petroleum gas 4. Electricity 5. Jet fuel 6. Coal 7. Bitumen 8. Cellular communication services 9. Air transport services for passengers 10. Railway transport services for passengers 11. Housing construction 12. Cement 13. Rebar 14. Concrete 15. Food staples, except for fruits and vegetables 16. Production (national producers), wholesale and retail sales of medicines	1. List of market entities 2. Volume of production of goods (works, services) in kind and in value terms 3. Volume of wholesale and retail sales of goods / services in kind and in value terms 4. List of market entities with state participation, share of state participation 5. Producer prices 6. Prices of wholesale and retail sales of goods 7. Average prices 8. Volumes of export of goods 9. Volumes of import of goods 10. Market share of the three largest enterprises (compared to total volume) in RK market and by region 11. Herfindahl-Hirschman Index 12. Weighted average Lerner index 13. Volume of investment 14. Average break-even level 15. Average salary level

The list of commodity markets will be continuously expanded and scaled up. In addition, possibility of integrating data from other information sources, including data on export and import operations, data on economic activity, data from service aggregators, marketplaces, etc., into the dashboard is being developed.

As a result, dashboard will become an effective tool for structuring, analyzing and representing indicators, and will make it possible to promptly assess situation on commodity markets, identify potential problems, and take timely preventive measures. This will make it possible to prioritize the Agency's core activities in specific commodity markets and implement its functionality more efficiently.

Also, in order to effectively identify cartels in public procurement, the Agency has introduced **Ormek Search Information System**. This system was created on the platform of "Single Procurement Window" of Atameken National Chamber of Entrepreneurs of the Republic of Kazakhstan and allows identifying signs of bid rigging. Ormek system analyzes behavior and establishes indirect links between bidders with automatic notification of possible signs of bid rigging.

The system covers public procurement starting from 2019. For example, the system revealed that in 2019, two companies jointly participated in tenders for 7 procurements for repair of motorways ordered by local executive bodies and alternately won almost without reducing price, creating phantom competition for each other. Savings on procurement amounted to 0.01%. Signs of bid rigging are also confirmed by the fact that these enterprises acted as contractors and subcontractors for each other in execution of public procurement contracts. In general, after introduction of Ormek Search Information System, the Agency for the Protection and Development of Competition initiated 19 investigations against 38 market entities due to bid rigging.

The issue of provision of public services, in particular, consideration of applications for M&A transactions by the Agency, deserves special attention. In order to improve quality and accessibility of public service on economic concentration, the Agency together with National Information Technologies JSC carried out work on **digitalization of public service** "Consideration of applications for consent to economic concentration", which is now available online. Service recipient can apply for consent electronically, that in turn will eliminate the need to submit paper documents.

It is planned to consolidate this work at the level of Public Services Provision Rules in accordance with laws on legal acts in context of developed draft order of the Chairman of the Agency, where submission of documents through the portal will become mandatory.

The draft order is published at open LSIs (Laws and Statutory Instruments) website and sent to Atameken National Chamber of Entrepreneurs, members of the Public Council, accredited organizations, as well as to Sapargaliev Scientific Research Institute of State and Law for anti-corruption expert review.

***For reference:** Previously, service was considered only when paper copies were submitted, but now, to simplify provision of the service, Internal Portal of "E-licensing State Database" Information System has been created, where applicants can apply and submit necessary documents online.*

The next stage, in accordance with the Agency's Action Plan for 2023, is to partially automate collection of information filled in by service recipient. This is necessary to confirm authenticity and reduce list of information provided by service recipient.

In particular, it is planned to automate retrieval of information on individuals (*IIN, document number, etc.*) and legal entities (*BIN, OKED, etc.*).

In addition, in accordance with the Rules for Digital Transformation of Public Administration, **Digital Transformation Office** has been established at the Agency, and its composition and regulations have been approved. Office's tasks include integrated management and implementation of Digital Transformation Roadmap. **The Agency's Digital Transformation** Roadmap has been developed, which defines strategic direction of industry's digital transformation and corresponding performance and efficiency goals of the public administration system, which are planned to be achieved by the public body through digital transformation in the planned period.

Introducing corporate governance principles

As is well known, Antimonopoly Authorities in all developed countries have successfully operated for a long time based on **corporate governance** principle, which contributes to increased transparency and efficiency. Kazakhstani Antimonopoly Authority has also felt the need to develop corporate governance. In this regard, taking into account the best international practices, the Agency started work on introduction of **corporate governance** principles.

Since November 2022, the Agency has launched institute of **Management Board**, consisting of the Agency's management (*all necessary governing internal regulatory documents have been adopted, membership of the Management Board and its functional responsibilities have been approved*).

In 2022, 9 Management Board meetings were held. Since the beginning of 2023, 7 Management Board meetings have already been held. Board determines the Agency's short-term and long-term goals, makes decisions on the most key issues, for example, mergers and acquisitions, the opening of antimonopoly investigations are discussed and determined collectively. It is also planned to establish the Supervisory Board. Its main function will be to make recommendations to the Management Board within the scope of the Agency's activities.

For subsequent introduction of corporate processes, the Agency has adopted **Corporate Governance Implementation Plan**, within its framework a memorandum of cooperation has been signed between the Agency and Qazaq Independent Directors Association¹⁹. The parties agreed to establish partnership relations and develop long-term cooperation aimed at implementing joint projects in corporate governance.

In order to increase transparency and efficiency of the Agency for Protection and Development of Competition, including better application of economic analysis, **Chief Economist's Office** has been established.

¹⁹ CORPORATE GOVERNANCE PRINCIPLES HAVE BEEN IMPLEMENTED IN THE APDC // <https://www.gov.kz/memleket/entities/zk/press/news/details/468468 ?lang=ru;>

***For reference:** EU Directorate-General for Competition: out of a total of about 700 employees, more than 400 (casehandlers) investigate specific cases. Of them, just over a quarter specialize in government subsidies, 2-3% work in Chief Economist's team, and the rest investigate antimonopoly cases.*

The duties of Chief Economist's Office include intra-departmental control of obtained results of commodity market research, and conducting independent research.

Chapter 2. Analysis of state of competition in certain commodity markets

In accordance with the Entrepreneurial Code²⁰, anti-monopoly authority is vested with competence to analyze state of competition in commodity markets. Analysis of state of competition in commodity markets is a key tool for implementing competition policy, that determines appropriate decisions on revealing market entities occupying dominant or monopolistic position, developing set of measures aimed at protecting and developing competition, preventing, limiting and suppressing monopolistic activities.

In total, more than 80 commodity market analyses were conducted in 2022. With that, in most cases, this includes unscheduled analysis of commodity markets conducted as prompt measures, which is due, inter alia, to execution of instructions related to January events, measures provided for by Anti-Inflationary Response Package, as well as instructions from President's Administration, the Government of the Republic of Kazakhstan. In addition, unscheduled analyses of commodity markets were conducted on the basis of incoming requests from individuals and legal entities.

It should be noted that in 2022, the Agency had conducted planned analysis for only 20 commodity markets:

1. Wholesale market of petroleum products;
2. Retail market of petroleum products;
3. Wholesale electricity market;
4. Retail electricity market;
5. Wholesale coal market;
6. Retail coal market;
7. Market of construction and installation services for connecting consumers to natural gas networks;
8. Market for technical, maintenance services and overhaul of locomotives;
9. Railcar repair services market;
10. Digital Terrestrial Broadcasting services market;
11. Copper Sales Market;
12. Lead Sales Market;
13. Zinc Sales Market;
14. Aluminum Sales Market;
15. Processed milk sales market;
16. Sugar sales market;

²⁰ Subparagraph 11), Article 90-6, Article 196 of the Entrepreneurial Code of the Republic of Kazakhstan // <https://adilet.zan.kz/rus/docs/K1500000375>;

17. Medicines sales market;
18. Market of services for conducting PCR diagnostics of coronavirus infection;
19. Market of services for collection, removal, sorting and disposal of solid waste;
20. Auto loan financing services market.

2.1. Wholesale and retail markets of petroleum products

Analysis of wholesale and retail markets of petroleum products was carried out in accordance with the Agency's Work Plan for 2022 and covers certain types of fuel and energy-oriented petroleum products such as: gasoline RON-92 and RON-95, jet and diesel fuel (*hereinafter referred to as petroleum products*).

In accordance with the Law "On State Regulation of Manufacturing and Turnover of Specific Types of Oil Products", fuel oil and road bitumen also belong to certain types of petroleum products. Fuel oil has limited use as start-up fuel for heat and power plants, and therefore was not covered by analysis. Road bitumen is used as construction material, and is not a fuel and energy commodity.

According to their properties and areas of use (*groups of buyers*), gasoline of RON-92 and RON-95 grades, diesel fuel (*summer / winter*) and jet fuel are not interchangeable.

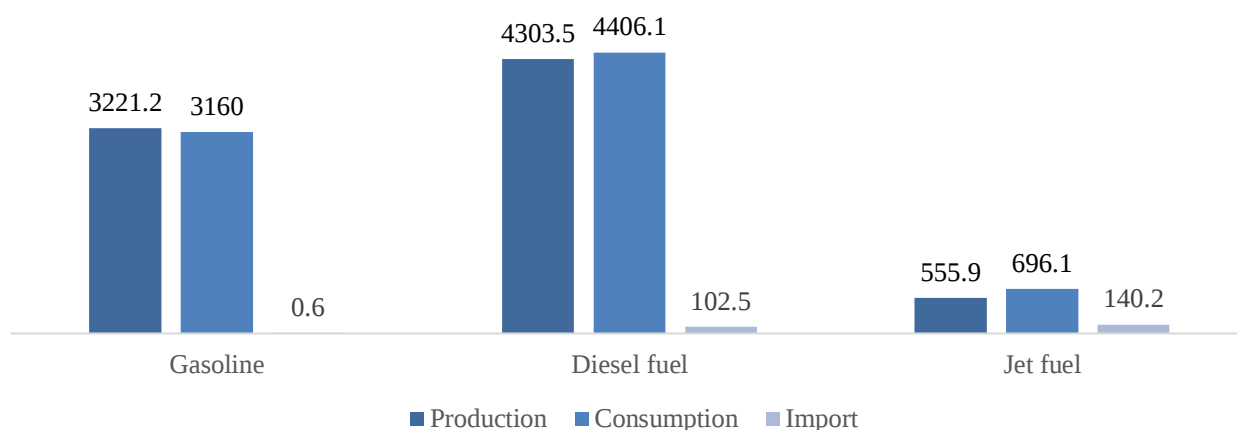


Fig. 10- Market balance for 2022, tons.

All petroleum products are produced from crude oil prepared for processing, supplied by the same organizations. Thus, the largest market shares are accounted for by "Petrosun" LLP, "KMG" JSC and "Petrostar" LLP:

- gasoline RON-92: Petrosun LLP – 58.7%, NC KazMunayGas JSC - 32.6%;
- gasoline RON-95: LLP "Petrosun" – 47.3%, "NC KazMunayGas" JSC – 24.1%, "Petrostar" LLP – 16.5% (*Figure 11*).

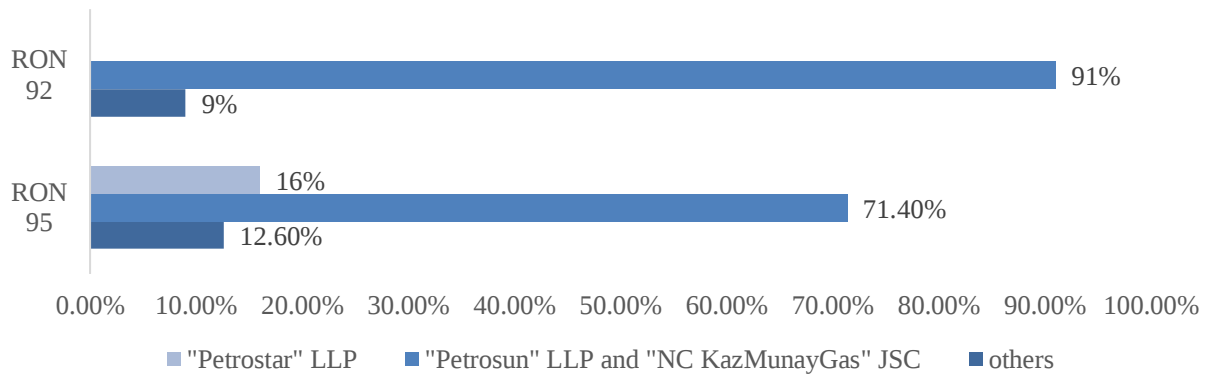


Fig. 11- Shares of wholesale sellers of gasoline for the period from October 2021 to September 2022, %.

Jet fuel: Petrosun LLP - 56.8% share; NC KazMunayGas JSC - 24% share (Figure 12).

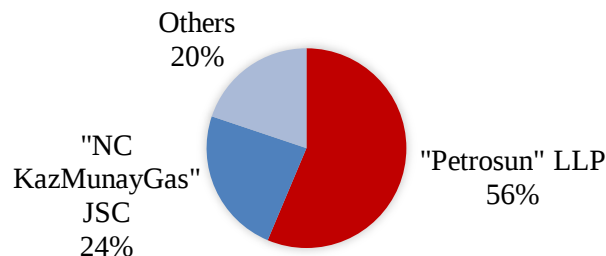


Fig. 12- Shares of jet fuel wholesale sellers, %.

Diesel fuel: Petrosun LLP - 51.1%, NC KazMunayGas JSC - 29.9% (Figure 13).

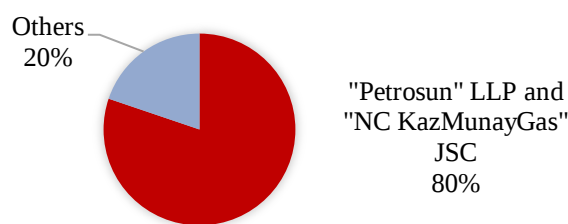


Fig.13 - Shares of diesel fuel wholesale sellers, %.

Compared to earlier analysis of commodity market, for the period from September 2021 to September 2022, number of market entities increased from 36 to 55.

With that, for RON-95 gasoline (*non-regulated price*), there is a market deconcentration, due to new market entity, Petrostar LLP, which occupies a market share of 16%.

During analysis, dynamics of prices for petroleum products from two large wholesale distributors - "Petrosun" LLP and "KazMunayGas" JSC was studied.

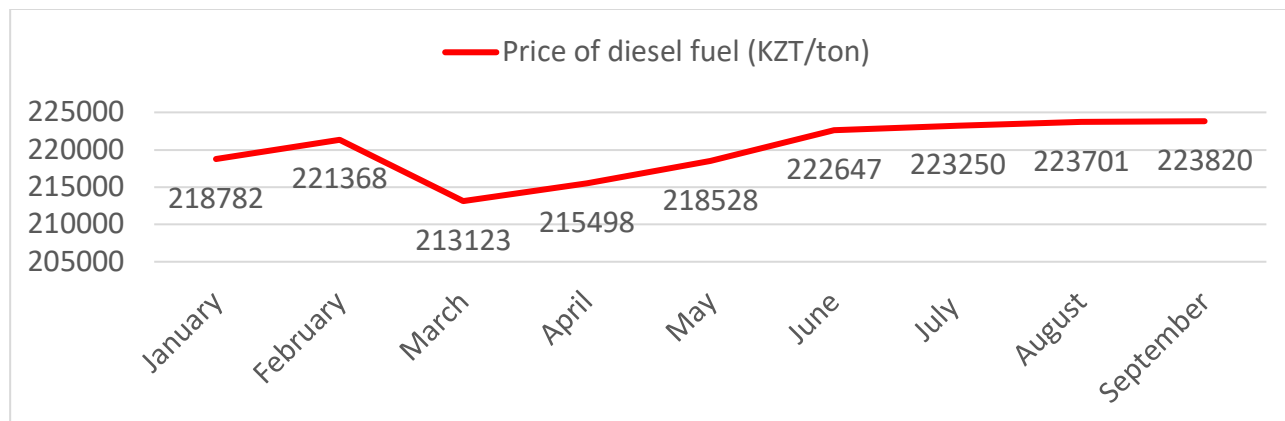


Fig. 14– Price of diesel fuel, KZT / ton.

In general, wholesale market for sale of petroleum products is characterized as highly **concentrated**:

Gasoline RON-92: CR-3: 91.3%, *Herfindahl-Hirschman Index* (hereinafter – *HHI*): 2000 <4513.53<10000.

Gasoline RON-95: CR-3: 87.9%, HHI: 2000 <4625<10000.

Diesel fuel: CR-3: 81%, HHI: 2000 <3497.5<10000.

Jet fuel: CR-3: 80.8%, HHI: 2000 <3809<10000.

In this connection, in accordance with paragraphs 4 and 6 of Article 172 of the Entrepreneurial Code, Petrosun LLP, NC KazMunayGas JSC are recognized as entities occupying a dominant position in the market.

Taking into account new norms of the Code on ensuring equal access to key capacity, as well as shares, occupied at the market, according to analysis results, Petrosun LLP and NC KazMunayGas JSC were recognized as owners of key capacity.

Main events

An important event in 2022 was adoption of Law "On Amendments and Additions to some Legislative Acts of the Republic of Kazakhstan on executing certain instructions of the Head of State", which provides for:

- strengthening requirements for oil suppliers regarding affiliation with subsoil user organizations (*hereinafter referred to as SUO*);
- transition of oil refineries (*hereinafter referred to as OR*) from processing to marketing scheme;
- granting SUO right for refining oil and further sale of its own petroleum products;
- elimination of "unproductive" intermediaries by strengthening requirements for oil tank farms.

According to preliminary estimates, this law has had a positive impact on market structure and composition of its subjects in terms of SUO's access to oil refining and sale of petroleum products, as well as elimination of "unproductive" intermediaries.

With that, negative consequences of state's presence in oil refining market (*KMG Group, CNPC*) and sale of petroleum products (*NC KazMunayGas JSC and Petrosun LLP*) have intensified, number of complaints against refineries has increased (*refusals to accept applications, forced buyback, lowered purchase price*).

This law also introduced possibility of state regulation of fuel prices at wholesale market, as well as obligations of oil suppliers to sell products to gas stations during seasonal period.

Since April 12, 2023, new ceiling prices for sale of petroleum products have been introduced:

1) by Order of the Minister of Energy No. 139 dated April 12, 2023, maximum prices for wholesale sale of petroleum products to stationary gas stations on ex-works supply conditions from refinery are set as follows (*with VAT*):

- RON-80 gasoline – 93 161 KZT/ton;
- RON-92 and RON-93 gasoline – 214 584 KZT/ton;
- diesel fuel (*summer, off-season*) - 284 350 KZT/ton;

2) By Order of the Minister of Energy No. 140 of April 12, 2023, amendments were made to the Order of the Minister of Energy No. 361 of May 19, 2015 "On establishing ceiling prices for retail sale of petroleum products which have a price, regulated by the state", according to which ceiling prices for retail sale of petroleum products through stationary gas stations are set as follows (*with VAT*):

- RON-80 gasoline – 89 KZT/liter;
- RON-92 and RON-93 gasoline – 205 KZT/liter;
- diesel fuel (*summer, off-season*) - 450 KZT/liter;
- upon presentation of driver's license issued in the Republic of Kazakhstan, up to 100 liters per day – 295 KZT/liter;
- upon presentation of driver's license and vehicle registration certificate issued in the Republic of Kazakhstan for trucks, special, specialized cars and buses - up to 300 liters per day – 295 KZT/liter.

According to preliminary estimates, this had produced a negative effect on elasticity of diesel fuel supply at the market due to non-market wholesale price to gas stations and "fixed" retail price at gas stations, as well as the fact that market participants "expected" non-market mechanisms for distributing volumes in spring-field period and "hoarding" diesel at oil tank farms.

Established maximum retail price of fuel and lubricants in the Republic of Kazakhstan is still lower than the prices in neighboring countries, both members of EAEU and those who have active trade turnover with Kazakhstan (*Uzbekistan, China*).

The problems of cross-border flow and covert transit of fuel and lubricants remain unresolved even with adoption of the Law and introduction of "manual" administrative regulation. To solve the problems, it is necessary to use **balanced pricing mechanism** at retail trade, focused on both internal and external indicators.

However, there is also a positive economic effect, as according to preliminary data, admission of SUO gave an impulse for deconcentration of primary wholesale trade in petroleum products by reducing share of Petrosun LLP and oil suppliers in general.

According to forecast data, introduction of balanced price regulation for oil and petroleum products (*which takes into account external indicators*), considering increase in prices at retail market and further elimination of disparity, will provide more than **1 trillion KZT contribution** to GDP (*due to additional tax revenues from fuel and lubricants*).

Also in 2022, the Rules of exchange trading in terms of regulating petroleum products exchange trading (*Chapter 24*) have been amended by the order of Deputy Prime Minister - Minister of Trade and Integration dated July 19, 2022 No. 294-NK "On Amendments to the Order of the Acting Minister of National Economy of the Republic of Kazakhstan dated March 30, 2015 No. 280 "On approval of the Standard Rules of Exchange Trading"

In addition, the National Project provides for increase in sales of gasoline, diesel fuel, jet fuel and bitumen through commodity exchanges **up to 20%** of total sales by 2025.

However, business entities, as well as Kazakhstan Fuel Association, have voiced complaints against sectoral government body and quasi-public sector stating that **diesel fuel has not been put** up for exchange trading since January 2023. Despite improvements of regulatory framework in the field of exchange trading, no real measures are being taken to increase volume of certain types of petroleum products.

With the administrative regulation of prices for petroleum products, prices are formed at the stock exchange in parallel, which can serve as a price indicator for the market (*for balanced regulation mechanism*). According to forecast, putting petroleum products to stock exchange (*up to 20% by 2025*) will provide competitive access to petroleum products worth **more than 1 trillion KZT**.

Barriers for competition development

1) over the past 3 years, despite 13% increase in diesel fuel production, **negative balance of the market** persists. Domestic consumption increased from 4.7 to 5.5 million tons, or 15%. The main increase is in agricultural production, where consumption increased by 26%. The second reason is illegal export of petroleum products (*5% of market volume*) and transit transport (*up to 10%*).

In this regard, the Government has implemented a set of measures on pricing and control over turnover of petroleum products. **Main operator** was created with share **over 80%** on the basis of KMG (*by purchasing share in Petrosun LLP*).

As part of transition to marketing scheme, the refineries have actually been granted **priority right** to purchase oil and sell fuel. Restriction on export of fuel has been introduced and system for monitoring turnover of petroleum products has been introduced.

Retail prices for domestic and transit transport have been regulated since August 2022. Currently, wholesale price of sales to gas stations is regulated, with compulsory sale of volumes to retail market;

2) high **difference** between wholesale (227 KZT/l.) and retail prices (*from 295 to 450 KZT/ l.*) is the main reason for dissemination of shadow schemes. The main volume of diesel fuel (45%) is sold to large gas station networks, and during agricultural season – to agricultural producers (*up to 30%*). The rest of the market remains **uncontrolled** (*"in the shadows"*).

So, structure of "Petrosun" LLP counterparties contains the same former intermediaries: "Silk Way Petroleum" LLP, "SAPAR Trading" LLP, "Petro Capital" LLP, "Lf-Trade" LLP and others. "NC KazMunayGas" JSC has guaranteed to sell 35% of petroleum products to "PetroRetail" LLP, some of which are resold at the market to other gas stations (*economically non-productive intermediaries*).

Currently, the Agency is checking the facts of unjustified refusals to sell fuel and lubricants.

After change of ownership, practice of selling fuel **without centralized accounting**, as per verbal requests of consumers began to be widely used in Petrosun LLP. Refusals to provide diesel fuel are **not registered**. Turnover of diesel fuel sales against cash has increased.

Thus, the state still does **not control** about 30% of petroleum products, that negatively affects transparency of pricing and remains one of the factors for artificial formation of high prices;

3) fuel distribution among agricultural producers is also carried out **non-transparently**, according to distribution lists. **There is no control** over targeted use of preferential fuel.

With transition to marketing scheme, practice of **compulsory withdrawal** of oil from private subsoil users by refineries at low prices is being introduced. Price of purchasing oil by KMG was reduced from 100 to 70 thousand KZT/ton, that did not lead to price reduction, but only increased profitability of refineries. Unbalanced price regulation has caused **disparity** of domestic and external prices. The difference in the cost of diesel fuel in Kazakhstan and neighboring countries has reached **65%**. In these conditions, measures of controlling illegal export of fuels and lubricants proved to be ineffective.

In turn, differentiation of prices for domestic and transit transport has led to restrictions on sale of "preferential" fuel to population. Establishment of unified wholesale price at the level of diesel fuel cost, sold by KMG and Petrosun LLP (*236 thousand KZT/ton*) jeopardizes small oil suppliers (*280-350 thousand KZT/ton*), whose production costs are much higher;

4) no less serious consequences arise in retail market, where the share of SMEs decreases annually in conditions of strict price control. In particular, small gas stations have indirect (*through oil tank farms or large gas stations networks*) access to resources of oil suppliers, that means higher cost of purchasing fuel;

5) if price control is established at wholesale and retail markets, then monopoly oil refining services remain **excluded from price regulation**.

As a result, facts of overpricing refinery services are revealed on an ongoing basis. For example, in 2022, Atyrau and Pavlodar refineries **exceeded** justified price by **35%**

and 17%, respectively. Despite this, Atyrau refinery, as part of KMG Group, again increased processing cost **by 27%** in January this year.

Taking into account approximately 18% contribution of processing cost to wholesale price, this significantly increases final cost for consumers;

6) **poor quality** of refinery's state management is characterized by the number of unscheduled repairs.

In February, Atyrau refinery stopped catalytic cracking. In the same month, Pavlodar refinery, due to a defect in hydrogen production unit, also stopped production of diesel fuel in an emergency. With that, the total amount of funds invested into modernization of Atyrau, and Pavlodar refineries for 5 years amounted to **1.9 trillion KZT**.

In total, **106 unscheduled shutdowns** have occurred at these state refineries over the past 3 years, while 21 unscheduled shutdowns have occurred at Shymkent refinery, which is owned by private investor (50.2%), that indicates more efficient asset management.

In turn, state shareholding of refinery complicates elimination of accidents, as it requires that procurement of equipment must be conducted in compliance with current legislation;

7) planned **gradual increase in prices** is a necessary measure to eliminate imbalances at domestic market.

However, in conditions of maintained monopoly state at wholesale market, price increase means profitability increase for dominant wholesale suppliers and retail market entities.

Therefore, when prices rise, it is necessary to **increase excise** tax rates in order to withdraw excess profits and redistribute profits from wholesale sector to subsoil users by increasing purchase prices;

8) data collection is carried out by SRC of Ministry of Finance (*gas station tax returns*), Ministry of Energy (*reports of oil tank farms and refineries*) and "NIT" JSC (*oil products accounting system (OPAS), through metering devices at refineries and gas stations*).

Tax returns for SRC and reports for MoE are generated by gas stations and oil tank farms independently, that **reduces data reliability**, while data collection of "NIT" JSC is carried out automatically through metering devices. However, the system of "NIT" JSC is related only to remainders at gas stations.

Thus, there is **no single platform** for collecting and accounting turnover of petroleum products, there is no process automation.

On December 31, 2015, by decree of the Government, "NIT" JSC was defined as operator of oil products accounting system (OPAS), the system was introduced only in June 2019, but it is not full-fledged, since it does not cover all market participants - feedstock suppliers and oil tank farms. The issue of financing this system has not yet been resolved, "NIT" JSC develops and maintains it independently.

Proposals and recommendations for competition development

Based on results of analysis, the following proposals were developed for market under consideration:

1) development of petroleum products exchange trading up to 20% of market volume;

2) regulation of access to oil refining services within the Rules of Equal Access to Key Capacity *(there are existing Rules for access of oil suppliers to processing of crude oil and (or) gas condensate, and (or) refined products, approved by Order No. 51 of the Minister of Energy of the Republic of Kazakhstan dated February 2, 2015, amendments to this order are planned)*;

3) regulation of petroleum products sale within the framework of the Rules of Equal Access to Key Capacity *(Rules have been developed, currently agreed with the industry state authorities (Ministries of Finance and Energy))*;

4) return to state regulation of prices for oil refining services, which was in effect until 2017;

5) recognition of oil refining services as licensed activity with qualification requirements of integrated technological process;

6) introduction of full cycle accounting for turnover of petroleum products on the basis of "NIT" JSC, including sales by feedstock suppliers and oil tank farms with budget financing;

7) gradual increase in wholesale and retail prices for petroleum products with increase in excise duty and prices for purchasing oil from subsoil users and subsequent deregulation of the market;

8) changing market model focused on competition of large and small vertically integrated companies;

9) implementation of a set of measures to reduce state participation in market of sale and processing of petroleum products in order to demonopolize market due to inefficiency of state operator *(the Agency's position was sent to the Government Office, Presidential Administration, general approaches were supported, including by industry body)*.

In 2022, the Agency jointly with Ministry of Energy adopted **roadmap**, which provides for:

1) analysis of exchange trading in petroleum products for up to 20% increase in volumes of trading;

2) approval of the Rules of equal access to key capacity of wholesale sales of petroleum products;

3) approval by "KMG-Aero" JSC of sale of aviation kerosene by the antimonopoly compliance act *(retail sale)*;

4) development of forecast plan for convergence of fuel and lubricants prices within the EAEU by 2025 *(balanced price regulation mechanism)*;

5) regulation of access to oil refining services within the Rules of Equal Access to Key Capacity.

2.2. Wholesale and retail markets of electric energy

Analysis of wholesale and retail markets of electric energy was carried out in accordance with the Agency's Work Plan for 2022.

In accordance with paragraph 3 of Article 14 of the Law "On Electric Power Industry", electric energy market consists of two levels: wholesale and retail electric energy markets.

In the wholesale market, electric energy is purchased for resale at retail market or to wholesale consumers, usually for industrial purposes.

According to KEGOC JSC, as of September 1, 2022, **53 Energy-Producing Organizations** (*hereinafter referred to as EPO*) carried out wholesale electricity sales.

Also, there are more than 80 market entities operating in wholesale electricity market that supply electricity generated from renewable energy sources (*hereinafter referred to as RES*).

However, conditions for sale of RES electricity differ. Thus, according to the Law "On Support for Use of Renewable Energy Sources", all electricity supplied to the grid from RES EPOs is guaranteed to be paid by **Single Buyer** (*FSC for support of RES LLP*) at established tariffs for 1 kWh (*ceiling price until 2018 or auction price after 2018*).

Thus, there is no competition between these EPOs, and therefore they cannot be taken into account when calculating shares of market entities. The process of competition between these EPOs occurs only at the stage of project selection based on the results of auctions.

About 20 organizations that provide services of transmitting electric energy through power lines at the regional level participate in wholesale electricity market.

According to the Law "On Natural Monopolies", electricity transmission services belong to natural monopolies and state regulation of energy transmission organizations is carried out by the authorized body that manages relevant spheres of natural monopolies, represented by the Committee for Regulation of Natural Monopolies of Ministry of National Economy of the Republic of Kazakhstan (*hereinafter – CRNM*) by forming, establishing and approving the tariff.

In the retail electricity market, energy supply organizations (*hereinafter referred to as ESOs*) act as sellers, buying electricity from EPOs for subsequent sale to retail consumers, taking into account transportation costs, payments for power, etc.

There are over **140 ESOs** operating at electricity supply market, including approx. 35 ESOs that are guaranteeing electricity suppliers, which are regulated by CRNM in accordance with pricing procedure in socially significant markets. The remaining ESOs independently set selling price for electric energy.

Wholesale electricity market

Information about wholesale electricity market entities that occupy dominant or monopolistic position is given in the following table.

Table2. Wholesale electricity market entities that occupy dominant or monopolistic position.

№	Geographical boundaries	Name of EPO (groups of entities)	Market share	Competition level	
				2021	2022 (January-August)
1	Almaty power center	"Samruk-Energy" JSC	93 %	2000 <HHI 8681 <10000	2000 <HHI 8301 <10000

2	Taldykorgan power center	"Samruk- Energy" JSC TEK LLP	70-73 % 12 %	70 <CR(3) 85 <100 2000 <HHI 5580 <10000	70 <CR(3) 92 <100 2000 <HHI 5057 <10000
3	Kyzylorda region	"Samruk-Energy" JSC State Enterprise "Kyzylordateploelectrocenter"	67 % 19 %	70 <CR(2) 85 <100 2000 <HHI 4837 <10000	70 <CR(3) 90 <100 2000 <HHI 3586 <10000
4	Zhambyl region	"Samruk-Energy" JSC "Zhambyl GRES-1" named T.I. Baturov" JSC	62 % 27 %	70 <CR(2) 89 <100 2000 <HHI 4662 <10000	70 <CR(2) 90 <100 2000 <HHI 4447 <10000
5	Kokshetau power center	"Samruk-Energy" JSC Stepnogorsk CHP LLP	60 % 23 %	70 <CR(2) 83 <100 2000 <HHI 4204 <10000	70 <CR(3) 89 <100 2000 <HHI 3423 <10000
6	Kostanay region	"Samruk-Energy" JSC Group consisting of "EEC" JSC, CHP of "Aluminum of Kazakhstan" JSC and Rudnenskaya CHP SevKazEnergo JSC	> 55 % 24,32 % 18,20 %	70 <CR(3) 97 <100 2000 <HHI 3959 <10000	70 <CR(2) 80 <100 2000 <HHI 4027 <10000
7	Pavlodar region	"Samruk-Energy" JSC Group consisting of SevKazEnergo JSC and Pavlodarenergo JSC	47 % 39 %	70 <CR(2) 86 <100 2000 <HHI 3784 <10000	70 <CR(2) 91 <100 2000 <HHI 4164 <10000
8	Turkestan region and Shymkent city	"Samruk-Energy" JSC Group consisting of "3- Energoportalyk" JSC and "Eurasian Energy Corporation" JSC	65 % 15 %	70 <CR(2) 80 <100 2000 <HHI 4465 <10000	70 <CR(3) 84 <100 2000 <HHI 3329 <10000
9	Zhezkazgan power center	"Samruk-Energy" JSC Group consisting of GRES Topar LLP, Balkhash CHP and Zhezkazgan CHP of Kazakhmys Energy LLP	29-35 % 35,60 %	70 <CR(3) 81 <100 1000 <HHI 2393 <2000	70 <CR(3) 82 <100 2000 <HHI 2448 <10000
10	Akmola region and Astana	"Samruk-Energy" JSC Astana-Energia JSC	> 39 % 50 %	70 <CR(2) 89 <100 2000 <HHI 4036 <10000	70 <CR(2) 90 <100 2000 <HHI 4134 <10000
11	Aktobe region	"Samruk-Energy" JSC "Aktobe CHP" JSC Zhanazholskaya GTPP	> 29 % 29,5 % 28,5 %	70 <CR(3) 87 <100 2000 <HHI 2528 <10000	70 <CR(3) 87 <100 2000 <HHI 2771 <10000
12	East Kazakhstan region	Group consisting of "AES Shulbinskaya HPP" LLP and "AES Ust-Kamenogorsk HPP" LLP Ust-Kamenogorsk CHP LLP "Samruk-Energy" JSC	50,5 % 18,6 % 12 %	70 <CR(2) 70 <100 2000 <HHI 2897 <10000	70 <CR(2) 73 <100 2000 <HHI 2796 <10000
13	Karaganda power center	Group consisting of Karaganda Energy Center LLP and Ust-Kamenogorsk CHP LLP "Samruk-Energy" JSC	56 % 18 %	70 <CR(2) 73 <100 2000 <HHI 3463 <10000	70 <CR(2) 92 <100 2000 <HHI 3384 <10000
14	North Kazakhstan region	SevKazEnergo JSC	100 %	2000 <HHI 9941 <10000	2000 <HHI 5348 <10000
15	West Kazakhstan region	BatysPower GTPP-200 LLP Ural GTPP	39 % 20 %	70 <CR(2) 58 <100 2000 <HHI 1883 <10000	70 <CR(3) 60 <100 2000 <HHI 2448 <10000
16	Atyrau region	Atyrau CHP JSC GTPP OF "KUS" LLP	56 % 25 %	2000 <HHI 3761 <10000	2000 <HNI 3827 <10000

17	Mangystau region	MAEK-Kazatomprom LLP GTPP OF "KUS" LLP	76 % 23 %	2000 <HHI 6323 <10000	2000 <HHI 5577 <10000
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As can be seen from the table, wholesale electricity market is a highly *concentrated* market.

Retail Electricity market

Information about retail electricity market entities that occupy dominant or monopolistic position is given in the following table.

Table3. Retail electricity market entities that occupy dominant or monopolistic position.

Geographical boundaries	ESO	Market share	Competition level	
			2021	2022 (1st half of the year)
Astana city	PRIME ENERGY RESOURCES LLP	74,7 %	70<CR(1) 75 <100	70<CR(2) 87 <100
	AstanaEnergosbyt LLP	14,1 %		
Almaty city	Almatyenergoby LLP	91,3 %	70<CR(1) 91 <100	70<CR(1) 83 <100
East Kazakhstan region	Shygysenergotrade LLP	56,1 %	70<CR(2) 72 <100	45<CR(1) 48 <100
	AB Energo LLP	15,6 %		
Zhambyl region	ZhambylZharykSauda-2030 LLP	68 %	70 % < CR(3) 90,14 < 100	70 % < CR(3) 85,18 < 100
Mangystau region	Mangistau Zharyk LLP	43,6%	70 % < CR(3) 92 < 100	70 % < CR(3) 91 < 100
	MangistauEnergoMunay LLP	27,9 %		
	AktauEnergoSbyt LLP	20,5%		
West Kazakhstan region	Batys Energy Resources LLP	55 %	70 % < CR(2) 88 < 100	70 % < CR(2) 88 < 100
	Batys Power LLP	33 %		
Pavlodar region (with the exception of Ekibastuz city, aviators' settlement of Pavlodar city)	Pavlodarenergosbyt LLP	39,5 %	70 % < CR(2) 78 < 100	70 % < CR(1) 79 < 100
	AB Energo LLP	38,3%		
Aktobe region	Aktobeenergossab LLP	76 %	70 % < CR(1) 76 < 100	70 % < CR(1) 81 < 100
Almaty region	Almatyenergoby LLP	99,43 %	70 % < CR(1) 99 < 100	70 % < CR(1) 99 < 100
Atyrau region	Atyrau Energosat LLP	68 %	70 % < CR(2) 92 < 100	70 % < CR(2) 93 < 100
	Karabatan Power LLP	24 %		
Shymkent	Energopotok LLP	57 %	70 % < CR(3) 80 < 100	70 % < CR(3) 81 < 100
	Energossab XXI LLP	12,5 %		
	Yugenergoimpulse LLP	11,1 %		
Turkestan region	Energopotok LLP	82,4 %	70 % < CR(1) 82 < 100	70 % < CR(1) 82 < 100

It follows from the above table that retail electricity market in most regions of the country is also highly **concentrated market** (*in some cases refers to market with moderate concentration*).

Main events

In wholesale electricity market, there is still stable **high concentration** of market between several vertically integrated companies represented by Samruk-Energy JSC, Kazakhstan Utility Systems LLP, Central Asian Electric Power Corporation JSC and Eurasian Energy Corporation JSC, depending on the region.

Direct electricity supplies to large energy consumers ensure reduction in cost of final products for them, and therefore it is necessary to encourage and support entry of new consumers into wholesale market.

However, EPOs are noted for **refusing** to conclude direct contracts with potentially new consumers with reference to reservedness of all contractual volumes by ESOs and other consumers. "Eurasian Foods Corporation" JSC and a number of other food producers, meeting all parameters of wholesale consumers, are refused by EPOs with reference to reservedness of all contractual volumes of electricity for 5-10 years ahead.

With that, formally, these refusals are considered legitimate since absence of goods due to conclusion of contracts with other buyers excludes liability for abuse of dominant or monopoly position.

Also, restriction of access to electricity for wholesale consumers was influenced by **intermediary structures** represented by ESO. Despite market role of ESOs as suppliers of retail market, some ESOs have occupied "niche" of supplying wholesale consumers. Out of wholesale consumers' demand for 30 billion kWh, 8 billion kWh is accounted for by supplies via ESO.

Thus, "NC KTZ" JSC, being in the same structure with EPO "Samruk-Energy" and other EPOs of "NWF Samruk-Kazyna" JSC, purchased electricity not directly from power plants, but through various ESOs (*on this fact, anti-corruption service is investigating criminal case on abuse of official powers by the management of national companies*).

The largest shares in this "niche" were occupied by such ESOs as the former subsidiary of NC KTZ JSC – Temirzholenergo LLP – 1.5 billion. kWh; AB Energo LLP, Samga Development LLP – 3 billion kWh. In this regard, these ESOs represented **unproductive intermediary** between wholesale consumers and EPOs. With that, conclusion of transactions between ESOs and wholesale market consumers did not contradict with legislation on electric power industry. In this regard, in order to exclude this practice, the Agency initiated amendments to the Law on Electric Power Industry in 2021, prohibiting ESOs to supply wholesale consumers (*Law was signed on January 3, 2022*). Thus, marginal costs of wholesale consumers were reduced by about **4.5 billion KZT**.

In addition, by Order of the Chairman of the Agency No. 4 dated May 4, 2023, amendments were made to the current procedure for providing equal access to key capacity in terms of providing a special procedure for providing equal access to key capacity in decentralized electricity purchase and sale market, which takes into account

transparent mechanism for sales of electricity at wholesale electricity market (*acceptance, fulfillment of requests, process of distributing electricity volumes for planned period in priority order, basis for refusals to fulfil requests, etc.*).

By the end of 2022, the wholesale market had a negative balance of electricity (*generation – 113.89 billion kWh, consumption – 112.86 billion kWh*) in amount of 1.03 billion kWh, which was covered by imports from neighboring countries.

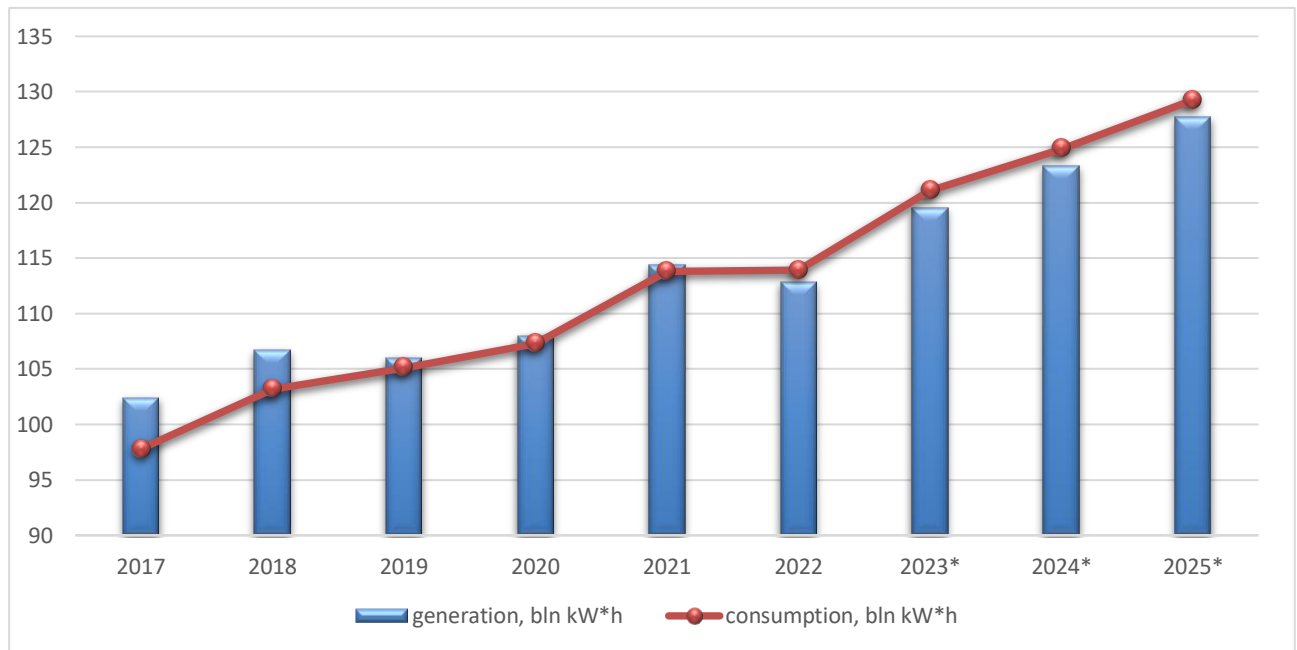


Fig. 15– Forecast of electricity consumption.

To cover the deficit, the Government plans to switch to new market model from July 1, 2023, which provides for aggregated purchase of electricity at wholesale market by state monopoly structure, **Single Buyer**, for subsequent sale of electricity to ESOs and other consumers at **averaged single price**.

With that, alignment of wholesale prices will not eventually lead to equalization of final tariff since tariffs of regional energy transmission organizations differ in the regions.

Also, introduction of Single Buyer model carries risks of strengthening "Averch-Johnson effect" at electricity market, consisting in deliberate increase of production costs.

It is expected that Single Buyer will purchase electricity, among other at centralized auctions, that, according to Ministry of Energy, will allow fulfilling instructions of the Head of State on increasing centralized electricity trading.

With that, new monopoly operator, represented by Single buyer, bears the risks of negative impact on competition at retail electricity market, because after introduction of new market model, **preferential right** to receive electricity will be granted to ESOs affiliated with energy transmission organizations.

The experience of operating Single Buyer market in Ukraine shows that under this market model, Regional Electric Grid Company (REC) becomes the only supplier of electricity in the regions, thus eliminating competition at the market and right of consumers to choose electricity supplier.

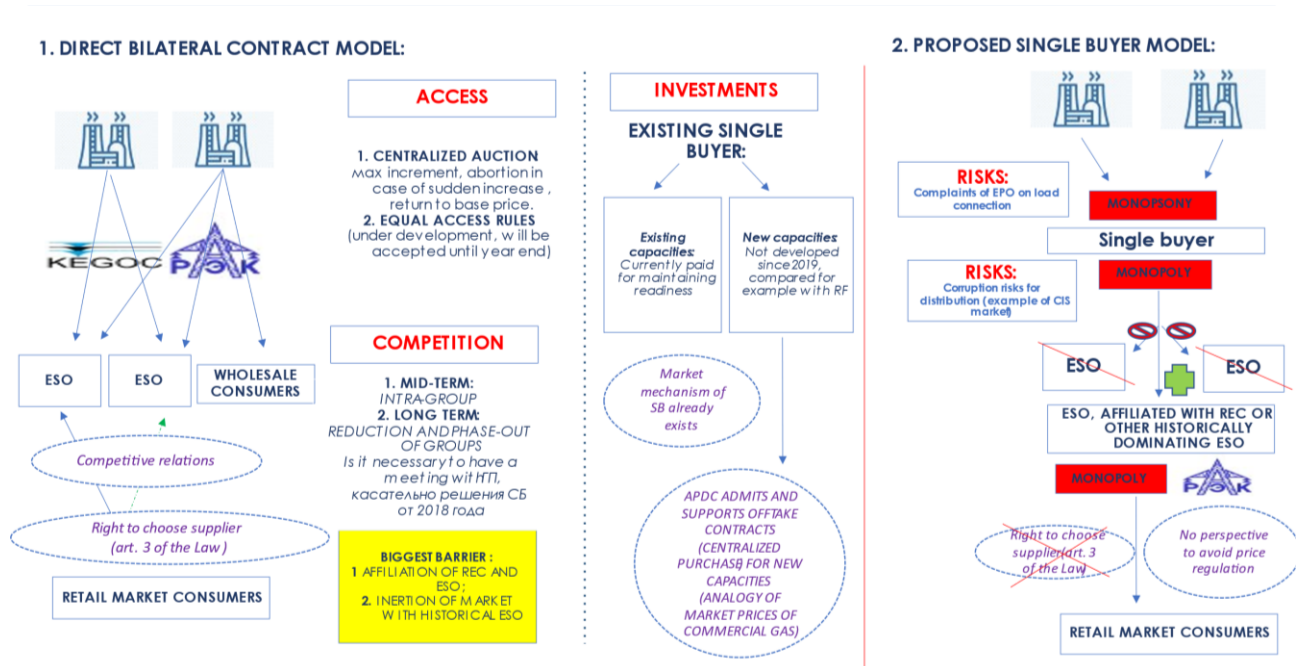


Fig. 16– Models of electricity market.

Realizing the need to introduce new capacities and import electricity in the country, the Agency supported the use of mechanism with Single Buyer of electric energy as a **temporary measure** until the tasks are solved within the framework of fuel and energy complex and electric power industry development concept for 2023-2029.

Today, there is already **Single buyer of electric power** at the market, represented by Financial-Settlement Center, which has been operating since 2019 to attract investments to maintain existing and introduce new capacities in the unified electric power system of Kazakhstan to cover demand for capacity.

With that, collecting payments for power covers of fixed costs of power plants, while payment for electric energy covers variable costs and income generation by power plants.

It should be noted that since 2019, power plants have received more than 285 billion KZT at the capacity market and, according to explanations of Ministry of Energy, EPOs that have concluded contracts for provision of services to maintain capacity readiness under subparagraphs 3) and 4) of paragraph 3-1 of Article 15-3 of the Law "On Electric Power Industry", have no restrictions on targeted use of funds

received from sale of these services, i.e. EPO has the right to independently dispose received funds.

In addition, savings resulting from certification of generating units of power plants and under-consumption of power on consumers' side are considered by a Single buyer as its own financial result (*annually from 8 to 15 billion KZT*) and **corporate income tax of 20%** is applied to it, that means incomplete refunds to consumers of power, including population.

With that, the price of Single Buyer's services is not regulated by state and is deducted from funds returned to consumers within 2 years. Until the funds are returned to consumers, they are placed on deposits.

Thus, in order to minimize negative impact of Single Buyer on the market, when discussing the bill providing for its introduction, the Agency had proposed a number of amendments in Senate of the Parliament, including those aimed at ensuring transparent and equal access to electricity volumes of Single Buyer for wholesale consumers and ESOs, introduction of state regulation of price for Single Buyer's services, which were supported by deputies of the Senate.

In addition, the Agency proposed introduction of EPOs' obligation to **implement investment program** for attracted funds within capacity market, which was also supported by Senate deputies.

The law ²¹with the above-mentioned amendments of the Agency was adopted on April 19, 2023.

Special attention should be paid to ongoing auctions of electric power. Bidding results show **absence of competition** between power plants.

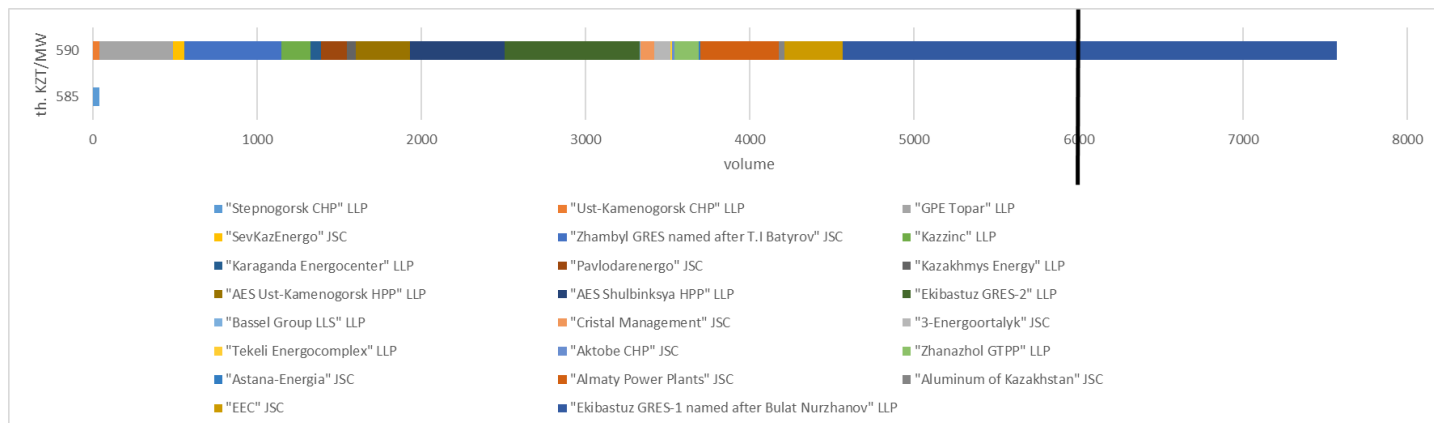


Fig. 17– Ranked schedule of 2022 auction results for Northern and Southern zones of the UES of the Republic of Kazakhstan.

Thus, the Ranked schedule of 2022 auction results for the Northern and Southern zones of the UES of the Republic of Kazakhstan, presented by KEGOC JSC (*Figure*

²¹ Law of the Republic of Kazakhstan dated April 19, 2023 No. 223-VII ZRK "On Amendments and additions to some Legislative Acts of the Republic of Kazakhstan on administrative reform in the Republic of Kazakhstan" // <https://adilet.zan.kz/rus/docs/Z2300000223>;

17), shows that all **23 power plants**, with exception of one Stepnogorsk CHP, submitted bids **at the maximum allowable price of 590 thousand KZT/MW**.

This was facilitated by the fact that **GRES-1 LLP** (*Samruk-Energy*) refused to compete, being the last of bidders to submit an application for power maneuvering service with the same price of 590 thousand KZT/MW for 1,436 MW with available capacity of 3,008 MW or 47.7%.

As a result, **lost revenue of state power plant** according to 2022 auction results amounted to **more than 10 billion KZT**, and for the period from 2018 to 2022 – **50 billion KZT** and above.

Moreover, due to **absence of competition at the auction**, Kazakhstani consumers purchased power maneuvering services at the maximum price set by Ministry of Energy - **590 thousand KZT/MW**. So, if in 2018, that was the first auction year, cost of maneuvering capacity according to auction results decreased **to 383 thousand KZT / MW**, for the last 3 years it has been kept at the maximum established level.

Development of competition at retail market is also hindered by **differentiation of tariffs** for electricity supply services of regulated ESOs, due to which there is a tendency for legal entities and budget organizations to leave for alternative unregulated ESOs.

In addition, decrease in volumes attributable to legal entities leads to annual increase in the average tariff of guaranteeing suppliers. In order to create equal conditions of competition between ESOs, it is necessary to change approach in subsidizing household consumers to the **targeted orientation of support measures** for socially vulnerable segments of population.

In this regard, the National Project provides for step-by-step elimination of tariff differentiation by consumer groups. It follows from the calculations that, in general across the Republic, local budgets will save **over 38 billion KZT**, that can be directed to targeted subsidizing of utility costs of socially vulnerable segments of the population. Also, expenses of small and medium-sized businesses will decrease **by more than 38 billion KZT**.

In addition, at the meeting for development of energy and engineering infrastructure, dated March 2, 2022, Head of State instructed to start implementing a project on partial equalization of tariffs between consumer groups, and in his Address to the People of Kazakhstan dated September 1, 2022, he noted the need for gradual rejection from cross-subsidizing tariffs in natural monopolies and in socially significant markets.

Almaty, Kostanay region and West Kazakhstan region (*hereinafter - WKO*) were selected as pilot regions.

State stakeholders have carried out extensive awareness raising campaign. Local executive bodies have developed mechanism of social assistance for socially vulnerable part of population at the expense of budget savings from tariff equalization.

However, it was decided to reduce differentiation of tariffs between the household consumer tariff and average daily tariff:

- in Almaty by 2.3% (*from 14.6% to 12.3%*);

- in Kostanay region by 3.4% (29% to 25.6%);
- in West Kazakhstan region by 8.2% (from 18% to 9.8%).

CRNM justifies its decision by increasing the ceiling prices for electricity of EPOs from July 1, 2022. Thus, the National Project and instructions of the Head of State on gradual reduction of tariffs differentiation between groups of consumers for electricity services were implemented partially.

For reference: National Project for 2022 provides the following targets for the maximum difference between group of consumers and average electricity tariff:

- in Almaty - 0% (current difference - 12.3%);
- in Kyzylorda region – 12% (current difference - 12%);
- in Karaganda region – 19.5% (current difference - 31%);
- in East Kazakhstan region – 15% (current difference - 31%);
- in Akmola region – 25% (current difference - 31%);
- in Zhambyl region – 27% (current difference - 36%);
- in Mangystau region – 2% (current difference - 23%);
- in Pavlodar region – 29% (current difference - 37%);
- in North Kazakhstan region - 31% (current difference - 35%);
- in Turkestan region and Shymkent – 29% (current difference - 30%).

In addition, in a number of regions, there is a significant **increase in differentiation of electricity tariffs** compared to 2021.

For example, in East Kazakhstan region, tariff differentiation was increased by 1%, in Akmola region by 6%, in Zhambyl region by 9%, in Mangystau region by 21%, in Pavlodar region by 8%, in North Kazakhstan region by 4%.

Barriers for competition development

The main obstacle to development of competition in electricity markets is **state regulation of prices** for power plants and regulated ESOs. This, in turn, reduces incentives for both power plant owners and new investors to upgrade existing and build new capacities, that generally hinders industry development and keeps the situation with shortage of electricity.

In this regard, Government needs to ensure **gradual deregulation of prices** in the industry in order to form market principles of functioning that allow investors to respond to market signals and consider the possibility of building new capacities and ensuring equal conditions of competition between ESOs.

In addition, for thermal power plants, which are also producers of thermal energy and are regulated under legislation on natural monopolies, **cross-subsidization** of thermal energy is applied at the expense of electricity tariffs. Thus, thermal power plants are now **in unequal conditions** of competition with other energy enterprises that produce only electricity.

The level of state participation in generation also remains high. The share of **18 state-owned companies** (including those within Samruk-Energy) in supply of electricity to the grid (excluding their own needs and interstate flows) is 42% or ~0.4% of GDP.

With that, there is only one state-owned ESO represented by AlmatyEnergoSbyt LLP, which is also a part of Samruk-Energy group, in retail market of Kazakhstan.

In general, the documents of government planning system provide targets for reducing share of state participation to 13.9% by 2026. To achieve this indicator, it is necessary to ensure implementation of measures aimed at denationalization reducing state involvement in economy, including electric power industry.

There is **still high concentration** in retail electricity market, where shares of ESOs, vertically integrated with electric network and (or) energy-producing organizations vary from 55-75% to 75-100%, depending on the region.

Table4. Affiliation of energy supply organizations with regional electric grid companies by region.

№	Region	Regional electric grid company	Affiliated energy supply organization
1	Astana city	"Akmola REC" JSC (1/3 of transmission volume)	AstanaEnergosbyt LLP
2	Akmola region	"Akmola REC" JSC	AREC Energosbyt LLP
		Kokshetau Energo LLP	Kokshetau Energo Center LLP
3	Pavlodar region	Pavlodar REC JSC	Pavlodarenergosbyt LLP
4	North Kazakhstan region	"North Kazakhstan REC" JSC	
5	Karaganda region	"Kagandy Zharyk" LLP	"Karagandyzhylusbyt" LLP, "RSC" LLP
6	Turkestan region and Shymkent city	Ontustik Zharyk Transit LLP	Energopotok LLP
7	Mangystau region	Mangystau REC JSC	Mangystau Zharyk LLP
9	Atyrau region	Atyrau Zharyk JSC	Atyrauenergossnab LLP
10	Zhambyl region	"Zhambyl electric networks" JSC	Zhambyl Zharyk Sauda LLP
11	Almaty region	TATEC JSC	Zhetysuenergotrade LLP
12	East Kazakhstan region	"East Kazakhstan REC" JSC	Shygysenergotrade LLP
13	Almaty city	"Alatau Zharyk Companiyasy" JSC	Almatyenergossbyt LLP

Currently, the Agency receives numerous requests from ESOs who cannot conclude an agreement on provision of electricity transmission services through networks of Regional Electric Grid Companies (*hereinafter referred to as REC*).

RECs, carrying out electricity transmission activities, are subjects of natural monopolies and are regulated by authorized body for natural monopolies in terms of providing equal access to electric grid for consumers and setting tariffs for their services.

With that, until 2004 in Kazakhstan, RECs provided energy supply services to consumers connected to their networks.

Since 2004, energy supply services had been separated from electricity transmission services and form competitive market where two or more ESOs can operate.

Since introduction of competitive model until today, the state has issued more than **300 licenses** for purchase of electricity for energy supply purposes. In each region, in addition to guaranteeing electricity supplier, there are at least 5 independent ESOs. With that, there is a positive trend in emergence of new market participants, over the past 5 years, more **than 50 new ESOs** have entered the market.

However, due to affiliation of RECs with ESOs, that are guaranteeing suppliers of electricity, occupying dominant positions, RECs are not interested in admitting new ESOs to the market, since new ESOs start servicing legal entities due to existing practice of tariff differentiation.

Thus, **RECs refuse** for various reasons to conclude contracts for transmission of electricity with new ESOs.

Existing differentiation of ESO tariffs limits competition struggle of both regulated ESO for non-household consumers and unregulated ESO for household consumers. This eventually leads to overflow of legal entities from regulated to unregulated ESOs, increased expenditures of SMEs on utilities, influencing cost of their final products, inefficient use of budget funds in terms of supporting all segments of population, but not socially vulnerable segments of population.

Separate factor of low level of competition between ESOs, in addition to differentiation and regulation of ESO tariffs and limited access to REC networks, is **lack of available mechanisms for changing ESOs**. In this regard, it is necessary to create conditions for simplifying procedure for consumers to change his ESO.

National Project provides for measures aimed at eliminating price distortions at electricity markets and ensuring access for new suppliers. One of the main tasks is to increase share of consumers who have switched to alternative electricity suppliers, as well as to reduce time for changing suppliers by creation of online platform (*marketplace*).

The experience of Germany shows that the consumer can compare prices of various electricity suppliers and choose the most favorable tariff using a special Internet resource. Then, he can apply for a contract with a new supplier through various communication channels, such as telephone, Internet or office.

After receiving application, new supplier informs the former supplier about termination of the contract and carries out all necessary procedures to transfer consumer to its service. This process takes about two weeks on average and allows the consumer to receive **discounts of up to 30%**. Today, "KOREM" JSC has developed an online digital platform that allows consumers to choose ESO based on the most favorable offers at the market.

Proposals and recommendations for competition development

The Agency proposes the following to ensure development of competition at electricity market.

1) in order to reduce risks of violation of antimonopoly legislation, as well as in order to preserve competition between ESOs, it is necessary to **ensure transparent and equal access** to electricity volumes at Single buyer by digitalizing its services for ESOs and other consumers at uniform prices.

Ministry of Energy is currently developing by-laws regulating Single Buyer activities, within which Ministry of Energy supports the Agency's proposals on digitalization of its services for transparent and equal access to electricity volumes;

2) ensuring introduction of amendments and additions to legislative acts regarding **exclusion of recognizing own income formed as a result of Single Buyer activities**, and collecting corporate income from this entity.

This proposal was previously supported by both Ministry of Energy and Senate deputies. At this stage, it is necessary to initiate appropriate amendments to the Tax Code;

3) ensuring **gradual abolition of tariff differentiation** by consumer groups for electricity supply in order to create equal conditions of competition between regulated and unregulated ESOs with point subsidization of electricity costs for socially vulnerable segments of population.

This proposal is being implemented both within the framework of National Project and individual instructions of the Head of State, including Address to People of Kazakhstan dated September 1, 2022;

4) in order to **reduce cost of switching** for consumers, as well as to strengthen competition between ESOs for consumers, it is necessary to run pilot test of online digital platform of "KOREM" JSC on changing electricity suppliers in one of country's regions for its subsequent scaling-up, with the condition that other developers can be provided services of **marketplace** for online switching of ESOs by consumers;

5) in order to ensure **unhindered access to REC networks**, it is necessary to introduce a practice with legislative consolidation of service model for provision of electricity transmission services, which provides for services on the basis of electricity sales contracts with Single buyer;

6) in order to reduce concentration at wholesale market and develop competition in retail market, it is proposed to **privatize** subsidiaries of Samruk Energy JSC in separate lots with mandatory conditions:

- single lot - "Ekibastuzskaya GRES-1 named after Bulat Nurzhanov" LLP and "Ekibastuzskaya GRES-2" JSC, "Moynakskaya HPP" JSC;
- separate lot - "Shardarinskaya HPP" JSC;
- separate lot - "Samruk-Green Energy" LLP;

Almatyenergosbyt LLP before its unbundling into several independent energy supply organizations;

- "Almaty Electric Power Plants" JSC before its unbundling by creating independent EPO on the basis of CHP-1 (85MW), CHP-2 (240MW), CHP-3 (90 MW), Kapshagai HPP (90MW);

- "Alatau Zharyk kompaniyasy" JSC for the purpose of preservation in state ownership and transfer to private environment by transfer to concession (*trust management*) on competitive basis (*competition for the market*);

7) in order to increase investment attractiveness and competition, it is necessary to ensure **consolidation of EPO into groups** when approving marginal tariffs;

8) in order to provide equal conditions for competition at electricity market between thermal power plants and other types of plants, it is necessary to take measures to **eliminate cross-subsidization of thermal energy at the expense of electricity**.

Most of the above proposals are supported by interested government agencies and will be included in the Roadmap for Development of Competition at Electricity Market. Additional work is required on individual proposals.

2.3. Wholesale and retail markets of coal sales

Analysis of wholesale and retail markets of coal sales was carried out in accordance with the Agency's Work Plan for 2022.

Coal industry is one of the most important resource sectors of the Republic of Kazakhstan. In terms of coal reserves, Kazakhstan is among the top ten leading countries. State balance sheet takes into account reserves for 49 deposits, amounting to 33.6 billion tons, including hard coal – 21.5 billion tons, brown coal – 12.1 billion tons. More than 90% of the proven coal reserves are concentrated in the north and central part of Kazakhstan.

Today, Republic's coal industry provides about 70% of electricity generation in Kazakhstan, one hundred percent coke production, fully meets fuel needs of municipal sector and population.

The main coal mining enterprises are located in the Karaganda, Ekibastuz and Maykubensk coal basins, as well as at Shubarkol, Borlinsky and Karazhyrinsky fields. The peculiarity of Kazakhstan's coal industry in comparison with the world coal-owning states is that this industry is not subsidized by the state. The development of coal deposits in Kazakhstan is carried out on the basis of subsoil use contracts concluded between the state represented by Ministry of Industry and Infrastructure Development and subsoil users.

According to the information of Ministry of Industry and Infrastructure Development for analyzed period (2018-2021 and the first half of 2022) there were **46 contracts** and **1 license** for subsoil use. **27 main market entities** carry out the extraction and primary wholesale sale of coal in the republic.

There are enterprises that are at the stage of exploration and preparatory work and, accordingly, do not produce and sell coal.

Coal is traded within the geographical borders of the Republic of Kazakhstan and is sold for use:

- for the needs of energy-producing organizations;
- for the needs of municipal consumers;
- for the needs of industrial enterprises.

According to official statistics, in 2022, volume of coal and lignite production (except coal concentrate) amounted to 113.9 million tons, that is 1.8 million tons or 1.7% more than in 2021²².

In 2022, shipment of coal to domestic market of the country amounted to²³:

- energy-producing enterprises - 64.4 million tons;
- industrial enterprises - 6.1 million tons;

²² <https://www.stat.gov.kz/official/industry/151/statistic/5>;

²³ <https://primeminister.kz/ru/sessions/zasedanie-pravitelstva-rk-11042023-11317>;

- 11.03 million tons were shipped for municipal and household needs and population.

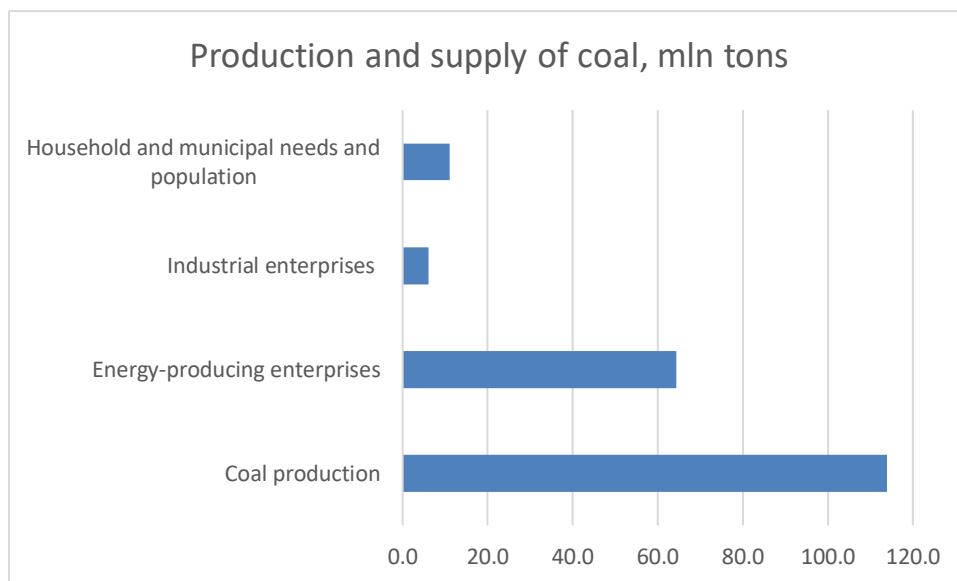


Fig. 18– Coal production and supply, million tons.

Transportation and delivery of coal is carried out by rail and road transport.

Coal pricing is based on market relations and is not regulated by the state.

Coal is shipped to energy companies at selling prices of surface mines under direct contracts.

The bulk of coal for municipal consumers and population is sold through commodity exchange.

The Agency has developed **Recommendations** (*sectional rules*) for sale of municipal coal through commodity exchanges (*hereinafter referred to as Sectional Rules*).

This innovation is registered by the order of the Minister of Trade and Integration No. 498-NK dated August 13, 2021.

The main purpose of introduction of this exchange trading scheme is to provide population with "cheap" municipal coal without unproductive intermediaries in the pricing scheme.

Provision of direct access for regional operators for amount of 544 thousand tons in 2021 ("Shubarkol Komir" JSC - 387 thousand tons, "Karazhyra" JSC - 108 thousand tons, "Maykuben-West" JSC - 49 thousand tons) and 576 thousand tons in 2022 ("Shubarkol Komir" JSC - 411 thousand tons, "Karazhyra" JSC - 130 thousand tons, "Maykuben-West" JSC - 35 thousand tons) allowed reducing costs of coal operators in amount of approx. 5.6 billion KZT.

Article 90-6 of the Code provides for competence of antimonopoly authority to monitor prices on commodity markets in order to establish signs of violation of legislation in the field of competition protection.

According to the results of heating season and price monitoring, there were no sharp fluctuations. At coal railway dead ends, the price of municipal coal, depending on the region, brand and fraction of coal, ranged from 9 to 23 thousand KZT/ton. The

price depends on size fractions, ash content and distance to final consumers, taking into account transport costs.

With that, **16 acts of antimonopoly compliance** aimed at reducing risks of violation of antimonopoly legislation by market entities have been agreed with regional owners of coal bases (dead ends) who purchase coal for resale to population for household needs.

The issue of selling coal to population has a social nature, in this connection the Agency conducts weekly monitoring of coal selling prices at railway dead ends in order to prevent unjustified price increases.

If power-generating coal is sold directly to energy-producing and industrial enterprises, then municipal coal is sold through a network of intermediaries.

To do this, coal mining companies use stock trading, where huge volumes (*up to 3 million tons or up to 71% of the annual shipment volume*) are sold within a few minutes to a limited number of suppliers, which do not change for several years (*from 2 to 17*).

For example, in December 2022, "Halyk Komir" LLP buys 120 thousand tons of coal at weighted average price of 6,500 KZT/ton through commodity exchange of "TB "Caspian" JSC from "Karazhyra" JSC and resells it for 12,595 KZT/ton.

Table 5. Primary sale through commodity exchange.

Seller	Stock market	Volume, tons.	Buyer	Transaction amount, KZT.	Weighted average. price, KZT/ton.
"Karazhyra" JSC	"TB "Kaspiy" JSC	120,000	Halyk Komir LLP	780 000 000	6 500

Table 6. Secondary sale through commodity exchange.

Seller	Stock market	Volume, tons.	Buyer	Transaction amount, KZT.	Weighted average. price, KZT/ton.
Halyk Komir LLP	"TB "Kaspiy" JSC	1 000	Halyk komir IE	12 595 000	12 595

Thus, the mark-up of Halyk Komir LLP, which does not own technically equipped railway dead end (*weighing equipment, loading and unloading transport, etc.*) on ownership right or other legal grounds, is about 94%.

The task of such intermediaries, who do not have storage infrastructure, is to find buyers. Exchange transactions are concluded by brokers who simultaneously represented interests of sellers and buyers, and access to trading is maximally limited for independent suppliers.

Some commodity exchanges were opened for the purpose of bidding by certain narrow circle of sellers and buyers, being so-called "pocket" exchanges.

The analysis highlights several areas of coal use in the domestic market of the Republic of Kazakhstan: for electric power industry, for municipal needs of population, for industrial enterprises.

Bogatyr Komir LLP occupies a dominant position in the market of coal sales for energy-producing organizations (2018 – 86.07%, 2019 – 86.47%, 2020 – 84.84%, 2021 – 86.33%, the first half of 2022 – 83.1%).

Table 7. The share of dominance at the market of coal sales for energy-producing organizations.

№	Name	2021	First half of 2022
		Share, %	Share, %
1	Bogatyr Komir LLP	86.33	83.1
2	"Karazhyra" JSC	7.12	8.91
3	Kazakhmys Coal LLP	3.16	3.41
4	"Eurasian energy corporation" JSC	2.57	0.83
5	"Angrensor Energo" JSC	0.32	3.43
6	Other market entities	0.5	0.32
	Total	100	100

At the market of coal sales for EPO needs, Bogatyr Komir LLP occupies constant dominant, almost monopolistic share of more than 80% on average.

Table 8. Price dynamics (weighted average) for power generating coal in 2018-2021 and the first half of 2022, KZT per 1 ton without VAT.

№	Coal mining companies	2018	2019	2020	2021	I half of 2022
1	Bogatyr Komir LLP	1 940	1 940	2 132 (9,9%)	2 077 (-2,6%)	2 228 (7,3%)
2	Eurasian Energy Corporation JSC	3 206	2 260 (-29,51%)	3 707 (64,03%)	2 765 (-25,41%)	3 292 (19,06%)
3	"Karazhyra" JSC	3 146	3 330 (5,85%)	3 458 (3,84%)	3 599 (4,08%)	3 903 (8,45%)
4	Kazakhmys Coal LLP	3 757	3 846 (2,37%)	2 814 (-26,83%)	3 334 (18,48%)	3 635 (9,03%)
5	"Angrensor Energo" JSC	2 730	2 533 (-7,22%)	2 797 (10,42%)	3 931 (40,54%)	4 960 (26,18%)

In addition, in 2022, Bogatyr Komir LLP increased selling price for power-generating coal from August 1 to 2,282 KZT/ton, from September 1 to 2,396 KZT/ton, from October 1 to 2,516 KZT/ton, from November 1 to 2,642 KZT/ton; from December 1 up to 2,774 KZT/ton, and from January 1, 2023 up to 2,968 KZT/ton.

Taking into account existing signs of violation of legislation in the field of competition protection, issue of taking antimonopoly response measures against Bogatyr Komir LLP is currently being considered for establishing monopolistically

high price for power-generating coal, namely, exceeding growth rates of prices for power-generating coal in January-December 2022.

"Karazhyra" JSC and "Shubarkol Komir" JSC occupy a dominant position in market of coal sales for needs of municipal consumers with combined dominant share more than 60%.

Table 9. The share of dominance at the market of coal sales for municipal consumers.

№	Name	2021	First half of 2022
		Share, %	Share, %
1	"Karazhyra" JSC	29.08	30.26
2	"Shubarkol Komir" JSC and Eurasian Energy Corporation JSC	33.94	34.12
3	"Maykuben-West" JSC	11.42	12.57
4	"GRK "Sat Komir" JSC	4.01	2.77
5	Sherubai Komir LLP	2.61	3.65
6	STS-1 LLP	3.38	4.27
7	Coal Resource LLP	2.47	2.07
8	Transkomir LLP	1.79	3.04
9	Kulan Komir LLP	1.53	0.58
10	Gamma Sarykol LLP	1.54	1.47
11	Bogatyr Komir LLP	1.25	0.78
12	"Razrez "Kuznetsky" LLP	1.54	1.59
13	"Firm "Rapid" LLP	1	1.16
14	Other market entities	4.44	1.67
	Total	100	100

Degree of monopolization of the market for extraction and wholesale sale of coal for municipal needs is highly **concentrated**.

in 2021: (CR3) $70\% < 74,44 < 100\%$, $2000 < 2128 < 10\ 000$

first half of 2022: (CR3) $70\% < 76,95 < 100\%$, $2\ 000 < 2238 < 10\ 000$.

Table 10. Share of dominance in accordance with concentration coefficients and Herfindahl–Hirschman indices.

Name	Market share (%)	Total market share	HHI
"Karazhyra" JSC	30.47	71.68	1 929
"Shubarkol Komir" JSC and "EEC" JSC	29.3		
Bogatyr Komir LLP	11.91		
"Karazhyra" JSC	34.56	73.81	2 288
"Shubarkol Komir" JSC and "EEC" JSC	32.34		
Bogatyr Komir LLP	6.91		
"Karazhyra" JSC	33.67	77.04	2 302

"Shubarkol Komir" JSC and "EEC" JSC	32.37		
"Maykuben-West" JSC and "Shubarkol premium" JSC	11		
"Shubarkol Komir" JSC and "EEC" JSC	33.94		
"Karazhyra" JSC	29.08	74.44	2 128
"Maykuben-West" JSC and "Shubarkol premium" JSC	11.42		
"Shubarkol Komir" JSC and "EEC" JSC	34.12	76.95	2 238
"Karazhyra" JSC	30.26		
"Maykuben-West" JSC and "Shubarkol premium" JSC	12.57		

At wholesale market of municipal coal, share of three coal mining companies is 74.4%.

Table 11. Price dynamics (weighted average) for municipal coal in 2018-2021 and the first half of 2022, KZT per 1 ton without VAT.

№	Coal mining companies	2018	2019	2020	2021	I half of 2022
1	"Shubarkol Komir" JSC	4 816	5 153 (7%)	5 463 (6,02%)	5 592 (2,36%)	5 506 (-1,54%)
2	"Karazhyra" JSC	2 856	3 605 (26,23%)	4 108 (13,95%)	4 111 (0,07%)	4 270 (3,87%)
3	"Maykuben-West" JSC	5 435	6 061 (11,52%)	5 221 (-13,86%)	5 473 (4,83%)	5 656 (3,34%)
4	"GRK "Sat Komir" JSC	3 493	4 472 (28,03%)	3 946 (-11,76%)	5 248 (33%)	5 995 (14,23%)

Main events

Monopoly structure of the wholesale markets for energy and municipal coal remains unchanged.

Share of Bogatyr Komir LLP in power-generating coal market exceeds 80%. Combined share of 3 main producers of municipal coal - "Shubarkol Komir" JSC, "Karazhyra" JSC, "Maykuben-West" JSC is 74%.

In these conditions, dynamic growth of wholesale coal prices remains, being average of 6% per annum.

Thus, Bogatyr Komir LLP increased cost of power-generating coal by 15.5% in 2020, by 10% in 2021, reducing it to 2% based on results of discontinued investigation, and plans to increase to 40% in 2022.

"Shubarkol Komir" JSC increased prices by 6.5% in 2019 and 4.2% in 2021. "Karazhyra" JSC - 36% in 2019 and 25% in 2021, that allowed it to increase profitability to 52% in 2021.

If power-generating coal is sold directly to energy-producing and industrial enterprises, then municipal coal is sold through a network of intermediaries.

To do this, coal mining companies use stock trading with huge volumes.

With that, as the results of the antimonopoly investigation showed in 2019, more than 90% of the transactions concluded at the auction were **not provided with either payment or shipment of coal**.

Currently, practice of using "**unproductive**" **intermediaries** by coal producers, which leads to increase in the final cost of coal for population by an average of **40-45%**, continues.

So, according to the results of auction on September 8-9 this year. "Shubarkol Komir" JSC offered 3.2 million tons of coal, that was bought by 16 regional operators (26% of the volume) and 10 intermediaries (74% of the volume) within a few minutes without remainders.

In this regard, in order to prevent vertical collusion at auctions, the Prosecutor General's Office has carried out measures to identify and suppress collusion at coal exchange auctions. The audit covered "Shubarkol-Komir" JSC, stock exchange companies, as well as large buyers in order to identify schemes for artificial increase of prices and possible collusion in the sale of coal.

It is established that in 2022, on average, municipal and household coal was sold by "Shubarkol-Komir" JSC at a price of 6.2 thousand KZT/ton. In the future, the cost of selling coal to a regional operator varies from 11 to 17 thousand KZT/ton. The final prices from dump trucks range from 25 to 30 thousand KZT.

Thus, the final cost for consumers coal delivery chain increases from dead end to consumer by 3-4 times from the cost of its initial sale.

According to results of audit of collusion in coal exchange trading, violations of current legislation that led to increase price of coal were not revealed.

At the same time, in order to stabilize prices, antimonopoly authority takes response measures against manufacturers and retail operators. Issues of tightening trading rules, strengthening requirements for suppliers and commodity exchanges on availability of appropriate infrastructure are being worked out as systemic measures.

Thus, the sale of municipal coal **without participation of unproductive intermediaries in pricing scheme** has been ensured by making changes to the List of stock exchange goods and Rules of exchange trading in terms of increasing exchange trading of municipal coal for regional operators **from 10% to 50%**, and obligation to offer their volumes at exchange trading for market entities, engaged in the processing (*enrichment*) of coal has been introduced. Increase in exchange trading of municipal coal will provide direct access for regional operators for **about 4 million tons**, that will reduce expenses of coal operators by **about 16 billion KZT**.

In addition, the issue of taking antimonopoly response measures against Bogatyr Komir LLP is currently being considered in the market of power-generating coal, taking into account signs of violation of competition protection legislation.

However, these antimonopoly response measures have low effectiveness in terms of influencing behavior of Bogatyr Komir LLP at the system level. Taking into account remaining share of the subject and constant increase in prices, it is necessary to work out issue of attributing primary wholesale coal sales market for the needs of energy-

producing organizations to socially significant markets with appropriate price regulation.

Based on the results of the analysis, measures have been developed that are included in **Roadmap for Development of Competition at coal sales market**.

The measures provide ways to solve main problems of developing competition in coal industry and are aimed at increasing transparency of procurement procedure, eliminating unproductive intermediary structures at market municipal coal sales market and introduction of state price regulation of power-generating coal by attributing this market to socially significant market. In December 2022, this Roadmap was adopted by the Ministries of Industry and Infrastructure Development, Trade and Integration together with the Agency.

Proposals and recommendations for competition development

1) elimination of intermediaries:

- establishment of requirements for wholesale and retail suppliers of coal for availability of storage infrastructure, as well as ban on sales of coal between intermediaries (*by analogy with electricity and petroleum products markets*);
- making changes to the List of exchange-traded goods and the Rules of exchange trading in terms of regulating sale ratio of 50% of municipal coal through commodity exchanges: 90% long-term annual contracts, 10% spot trading;

The recommendation has been implemented. Ministry of Trade and Integration adopted Order No. 294 dated July 19, 2022, which provides for increase in exchange trading of municipal coal for regional operators up to 50%. With that, for the Rules of exchange trading to correspond to List of exchange-traded goods, Ministry of Trade and Integration amended the List in terms of increasing the exchange trading of municipal coal for regional operators **to 50%**, and also introduced obligation to offer their volumes at exchange trading for market entities engaged in coal processing (*enrichment*).

At this stage, it is necessary to make changes to the Rules of exchange trading in terms of regulating trading of municipal coal and its sales by **90%** through long-term annual contracts and 10% through spot trading;

2) reduction of market concentration by:

- compulsory joint use (*sharing*) of large coal deposits by sites through revising contractual territories and holding auction for granting rights to alternative market entities on these sites (*legislative definition of competence of authorized bodies to issue relevant rules*).

For this, Ministry of Industry and Infrastructure Development has provided a position on exclusion from the Roadmap. This is due to the fact that according to the provisions of the contracts, the subsoil user is obliged to fulfill the obligations prescribed in it. With that, only violation of contract terms and provisions of the current legislation can be the basis for its termination. When subsoil users fulfill their obligations under the contract, alienating part of the contract territory is illegal;

- coordination of transactions on transfer of subsoil use rights for coal mining for economic concentration;

3) timely and full **coverage of demand** in the domestic market through:

- priority provision of rolling stock for transportation of municipal coal purchased by regional operators at commodity exchange;
- implementation of the mechanism of regional bases for the supply of municipal coal (*preservation of FCA conditions with division of trade by region*) with possibility of switching to basis of supply of the Republic of Kazakhstan in case of unclaimed volumes;

4) **state regulation**. As of today, the Agency has begun work on analyzing primary wholesale coal sale market for the needs of energy-producing organizations in terms of attribution to socially significant markets.

2.4. Market of construction and installation services for connecting consumers to natural gas networks

Commercial gas market

National operator represented by "NC "QazaqGaz" JSC carries out wholesale sales of commercial gas at domestic market according to marginal tariffs approved by Ministry of Energy. With that, due to anti-inflationary regulation, purchase price of commercial gas increases by no more than 15% annually.

Export prices of "QazaqGaz" JSC are formed according to market conditions, and therefore subsidize domestic prices.

This made it possible to subsidize domestic market for a long period. However, this imbalance of internal and external prices increasingly leads to problems of saturating domestic market, as volume of consumption at domestic market is growing, respectively reducing export volumes.

In an attempt to solve this problem, a number of legislative amendments have been initiated since 2022.

In particular, new **incentive formula for purchase price** of gas by the National Operator from subsoil users for newly commissioned fields has been developed and approved.

With that, revision of the purchase price for commercial gas did not affect cardinally operating fields, including small SUO, that leads to unequal conditions in primary market of wholesale sale of commercial gas, and as a consequence, violation of competition and investment climate.

Thus, situation on primary wholesale market of commercial gas sales (*low investment attractiveness, administrative and economic barriers*) has **not been solved** for the most part.

It should also be noted that the new amendments granted the national operator the right to **10%** commission for servicing gas purchases and sales (*profitability level*).

It should be noted that the national operator is not a producer of commercial gas, but its **reseller**. For such structures, by analogy with the retail gas market, a **supply mark-up** is provided, established by the regulator based on actual planned sales costs (*administrative, financial costs, payroll, etc.*), and **not fixed amount**.

In this connection, establishing certain profitability threshold of the National Operator leads to **unjustified increase in gas tariffs**, while the calculation on actual basis could take into account current situation with financial and economic activities of the entity.

The Agency provided comments on the draft of relevant bill, but these comments **were not accepted**.

In general, the problem of saturating domestic market with gas, attracting investment in industry can be solved by introducing exchange trading for commercial gas, which will allow the SUO to sell volumes of gas to consumers directly, without participation of a national operator, at market prices.

When adopting the Law "On Gas and Gas Supply", which provides for granting preferential right to purchase commercial gas to "QazaqGaz" JSC, the rationale for amendments was the need to implement gasification program for the regions of the country.

The implementation of Gasification Program of the country's regions is calculated until 2030 and provides for new gasification projects according to updated General Scheme of Gasification and modernization, expansion of gas transportation infrastructure. The sources of financing of the program will be the state budget, own and borrowed funds, which will be paid back at the expense of transportation tariffs, wholesale and retail gas prices, as well as allocation of funds from state budget through the replenishment of the authorized capital.

Thus, the gasification of the country's regions is provided mainly at the expense of republican and local budgets, borrowed funds and tariff, while **justification for monopolizing** wholesale market by granting preferential rights to the National Operator was **financing of the country's gasification**.

In this regard, the attempts of the National Operator to **enter adjacent markets** (*construction and installation works*) continue, due to containment of tariffs for domestic sale of commercial gas, drop in export revenue and gas production. An example of this situation is the market of construction and installation works (*hereinafter referred to as CIW*).

The analysis of **market of CIW** for connecting consumers to natural gas was carried out in accordance with the Agency's Work Plan for 2022.

Based on incoming requests and active agenda of gasification of the housing stock, the analysis considered the market segment of works for connecting household consumers.

In this regard, the analysis does not include the market segment in terms of connecting commercial and other consumers (*central heating facilities, other categories of business entities, social institutions*) that are not households.

This report contains information for each region.

Market under consideration as a whole represents the last stage ("*last mile*") of consumers' gasification process and is adjacent (*connected*) to market for supply of commercial gas through the pipeline.

Process of gasification (*laying gas pipelines*) includes construction and installation

work on high-pressure (trunk), *medium-pressure* (distribution) and *low-pressure* pipes ("intra-house networks" from input of distribution network to consumer's gas-consuming equipment (heating boilers, cooking stoves, water heaters, etc.).

Schematically, this is shown in Figure 19:

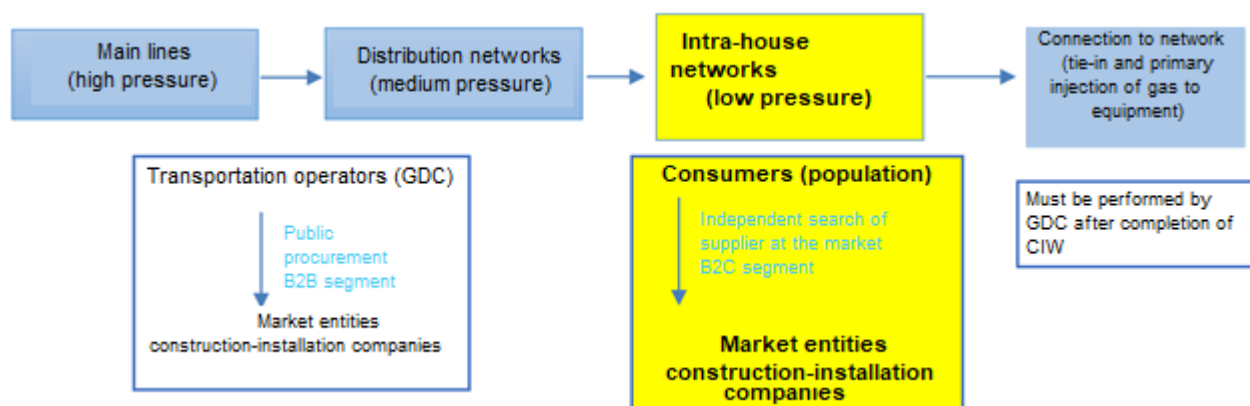


Fig. 19- Structure of entire gasification stage and place of CIW market for connecting end consumers (population).

Customers of CIW for high and medium pressure pipelines are gas distribution organizations or other pipeline owners.

In turn, customers of CIW for intra-house networks are the gas consumers themselves.

In these segments, market conditions differ, in the first case contractual relations are formed between market entities from both sides, most often it is public procurement (*tender*), scope of work is larger and technologically complex, and therefore a separate *license* is required for Construction and Installation Companies (**hereinafter referred to as CICs**).

In the second case, the market is formed between the CICs and gas consumers (*customers of CIW*), indefinite circle of consumers act as potential customers, which depends on supply of distribution networks.

Consumers search for CICs or vice versa through publicly available communication channels (*advertising, recommendations, etc.*).

Table 12. Number of market entities by region.

	Region	2021	2022
1	Astana city	70	140
2	Almaty city	19	8
3	Shymkent	37	3

4	Akmola region	7	7
5	Karaganda region	5	7
6	Turkestan region	99	99
7	Zhambyl region	11	6
8	Almaty region	39	29
9	Zhetisu Region		13
10	Kostanay region	11	49
11	Kyzylorda region	24	24
12	Mangystau region	69	108
13	Aktobe region	8	7
14	East Kazakhstan region	1	1
15	West Kazakhstan region	19	7
16	Atyrau region	3	2
	Total	422	510

Due to absence of gasification system infrastructure in North Kazakhstan and Pavlodar regions, Departments of these regions did not analyze CIW market.

Table 13. CIW market shares for 2022 and market concentration (degree of monopolization).

Region	CR 3	HHI
Astana city	8,01+5,43+5,40= 18,84	327.50
	Low - concentrated	
Almaty city	34,08+19,51+14,76= 68,35	2064.1
	Moderately concentrated	
Aktobe region	43,23 + 18,71 + 30,77 = 92,71	6 574
	Highly concentrated	
Atyrau region	100	10000
	Highly concentrated	
East Kazakhstan region	100	10000
	Highly concentrated	
Zhambyl region	66,08+18,16+13,18= 97,42	4873.12
	Highly concentrated	
Karaganda region	38,8+27,1+15,7= 81,6	2 659,43
	Highly concentrated	
Kyzylorda region	17,3+16,9+13,6= 47,8	972.6625
	Moderately concentrated	
Mangystau region	5,2+6,1+4,8= 16,1	256.97
	Low - concentrated	

Turkestan region	7,47+6,85+6,41= 20,73	350.02
	Low - concentrated	
Shymkent	52,13+46,54+1,33= 100	4 885,26
	Highly concentrated	
Kostanay region	64,8+17,4+16,0= 98,2	4 760,73
	Highly concentrated	
West Kazakhstan region	37,95+18,55+12,15= 68,65	2 229,83
	Moderately concentrated	
Akmola region (in the context of Arshalynsky district)	45,49+17,66+14,79= 77,94	2 837,49
	Highly concentrated	
Ulytau region	41,84+39,52+18,63= 99,99	3 659
	Highly concentrated	
Almaty region		
Talgar district	57,05+18,09+16,94= 92,08	3931
	Highly concentrated	
Ily district	62,37+12,42+6,46= 81,25	4183
	Highly concentrated	
Zhambyl district	39,35+15,65+15,07= 70,07	2342
	Highly concentrated	
Karasai district	81,84+8,18+6,05= 96,07	6809
	Highly concentrated	
Uygur district	100.00	10000.00
	Highly concentrated	
Konaev	100.00	10000
	Highly concentrated	
Zhetisu Region		
Taldykorgan	39,3+35,3+20,8= 95,4	3244
	Highly concentrated	
Koksu district	100.00	10000.00
	Highly concentrated	
Eskeldinsky district	67+33= 100	5578
	Highly concentrated	
Panfilovsky district	100.00	10000.00
	Highly concentrated	

Barriers for competition development

It should be noted that country's gasification indicators depend on expedited and larger "last mile" CIW, since commissioning of distribution networks is still insufficient. The final gasification is completed when subscriber is connected to the distribution network.

From this point of view, National Gas Operator (*QazaqGas JSC*, *Kaztransgas Aimak JSC*) is interested in development of this direction.

According to the Law "On Gas and Gas Supply", the function and responsibility of National Operator is to participate in implementation of state policy in the field of gas, as well as in implementation of general gasification scheme.

In turn, gasification is a set of measures aimed at using commercial and (or) liquefied petroleum gas as fuel for housing and municipal services, industrial, agricultural and other facilities (*Clause 10 of Article 1 of the Law "On Gas and Gas Supply"*).

In this connection, CIW of intra-house networks also refers to gasification, the implementation of which, not directly, but indirectly, is assigned by Law to the National Operator.

With that, in fact, the National Operator has a real opportunity to implement gasification function at construction of trunk and distribution networks.

In turn, the "last mile" section is located in free market environment and in fact should be carried out by **potential gas subscribers independently** through search and attraction of CICs.

With that, activity of the CICs is in competitive environment. To date, more **than 400 licenses** have been issued for CIW on low-pressure gas pipelines.

However, monopolistic presence of the National Operator in entire gas industry **carries risks of monopolization of low-pressure CIW market** or other restrictive interventions in competitive environment on its part. Thus, CIW market itself functions in a private competitive environment, but there are risks affecting state of competition.

In particular, since 2014, National Operator represented by "KTGA" JSC organized purchases of CIW on low-pressure pipelines at the market under consideration, the winner of which was always the same market entity - TVK Zenit LLP (*later renamed into Gaz Qurylys LLP*):

This company had **signs of hidden affiliation** with top management of National Operator (*then KazTransGas JSC*), in particular - parent companies of both organizations have been located in the same office (*at the location of KazTransGas JSC*) at the central level, as well as in offices of branches of KTGA JSC.

This led to the fact that during the process of organizing consumers' requests for connection to KTGA JSC, they were sent exclusively to this organization, and permits for connection were also agreed faster for this company than for other construction and installation companies.

Thus, National Operator itself did not directly provide CIW, but acquired them through **privileged purchases** from private businesses. It followed from such a strategy that the National Operator chose service providers for consumers themselves, and National Operator himself also legally concluded contracts with consumers for CIW, funds were also transferred to National Operator for further transfer to the contractor. In turn, work was carried out by the abovementioned covertly affiliated company.

This led to creation of **unjustified competitive advantages** at the market for natural monopoly entity, restriction of consumers' rights to independently choose a supplier of works, and limited competition between CICs. According to these facts, the antimonopoly authority considered a case of abuse of monopoly position in relation to one of production branches of "KTGA" JSC, with imposition of a **fine** (6 million KZT). The risks of restricting competition in this market remain.

On pricing in construction and installation works market (hereinafter - CIW).

Currently, costs of connecting to gas pipeline include the cost of:

- equipment (*gas boiler and its components*) - 300-900 thousand KZT;
- materials (*pipe, supports, etc.*) - 50-200 thousand KZT;
- construction and installation works - 95-112 thousand KZT (*for 25 r. m.*) depending on distance or 3800-4500 KZT for 1 r. m.;
- project documentation - 15-30 thousand KZT;
- gas connection services (*start-up, tie-in*) – 23 thousand KZT (*KazTransGas Aimak JSC*);
- construction of distribution networks within settlements (*in some regions*) – 190-300 thousand KZT.

Thus, main costs of connecting to gas, amounting to **60%** are formed by cost of equipment and materials, while **construction and installation work with pipes accounts for 30% of total costs** (200 – 450 thousand KZT).

In turn, total price of connection to gas, together with all the equipment, is on average **from 700 thousand to 1.1 million KZT in the country**.

The indicated range of total cost depends on capacity of the equipment for corresponding area of housing, climatic conditions, and distance from connection points. For example, cost of "turnkey" connection of a residential building with an area of **120 sq. m** (*most common area of individual residential building*) is about **700 thousand KZT**. Accordingly, of these, costs for boiler and components amount to 500 thousand KZT (65%), CIW – 183 thousand KZT (25%).

In turn, connection of a residential building with an area of **450 sq. m** costs about **1,100 thousand KZT**. Of these, costs for boiler and components amounts to 700 thousand KZT (60%), CIW – 324 thousand KZT (30%).

Accordingly, in case of connecting residential buildings with larger area, due to more powerful equipment and number of components, price increases proportionally.

With that, in some regions (*especially in Almaty and Zhetisu oblasts*), these market prices increase during construction of medium–pressure distribution networks within locality by **private contractors**, and not at the expense of state budget or KazTransGas Aimak JSC (*hereinafter - KTGA*), cost of connecting to gas increases **by 30-40%**.

Reasons for high cost of CIW

Since construction of 1st branch of the Saryarka trunk pipeline (*Kyzylorda-Astana*) in 2019, the process of country's gasification country has begun.

In 2019-2023, 6,386 settlements were gasified, 11,658,748 consumers were connected. This has created a high demand for CIW.

With that, more than 500 suppliers are operating at CIW market now, then until mid-2021, 70% of the market share was occupied by **GasQurylys LLP**, previously affiliated with the management of KazTransGas JSC.

Thus, by the beginning of gasification, CIW market **was undeveloped** with steady practice of restricting access to the market.

Currently, creation of advantages for individual suppliers of CIW continues. Competitive selection of such suppliers has been organized, their representative offices are located in operator's buildings, accelerated issuance of technical specifications and

acceptance of works is selectively carried out (*based on complaints from market participants, there are facts of location of affiliated company - Aigerim LLP- in the same building with KazTransGas Aimak JSC*).

The practice of building distribution networks within settlements at the expense **of private suppliers**, which then restrict access of other suppliers to construction of intra-house networks, has led to increased monopolization of the market.

Accordingly, **high demand for CIW, dominant position of individual suppliers contributed to overestimation of cost of services and non-transparent pricing in the market.**

Gasification of regions includes construction of distribution and intra-house networks. With that, as already noted, **practice of building distribution networks by private suppliers** has been developed - for the period of 2018-2022 in Zhetysu region - 648 km, WKR - 502.4 km, Atyrau region – 180 km, Aktobe region – 10.392km, Almaty – 90.286km and in Almaty region in 2022 - 2970 km.

In general, for the period from 2018 to 2022, 13,779 km of distribution networks were built, of which 1,157,765 km (8.4%) were built at the expense of KTGA funds, 8,220,436 km (59.6%) at the expense of akimats, 4,401 km. (32%) at the expense of private suppliers.

Meanwhile, main purpose of creating single buyer in 2012, represented by KazTransGas JSC was gasification of the country, that envisaged construction of both trunk and distribution networks. In turn, gas transportation through distribution networks is the main activity of KTGA, which occupies 95% of the market.

In this regard, construction of distribution networks not at the expense of the budget or KTGA, but by private suppliers **led not only to increase in the final cost of CIW**, but also to creation of numerous natural monopoly subjects and **fragmentation of regions' unified gas supply system.**

Also, based on complaints from market participants on activities of KTGA, collection of a fee in the amount of 23,000 KZT from consumers for provision of start-up (*connection*) services was revealed (*500 million KZT has been illegally collected from consumers since 2016*).

With that, Resolution of the Supreme Court (*dated July 14, 2020 No. 6001-20-00-3gp-122*) established that tie-in services (*connecting*) to existing gas pipeline should be provided within the framework of regulated services (*decision was made in favor of the authorized body*). Also, Resolution of the Supreme Court (*dated March 2, 2021 No. 6001-21-00-3gp-23*), established that the services of tie-in (*connecting*) to existing gas pipeline do not belong to a regulated service (*decision was made in favor of KTGA*).

In this connection, there are two contradictory decisions of the Supreme Court regarding involvement of KTGA for charging fees on connection to gas supply networks. The abovementioned influence on increase of connection prices is due to existing conflicts on application of the current legislation on natural monopolies. With that, the Agency notes that these collisions establish **unequal conditions** for entities operating in commercial gas transportation market.

Measures to reduce gas connection costs and ensure clear pricing

In most regions, gasification of population is almost complete: more than 90% in Atyrau, Aktobe, Zhambyl, Mangystau, West Kazakhstan regions and in cities of Almaty, Shymkent, over 50%-75% in Kyzylorda, Kostanay and Turkestan regions.

In turn, regions along the main gas pipeline "Saryarka" *are at stage of active gasification with a level from 1.5 to 40%, (Astana, East Kazakhstan region, Karaganda, Ulytau, partly Akmola region)* as well as Almaty and Zhetysu regions.

In this regard, in these regions, the Agency's territorial departments, together with market entities, are working on application of measures to reduce prices for gasification services.

Action Plan for Territorial Departments to implement instructions and verify activities of relevant organizations in terms of compliance with requirements of legislation in the field of competition protection has been approved, in accordance with which monthly monitoring of gasification prices of the population is carried out.

In Astana, **12 antimonopoly compliance** agreements have been agreed with fixed price for CIW until the end of 2023. Agreement was reached with companies to provide CIW in the range from 97 to 103 thousand KZT (*based on distances of 25-30 m*), previously CIW services amounted to 120-140 thousand KZT. This amount includes design and estimate documentation, executive and technical documentation, construction and installation work, consumables.

In Karaganda region, act of antimonopoly compliance has been agreed to reduce cost of CIW by 5-10% with 5 companies. In Zhetysu region, **8 compliance** measures have been agreed to reduce prices for CIW services.

In Kostanay region, **2 compliance** measures have been agreed with market entities to curb prices for CIW services. In other regions, work is also being carried out with market participants to reduce cost of CIW services.

In order to ensure transparency of market pricing, a number of organizational measures have been taken.

In order to stop imposing services of individual suppliers, KTGA was sent a **request to cancel competitive selection** of suppliers and locating them in its own buildings.

To exclude facts of creating privileged position, **Memo to consumers** has been developed, where types, recommended cost of goods and works, as well as the rights and obligations of the parties are described. KTGA posted this Memo and list of companies providing CIW on its website and in all regional offices, as well as in its social networks.

In addition, in order to constantly monitor market situation and inform consumers about service, additional memos have been developed for all territorial divisions of the Agency to be placed in public places with telephone numbers for complaints.

Main events

Since the beginning of last year, procurement of CIW by KTGA JSC and involvement of Gaz Qurylys LLP through this practice has not been carried out.

Thus, in the current year, CIW is carried out throughout the territory Kazakhstan without procurement of KTGA by market entities independently, while Gaz Qurylys LLP also continues to work.

With that, due to oncoming heating season and need for gasification in newly connected regions (*Astana and Karaganda region*) KTGA sent a letter to the Agency with a proposal to temporarily allow procurement of CIW in these regions with a guarantee of reduced price (*at a working meeting with KTGA, price of 125-130 thousand KZT was promised*) for the standard 25 running meters of works.

KTGA undertook to ensure this cost of the CIW by setting the limit of the specified purchase price.

On June 24, 2022, "KTGA" JSC, following the results of preliminary study, applied to the Agency for approval of procurement of CIW in Astana and Karaganda region, taking into account Article 192 of the Code on certain antimonopoly conditions.

The Agency agreed with the following **conditions**:

1) "KTGA" JSC must **divide lots** by territory, conduct tenders administratively and territorially in accordance with legislation requirements, in order not to restrict competition (*customer, procurement organizer are obliged to divide heterogeneous goods, works and services into lots by uniformity, homogeneous goods - by types of homogeneous goods and delivery points, homogeneous works, services – by place of their execution, provision – paragraph 3 of Article 6 of the Law "On Procurement of Certain Subjects of the quasi-public sector" (hereinafter - the Law)*);

2) "KTGA" JSC must purchase CIW **through tender** (*sub-paragraph 1) Clause 1, Article 11 of the Law*) or in any other way that allows potential CIW contractors to freely participate in procurement of "KTGA" JSC, except for the following methods: request for price proposals, from one source, within the framework of intra-holding cooperation;

3) The Company **should not have any affiliation or other bonds with potential suppliers** (*for example, a common location or other transactions*) that may affect selection of CIW contractor (*subparagraphs 3) and 5), clause 1, Article 4 of the Law - principle of fair competition among potential suppliers, prevention of collusion between procurement participants and principle of preventing corruption manifestations*);

4) there must be at **least three potential CIW suppliers** for the tender, not affiliated and not interconnected by transactions (*subparagraph 3) of paragraph 1, Article 4 of the Law – principle of fair competition among potential suppliers*);

5) placement of information on alternative CIW contractors at **location** of "KTGA" JSC and its branches;

6) **unified terms** of considering applications from market entities at connection to distribution networks by "KTGA" JSC.

With that, the Agency reported that **analysis of the feasibility of state participation in the markets will be carried out within one year, following which a decision** will be made.

According to the results of the past purchases, the winners were determined:

- Astana – Aigerim LLP;
- Karaganda region – Rembrandt LLP.

According to KTGA, these companies are currently carrying out CIW activities in these regions.

Proposals and recommendations for competition development

1) work on the issue of allocating funds for construction of distribution networks within settlements at the expense of export revenues of "NC Qazaq Gas" JSC, state budget or tariff for regulated services;

2) on tie-in (*connection*) services, the Ministries of National Economy and Energy, together with market entities, should produce unified final position on CIW with the introduction of appropriate amendments to regulatory legal acts governing the rules for formation of tariffs for natural monopolies in gas transportation services;

3) local executive bodies should consider and apply positive experience of Astana Akimat on providing social support to vulnerable segments of population for connection to gas networks, if necessary, with amendments to regulatory legal acts;

4) Ministry of Ecology and Natural Resources should take measures to switch consumers from coal heating system to gas when applying restrictions on use of coal in gasified regions of the country, including conducting large-scale awareness campaign work on applied restrictions and need for gasification;

5) Ministry of Industry and Infrastructure Development should consider possibility of producing its own gas equipment (*gas pipes, meters, components*) at existing infrastructure facilities, or work on attracting investments to build plant for production of equipment, with inclusion of this project into Unified Industrialization Map and "Economy of Simple Things" program or through mechanisms of "Industrial Development Fund" JSC.

These proposals have been sent to the President's Administration (*under consideration*). Fulfillment of proposals for digitalization of construction and installation works until 2024 will accelerate gasification **by 20%**.

2.5. Communication services market

According to BNS, in 2022 the volume of telecommunications market in Kazakhstan amounted to 1.106 trillion KZT, that is 8% more than volume of communication services in January-December 2021(*as of January-December 2021, the growth was 14.4%*). Volume of local telephone services in January-December 2022, according to BNS, amounted to 29.1 billion KZT, that is 16.6% less than the volume of 2021, Internet services – 474.1 billion KZT (*15.4% more*) and cellular services – 250.6 billion KZT (*2.2% less*).

Significant share in the total volume of communication services is occupied by Internet, cellular and other telecommunication services.

Today, cellular communication market in Kazakhstan is **duopolistic**, with only **2 market entities** – Kazakhtelecom JSC group (*Kcell JSC, Mobile Telecom Service LLP: Tele2 / Altel*) with share of over 60%, as well as private operator represented by Kar-Tel LLP (*Beeline*).

The structure of shares in cellular communication market is as follows:

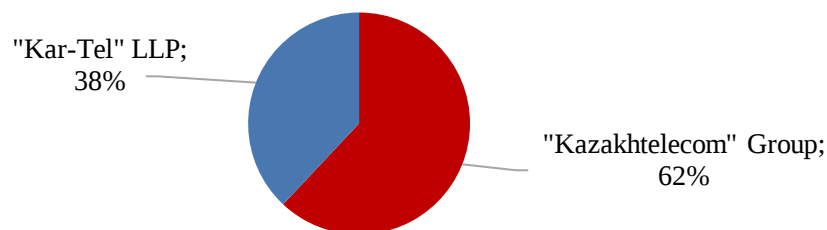


Fig. 20- Share in cellular communication market, %.

The market is characterized by **high concentration** with predominant share of **state participation** and absence of free radio frequencies. **High share of state participation** remains in the market, that negatively affects state of the market.

Thus, due monopolization by the state and high concentration of the market, there is decrease in competition for the client between operators, **complaints** about unilateral price increases, imposition of unnecessary services for consumers, as well as poor quality of communication and Internet services have increased.

Barriers for competition development

According to the results of the Agency 's analysis, the following barriers to development of competition were identified:

Distribution of radio frequency spectrum

Radio frequency spectrum (*hereinafter referred to as RFS*) is a **limited resource**. Until 2022, the RFS was distributed among telecom operators mainly according to recommendations of the interdepartmental commission on radio frequencies. According to the Agency, this mechanism for distribution of limited resource was **non-transparent** and, in this regard, the need to introduce an **auction** mechanism that eliminates barrier to access limited resource has appeared.

The Agency initiated a project to develop competition at cellular communication market, including through auctions, back in 2020 as part of implementing Roadmap for Development of Competition in key commodity markets. So, during implementation of the abovementioned Roadmap, non-competitive procedure for distribution of radio frequencies for organization of new types and technologies of communication was **canceled** (*paragraph 18 of Rules for Assigning Frequency Bands, Radio Frequencies (Radio frequency Channels), operation of radio-electronic equipment and high-frequency devices, as well as calculation of electromagnetic compatibility of civil radio-electronic equipment approved by the order of Acting Minister for investment and Development No. 34 dated January 21, 2015*).

Also, the Agency previously **made a proposal to the Government** regarding distribution of RFSs, including introduction of new fifth-generation communication technology (5G), by **auction method**, as the most optimal model aimed at ensuring transparency and objectivity, competitive and equal conditions for each market participant.

An auction is understood to be a form of bidding in which participants declare their proposals publicly using web portal registry in electronic format, following which the organizer undertakes to grant the right for using RFS to the winner.

In addition, after the Agency provided information on how to distribute radio frequency bands through auctions, the Head of State instructed Ministry of Digital Development, Innovation and Aerospace Industry (*hereinafter – MDDIAI*) to introduce, together with the Agency, **transparent mechanism for distribution of RFSs** by the end of 2022.

As part of implementing this instruction, MDDIAI has developed format of auction for 5G radio frequencies. The Agency sent comments on possible **risks of maintaining and strengthening duopoly** at the market due to sale of only **2 enlarged lots** at auction and provision of frequencies in "gold" range 694-790 MHz to auction winners as **bonus**, as well as **increase of tariffs for communication services by auction winners**, etc.

Taking into account international practice, proposals were sent to MDDIAI to level these risks, which **were not taken into account**.

On December 22-23, 2022, auctions were organized by MDDIAI at information system website "gosreestr.kz" to assign fifth-generation cellular *frequency bands (for lot No. 1 in 3600-3700 MHz (100 MHz) radio frequency bands and lot No. 2 in 3700-3800 MHz (100 MHz) radio frequency bands)*.

According to results of the **auction**, amount of budget receipts for lot No. 1 amounted to 62.7 billion KZT and 93.4 billion KZT for lot No. 2, and **winner** was the Consortium represented by Kcell JSC and Mobile Telecom Service LLP.

***For reference:** Under auction terms, auction winners within 5 years assume obligations to launch more than 3.5 thousand base stations in Kazakhstan, which may negatively affect operators' tariff policy in terms of tariff increases.*

Ratio of ownership shares of Kazakhtelecom JSC Group and Kar-Tel LLP is **82%** and **18%**, respectively. Frequency indicators increased significantly for the Group based on results of auction for RFS for 5G network. Thus, the **risks** previously identified by the Agency in the form of preserved duopoly and increasing tariffs at cellular market were **confirmed**.

So, according to auction results, the market structure has not changed:

- high concentration of the market is still in place;
- provision of 5G network services is monopolized by state, represented by Kazakhtelecom JSC group;
- tariffs for cellular communication services have increased.

***For reference:** Operator of MTS LLP (Tele2/Altel) reported that one of the **reasons for tariff increase** is the commitments to launch base stations (5G).*

According to MDDIAI, in addition to Kazakhtelecom Group, Kar-Tel LLP and International Telecommunication Networks of Kazakhstan LLP in a consortium with **Freedom Holding Corp.**, participated in the past auctions, which (*potential player*), in case of entering the market, could positively affect level of market concentration. However, according to current auction mechanism, private bidders were **not competitive** with state-owned companies (*financial and technical equipment*).

Proposals and recommendations for competition development

Taking into account identified barriers for development of competition, the Agency proposes:

1) following the results of auction on allocation of frequency bands for 5G, the Agency **made a number of recommendations** to the Government regarding the holding of the next **auction in a new format**, including introduction of restrictions on participation in auctions for telecom operators (*including those with state participation*) who already own frequencies for 5G network. By order of the Deputy Prime Minister, the Agency's proposals were sent to MDDIAI and other interested state bodies for consideration;

2) **demonopolization** of Kazakhtelecom JSC group of companies through phased implementation of subsidiaries (*mobile operators*), as well as amendments to Rules for Provision of Cable Channels for Use. These proposals are reflected in Action Plan for implementation of the Concept. The issue of **demonopolization of Kazakhtelecom JSC** group was considered by Commission on Demonopolization of Economy (*April 5, 2022*), where the Prosecutor General's Office and the Financial Monitoring Agency were instructed to study possible damage caused to state as a result of sale of 24% of Kcell JSC. In addition, MDDIAI was instructed, jointly with "NWF "Samruk-Kazyna" JSC (*hereinafter referred to as the Fund*) and "Kazakhtelecom" JSC to make proposals for transfer of one of mobile operators (*"Kcell" JSC, "MTS" LLP*) into competitive environment

MDDIAI, together with the Fund held a meeting on May 4, 2022, which resulted in a decision to further develop measures for transfer of Kcell JSC into competitive environment, after realization of measures, envisaged by paragraphs of Minutes, dated April 5, 2022, related to considering legality of sale transaction of 24% of shares of Kcell JSC and possible damage to the state.

It should be noted that today the process of transferring Kcell JSC into competitive environment has become **inert and passive**, that negatively affects development of competition in the industry. In turn, MDDIAI notes that mobile operator's withdrawal is completely in the hands of the Fund.

Use of cable channels

In 2022, Council for Development of Competition in Telecommunications under the Agency, which includes representatives of MDDIAI, Association and telecom operators, jointly developed separate amendments to Rules for Provision of Cable Channels for Use (*approved by the Order of Acting Minister for Investment and Development of the Republic of Kazakhstan dated 28.01.2016 No. 120*), to the Rules for Activities of Natural monopolies (*approved by the Acting Minister of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan dated 29.07.2019 No. 180/NK*).

According to results of this work, and within the framework of the Concept, appropriate changes and additions were made to these NLA (*registered on 01/24/2023 by Ministry of Justice*).

Changes in legislation propose **new procedure for dealing** with complaints from applicants in case of refusal to provide access to cable channels. In such cases, the applicant has the right to file a complaint with MDDIAI. Based on the complaint, an

inspection is appointed with involvement of special commission, which includes representatives of MDDIAI, National Chamber of Entrepreneurs and industry associations, to conduct a technical inspection.

The amendments are aimed at regulating interaction of the lessor and the lessee when using cable channels, setting deadlines for concluding contracts, signing land provision certificate, as well as deadlines for acceptance of construction and installation works in cable channels.

Thus, establishment of specific deadlines will streamline the process of using cable channels, as well as reduce proportion of unjustified delays in issuance and approval of documents by the lessor.

With that, in order to ensure access to a regulated service, Rules for Activities by natural monopolies have been supplemented with a norm ensuring use of **no more than 75% of the total volume of cable channels** (*for their own needs*) by natural monopoly entity, which is also a consumer of these services, within twelve months from the actual start of operation, remaining 25% (*in reserve*) for consumers. This provision will make it possible to exclude refusals to provide access to cable channels from the owner, which is at the same time consumer of these services, for reasons of full reservation of channels by owner himself.

In general, realization of the above measures is aimed at organizing unhindered access to cable channels for communication providers, which will enable end users to choose alternative Internet service providers, improve the quality of provided services, and will also contribute to expanding range of services and digitalization of economic sectors.

Services for lease (*rent*) of property or use of cable channels are regulated by the state and belong to the spheres of natural monopolies.

According to subparagraph 21) of paragraph 2 of Article 26 of the Law "On Natural Monopolies", natural monopoly entity is obliged to post quarterly at its Internet resource or, in case of its absence, submit to MDDIAI for posting at its Internet resource information on **reserve, availability of free and available capacities**, power, places, bandwidth of networks of natural monopoly entity.

Proceeding from this norm, natural monopoly entities providing cable channels for use (*Kazakhtelecom JSC, Transtelecom JSC, Astana Innovations JSC*) are obliged to post this information in open access for non-discriminatory access of consumers to regulated service.

In fact, the owners of cable channels take their duties as mere formality, since there is no complete information provided for by law, at their Internet resources.

In this regard, the Agency has repeatedly sent letters to the Government Office and MDDIAI on considering issue of bringing owners of cable channels to administrative responsibility for non-compliance with legislation in the field of natural monopolies. With that, no specific measures were taken by MDDIAI, which is responsible for management of natural monopolies (*cable channels*).

Based on results of work in 2022, the Agency jointly with MDDIAI approved **Roadmap for development of competition in the telecommunications market**, which included such measures as:

- analysis of current procedure for conducting auctions for distribution of radio frequencies (*taking into account international experience*) in order to create conditions for reducing market concentration;
- reduction of state participation in communications market;
- analysis of connection procedure and interaction of telecommunications networks of telecom operators;
- determination of procedure for competitive transfer of cable channels, built at the expense of budgetary funds, etc.

These measures are aimed at improving current mechanism of auctions for the distribution of RFS, reducing market concentration, non-discriminatory access to newly built cable channels, which in general should have a positive impact on competitiveness of the industry. Realization of measures is planned until the end of 2023.

Revision of Rules for Provision of Communication Services

In 2022, the Agency repeatedly received complaints about the actions of mobile operators to increase tariff plans with simultaneous changes in services included in the tariff plan (*increase in number of Gigabytes, minutes of voice calls, SMS messages, etc.*).

After analyzing received materials, it was found that mobile operators make minor changes to volume of services, included in tariff plan, which are **not demanded by subscribers**. With that, cost of tariff plan increased simultaneously.

In this regard, in order to exclude cases when cellular operators impose non-required volume of services to subscribers with simultaneous price increase, the Agency has developed certain recommendations to MDDIAI with amendments to Rules for Provision of Communication Services, in particular, **establishment of ban on cellular operators to change terms of tariff plan**, except for increasing its cost due to reasonable expenses.

In addition, the updated Rules provide that increase in tariff for telephone communication services and Internet access in connection with change in the volume of services included in the tariff plan must be made with consent (*on application*) of subscriber received by the operator through a telephone call, as well as through automatic service system.

These proposals are aimed at protecting rights of an unlimited number of consumers of communication services who have the right to use terms of the tariff plans to which they agreed when concluding the contract with operator. The Agency's proposals were accepted by MDDIAI, the order was registered with Ministry of Justice in April 2023.

2.6. Digital Terrestrial Broadcasting services market;

Analysis of the digital terrestrial television broadcasting services market (*hereinafter – DTTB*) was carried out in accordance with the Agency's Work Plan for 2022.

DTTB project was included in state program "Digital Kazakhstan" as one of elements for development of Republic's digital space and ensuring possibility of equal access to information for country's population, including public services and information resources of domestic television and radio broadcasting. Kazteleradio JSC has been designated as national operator of digital terrestrial television broadcasting in accordance with Government Decree No. 777 dated June 11, 2012 "On National operator in television and radio broadcasting". "Kazteleradio" JSC has started working on planned transition to DTTB in the Republic of Kazakhstan on the basis of order No. 128 dated December 29, 2010, approved by the Committee of Communications and Information of Ministry of Communications and Information.

Based on developed feasibility study and financial and economic justification of the project, it is planned to build and modernize 827 radio-television stations (*hereinafter - RTS*) in the Republic of Kazakhstan with more than 95 % coverage of the country's population. During implementation of DTTB project, as of the period of the analysis, Kazteleradio JSC commissioned **561 RTS**, which provided up to **93%** coverage of the population of the Republic of Kazakhstan with DTTB.

Table 14. Coverage of Republic's population with DTTB by region.

	Region	Number of RTS	Coverage of population with DTTB, %
1	Almaty region and Almaty city	91	19,68 %
2	Akmola region and Astana	9	6,82 %
3	Aktobe region	6	3,41%
4	Atyrau region	9	2,63%
5	East Kazakhstan region	118	7,95%
6	Zhambyl region	43	6,31%
7	West Kazakhstan region	2	2,21%
8	Karaganda region	35	8,04%
9	Kostanay region	59	5,47%
10	Kyzylorda region	17	3,47%
11	Mangystau region	21	2,99%
12	Pavlodar region	29	4,54%
13	North Kazakhstan region	42	3,63%

14	Turkestan region and Shymkent city	80	15,82%
	Total	561	93%

Geographical boundaries of analyzed market are limited by area of operations of "Kazteleradio" JSC – the territory in which RTS operate.

Technological features of DTTB

In accordance with frequency-territorial plan, facilities (RTS) have been identified, which are envisaged for installation of technological equipment for broadcasting.

To implement "National Digital Broadcasting Network of the Republic of Kazakhstan" project, in accordance with the frequency-territorial plan (FTP), facilities (RTS) of Kazteleradio JSC have been identified, which are envisaged for installation of technological equipment for broadcasting.

Kazteleradio digital broadcasting network consists of the main center for formation of republican multiplex in Almaty, 15 regional centers for formation of regional multiplexes, centers for formation of multiplexes for direct reception (DTH) in Astana and Uralsk. The network also includes RTS of republican significance in Almaty (*Kok-Tobe*), Astana, Shymkent and 15 RTS of regional significance and more than 700 RTS for broadcasting digital TV programs.

The main network monitoring and management center is located in Almaty, backup center is located in Astana. Monitoring and management of network equipment is provided through distributed satellite network of VSAT system, that allows receiving and transmitting data for management and monitoring equipment traffic around the clock from each of regional RTSs.

Due to the fact that DTTB services are provided exclusively by the national operator represented by Kazteleradio JSC, which occupies one hundred percent share in DTTB services market, position of this entity is recognized as **monopolistic** in accordance with paragraph 7, Article 172 of the Code, and accordingly there is **high concentration of the market**.

The sole shareholder of national DTTB operator "Kazteleradio" JSC is Ministry of Information and Public Development. National DTTB operator faces the task of providing entire country's population with television programs on DTTB networks by developing national broadcasting network infrastructure.

According to the information of Kazteleradio JSC, 266 RTS are planned to be put into operation in the period from 2022 to 2024.

Taking into account the above and incompleteness of DTTB project, as well as incomplete readiness of appropriate infrastructure to cover entire population of the Republic of Kazakhstan with DTTB, in order to develop digital space, presence of state, represented by the national DTTB operator - Kazteleradio JSC in this commodity market until full implementation of the project is considered appropriate.

Due to the fact that Kazteleradio JSC is the national television and radio broadcasting operator, including DTTB service, there are no other competing operators for the analyzed service.

Ongoing work on reviewing the tariffs of Kazteleradio JSC for compliance with antimonopoly legislation

Based on application of Supreme Audit Chamber about signs of violation competition protection legislation in the tariff policy of Kazteleradio JSC, the Agency reviewed tariffs for digital broadcasting of TV channels (Table 15).

Table 15. Distribution services of 1 TV channel via DTTB with full load of multiplexes (SD format) (Approved by Decision of the Management Board No. 26 of 29.08.2018).

No	Transmitter capacity W	Tariff for broadcasting 1 TV channel through digital terrestrial broadcasting, by type of transmitters, on the 1st multiplex, KZT without VAT, per month	Tariff for broadcasting 1 TV channel through digital terrestrial broadcasting, by type of transmitters, on the 2nd multiplex, KZT without VAT, per month
1	1	311.74	159.22

In accordance with identified signs of violation of competition protection legislation by Kazteleradio JSC, investigation procedure is being conducted in relation to Kazteleradio JSC regarding violation of paragraph 1) of Article 174 of the Code (*establishment, maintenance of monopolistically high prices for TV channel broadcasting service in digital format*).

2.7. Railway freight transportation services market

Since 1999, since the adoption of Law "On Railway Transport", market of railway transportation of goods has been withdrawn from natural monopoly into competitive environment in order to develop competition.

With that, the market of railway transportation of goods remains one of the most highly **concentrated** with undeveloped competition. Share of main player represented by KTZ-Cargo Transportation LLP (*hereinafter – KTZ-CT*), which dominates the market, is **over 95%** (*in 2018 – 100%, in 2019, 2020 – 99%, in 2021 – 95%*).

For reference: *KTZ-CT is National cargo carrier and ensures execution of train formation plan throughout mainline railway network. The founder of KTZ-CT (100%) is "National Company "Kazakhstan Temir Zholy" JSC (hereinafter - KTZ).*

To enter commodity market under consideration, new market entities must obtain a permit (*license*) in accordance with the Law on Permits.

In the period from 2014 to 2022, Ministry of Industry and Infrastructure Development issued **48 licenses** for the transportation of goods by rail. With that, as of today, only **2 private carriers** (*TTT Service LLP, Dar Rail LLP*) gained access to mainline railway network (*hereinafter referred to as MRN*) as part of pilot project since 2019.

For reference: *TTT Service LLP is a part of SilkwayTransit LLP holding company, formed in 2009 and is currently railway freight carrier with its own traction rolling stock. Company has divisions in Almaty, Astana, Shymkent, Atyrau, Pavlodar and at Dostyk, Matai, Koksu stations in Almaty region; Dar Rail LLP is 100% owned by T-Service-Logistics LLC, 99.7% of which belongs to T.D. International Logistic Corporation Limited (Republic of Cyprus).*

Moreover, TTT Service LLP and Dar Rail LLP carry out transportation **only on certain designated sections**, while **KTZ-CT** carries out cargo transportation **by rail throughout the territory** of the Republic of Kazakhstan.

Barriers for competition development

The Agency has identified the following barriers to development of competition in the railway freight transportation market:

1) presence of **vertically integrated group** of railway transport companies.

KTZ is **National Infrastructure Operator**. In accordance with the Law "On Natural Monopolies", services of mainline railway network are classified as natural monopoly. Access to the MRN services for carriers is provided by the infrastructure operator represented by KTZ.

It should be noted that there is a branch in KTZ – "Mainline Network Directorate", structural unit that accepts, reviews applications for access to MRN services and concludes contracts for provision of MRN services.

However, **KTZ delegates** its functions provided for by Law to its **affiliated company KTZ-CT**, which has a **priority right** compared to other carriers to participate in the process of organizing access to MRN services, namely, to consider carriers' applications, as well as approve draft contracts for provision of MRN services. So, for example, **KTZ-CT, to which National Infrastructure Operator delegated part of its powers under a separate contract, participates in considering applications** submitted by private carriers for access to the MRN, that leads to **limited access to MRN** for private carriers. KTZ's denials of access to MRN contradict the principles of equal access to key MRN facilities, established by number of norms in current legislation.

KTZ-CT, being 100% affiliated with KTZ, is not interested in objectively determining volume of freight traffic and routes of competitors' trains.

***For reference:** According to private carriers' data, KTZ has denied access to MRN services on sections: Nura – Topar, Ekibastuz-2 – Ekibastuz North, Ekibastuz-2 – Ekibastuz North 2, Ekibastuz-2 – Karaganda Marshalling, Zhem - Kimpersay due to the fact that requested volumes of cargo transportation have been reserved for KTZ-CT.*

Thus, KTZ's ownership of 100% share in KTZ-CT **without completing functional and organizational allocation** of National Infrastructure Operator allows it to provide **exceptional advantages** to its subsidiary – KTZ-CT in transportation market and providing deliberately **discriminatory conditions** for other carriers. This circumstance leads to **privileged position** of KTZ - CT LLP in this market compared to other carriers at obtaining right of access to MRN services and transportation process, **creating obstacles** to access to market for other participants;

2) "Kedentransservice" JSC, "KTZ Express" JSC, "Kaztemirtrans" JSC and others are subsidiaries of KTZ. KTZ-CT provides **benefits and preferences, discounts, credit conditions** to its companies in competitive market, that are the signs of **limiting competition**.

The transshipment facilities located at Dostyk and Altynkol stations operate in competitive environment, despite this, KTZ, using its right, distributes volumes primarily **with 100% capacity utilization of its subsidiaries**, and all other

competitors have opportunity to provide transshipment services on residual basis. Also, KTZ-CT was granted **discounts by "KTZ-Express" JSC** from the beginning of its transportation, while other companies are required to execute guaranteed volume of transportation.

With that, KTZ-CT declared a **ban** accepting empty covered railway cars for transportation, **except for the railway cars owned by Kaztemirtrans JSC**. KTZ-CT was pointed at unfavorable traffic situation at station, where more than 1,000 empty covered railway cars and grain carriers of different owners remained idle on tracks for a long time, accumulating on station tracks, that led to technological difficulties in shunting train operation of the station;

3) barriers during **inspection of containers** with cargo at Dostyk and Altynkol station tracks lead to long downtime of railway cars and additional costs;

4) at the end of 2020, Ministries of Industry and Infrastructure Development and National Economy, KTZ and private carriers developed and adopted **Regulations** for Technological Interaction between National Infrastructure Operator and cargo carriers during in organization and performance of transportation. According to private carriers, practical application of this Regulation has not revealed any critical problems. With that, the abovementioned Regulations have **not been prolonged** for new period, and therefore there is currently **no procedure** regulating operations National Infrastructure Operator in plurality of cargo carriers;

5) **inefficient organization** of transportation process and absence of **KTZ's interest in admitting** private carriers. According to KTZ, expansion of routes for private carriers entails decrease in throughput and processing capacity of stations and sections, increase in downtime of trains and locomotives of both National carriers and private carriers, massive oncoming reserve runs of locomotives of both National carriers and private carriers, increase in underweight and incomplete trains, that would entail a decrease in carrying capacity railway infrastructure of the country, abandonment of trains due to congestion on infrastructure and lack of locomotives.

With that, according to experts, today, with existing transportation system, there is **inefficient** organization of transportation process (*priority of freight transit trains and increase in the number of passenger trains*). All of facts above facts lead to worsening of railway infrastructure throughput capacity (*as a consequence, decrease in cargo transportation across the country*);

6) **significant wear** (*up to 70%*) of fleet and **insufficient provision** of locomotive traction create seasonal shortages in carrying capacity of the railway transport system, contributing to increase in delivery time of passengers and cargo. Technological obsolescence of significant part of locomotive fleet increases costs and reduces overall efficiency of transportation, as well as exacerbates negative impact of railway transportation on the environment;

7) absence of **long-term access to MRN services** is a significant barrier preventing private carriers from using borrowed financing necessary for multimillion-dollar investments and purchase of traction rolling stock the infrastructure operator

denies conclusion of long-term contracts with private carriers for access to MRN services.

Pricing

In accordance with subparagraph 5) of Article 124-5 of the Code, **state price regulation** applies to goods (*works, services*) of socially significant market entities in areas of railway transportation of goods and locomotive traction, with the exception of:

- rent of railway freight cars and services of railway cars (*containers*) operator;
- services for transportation of goods by rail in transit through the territory of the Republic of Kazakhstan;
- services of transporting goods in containers, piggyback shipments, empty containers and empty fitting platforms by rail.

In this connection, prices for services of KTZ-CT, TTT Service LLP and Dar Rail LLP for transportation of goods by rail are regulated by the Committee for the Regulation of Natural Monopolies of Ministry of National Economy.

According to KTZ, current tariff system for cargo transportation provides for **cross-subsidization** of some goods at the expense of others (*cost of transporting petroleum products exceeds cost of grain transportation by 3.9 times*).

For reference: *The main transported cargoes are coal, iron ore, grain and petroleum products (58% of total volume) along with massive cargoes, raw materials and semi-finished products generated by large enterprises of mining, metallurgical, petrochemical and agricultural sectors.*

It also provides for cross-subsidization in support of diesel-electric traction at the expense of electric traction (*tariff for diesel-electric traction is 9% higher than electric traction, while the prime cost of diesel-electric traction is 2.5 times higher*). Also, group transportation (*products of large and extractive industries*) is less expensive than combined shipments due to need for uncoupling, coupling en route. In addition, according to market participants, existing tariff model does not provide necessary balance of tariff regulation for long-term investment planning and maintaining sufficient flexibility of tariff conditions, and as a result, investment opportunities for maintenance and modernization of infrastructure, as well as improving quality of rail transport services are limited.

Proposals and recommendations for competition development

Taking into account identified barriers for development of competition, the Agency proposes:

1) **completion** of functional and organizational **separation** of National Infrastructure Operator with dispatching regulation functions, **to segregate it as independent legal entity**. So, for example, in Germany there is **organizational division** of infrastructure block, transportation and logistics activities into separate organizational and independent segments. The organization of DB Group's activities is characterized by control over infrastructure block from state regulator to ensure non-discriminatory access to MRN and related services, demonstrating **high effectiveness** of this approach;

2) **completion** of pilot project and providing **access to services for private carriers** during transportation of goods **in long-term periods** with necessary amendments and additions to the regulatory legal acts regulating the access of carriers to the services of Ministry of Transport. In accordance with the Concept of development of transport and logistics potential until 2030, it is planned to increase share of private carriers in the railway transportation of goods by at least 30% in 2030. During pilot project, participating private carriers purchased 75 mainline locomotives (11 new electric locomotives, 46 used electric locomotives, 18 diesel locomotives) and 4 new shunting locomotives. In the first quarter of 2023, it is planned to deliver another 16 shunting locomotives. According to private carriers, over the next years it is planned to purchase about 140 mainline locomotives of new series, including the ones manufactured by Kazakhstan locomotive factories;

3) **determination of KPI** for KTZ in order to improve throughput capacity of railway infrastructure, subject to plurality of carriers;

4) work **to improve KTZ information systems**, providing for change in MRN infrastructure operator's system, **with open services for integration of private carriers**, as well as automation of planning processes;

5) revision of current tariff system **in terms of plurality of carriers** and, if necessary, development of new approaches taking into account results of an economic analysis of risks and benefits.

For reference: The authorized body is delaying adoption of Roadmap for Development of Competition in railway transport market.

2.8. Markets for repair, service and maintenance of locomotives and railway cars in the Republic of Kazakhstan

In accordance with the Agency's Work Plan for 2022, analysis of the market for repair of railway cars, service and maintenance of locomotives in the Republic of Kazakhstan was carried out.

During the analysis, it was found that in the Republic of Kazakhstan, 30 market entities provided locomotive maintenance services within the analyzed period, 6 market entities provided locomotive maintenance services, 21 companies repaired railway cars.

As a result of analyzing indicators characterizing structure of market of services for maintenance, repair of railway cars, the market is characterized as highly **concentrated** with undeveloped competition.

Maintenance services for MNT-2, MNT-3 periods in analyzed period belong to the 2nd type of market – moderately **concentrated** with undeveloped competition.

It should be noted that rolling stock and special rolling stock must regularly and timely undergo preventive repairs, maintenance and service.

Service maintenance (*hereinafter – SM*) - complex of technical and organizational measures carried out by specialized organizations and/or manufacturers of railway rolling stock or its components to ensure the operation and repair of railway rolling stock.

Locomotives are tested according to manufacturer's operating manual before being released from SM. Locomotive repair companies that perform SM have repair and maintenance documents, technological processes for types of locomotives being repaired and their components.

In these commodity markets there is a limited circle of main consumers – KTZ-CT, DAR-Rail LLP, TTT Service LLP, etc.

Service maintenance is not interchangeable with maintenance and overhaul services of locomotives due to different types of work performed, frequency and cost.

So, for each type of locomotives, certain requirements are presented to service maintenance and maintenance, as well as repair of railway cars. In this regard, types of locomotives, as well as types of railway cars, represent separate commodity markets.

Maintenance (*hereinafter referred to as MNT*) differs from repairs by volume and content of work. The main restoration works in MNT are adjustment, in-situ smith work, replacement of unusable or rapidly wearing parts by new ones upon reaching maximum wear-out, tightening, fastening, adding or changing lubricants in friction units. Types of locomotives maintenance by types (*cycles*) MNT-2, MNT-3, MNT-4, MNT-6, MNT-7, MNT-8, MNT-8 are not interchangeable with each other since each type of MNT has its own goal and purpose. The difference is due to the different types of work performed, frequency and cost of a particular type of maintenance.

Railway car repair services are non-interchangeable due to the different types of work performed, the frequency and their cost.

Barriers for competition development

The main barriers to entry of new entities (*potential competitors*) into commodity markets under consideration are economic restrictions, in terms of significant capital investments with long payback periods for these investments (*purchase of spare parts, maintenance, etc.*).

Materials, semi-finished products, spare parts and accessories used in the maintenance of locomotives must comply with **requirements of relevant instructions**, and new ones - **standards, specifications and certificates** for their manufacture.

In recent years, due to difficult economic situation at domestic and global markets, there are difficulties in purchasing spare parts to ensure performance of the volume of work, since there has been sharp change in exchange rate against KZT, and price of spare parts has doubled, maintenance of locomotives is unprofitable.

Lack of qualified personnel and significant shortage of young specialists in metalworking and welding specialties with education.

In order for enterprises to maintain their positions, it is necessary not only to produce modern quality product, but also to constantly develop production line and create unique products.

The main customer of these services is KTZ, as there are **no conditions for prepayment** for repair of locomotives and railway cars within the procurement framework of "NWF "Samruk Kazyna" JSC, which in turn affects liquidity of enterprises' funds.

Taking into account constant share of market entities and constant increase in prices at locomotive maintenance market, **signs of violating competition protection legislation in terms of establishing monopolistically high prices were revealed**, and measures were taken against Kamkor Locomotive LLP with imposition of an administrative penalty in amount of **more than 240 million KZT**.

For effective functioning and development of competition in these markets, **authorized body needs to ensure update of regulatory documentation, requirements for modernizing technical base** of production sites for service and maintenance of locomotives, repair of specific types of rolling stock, allowing improvement in quality of repairs and reducing its time, as well as **take measures to attract qualified personnel of working specialties for provision of services in this commodity market**.

2.9. The market of services for regular passenger transportation by air

Analysis of market of regular passenger air transportation was carried out on the basis of price monitoring results, identified signs of violation of competition protection legislation.

Domestic air transportation is carried out on more than **40 routes**. Regular commercial transportation is carried out by **3 airlines**, main share is occupied by "AirAstana" JSC and Fly Arystan, "Qazaq Air" JSC, "SCAT" JSC.

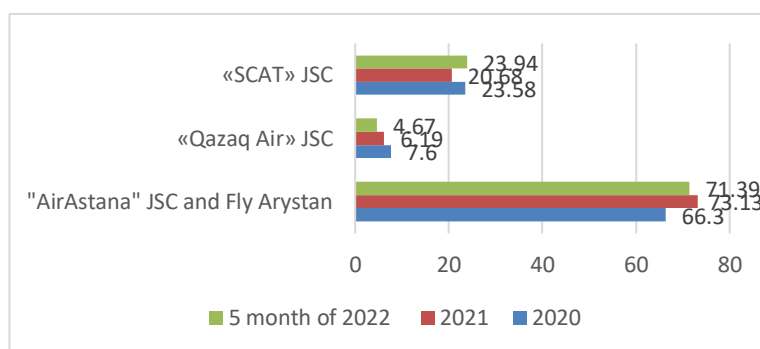


Fig. 21- Distribution of airlines's shares between "AirAstana" JSC and Fly Arystan, "Qazaq Air" JSC, "SCAT" JSC.

For reference: 1) "Air Astana" JSC: state's share is 51% ("NWF "Samruk-Kazyna" JSC), 49% of company's shares belong to BAE Systems PLC (UK); 2) Shareholders of "SCAT" JSC are Denisov V.I. (57%) and Sytnik V.A. (43%). "SCAT" JSC owns 2 subsidiary airlines: "Southern Sky" and "Sunday Airlines" (passenger transportation on charter destinations); 3) "Qazaq Air" JSC: 100% shares belong to "NWF "Samruk-Kazyna" JSC.

International air routes for regular commercial air transportation are determined in accordance with international treaties of the Republic of Kazakhstan.

With that, due to different conditions of market access, qualification requirements, regulatory regulations for airlines, domestic and international air transportation cannot be considered as one commodity market.

Regular (*domestic*) passenger air transportation services are regulated by Law "On Use of Air Space of the Republic of Kazakhstan and Aviation Activity" (*hereinafter referred to as the Law*) and relevant by-laws.

Results of analysis, as well as calculation of coefficient and market concentration showed that market for passenger air transportation services by regular (*domestic*) flights for analyzed period belongs to 1 type of market – highly **concentrated** with insufficiently developed competition.

In addition to the above, the main share in this market is occupied by "AirAstana" JSC and Fly Arystan, "Qazaq Air" JSC, "SCAT" JSC, while 2 companies belong to "National Welfare Fund "Samruk-Kazyna" JSC. In turn, FlyArystan is a division of "AirAstana" JSC (*51% shares belong to "NWF Samruk Kazyna" JSC*), created **according to the low-cost carrier system**, carries out regular transportation without being a legal entity. Thus, we believe that presence of airlines **with state participation** leads to decrease in competition between market participants, absence of interest from foreign investors, that generally negatively affects competition.

On December 30, 2015, the Government adopted a resolution "On some issues of privatization **for 2016-2020**", in which **sale of "Qazaq Air" JSC and "AirAstana" JSC** is planned as a priority. With that, these airlines were not sold, and therefore they were included in the Comprehensive Privatization Plan **for 2021-2025, approved by Government Decree No. 908 of December 29, 2020**, deadline for sale of airlines was **postponed** due to pandemic, also within the framework of this comprehensive plan.

In addition, in 2018, AirAstana JSC **created Fly Arystan division** as a low-cost carrier. To date, Fly Arystan has **not been singled out as a separate legal entity** and does not have a certificate of civil aircraft operator. Fly Arystan operates in the structure of "AirAstana" JSC and does **not keep separate records** of expenditure and revenue, and accordingly there is no transparency in activities of the airline and its division, including **pricing issues**.

Pricing

In October 2015, domestic passenger air transportation market was withdrawn from state regulation. Currently, ticket prices for airlines of the Republic of Kazakhstan are formed on the basis of market pricing mechanisms based on demand and user data, i.e., **dynamic pricing** is used, in which prices can remain at the same level, increase and decrease depending on demand, advance ticket purchase, day of the week when flight is performed, flight departure time, etc.

Prices for air transportation are formed depending on level of loading, and therefore, **minimum** and **maximum** fares per adult passenger are possible on one flight, depending on class, direction and conditions of purchase (*date of purchase, availability of restrictions on return and rebooking, etc.*). The purchase of air tickets at a lower price is possible in cases of advance purchase, purchase of a round-trip ticket, acceptance of restrictions on flights availability, refund and rebooking.

According to "dynamic pricing" principle, prices for air tickets should be formed taking into account sales dynamics, historical data on flights, prices, level of demand, prices of other carriers and only **under conditions of existing competition**.

In 2021, "AirAstana" JSC adopted declaration on transparency with the following mandatory conditions:

- 1) reduction of maximum prices **by 10%** for domestic routes, while maintaining stable prices until May 1, 2022;
- 2) selling at **least 70%** of tickets at prices below average;
- 3) possibility of choosing fare group **without luggage**.

In 2022, after expiration of terms stipulated in the declaration, according to the results of the monitoring, there is an increase in prices. Price monitoring was carried out in 43 routes performed by airlines. So, for example, main directions showed the following (compared to the first quarter of 2021 and the first quarter of 2022):

- Almaty - Astana - Almaty, growth - 45%;
- Shymkent - Astana - Shymkent, growth - 49%;
- Shymkent - Almaty - Shymkent, growth - 48%.

With that, taking into account increase in passenger turnover, use of dynamic pricing by airlines **in duopoly structure of the market** provides an opportunity to maximize revenue.

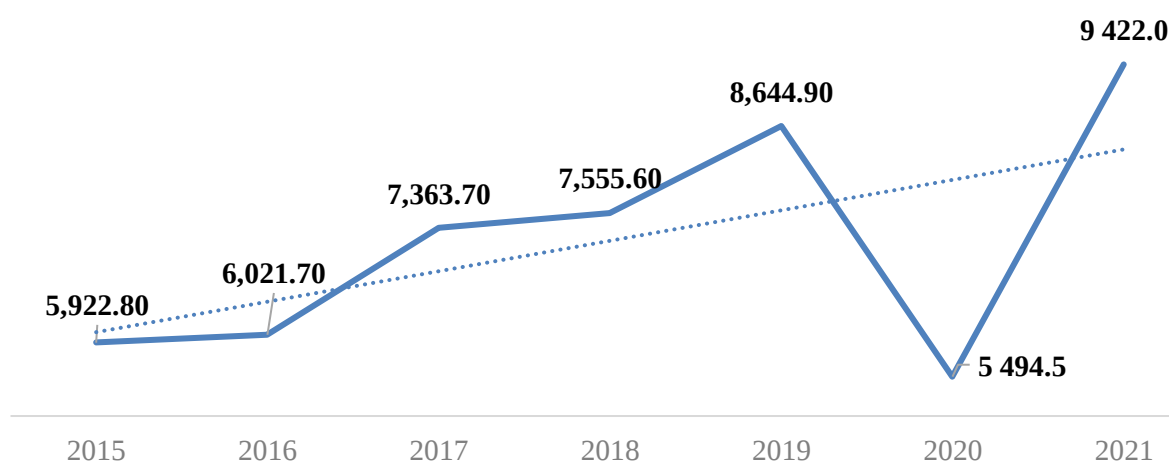


Fig. 22- Information on passenger traffic (thousand persons).

Dynamic pricing system of individual airlines during increased demand period **blocks sale of free seats at cheaper fares** in favor of tickets with a higher fare level. Thus, cases have been established when, during increased demand period, the largest volume (90%) of tickets is sold **at high tariffs**.

In ticket cost structure, one of the main costs is **fuel**, change in its price level significantly affects the final cost of the ticket for passengers.

According to Ministry of Energy, the maximum volume of domestic jet fuel production is about 650 thousand tons per annum. With that, consumption of jet fuel by domestic companies, taking into account the growth of traffic, is already over a million tons per annum. Accordingly, there is a shortage of jet fuel production.

Today, in accordance with paragraph 9, Article 76 of the Law "On the Use of Airspace", **airlines with state participation**, in order to compensate for increase in

cost of jet fuel during period of passenger transportation tariff validity, which cannot be taken into account when calculating tariff, collect **fuel surcharge**.

It should be noted that this rule was introduced during the period of regulation of prices for air tickets, in order to level constantly changing prices for jet fuel.

With that, Ministry of Energy, together with Ministry of Industry and Infrastructure Development, distributes produced jet fuel **directly to airlines** in order to exclude intermediary services and ensure uninterrupted supply of jet fuel.

The volatility of prices for jet fuel of "Petrosun" LLP in 2020 amounted to about 30% (*weighted average price of "Petrosun" LLP in January was 222,975.77 KZT, in December 160,000 KZT*), with that amount of fuel surcharge is **not revised** by airlines.

Open Skies mode

In order to expand flight geography and increase number of international flights, Ministry of Industry and Infrastructure Development has introduced "Open Sky" mode since November 1, 2019.

***For reference:** "Open Skies" is an international concept aimed at lifting restrictions and creating free market for this economy sector, i.e., conditions in air transportation market should be fair and equal to all participants, regardless of the country of origin.*

"Open skies" mode extended to **12 international airports** of Astana, Almaty, Taraz, Shymkent, Aktau, Semey, Karaganda, Ust-Kamenogorsk, Pavlodar, Petropavlovsk, Kokshetau and Turkestan, in 2022 the list also includes "Aktobe International Airport" JSC.

"Open skies" mode has been extended **until the end of 2027**. This regime provides for removal of all restrictions on number of flights and provision of **fifth degree** of "air freedom" to foreign airlines on routes where Kazakh airlines do not operate. The fifth degree of "air freedom" implies flights of foreign airline through the cities of Kazakhstan to the cities of third countries.

Currently, the Republic of Kazakhstan is concluding **bilateral** agreements between countries. According to Manual on the Regulation of International Air Transport No. 9626, approved by the International Civil Aviation Organization ICAO, there are **2 types of international agreements**:

- bilateral agreements (*type 1*), that is, negotiations between two parties, most often between two sovereign states;

- multilateral agreements, i.e., agreements that may initially be bilateral, but with possibility of its expansion and additional parties ascending it (*so-called "expanded bilateral"*) or in which three or more parties may participate from the very beginning, but in both cases with participation of parties setting the same regulatory goals, which are not so typical that it would be possible to conduct typical multilateral negotiations on separate bilateral agreements.

According to research by International Civil Aviation Organization, **multilateral agreements** would ensure development of airports and airlines. Airlines get the opportunity to launch new routes by expanding coverage of their global networks, and airports benefit from increased traffic volume and a greater choice of flight options for airport users, such as passengers. In the countries that signed the "open skies"

agreements, five years after their signing, there is 17% increase in traffic volumes, and more than a third of this growth is accounted for by growth on new routes.

Allowing carriers to use rights of fifth degree of "air freedom" would also **diversify composition of airlines** operating in the market, giving users a **wider choice**. With that, according to the above recommendations, States can perform liberalization at the rate and in the ways that meet their needs and circumstances.

Conclusions, suggestions and recommendations on development of competition at commodity markets under consideration

1) it is necessary to accelerate sale of state share in "QazaqAir" JSC and "AirAstana" JSC;

2) prior to sale of "AirAstana" JSC, it is necessary to single out FlyArystan as a separate market entity;

3) eliminate restrictions on "open skies" mode for passenger flights "on routes that are not operated by designated Kazakhstani carriers", and also extend them to all international airports. Also, in order to strengthen competitiveness and improve quality of provided services, increase profitability of airports, it is proposed to gradually switch to long-term, multilateral agreements;

4) develop regulatory legal act regulating use of dynamic pricing in air transport;

For reference: the Agency has submitted a proposal to Ministry of Industry and Infrastructure Development to amend Order No. 540 dated April 30, 2015 "On approval of the Rules for transportation of passengers, baggage and cargo by air transport", regarding regulation of dynamic pricing based on results of inspection, carried out by General Transport Prosecutor's Office.

5) introduce amendments to legislation providing for excluding collection of fuel surcharge.

The relevant proposals were reflected in **Roadmap for the Development of Competition in Civil Aviation**, adopted by the Agency jointly with Ministry of Industry and Infrastructure Development.

Development of competition in the market of airport services

There are **20 airports** operating at the territory of the Republic of Kazakhstan, of which 6 are private, 11 are municipal and 3 are state-owned.

The largest airports (*Astana, Almaty*), due to the geographical location and conditions provided by aviation authorities and airports of other states, are in fierce competition with airports of neighboring states.

Airports that have multifunctional industrial and public funds and act as natural monopolistic structures in air transportation market are at the same time completely dependent on this market. To date, 4 services belong to natural monopoly and 5 services belong to socially significant markets.

Practice of foreign airports shows that they receive significant share of income from **non-aviation activities**. The level of airport development and its competitiveness is determined, first of all, by generated passenger and cargo flows, which lead to increase in income mainly due to non-aviation activities.

Investment attractiveness of airports also increases significantly with growth of income from non-aviation activities.

Main consumers of airport services are also airlines that pay for use of ground infrastructure (*fees from airlines for take-off and landing services, parking, security, noise level*). This most important group of consumers of airport services has decisive impact on its market position.

Most regional airports often seek to maximize benefits from local monopolism in which they usually find themselves, however, abuse of natural advantages can lead to outflow of customers and narrowing of regional air transportation market. The reason for this may be excessively high tariffs, poor quality of ground handling or limited network of air routes.

Council of Europe Directive 96/67/EC dated 10/15/1996, which established rules for access to this market at airports in EU countries and determined changes in the global aviation industry. Directive establishes the following requirements in ground handling market regulation:

- separation of airport as natural monopoly entity from ground handling business (*exclusion of financial relations and cross-financing*);
- since 2001, at airports with annual passenger traffic at least 2 million people or cargo turnover of 50,000 tons, there must be at **least 2 operators** (AONO) for handling baggage, passengers and cargo on apron, provision of jet fuel and lubricants, as well as cargo and mail handling.

As a result of this Directive, in most European airports, ground handling services are provided by independent specialized operators. Analysis of results of Directive 96/67/EC, summed up in 2009, showed the following results:

- cost of ground handling at EU airports has **decreased**;
- in airports where monopoly on ground handling existed before, prevailing market share is occupied by **newly emerged operators**;
- number of **independent specialized operators** performing this activity as core activity with higher quality and competitive service prices has significantly increased.

In this regard, amendments have been made to the Law "On Use of Airspace", establishing that if airport services more than 2 million passengers per annum, the airport is obliged to admit independent provider of ground handling services (*Astana and Almaty airports fall under this category*).

On June 21, 2022, the Agency, together with Ministry of Industry and Infrastructure Development, amended the Rules for Ground Handling at Airports in terms of providing non-discriminatory access to ground handling providers. Thus, the following is provided for ground handling services:

- **open** access for all suppliers (*services, provided in the terminal, for example, passenger registration, baggage handling, provision of in-flight catering to passengers and crew, etc.*);
- access to apron service for suppliers, including 1 supplier affiliated with the airport (*for example, passenger shuttle, aircraft fueling*);
- provision of **infrastructure services** only by the airport.

The rules are aimed at improving business climate and developing competition by ensuring equal and non-discriminatory access to ground handling services at airports, including supply of jet fuel.

For reference: as of today, Almaty International Airport JSC has announced a competition for selection of ground handling service providers for implementation of these Rules.

Development of competition in helicopter services market

Various helicopters (brands: Mi-8/Mi-171, Ka-32, EC 130, EC 145, AW-139, etc.) are operated in the Republic of Kazakhstan, providing services for commercial air transportation, aerial surveys and aerial works on protection of forests, flights for provision of medical assistance to population and sanitary measures, rescue and recovery operations, construction and installation and loading and unloading operations, transport and communication flights, as well as flight inspections (*overflights*) of ground-based aviation radio communication devices, airfield circuits and lighting equipment.

The main operators are "Kaz Air Jet" JSC, "Airline "Fly Jet.kz" JSC, "Kazaviaspas" JSC, "Beybarys Airline" JSC, "Dala Air" LLP, Municipal State-Owned Public Enterprise "AP EKR", "Q-Avia" LLP, "Euro-Asia Air" JSC, "Burundai Avia" JJSC, Sauts Oil LLP.

With that, in accordance with the Resolution of the Government of the Republic of Kazakhstan dated February 18, 2016 No. 72 (*hereinafter referred to as the Resolution*), Kazaviaspas JSC is defined as **single operator of helicopter services**. The legal status of single operator for provision of helicopter services is regulated by Article 82-1 of the Law "On Use of Airspace of the Republic of Kazakhstan and Aviation Activity".

Kazaviaspas JSC performs emergency prevention and response flights, emergency medical assistance in the form of air ambulance, aerial protection of forests and wildlife, rescue and recovery support of flights, transportation of protected persons for local executive bodies.

The Government has adopted Development Program of Kazaviaspas JSC for the period from 2020 to 2029. The total amount of funds to renewal of aircraft fleet and meeting needs of government agencies is planned in amount of 274.9 billion KZT (*including infrastructure and training costs*), out of it:

- 100.6 billion KZT – 26 aircraft;
- 162.7 billion KZT – 32 helicopters;
- 11.5 billion KZT – for maintenance of infrastructure and training of flight technical personnel.

Renewal of fleet of "Kazaviaspas" JSC is expected within ten years. According to Ministry of Emergency Situations, transfer of helicopter services provided to state bodies and organizations into competitive environment will entail inability of Kazaviaspas JSC to perform flights on sanitary aviation and forest protection assignments, as well as decrease in quality of flight safety due to price dumping by private companies.

With that, there is a certain criticism among consumers of data on quality of services provided and prices of Kazaviaspas JSC, namely Ministries of HealthCare and Ecology and Natural Resources. They propose to provide a choice of suppliers of aviation (*helicopter*) services, on a general basis, that will create competitive environment by attracting private airline operators to helicopter services market that

meet the relevant requirements, which will ultimately have positive impact on quality of medical services provided and on aerial protection of forests from fires.

With that, Development Program of Kazaviaspas JSC for the period from 2020 to 2029, according to the Agency, leads to **strengthening of market power in helicopter services market**. This issue is being considered at the Council of Domestic Entrepreneurs.

In this regard, taking into account positions developed at working groups, the Agency considers it appropriate to **transfer** emergency medical services of medical aviation and **aerial protection of forests and wildlife into competitive environment** to be rendered by all operators meeting relevant requirements, that in turn will stimulate the sector of private air carriers. With that, it is necessary to **revise Development Program** of Kazaviaspas JSC for 2020-2029, taking into account competitive environment.

2.10. Housing construction market

Analysis of state of competition showed **high level of concentration** at local (regional) housing sales markets. With that, in North Kazakhstan region, Almaty, Zhambyl, Kyzylorda, Mangistau regions, housing markets are characterized as **moderately** concentrated, in Almaty and Astana, I and II class housing sales markets are defined as highly **concentrated**, markets of III and IV class housing are moderately **concentrated**.

In this regard, in 2022, housing construction market was reviewed by the Agency for developing set of measures aimed at protecting and developing competition.

For 3 years, average cost per square meter of primary housing has increased by **48.5%** (from 290 to 430 thousand KZT). With that, growth rate of housing costs is **not correlated** with growth rate of prices for construction materials.

According to the Agency, the key factor in price increase was **stimulating demand**. Since 2019, **3.6 trillion KZT** was injected into housing market from implementation of programs ("7-20-25", "Baspana-Hit") and pension savings. However, speculative price increases by developers have **reduced effect of government's social initiatives**, and therefore construction companies have become main beneficiaries of support measures.

As for infrastructure, share of imports in construction materials has not changed in 5 years. If in 2017 it was 46%, then at the end of 2021 it was 43%. In five years, production of construction materials has increased by **2 times**, however, domestic production covers only need for basic materials. Dependence on materials with high added value remains **at the level of 50 to 100%**.

In addition to stimulating demand and rising prices for construction materials, cost of housing is also **influenced by government regulation, access to land and infrastructure**.

State regulation has been tightened since 2016 after adoption of new Law "On Equity Participation in Housing Construction".

The law defined only three permitted ways of raising funds for shareholders: 1) after construction of structural frame (*upon permission of the akimat*); 2) involvement of bank loan (*upon permission of the akimat*); 3) upon receipt of Single Operator's guarantee.

With that, state control over compliance with these requirements has not yet **been implemented**. **Checklists have not been approved** by the authorized body for construction, akimats do not check legality of raising funds and have limited themselves to publishing lists of developers who have not received permits without bringing them to administrative responsibility.

As a result, there is **widespread practice** of attracting funds from shareholders by concluding "booking agreements", selling apartments through unauthorized organizations **without permission** of akimats or Single operator.

According to the Agency's estimate, **out of 7.5 million square meters of housing commissioned in 2021, permits were issued for 2.1 million or 28%**.

Thus, at least half of housing built with involvement of equity holders has been sold, **bypassing the Law**. This volume of **shadow market** is not covered by guarantees of shareholders' rights, nor by state control. It also fell out of turnover during implementation of state mortgage programs and use of pension funds, which was another **reason for "explosive" growth in real estate prices**.

State support of the market is implemented by single housing construction operator– "Kazakhstan Housing Company" JSC. In addition to subsidizing interest rate on commercial loans to private developers, it provides guarantees for completion of construction.

Out of three ways to build housing with involvement of equity holders, obtaining its guarantees is the most profitable way for developers. With that, by the end of 2021, with more than 1,700 apartment buildings commissioned, **only 72 houses or 4% received Operator's guarantees**. Such a low level of guarantees is one of the reasons for high economic cost of entering the market.

Availability of support measures implemented by the Operator is also affected by the practice of **delaying** consideration of applications, charging developers both commission for issuing guarantee (*1% of guaranteed amount*) and fees for application review procedure (*up to 1 million KZT*). They also introduced **additional requirements** on work experience and financial stability, not provided for by the law, **imposed services of "their" engineering organizations**. According to this fact, the Agency issued a notification about signs of violating competition protection legislation in Single Operator's activities.

Another significant state support operator is Otbasay Bank, which supports demand at housing market through concessional lending. Its main task was to create a system of housing construction savings, that is, product that was not represented in the financial markets.

The condition of this basic product is accumulation of a minimum amount of savings over 3 years. Today, share of such "hybrid" products of the bank, replacing concept of housing savings development, is 83% of the total portfolio. As of January

2022, the loan portfolio of Otbasys Bank increased by 50% and amounted to 2.1 trillion KZT, or **60% of total volume of mortgage loans**.

Thus, instead of implementing a system of housing construction savings, Otbasys Bank, **operating with public funds**, entered commercial mortgage lending market, **displacing** private financial structures.

Access to the key production factors – land and infrastructure – has a significant impact on development of this market. The underlying problem is non-transparent resource allocation mechanism. The main method of allocating land plots, defined by the Land Code is *auctions* and, as an exception - 21 methods.

With that, in practice, local executive bodies distribute plots **without bidding**. Thus, Akimat of Astana city has issued only 6 land plots through auctions over the past 3 years, and 889 without auction. Its last auction dates back to 2020.

The requirement for quarterly public posting of information on vacant plots is not met.

The most common way of issuing plots has become the use of Social Entrepreneurial Corporations (*SEC*).

This is a non-competitive procedure, implying direct request of entrepreneur to SEC or akimat without any criteria for decision-making.

There is an arbitrary determination of amounts and methods of compensation to state for provision of land, misuse of received refunds, implementation of projects that do not meet legislation requirements (*bathhouses, restaurants, trading houses, gas stations, car washes*).

For example, over the past five years, SEC "Astana" has allocated 70% of plots specifically for construction of housing and non-residential premises. In general, main activity of regional development institutions is shifted towards implementation of commercial projects - bathhouses, restaurants, trading houses, gas stations, car washes, country home communities.

Meanwhile, this practice contradicts Land and Business Code, which prohibits non-competitive allocation of land through SEC for implementation of project that is not an investment (*production of goods*) or innovative (*creation of a new product*) project.

According to anti-corruption service, such activities of SEC are associated with corruption risks, due to resale of land plots by private companies at prices ten times higher than purchase price, booking vacant plots to large construction companies.

According to this fact, out of 12 antimonopoly notices addressed to SEC, 6 were voluntarily executed, remaining notifications were appealed by SEC in courts (*court proceedings are ongoing*).

Another common method of non-competitive distribution of land plots is implementation of housing construction projects at the territory of special economic zones (*SEZ*).

Current Law "On Special Economic Zones" excludes possibility of implementing housing construction projects, since they do not belong to production of goods. With that, by Order of the Minister for Investment and Development No. 142 dated February

27, 2018, as an exception, housing construction is included in the list of priority types of SEZs located in Astana, Turkestan and Aktau cities.

Given that procedure for selecting SEZ participants is non-public, it also contains risks of committing anticompetitive and corrupt actions. In particular, disproportionate distribution of plots among developers has been established on example of SEZ "Astana". Thus, 65 or 55% of 118 housing construction projects are implemented by BI Group.

With that, despite gratuitous receipt of land plots and exemption from tax and customs duties, developers sell housing at current market prices.

The state, in turn, does not issue any counter obligations to developers, although only in 2011-2020 they received benefits in amount of 215 billion KZT.

Moreover, according to Ministry of Finance, procedure for registering import of goods and absence of technical specialists does not allow Ministry to ensure proper control, that creates risks of materials being used outside SEZ territory.

As a result, instead of creating high-tech and competitive industries, **territory of SEZ is used for non-production purposes.**

Today, limited land resource is **main factor in development of housing construction**. Its **non-competitive distribution** distorts competition, acts to strengthen market share of the largest developers. This is also reason for shortfalls of funds to budget and high corruption risks.

In turn, existing state support institutions – SEC and SEZ – prefer commercially attractive housing construction projects, using budget, land and other limited resources for them.

Unequal access to land resources is aggravated by the **inefficient implementation** of mechanism for seizure of unused land.

Today, Land Code requires seizure of land plot granted into ownership or for housing construction after 3 years of non-use.

Meanwhile, dynamics of work on seizure of unused land by the state has decreased due to moratorium on inspections of businesses. So, if 1.1 thousand hectares were seized in 2019, 45 hectares in 2020, 221 hectares in 2021, then there were no seizures by August 2022. In these conditions, sale of land plots intended for housing construction is spreading wide, not on behalf of the state, but from private individuals, which in practice leads to increase in the cost of housing construction projects.

Another unused resource is agricultural land located within the city limits.

According to "Atameken" NCE, there are about 80 thousand hectares of such land plots at the territory of Astana, Almaty and Shymkent. When changing designated use of land, in addition to buying it from owners, developers must also pay fees for changing designated use of the site (*total cost of such payments is more than 1 trillion KZT*), that significantly affects the final cost of construction projects.

For reference. According to "Atameken" NCE, in Astana, the cost of changing designated use of 269 land plots with area of 13 thousand hectares is 501.7 billion KZT, in Almaty there are 2,549 land plots with an area of 6.6 thousand hectares (on average 2.6 hectares each), total cost of changing their designated use is 292 billion KZT, Shymkent has 13,301 land plots with an area of

60.6 thousand hectares (average of 4.5 hectares each), changing their designated use amounts to 386.3 billion KZT.

Shortage of land resources and unequal access to them for market participants require increased work on seizure of unused land and changing designated use of agricultural land located within city boundaries.

Based on the above, within the framework of the Concept, Ministry of Industry and Infrastructure Development, together with the Agency and interested state bodies, approved **Roadmap for housing construction**. By the end of 2023, it is planned to exclude non-competitive allocation of land plots through SEC and SEZ, tighten procedure for posting information about vacant plots.

With strengthening of control over raising funds, requirements for developers and obtaining guarantees from housing construction operator will be lowered. Digitalization of process from start of construction to sale of housing will increase market transparency. Measures are also proposed to de-monopolize and denationalize mortgage market, in particular, introduce participation of banks, in addition to Otbasys Bank, in housing construction savings system, as well as providing banks with access to budget financing of mortgages by analogy with 7-20-25 program. Competitive access of STBs to government programs and possibility of participating in housing savings system will reduce transaction costs of concessional lending.

2.11. Markets for sale of non-ferrous metals

Analysis of markets for sale of copper, lead, zinc and aluminum was carried out in accordance with the Agency's Work Plan for 2022 as part of instructions of Head of State to develop regulatory mechanisms for ensure full loading of domestic processing enterprises with feedstock.

According to results of analyses, it was found that markets for sale of copper, lead, aluminum and zinc are highly **concentrated**.

The composition of the markets is as follows:

Copper ore is extracted by: Kazakhmys Corporation LLP, KAZ Minerals Group, Eurasia Copper Operating LLP, Sary Kazna LLP, Aktobe Copper Company LLP, Copper Technology LLP, KazGeorud LLP.

Copper enrichment process is carried out by KAZ Minerals Group and Aktobe Copper Company LLP.

Production and sale of copper: Kazakhmys Corporation LLP, KAZ Minerals Group, Kazzinc LLP, Eurasia Copper Operating LLP, Casting LLP, Kounrad Copper Company LLP.

Sale of cathode copper, final product of technological conversion, is carried out by 3 entities: Kazzinc LLP, Kazakhmys Corporation LLP and Kounrad Copper Company LLP.

Main internal **processors (consumers) of cathode copper** are Kazkaz LLP, ZOСM JSC, Casting LLP with total consumption about 35 thousand tons.

Mining lead-zinc ore and its enrichment is carried out by "Zhairym GOK" JSC ("Kazzinc" LLP) and "Er-Tai" LLP. The producer of refined lead is Kazzinc LLP.

Kazzinc LLP also processes foreign feedstock with subsequent export of finished products (*tolling*).

Main consumer of lead at domestic market is Kainar AKB LLP.

Extraction and enrichment of zinc-containing ore is carried out by: Kazzinc LLP, Er-Tai LLP, Nova Zinc LLP (*Ural Mining and Metallurgical Company, Russian Federation*).

The only **zinc producer** in the country is Kazzinc LLP. The main consumer of zinc is "ArcelorMittal Temirtau" JSC for production of hot-dip galvanized steel band.

At the territory of the Republic of Kazakhstan, **bauxite mining and alumina production** is carried out by "Aluminum of Kazakhstan" JSC, and production and sale of primary aluminum is carried out by "Kazakhstan Electrolysis Plant" JSC. The entities belong to the same group.

The main consumers of aluminum are "Kazenergokabel" JSC, "Alluminium of Kazakhstan", LLP "UPTK Asia-Electric" LLP, "Tsvetlit" LLP, "Giessenhaus" LLP.

High level of concentration corresponds to global practice, since entry to the market is complicated by high level of capital investment, complex regulatory framework for subsoil use and need for partial or full vertical integration.

In order to attract new players to the market, it is necessary to establish equal and transparent basic conditions for subsoil use. Business entities have repeatedly raised the issue of absence of open and transparent **access to geological information**, which is a prerequisite for development of competition in metals markets and full disclosure of country's potential in the field of subsoil use.

With that, it should be noted that enterprises of mining and metallurgical complex (*hereinafter - MMC*), as a rule, compete with each other **at inter-country level**, and policy of states on protectionism of domestic enterprises is balanced taking into account the need to develop their own manufacturing industry.

In Kazakhstan, mining and metallurgical complex is the second largest sector after oil and gas industry²⁴. MMC accounts for **8.7% of GDP**, of which **5.8%** is accounted for by **metallurgical industry**.

Despite significant contribution of the industry to domestic economy, today the low level of feedstock processing in the country is acute – **major part of produced metal is exported**.

Annual production of aluminum is 262 thousand tons with domestic consumption of 34 thousand tons, 87% is exported.

Copper production is 459 thousand tons, domestic consumption is 5.3 thousand tons, remaining 98.8% are exported.

Lead production is 108 thousand tons, domestic consumption is 24 thousand tons, 77% is exported (*only one processor*).

²⁴ Resolution of the Government of the Republic of Kazakhstan dated December 20, 2018 No. 846 "On approval of Concept for development of manufacturing industry of the Republic of Kazakhstan in 2023-2029" // <https://adilet.zan.kz/rus/docs/P1800000846>;

In recent years, growth rates of Kazakhstan's manufacturing industry have been provided mainly due to expansion of country's participation in world commodity markets (*base metals and materials*). International community, represented by international institutions, representatives of business communities and experts, share opinion that **commodity super-cycle is over and opportunities for economic growth due to sale of low-value goods have been exhausted**.

In this regard, issue of intensive development of manufacturing industry has matured due to organization of production of most high-tech complexity, oriented to world trade, not subject to sudden changes in purchase prices for raw materials.

On behalf of the Head of State, regulatory legal framework is being developed to ensure full loading of domestic processing enterprises with feedstock.

In particular, Ministry of Industry and Infrastructure Development has adopted Rules for providing domestic raw materials to manufacturing enterprises, according to which the practice of concluding trilateral agreements between Ministry, seller and buyer (*taking into account demand requirements*) is applied, which contain **formula for sale of metals in the country** with recommendatory nature – for copper, price of LME²⁵ minus 5%, for lead, price of LME minus 2%, for aluminum, price of LME minus 5%. the Agency believes that establishment of pricing formula is **deterrent to growth of metal prices** at domestic market, but not an incentive for domestic processing enterprises to manufacture products with high added value.

In this regard, in order to stimulate development of industrial and innovative industry and loading of domestic manufacturing production, it is proposed to apply existing instruments of **tariff and non-tariff regulation**, including introduction of export customs duties and quotas on non-ferrous metals, as well as on subsequent products of their processing.

With that, in order to increase investment attractiveness, it is necessary to reorient state support measures for value-added products, including financing working capital and modernization of capacities, ensuring volume of sales at domestic market.

In order to increase potential of manufacturing industry, the Agency has proposed the following mechanisms:

- 1) provide open and transparent access to geological information and subsoil areas;
- 2) refocus provision of state support measures on manufacture of value-added products;
- 3) consider use of tariff and non-tariff regulation tools.

Relevant initiatives to ensure availability of commodity prices (*including intermediate ones*) for domestic industry and their sufficiency for full provision of domestic processors will be further worked out jointly with the Government as part of executing paragraph of the National Action Plan for implementation of the President's Address to the People of Kazakhstan dated September 1, 2021 "Unity of the people and systemic reforms – solid foundation for country's prosperity".

²⁵ London Metal Exchange (LME) is the world's leading commodity exchange specializing in non—ferrous metals trading.

2.12. Pesticides' sales market

Analysis of pesticides sales market was carried out within the framework of determining factors influencing growth of prices for food staples.

One of the key factors affecting cost of agricultural products is the **cost of pesticides**. According to authorized bodies, share of pesticide costs in the cost of major crops is **18%**, while the share of imports in Kazakhstan exceeds **69%**.

Pesticides include 7 types, such as: insecticides, rodenticides, fungicides, herbicides, plant growth regulators (*stimulants*), defoliants, desiccants.

Results of the consumer survey showed that types of pesticides are not interchangeable with each other since they have different properties and scope of application.

As part of the analysis, it was found that there are 24 entities on the market, of which there are 20 importers, 4 domestic producers, and one of them is an enterprise with state participation, CHEM-Plus LLP (*included in the Privatization Plan*).

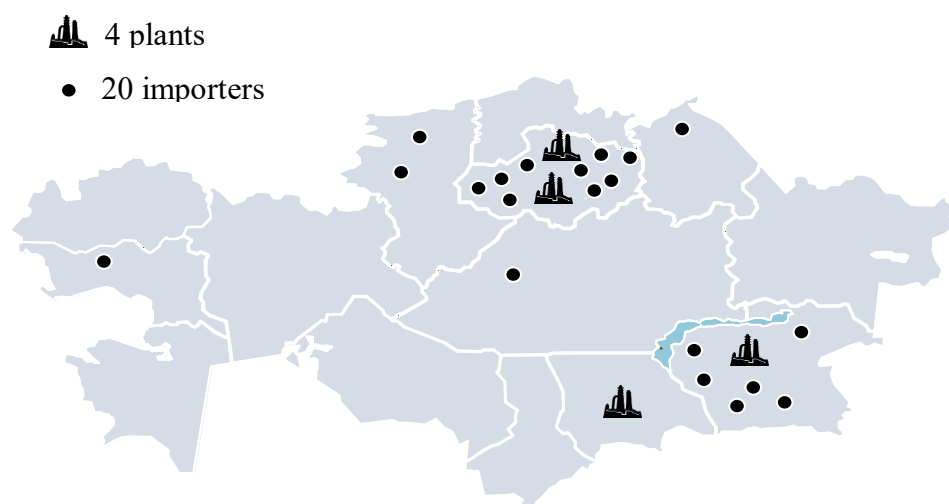


Fig. 23– Layout of manufacturers and importers of pesticides.

Markets for sale of insecticides, rodenticides, plant growth regulators (*stimulators*) are monopoly markets.

Markets for sale of fungicides, defoliants and desiccants are highly **concentrated** with undeveloped competition.

Herbicides market is moderately **concentrated**. During analyzed period, dominant position is occupied by Astana-Nan LLP, Shchelkovo Agrochem-KZ LLP and Syngenta Kazakhstan LLP.

Within the framework of analysis, administrative norms have been established that create unequal conditions for entities that sell pesticides.

1) in accordance with tax legislation, importers pay VAT using **offset method**, while domestic producers of pesticides operate **on a general basis**.

Thus, importers are in **privileged position** compared to local producers. This factor negatively affects concentration of competition and limits development of local

production.

In order to ensure equal conditions of competition, the Agency was asked to provide domestic producers with opportunity to also pay VAT using offset method. The proposal was supported by Ministry of Industry and Infrastructure Development and will be taken into account when making changes to the Tax Code.

2) currently there are 220 thousand farms in the Republic of Kazakhstan. Despite significant amounts of funds allocated by the state, no more than 10 thousand farmers are covered by support measures.

In 2020, volume of subsidies for pesticides amounted to 36.5 billion KZT, 9 thousand farmers received subsidies, while 100 large farms absorbed 13 billion KZT or 35% of allocated funds.

In 2021, volume of subsidies for pesticides amounted to 30.5 billion KZT, 7 thousand farmers received subsidies, while 100 large farms absorbed 11,3 billion KZT or 37% of allocated funds.

In the first half of 2022, total amount of subsidies amounted to 18.3 billion KZT, 1.5 thousand farmers received subsidies, while 100 large farms have already assimilated 10.2 billion KZT or 56% of allocated funds.

The Agency believes that this trend is due to imperfection of current subsidy procedure. Currently, subsidies are allocated on first-come, first-served basis, based on farmers' requests, and farmers are given opportunity to independently choose specific pesticide manufacturer.

This procedure looks well-developed and appropriate from industry policy point of view, however, possibility of choosing a supplier leads to **unequal conditions** of access to state support measures.

The analysis showed that price of pesticides varies significantly, for example, the price difference for herbicides ranges **from 2000 to 75000 KZT/liter**. As a result, state support measures are received only by large farms that have opportunity to purchase large volumes of more expensive products.

Taking into account the above, the Agency proposed to consider changing the procedure for allocating subsidies by setting ceiling prices for certain types of pesticides. This will expand the range of recipients of subsidies within current amount of allocated funds.

Also, as part of the analysis, actions of BASF Central Asia LLP revealed signs of violating competition protection legislation in terms of abusing dominant position expressed in **establishment of monopolistically high prices**. Investigation is currently underway.

2.13. Market for sale of crude petroleum coke

Analysis of market for sale of crude petroleum coke was carried out on the basis of Minutes of Meeting of Commission for Demonopolization of Economy dated May 4, 2022 regarding market for sale of petroleum coke in order to prevent violations of competition protection legislation.

During the analysis, it was found that production of petroleum coke is carried out by Pavlodar Petrochemical Plant (*hereinafter – PPP*) and Atyrau Oil Refinery (*hereinafter – ANPZ*). Calcination of petroleum coke is carried out by ANPZ and UPNK-PV LLP (*plant for production of calcined petroleum coke in Pavlodar region*).

According to NCE "Atameken", suppliers of petroleum coke on processing terms produced at refinery faced restrictions on shipment of petroleum coke for export.

Due to **failure to agree rail transportation plan** with shipment from PPP for export, the suppliers were forced to sell petroleum coke to UPNK-PV LLP at a price lower than export price. With that, shipment of petroleum coke for export from ANPZ was carried out freely.

According to information of "NC "Kazakhstan Temir Zholy" JSC, since the end of 2020, there have been restrictions on reception of goods by Chinese side due to increased quarantine measures, as well as in connection with reconstruction of transshipment sites at Alashankou station since May 2021.

With that, due to export restrictions that were imposed at the border with China and absence of alternative options, the suppliers sold petroleum coke to UPNK-PV LLP at price below market price or at prime cost.

During the analysis, it was found that UPNK-PV LLP purchases crude petroleum coke from suppliers, calcinates coke for further sale of calcined petroleum coke.

Thus, within the borders of Kazakhstan, UPNK-PV LLP, as buyer of petroleum coke, occupies **monopsonic position** (*more than 70%*).

Along with this, during analysis, it was found that UPNK-PV LLP purchased petroleum coke from foreign suppliers at higher price than from domestic ones.

In 2021, the average price for purchase by UPNK-PV LLP from domestic suppliers was 23,500 KZT/ton. Average purchase price from foreign entities was 91,700 KZT/ton.

In 2022, average purchase price of UPNK-PV LLP from domestic suppliers amounted to 46,900 KZT/ton, and from foreign entities amounted to 98,250 KZT/ton.

With that, according to one of the entities, **prime cost** of petroleum coke in 2021 amounted to **79,700 KZT**, in 2022 – **144,800 KZT**, with that, price of its sale to "UPNK-PV" LLP in 2021 amounted to **13,000 KZT**, and in 2022 – **39,200 KZT**.

Also, according to another market entity, cost of feedstock processing service in 2021 amounted to **14,000 KZT**, price of selling to UPNK-PV LLP also amounted to **14,000 KZT**. In 2022, this trend continued and costs and selling prices amounted to **37,000 KZT**.

It follows from the above that UPNK-PV LLP managed to get additional income by reducing costs of production and (or) sale at the expense of market entities selling petroleum coke to it, since suppliers sold petroleum coke at a price below market price or at price cost.

Thus, there are signs of abusing dominant position in actions of UPNK-PV LLP. In this connection, for the first time in practice of antimonopoly authority, investigation is being conducted on the grounds of establishing and maintaining monopsonic low prices.

Currently, compliance of antimonopoly authority's decision to initiate an investigation with the legislation is confirmed by judicial acts of the first and second instances. With that, it is currently being appealed to cassation instance. As result of measures taken, **establishment of fair market pricing at petroleum coke sales market will be ensured.**

2.14. Ammophos sales market

Based on complaints of agricultural producers (*hereinafter referred to as AGP*) and local executive bodies about increase of price for ammophos by 49% from October 2021 (125,000 KZT/ton) to January 2022 (185,000 KZT/ton), the Agency analyzed state of competition in ammophos sales market.

The purpose of analysis was to determine market share of Kazphosphate LLP, establish presence or absence of signs of violation of competition protection legislation.

In the world market of phosphoric fertilizers, more than 175 countries are consumers, only 30 countries produce phosphoric raw materials, and about 40 countries are producers of phosphoric acid and its derivatives. At a global scale, this market has **oligopoly structure.**

As part of analysis, it was found that **Kazphosphate LLP** is the only producer of ammophos at domestic market with dominant share of **60%**. According to results of analysis, actions of Kazphosphate LLP revealed signs of violation of law in terms of **establishing and maintaining monopolistic high prices.**

For example, when selling ammophos from the factory (*pick-up by consumers*), manufacturer included logistics services in cost of goods, thereby established selling price exceeded amount of expenses necessary for production and sale of ammophos. As a result of investigation, case materials were transferred to Department of Economic Investigations of Zhambyl region, where, as part of criminal case, market entity compensated damage in amount more than **697 million KZT.**

Currently, Kazphosphate LLP supports development of agriculture by participating in fertilizer subsidy system. Within the framework of memorandum concluded with the Government, the company sells ammophos at domestic market to responsible farmers at prices significantly lower than export prices.

Also, according to Kazphosphate LLP, difference between inflated price and new price was returned to customers who paid it, as **additional volume of ammophos, for 1.5 billion KZT and 383 million KZT in cash.**

With that, current state support measures aimed at supporting domestic agricultural producers lead to **stagnation** of mineral fertilizers market.

The state provided domestic agricultural enterprises with financial support in the form of subsidizing half of market value of mineral fertilizers.

The price of delivery of ammophos to domestic market is agreed by the authorized body at price below market and export prices.

Thus, the state artificially underestimated cost of ammophos at domestic market, as well as subsidized half of its purchasing costs.

State interference in entity's pricing is a constraining factor for development of the market, contrary to principles of interaction between business entities and the state.

With that, the issue of control by authorized state bodies over actual use and application of mineral fertilizers by agricultural producers remains unresolved.

Absence of estimated indicator of effectiveness of allocated funds allocated carries the risks of unfair use of mineral fertilizers. Domestic producers of mineral fertilizers report **export of state-subsidized products** by farms and peasant farms.

2.15. Wholesale markets of granulated sugar, processed milk

1. The selection criteria for analysis of **wholesale sugar market** were: social significance of the product, price volatility, complaints, media publications indicating signs of violation, import dependence over 35%.

According to BNS, during 2022, average sugar prices increased from 292 to 555 KZT/kg (by 90%).

The market by regions is highly **concentrated**. There are **4 large sugar producers** in the republic, located in 2 regions (2 in Zhambyl region – Taraz and Merke sugar factories, 2 in Almaty region – Koksu and Aksu sugar factories) and about 60 wholesale sugar market entities. Sugar importers of the Russian Federation and the Republic of Belarus also operate on the market.

According to the market balance, sugar production in Kazakhstan does **not cover domestic demand**. Imported products account for **50%** (for the first half of 2022, production - 121 641.4 tons, export – 128.1 tons, import – 89 753.7 tons, sales – 211 267.0 tons). The main sugar imports come from Russian Federation – 75.1%, the Republic of Belarus – 24.2%, in connection with this, introduction of ban on export of sugar and raw sugar from Russia and Belarus in 2022 negatively affected sugar market in Kazakhstan.

The volume of 4 plants' production in the Republic of Kazakhstan for the 1st half of 2022 amounted to 119.6 million tons. During analyzed period, manufacturers occupying dominant position at wholesale market of granulated sugar are "Taraz Sugar Factory" LLP and "Koksu Sugar Factory" LLP.

Domestic sugar market is **90% dependent on imported raw materials** – cane sugar. With that, there is a high cost of these raw materials and high costs for delivering it to sugar factories, despite zero import duties. In this regard, sugar of domestic production is **uncompetitive** compared to Russian and Belarusian sugar produced from sugar beet.

There is also low quality of beet production due to shortage of irrigation water, working capital at processors and producers, incomplete loading of production capacities, high production costs from sugar beet and imported raw sugar. Purchase of raw materials by sugar factories in 2022 was carried out at the expense of customers (wholesale buyers), who were represented by a large wholesale supplier - **KaIs Invest LLP**, which contracted **90%** of produced sugar.

With that, during specified period, there is restriction of access to produced sugar to other wholesale regional suppliers and sellers. As a result, antimonopoly authority

established signs of abusing dominant position in actions of Taraz Sugar Factory LLP in terms of unjustified **refusal to conclude contract**. In addition, signs of anticompetitive concerted actions have been established with respect to Taraz Sugar Factory LLP and Merke Sugar LLP, in terms of **setting and maintaining prices**, following which notifications were issued about signs of antimonopoly legislation violation in actions of market entities.

Due to non-execution of the notification, investigation has been appointed in relation to Taraz Sugar Factory LLP. By court decision, this entity was brought to administrative responsibility in the form of fine, for more than 8.5 million KZT.

In general, in 2022, antimonopoly authority issued **18 notifications** at sugar market (2 producers and 16 wholesale suppliers), initiated **4 investigations** (1 manufacturer and 3 wholesale sellers) and approved **12 external acts** of antimonopoly compliance. As a result of execution of notifications, price of sugar **decreased** by an average of **11%** for producers, **12.5%** for retail sellers. According to results of completed investigations, the state budget received **more than 8.6 million KZT**.

Also, sugar is included in List of exchange goods (*minimum size of sugar supply batch is equal to 60 tons*) and sale of such volumes should be carried out only through commodity exchange (*Order of Ministry of National Economy of the Republic of Kazakhstan dated 26.02.2015 No. 142*).

During the analysis, it was found that Taraz Sugar Factory has been selling products through commodity exchange only since May 2022. The plant registered and sold at commodity exchange ("*International Commodity Exchange "Kazakhstan" JSC*") only for SEC. Similar actions were detected at remaining 3 plants (*Koksu Sugar Factory LLP, Merke Sugar LLP and Aksu Kant LLP*).

The Agency sent materials to authorized body (*MTI RK*) on the need to consider initiating and considering administrative offense case against sugar factories under part 3 of Article 268 of the Administrative Code of the Republic of Kazakhstan on sale of goods included in the list of exchange goods, outside commodity exchanges.

Authorized body imposed a **fine** in amount of 428,820 KZT to Merke Sugar Plant and Aksu Kant, Koksu and Taraz plants for 1,255,200 KZT, respectively, due to non-compliance with requirements for sale of sugar through commodity exchanges as exchange commodity.

Thus, main reasons for current situation at sugar market in 2022 are: dependence on import; ban for export from main supplier countries (*Russia*); reduced yields in Brazil; export restrictions by India; absence of working capital; absence of warehouses for storage at SEC, in connection with which sugar is stored at the factory, that leads to late delivery to the regions; problems with delivery of sugar to the regions by rail.

Taking into account the above, the Agency proposed:

- **tighten control** over compliance with legislation in exchange trading by sugar market participants;

- consider amendments to normative legal acts on exchange trading to determine **category of entities** to which exchange trading will apply;

- consider allocating **revolving loan** to manufacturing plants for purchase of raw

materials;

- develop domestic beet seed production, as well as increase production of sugar beet, increasing efficiency of its processing through **modernization** of equipment, **reconstruction** of industrial complex;

- develop an **optimal mechanism** of subsidies, preferences for production of sugar beet and sugar factories;

- consider demonopolization of sugar sales market with transition from "tolling scheme" to **marketing** sales system.

Relevant proposals were sent by the Agency to Ministries of Agriculture, Trade and Integration, BNS.

In turn, **Roadmap for development of competition in agricultural sector**, adopted on December 29, 2022, provides for measures to develop **sectional rules** for sugar exchange trading and amending the List of exchange-traded goods in terms of determining **category of entities** to which sugar exchange trading will apply. Ministry of Trade and Integration is making appropriate changes to implementation of these measures (*they are being approved by state bodies*).

Also, the Agency has agreed **act of antimonopoly compliance** with large wholesale supplier of sugar, **KaIs-Invest LLP**, which provides for policy and rules of fair competition of market entity at relevant commodity market, as well as conditions of behavior of dominant entity to ensure registration of accepted and rejected requests, transparent terms of specifications, establishment of trade allowances, sale of sugar through commodity exchanges, etc.

2. Analysis of market for sale of **processed milk** (*dairy products*) was carried out in accordance with the Agency's Work Plan for 2022. The criteria for analyzing this commodity market of wholesale sale of milk were social significance of the goods, complaints, media publications indicating signs of violation.

The market by regions is characterized as highly **concentrated**. As part of analysis, more than 70 producers of processed milk, more than 160 market entities that carry out wholesale sale of processed milk were identified. According to market balance, domestic milk production mainly covers needs of the republic (*production – 279,938 tons, export – 7,640.2 tons, import – 11,920,2,02 tons, sales – 284,218 tons*).

In 2022, increase in milk prices amounted to **22.9%**, whereas over the past 3 years, price of milk has risen at the level of **5-7%**. Significant increase in milk price is associated with increase in prices for raw milk by 19.1%. The state allocated 18.6 billion KZT to subsidize milk production in 2022.

As part of monitoring dynamics of selling prices, **simultaneous increase in milk prices** (*2.5% fat content*) by **14.2%** by large dairy producers was revealed, while increase in prices of raw material for the period from January to April did not exceed **4.3%**. With that, other circumstances were taken into account, like dominant position, simultaneous increase in prices by producers, volume of dairy product sales, etc. There are also facts of equality and simultaneous price increases for different packaging volumes (*0.9 liters compared to 1 liter*). As a result, signs of **anticompetitive coordinated actions** of market participants were revealed. Based on results of analysis, **14**

notifications were issued, **3 investigations** were appointed and **7 external acts** of antimonopoly compliance were approved. As a result of execution of notifications, price of milk was **reduced to 10%**, consumer **savings** reached **more than 82 million KZT**, state budget received **more than 16 million KZT** based on results of completed investigations.

The analysis identifies both economic (*significant initial investments to enter the market, high cost of lending, etc.*) and administrative (*standards and quality requirements*) barriers.

Taking into account the above, the Agency proposed:

- development of domestic production of packaging material in order to **reduce import dependence**;

- implementation of joint investment projects, increasing provision of livestock farming with high-energy balanced feed due to development of feed production system. For these purposes, it is advisable to develop **feed balance** and update basic animal feeding rations taking into account natural climatic features, as well as determining optimal structure for sowing forage crops and promising forage and pasture crops;

- introduction of **counter obligations** at providing state support measures to market entities with development of **indicative figures** for development of competition.

On February 28, 2023, the Agency sent proposals to the Ministries of Agriculture, Trade and Integration, and Health. Ministry of Agriculture supported the Agency's proposals, in particular:

- 1) currently, it is planned to amend Rules for subsidizing costs of processing enterprises for purchase of agricultural products for production of high-value products²⁶ by introducing provisions on **counter obligations** for sale of finished products;

- 2) in order to reduce production costs, Ministry of Agriculture is working to **increase and improve volume of raw milk production**. In 2023, local executive bodies of regions plan to create and modernize 24 dairy farms with total production capacity of about 87.3 thousand tons of milk per annum. In addition, experience of the North Kazakhstan Region on financing dairy commodity farms through SEC will be replicated;

- 3) in order to solve the problem of **remoteness** of processing enterprises from production places of dairy raw materials and transport restrictions, Ministry of Agriculture has created favorable conditions by the following mechanisms: investment subsidies (*up to 25% of its cost*), subsidizing interest rates of loans and/or leasing for purchase of equipment;

- 4) regarding issues of production and provision of packaging material, Ministry of Agriculture of the Republic of Kazakhstan has reported that it is ready to assist in **opening of production**.

Mechanisms for price stabilization

²⁶ Order of the Minister of Agriculture of the Republic of Kazakhstan dated November 26, 2014 No. 3-2/615 "On approval of Rules for subsidizing costs of processing enterprises for purchase of agricultural products for production of high-value products" // <https://adilet.zan.kz/rus/docs/V14F0010087>;

The Agency, as part of executing orders of Presidential Administration order to assess measures taken to stabilize prices for *food staples*, analyzed existing tools and identified the following problems.

1) high level of dependence on imports, instead of import substitution policies, i.e., measures to increase supply in markets and commodity production, **direct and indirect price regulation** of food commodity markets, including use of revolving schemes, introduction of prohibitions and restrictions, are most used.

Their active use, along with restriction of trade price mark-ups for social products, concluding agreements on price restraint, introduction of prohibitions and restrictions, **reduces marginality** of market participants, possibility of subsequent investment in modernization or increase of existing production capacities, increases the risks of entrepreneurial activity and reduces investment attractiveness of the food market;

2) emphasis on administrative measures for stabilization of prices leaves **measures for development and saturation** of commodity markets in the background. In particular, state support of agricultural entities has turned into permanent support mechanism for farmers – recipients of subsidies, that does not stimulate growth of production volumes, capacities and emergence of new producers;

2) every year, the state allocates significant financial resources to contain and stabilize prices for food staples, providing state support to **all** segments of the population, depriving really needy strata (*vulnerable social groups*) of the opportunity to receive targeted equivalent assistance from state;

3) work on **price containment** is focused on conducting commodity interventions (*through stabilization funds, SEC and Food Corporation*) and allocation of preferential loans (*revolving schemes*) to retail chains, suppliers and manufacturers. Unlike subsidies, revolving schemes and stabilization funds are not aimed at supporting agro-industrial complex, saturating commodity markets, increasing supply in food markets as main tool for price stabilization, but at reducing the cost of food products, that does **not have** significant economic effect, continuing to demonstrate annual dynamic price increase;

4) Funds allocated for stabilization funds and revolving schemes account for **about 5%** of total market volume, making this approach extremely inefficient to ensure price stabilization;

5) despite annual increase in subsidies (*450 billion KZT in 2022*), **there** is no positive effect in agro-industrial complex, including recipients of subsidies;

6) difficult economic situation has developed in almost all agricultural commodity markets on subsidizing issues: **late allocation** of funds and **unequal distribution** of subsidies (*in 2020, in the context of regions, out of 9 regions, 3 regions did not receive declared necessary subsidies as follows: North Kazakhstan - 32%, Akmola - 31%, Almaty region - 48%. The rest of the regions received 100% subsidies.*

In addition, there are following problems: low availability of subsidies for major part of agricultural enterprises, no link of subsidies to final result and specialization of regions, imperfection of subsidy mechanism, as today the agro-industrial complex entities, whose business is not large by definition, do not have opportunity to receive subsidies.

Funds are distributed annually among limited number of large commodity producers, small and medium-sized businesses are subsidized on **residual basis**. Access to individual subsidies for new market participants is completely closed, since **criteria have been established that are focused on large participants**. There is instability in subsidizing agro-industrial complex in its main directions. For example, in egg production, rules of subsidy provision have **changed 7 times**.

Foreign experience of Italy and France (*direct regulation*) has shown that direct government intervention ultimately leads to **reduction in trade productivity** by average of **15%** and **overall increase** in retail prices. European Union is withdrawing from state regulation of retail food prices (*still in effect in some countries, but mainly concerns tariffs of natural monopolies*).

In **Turkey** (*Konya – indirect regulation*), main principle of subsidies is allocating subsidies for **final result** - finished agricultural products that have entered commercial circulation. This significantly improved sphere of state subsidies in Turkey and gave a significant increase in finished products. Transparency and quality of statistical data on stock trading allows government agencies to correctly and timely plan budget for next year with targeted identification of state program users to support agricultural producers.

In **Moldova** (*indirect regulation*), there are criteria for AGP: subsidy applicant cannot receive support from state if over the past 3 calendar years it has received subsidies totaling 9.0 million lei (*219 million KZT*). Also, state support has been established for **starting AGPs**, which is 65% of project cost and should not exceed 1 million lei (*24 million KZT*).

In this regard, due to ineffectiveness of instruments for restraining food prices by the end of 2021 and the first half of 2022, the **Government** was asked to provide the following measures:

- **abolition** of state price regulation, except in cases of food security threats;
- using **competitive advantages of region's agricultural sector** and developing its own local strategy for developing agricultural sector of economy, focusing on development of commodity production in markets with high share of import dependence;
- **revision** of subsidizing agro-industrial complex with focus on **problematic commodity markets, new market participants, determination of period for receiving subsidies – 3 years**;
- **gradual transition** from subsidizing to concessional lending;
- **support of effective projects** aimed not at reducing cost of goods, but at development of production infrastructure;
- **automated** regional balances of food products (*supply and demand*) in order to predict situation;
- improvement of tariff regulation, introduction of automated system for distribution of quantitative restrictions (*quotas, prohibitions*);
- introduction of **digital accounting** of goods (*from production to sale*) through exchange system in order to exclude shadow turnover of agricultural products,

stimulating state support measures related to development of exchange trading of agricultural products.

Also, activity of "NC **"Food Corporation"** JSC (*hereinafter referred to as the Company*) was analyzed for compliance with competition protection legislation in terms of concluding forward contracts with AGPs.

Based on results of the work, the Agency considered signs of anticompetitive actions of organizations, empowered by state with functions of regulating market entities, expressed in providing certain market entities with benefits or other advantages *that put them in a privileged position relative to competitors (pp.9 paragraph 2 of Article 194 of the Code)* and **failure** to provide market entities with equal access to state support measures (*paragraph 9, paragraph 2 of the Code*) in Forward Procurement Rules for 2022, approved by the decision of the Company's Management Board No. 17 dated May 27, 2022.

In particular, the Agency studied **675 contracts** and **294 additional agreements** between the Company and suppliers on purchased types of crops, concluded in the republic. As a result, **facts** of concluding contracts financed at different costs for the same qualitative characteristics, as well as providing **unequal access** to measures of state support for private entrepreneurship, were established.

Thus, the Rules establish that payment is calculated on the basis of standards that contradict competition protection legislation in terms of providing certain market entities with **advantages**. In addition, the Company's actions show signs of applying different conditions to equivalent agreements in forward purchases. In this regard, the Company has been notified to eliminate violations of competition protection legislation. Due to non-execution of notification, an investigation has been initiated against the Company.

According to results of investigation, an Order was issued to stop violating norms of the Code and ensure actions aimed at eliminating violations of competition protection legislation by excluding calculation of advance payment depending on categories of suppliers in subsequent annual forward procurement rules (*deadline - June 1, 2023*). Based on results of executing the Order, gradation for provision of financial resources for agricultural enterprises (*fulfilled, not fulfilled, partially fulfilled, extended term of execution (prolongation)*) and new entities that have concluded contracts for obligations to the Company) will be eliminated by ensuring equal access to state support measures.

2.16. Medicines sales market

Analysis of medicines sales market was carried out in accordance with the Agency's Work Plan for 2022.

Boundaries of commodity market for medicines sales are defined by regions - in wholesale sales, cities of regional significance – in retail sales.

In commodity market under consideration, **22 domestic manufacturers** of medicines operated during analyzed period.

Share of domestically produced medicines in proportion to volume of (*imported*) medicines from 2019 to 2021 increased from 20.7% to 31.9%. Share of imported products accounts for 71%.

155 licenses were issued in country's **wholesale market**, according to results of analysis, **149 entities** were identified.

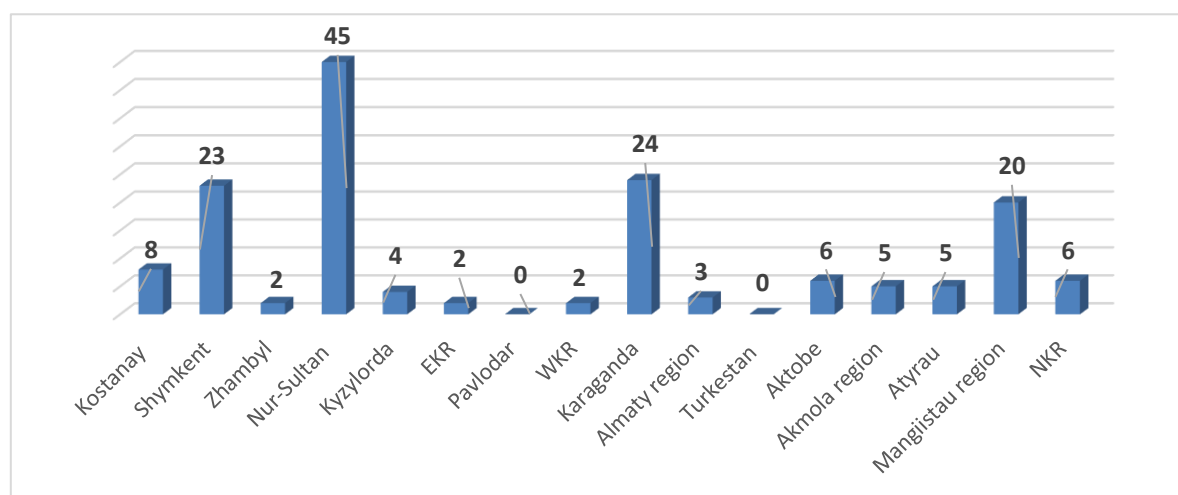


Fig. 24- Number of licenses issued by region.

Market entities that occupy dominant position in wholesale market of medicines within borders of individual regions are as follows: "KFK "Medservice plus" LLP, "Inkar" LLP, "L-pharma" LLP, "Medin" LLP, "Amanat" LLP, "SK-Pharmacy" LLP, "Sto-pharm" LLP, Makil LLP, Selmur Pharmacy LLP, Amity LLP, Alliance Farm LLP, Green Line LLP, Spectrum Pharma LLP, Medin LLP, NPO Zerde LLP, INKAR LLP Group and Medin LLP.

The wholesale market is characterized as:

- highly **concentrated** with undeveloped competition in the following regions: Kostanay, Pavlodar, West Kazakhstan, Karaganda, Almaty, Aktobe, Atyrau, Mangistau, North Kazakhstan regions and Astana.

- **moderately** concentrated in East Kazakhstan region.

According to analysis results, 16 market entities occupying dominant positions were identified in wholesale market of medicines.

In **retail market**, 3,717 licenses were issued across the country, according to results of the analysis, **1,108 entities** were identified. In 2022, number of pharmacies and pharmacy outlets was **9,861**.

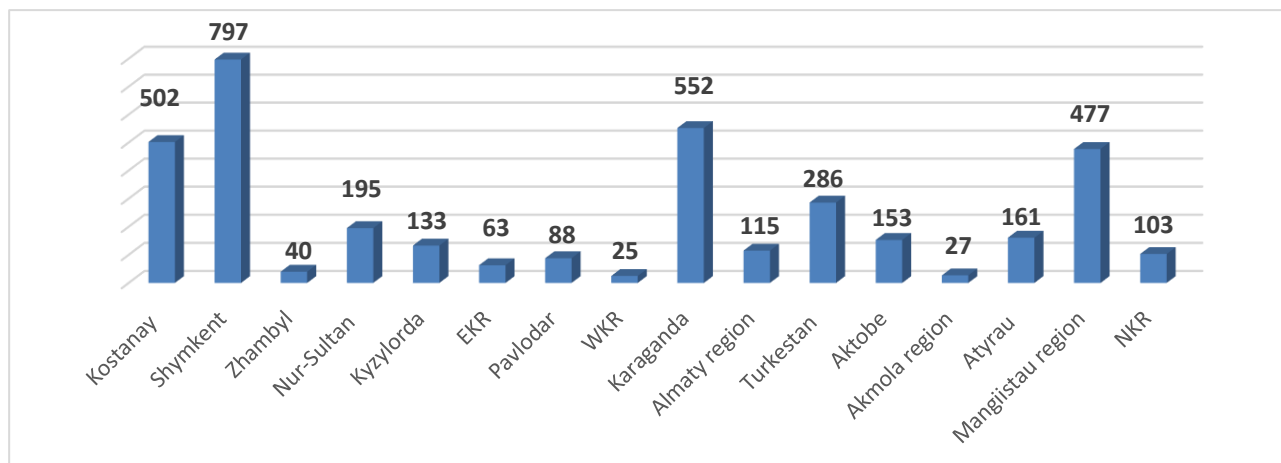


Fig. 25- Number of licenses issued by region in retail medicines market.

The retail market is characterized as:

- highly **concentrated** with undeveloped competition in the following regions: Kostanay, Shymkent, Zhambyl, Pavlodar, WKR, Aktobe, Atyrau, Mangistau, Almaty;
- **moderately** concentrated in Astana, East Kazakhstan region, Turkestan, Akmola, North Kazakhstan Region, Almaty;
- low-**concentrated** in Karaganda region.

According to results of analysis, 34 entities occupying dominant position were identified in the retail sale of medicines.

Despite large number of licenses issued throughout the republic (*wholesale market - 155, retail market - 3717*), allowing sales of medicines, the market in most regions is highly **concentrated**.

In accordance with Article 247 of the Code "On Health of People and Healthcare System", within the framework of guaranteed volume of free medical care and (or) in system of compulsory social health insurance, a single distributor represented by SK-Pharmacy LLP performs centralized procurement for 2 thousand medical organizations (inpatient and outpatient provision), providing patients with equal high-quality medicines at equal price .



Fig. 26- Dynamics of purchase of medicines by SK-Pharmacy LLP, billion KZT.

Out of 62 suppliers, which supply medicines, purchased by single distributor in 2021 and 2022, more than 45% was supplied by "Nobel Almaty Pharmaceutical Factory" JSC, "Chimpharm" JSC, "AK NIET" LLP, "KFK "MEDSERVICE PLUS" LLP, "Karaganda Pharmaceutical Complex" LLP, "STO-PHARM" LLP.

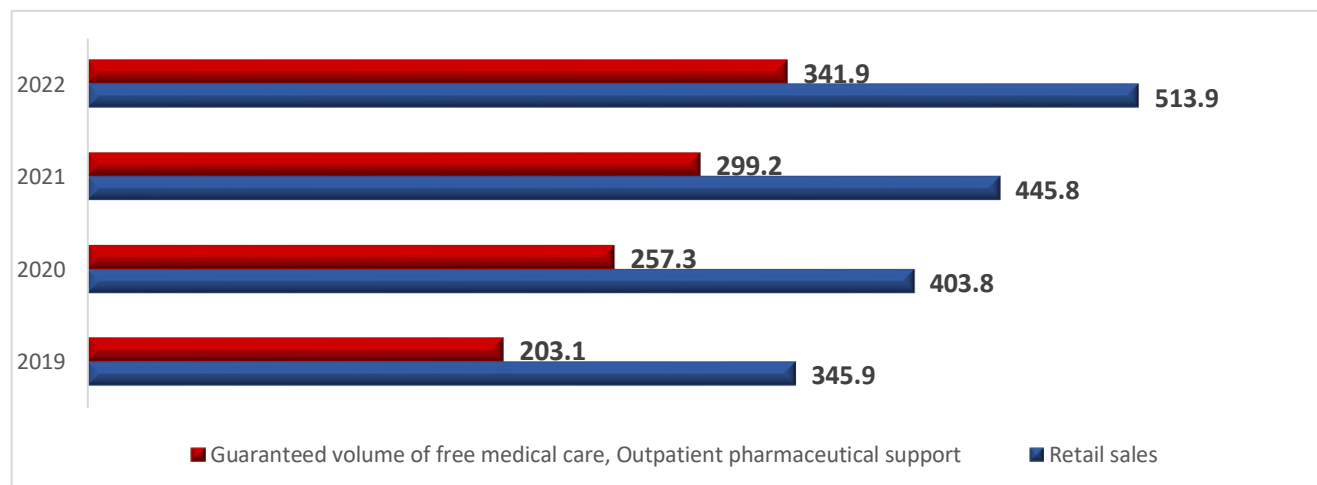


Fig. 27- Distribution of volume of medicines by consumption groups, billion KZT.

In 2022, in comparison with 2019, there was an increase in volume of medicine consumption within guaranteed volume of free medical care by 22.3%, in retail by 7.5%.

Volume of medicines purchased at the expense of public funds amounted to 203.1 billion KZT in 2019, 257.3 billion KZT in 2020, 299.2 billion KZT in 2021.

One of tools for supporting and developing pharmaceutical industry is conclusion of long-term contracts within Guaranteed Volume of Free Medical Care and Compulsory Social Health Insurance system with domestic manufacturers.

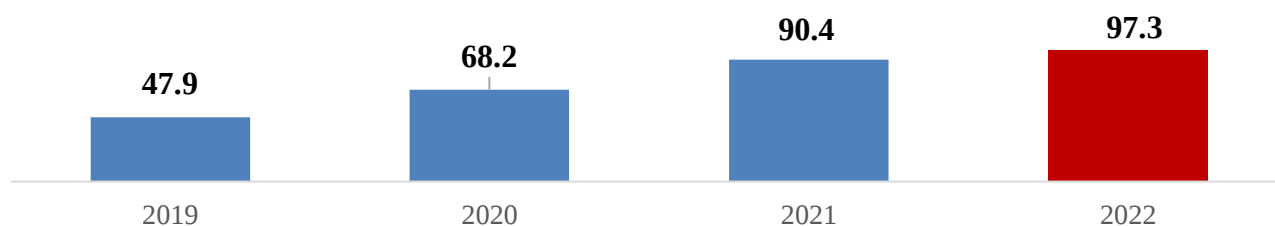


Fig. 28- Purchase of domestic medicines under long-term contracts, billion KZT.

In 2022, in comparison with 2019, there is an increase in volume of procurement of domestically produced medicines, increase amounted to 49.4 billion KZT. For 13 years of domestic manufacturers' support in the form of long-term contracts, production of 317 medicines or 39.3% of range of medicines has been established.

Barriers for competition development

According to the results of the Agency 's analysis, the following barriers to development of competition were identified:

1) **excessive price regulation** (6715 registered trade names of medicines), that does not correspond to international practice. Kazakhstan is the only country that regulates prices of all medicines. If compared with other partners in the EAEU, in the Republic of Belarus only medicines used for treatment of oncological and cardiovascular diseases are regulated, in Kyrgyzstan - medicines for treatment of COVID 19, in Russia only vital and important medicines are regulated, in Armenia there is no price regulation;

2) **long term** for entry of medicines into country's market ranging from 3 to 5 years, which is due, among other things, to non-compliance with deadlines regulated in NLA, absence of possibility for simultaneous passage of procedure for inclusion of medicines in various lists of medicines (*KNF, ALO, ED, etc.*), absence of deadlines for meetings of Formulary Commission, as well as absence of transparency in drug registration procedures;

3) import **dependence** of about **71%** due to absence of effectively built system for support and development of domestic manufacturers of medicines;

4) distortion of competition in terms of including generics produced in Kazakhstan in **long-term contracts** concluded for 10 years by including medicines and medical devices already registered by domestic producers in nomenclature of the competition. This issue was considered at Council for Identifying and Removing Barriers for Entry to Commodity Markets (*hereinafter referred to as Barrier Council, Crowd-sourcing platform under the Agency*)²⁷. Based on results of work, amendments were made to the Rules for organizing and conducting procurement medicines and medical devices, for exclusion of participation of domestic producers who already have long-term contracts in competition. Thus, the **barrier has now been eliminated**;

5) individual wholesale pharmaceutical companies sell medicines to their affiliated retail chains **at lower retail prices** than wholesale ones, that, according to small pharmacy organizations, limits competition in the market.

Almaty Department of the Agency addressed to "KFK "Medservice plus" LLP on identified signs of **applying of different prices or different conditions** to equivalent agreements with market entities or consumers without objectively justified reasons, notification on signs of violation of subparagraph 2 of Article 174 of the Code was issued. Currently, the notification is being appealed in court;

6) requirement stating that retail pharmaceutical market entities need to comply with **standard of good pharmacy practice**, provided for in Code "On Health of people and healthcare system". According to representatives of pharmacy business, non-compliance with GPP standards (*about 10 thousand pharmacies operate in republic, 564 of them meet GPP requirements, that is 5%*) could lead to withdrawal of significant number of pharmacies and monopolization of market from January 1, 2023. In this regard, the Associations initiated extension of transition period to GPP requirements until 2025, as well as amendments to current standard of good pharmacy practice.

²⁷ Barrier Council's Facebook page // <https://www.facebook.com/groups/372403647206099>;

Committee of Medical and Pharmaceutical Control of Ministry of Health of the Republic of Kazakhstan is working on compliance with GPP standard by pharmacy organizations, a schedule has been drawn up for transition of pharmacies to compliance with GPP standard until 2025.

Proposals and recommendations for competition development

Taking into account identified barriers for development of competition, the Agency proposes:

1) until 2026, in stages (*stage 1: 2022/2023, stage 2: 2023/2024, stage 3: 2024/2025*), to **abandon state intervention in pricing** of medicines, while maintaining price regulation for medicines purchased within guaranteed volume of free medical care and (or) in compulsory social health insurance system.

As systemic measures in work carried out by the Agency to improve pricing of medicines in 2022, amendments were made to the Code "On Health of People and the Healthcare System", under which Ministry of Health approves maximum prices for retail and wholesale sales of medicines included in list of medicines subject to price regulation by agreement with antimonopoly authority no more than once every six months (*amendments entered into force on March 7, 2022*), as well as in relevant Rules (*hereinafter referred to as Rules 247*)²⁸ regarding definition of criteria for inclusion in the list of medicines subject to price regulation.

In addition, on December 29, 2022, the Agency, together with Ministry of Health, approved **Roadmap for development of competition in healthcare sector**, which provides for measures to address problematic issues in medicines sales market, including reducing excessive price regulation, and ensuring access to public procurement of medicines within guaranteed volume of free medical care and (or) in system of compulsory social health insurance.

With that, the first stage of withdrawing medicines from state regulation should be decisive for making decisions on the rest. In fact, since January 2023, prices for 376 trade names of over-the-counter medicines (*homeopathic remedies, biologically active additives, vitamins and medicines for treatment of simple diseases*) have been deregulated. Deregulation of prices for medicines will open access to the market of Kazakhstan to many analogues of medicines, will promote competitive pricing, return of medicines that have left the market;

2) to simplify **entry into market**, it is necessary to amend Code "On Health of People and Healthcare System" and Rules 247, to approve uniform rules for formation of KNF, register of ceiling prices for medicines for INN purchased within guaranteed volume of free medical care and (or) compulsory social health insurance system, parallel inclusion into list of IPS and ID, to regulate periods of meetings of formulary commission;

²⁸ Order of the Minister of Health dated December 11, 2020 No. KR DSM-247/2020 "On approval of Rules for regulation, formation of ceiling prices and margins for medicines, as well as medical devices within guaranteed volume of free medical care and (or) in the system of compulsory social health insurance" // <https://adilet.zan.kz/rus/docs/V2000021766>;

3) to ensure complete **digitalization** of all business processes of "entry" of medicines and medical devices into Kazakhstan's market according to "one window" principle as public service (*in order to eliminate human factor and accelerate registration in all lists*).

Implementation of proposed measures will lead to emergence of new innovative medicines, attraction of BIG PHARMA, localization of production, reduction of import dependence.

Projected increase in volume of sales of medicines in retail segment may reach **22 billion KZT**.

2.17. Market of services for conducting PCR diagnostics of coronavirus infection;

The analysis of markets for PCR diagnostics of coronavirus infection was carried out in accordance with the Agency's Work Plan for 2022.

As part of the analysis, it was found that 96 medical laboratories operated in the market of services for conducting PCR diagnostics of coronavirus infection in 2020, and more than 130 medical laboratories in 2021. That is, there is an increase in medical laboratories for laboratory diagnostics for COVID-19 by PCR in 2021 by 35%.

In total, 134 market entities in the republic provide services for conducting PCR diagnostics of coronavirus infection.

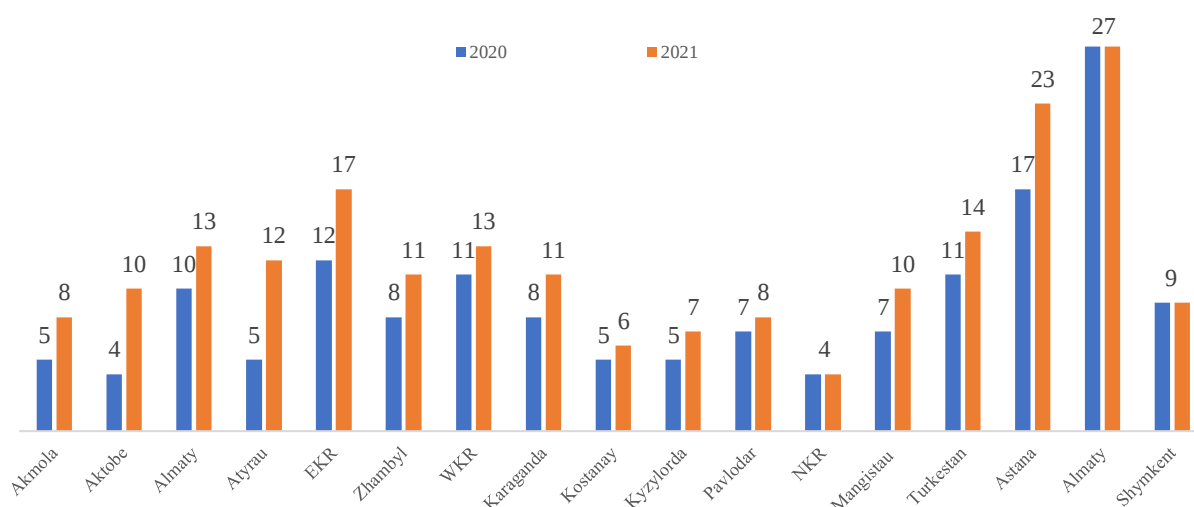


Fig. 29- Number of market entities by region.

Competition in market of services for conducting PCR diagnostics of coronavirus infection has been developing since 2021. New medical laboratories are being created; branches are being opened in the regions.

Basically, number of market entities has increased in Aktope, Almaty, Atyrau, East Kazakhstan, West Kazakhstan, Zhambyl, Turkistan regions and Astana and

Almaty. This happened due to opening of new branches of medical laboratories in the regions, as well as emergence of new players on the market.

In 2020, main share of the market was occupied by companies with branches: "KDL "Olymp" LLP, "National Center of Expertise" and "Invivo" LLP, and in 2021 "KDL "Olymp" LLP and "Invivo" LLP. The most developed market is in Astana and Almaty cities, in these regions the market is **low-concentrated**.

With that, markets in Akmola, Aktobe, Almaty, Atyrau, Karaganda, Kostanay, Kyzylorda, North Kazakhstan regions continued to remain highly **concentrated**.

During analysis, territorial departments of the Agency studied the price situation in market of services for conducting PCR diagnostics of coronavirus infection.

Dynamics of prices for laboratory diagnostics of Covid-19 **by PCR for the period of 2020-2021 tends to decrease from 19,220 to 9,000 KZT, or by 53.1%**. During the pandemic, work carried out by the Agency in 2020 to conclude antimonopoly compliance with large market entities contributed to price reduction. In the period of 2021-2022, there is a tendency in some laboratories to reduce the cost of PCR diagnostics **by 67.8% from 9,000 to 2,900 KZT**.

***For reference:** In 2020, the Agency concluded antimonopoly compliance agreements with 36 market entities, including "KDL "Olymp" LLP and "Invivo" LLP with selling price not exceeding 9,000 KZT. With that, certain laboratories of "Sunkar" LLP and "Aigerim" LLP reduced prices to 6 000 and 7 000 KZT, respectively.*

Mangistau regional Department of the Agency, based on the results of analysis, sent a notification to Firm Cha-Kur LLP on signs of applying different prices or different conditions to equivalent agreements with market entities or consumers without objectively justified reasons for signs of violation of subparagraph 2 of Article 174 of the Code (in 2020 and 2021 there were contracts, concluded with legal entities for services for conducting PCR diagnostics of coronavirus infection, in which price for services ranged from 8,300 to 6,000 KZT). Notification has been fully executed.

During analysis, **administrative barrier** for entry to market was identified. In accordance with sanitary regulations of Ministry of Health No. 684 dated September 8, 2017, materials containing erosive pathogens (including SARS-CoV-2) must be processed in laboratories that have conditions for working with risk group II microorganisms (only state laboratories). With that, during the pandemic, private laboratories provided diagnostic services for coronavirus infection (SARS-CoV-2) with temporary permission of authorized body (due to admission to work with risk group III-IV microorganisms). Based on results of analysis, proposals were sent to Ministry of Health on the need to eliminate this barrier.

This barrier was discussed at Republican Council on barriers, and also considered within framework of the Law "On biological safety". According to the new Law "On Biological Safety", risk group II is divided into pathogens of particularly dangerous infections and pathogens of infectious diseases. Within the framework of this law, Decree of the Government of the Republic of Kazakhstan dated November 11, 2022 No. 895 approved List of pathogenic biological agents, taking into account classification of pathogenic biological agents by risk and degree of danger, according to which SARS-CoV-2 is classified as pathogens of risk group II infectious diseases,

that allows conducting research in laboratories that have conditions for working with risk group III-IV microorganisms.

Thus, **administrative barrier has been eliminated**. In accordance with these legal acts, private laboratories are **allowed** to diagnose coronavirus infection. Lifted restrictions on entities' access to laboratory research market led to an **increase** in number of medical laboratories conducting COVID-19 diagnostics by PCR **by 30%** (from 156 to 203 units), as well as **decrease in cost** of PCR diagnostic services by an average of **8,700 KZT**. According to preliminary data, savings of population as result of reduction in cost of services can reach more than **13 billion KZT**.

2.18. Market of services for collection, removal, sorting and disposal of solid waste;

Analysis of market of services for collection, removal, sorting and disposal of municipal solid waste (*hereinafter referred to as MSW*) was carried out in accordance with the Agency's Work Plan for 2022.

As part of the analysis, it was found that in 2022, 379 entities carried out activities at the market for collection and disposal of solid waste (*composition of market entities by region is indicated in Table 16*), of which 13 organizations had state participation, 100 entities were operating at landfill market, 8 organizations from this number had state participation, and there were 20 entities at solid waste sorting market, including 2 organizations with state participation.

Table 16. The composition of market for collection and disposal of solid waste.

Region, city, oblast	2020	2021	8 month of 2022
Astana	3	5	5
Almaty	41	41	41
Shymkent	-	9	9
Akmola region	30	31	34
Aktobe region	13	14	15
Almaty region	29	33	35
East Kazakhstan region	10	11	13
Zhambyl region	25	28	29
Zhetysu region	6	9	12
West Kazakhstan region	14	15	14
Karaganda region	22	29	30
Kostanay region	20	21	22
Kyzylorda region	14	13	15
Mangystau region	15	16	18
Pavlodar region	4	4	4
North Kazakhstan region	13	14	15
Turkestan region	49	48	49
Atyrau region	16	18	19
Total:	324	359	379

In general, the market of services for collection, removal, sorting and disposal of solid waste is highly **concentrated** with undeveloped competition, 62 entities of market for collection, removal of solid waste occupy dominant position ($CP - 1 > 80\%$).

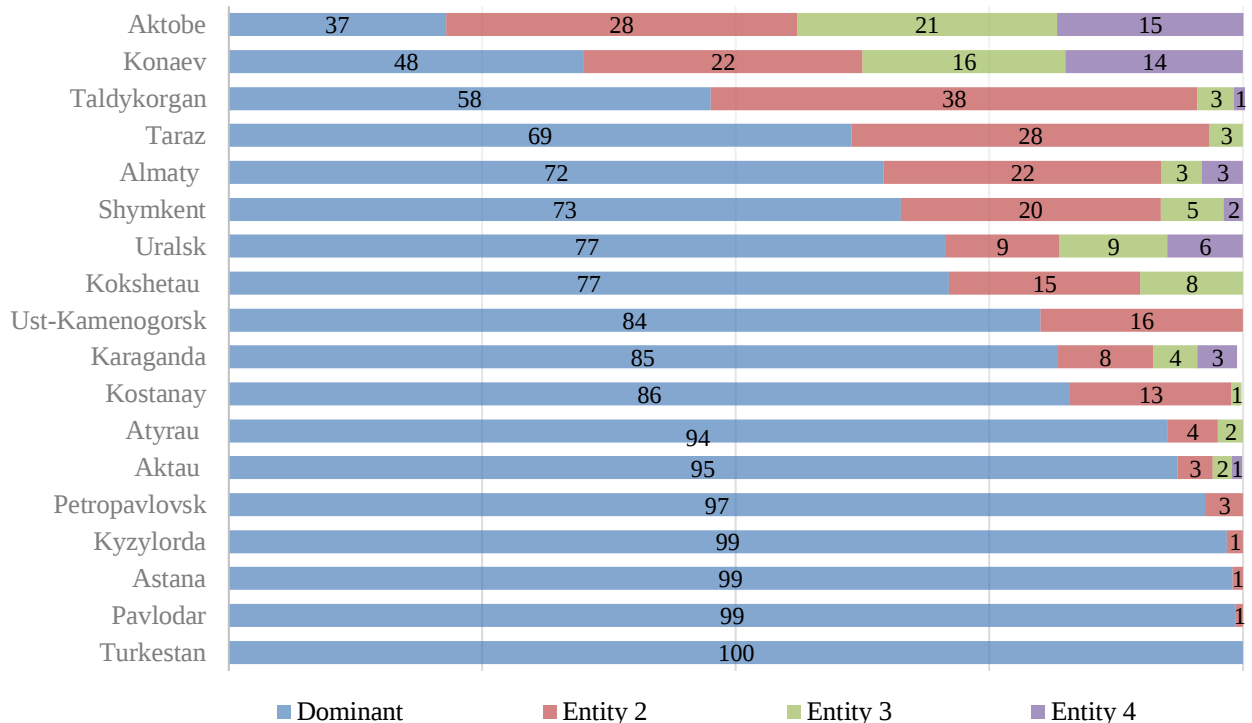


Fig. 30- Calculation of market shares.

As part of analysis, it was found that 56 market entities for waste burial services and 18 market entities for solid waste sorting services occupy monopolistic position.

Barriers for competition development

According to results of the Agency 's analysis, the following barriers to development of competition were identified:

1) current system of tariff regulation aimed at **curbing tariffs** hinders development of competition in the market and its investment attractiveness. The tariffs approved by maslikhats do not take into account real costs of companies. Many regions have not updated tariffs for collection of solid waste for years, despite increased costs and inflation. So, for example, the tariff in Kazakhstan varies from 94 (Taraz) to 595 KZT (Kosshy, Akmola region), with **6 times difference**. In addition, use of single local tariff in solid waste market completely **eliminates price competition** at the market;

2) conducting "**formal**" **selection** of participants in solid waste market within the framework of procurement procedures conducted by local executive bodies, transfer of state property to trust management (*land plots, special equipment, containers*), implementation of PPP projects. With that, there are no uniform criteria for determining potential bidders, that leads to consolidation of procurement lots.

Example of this is the tender held by the Department of Environmental Protection and Nature Management in Astana, at which during transfer of state property, **excessive**

requirements were set for potential participants (*possess 70 units of equipment for loading, compacting, transporting and unloading waste, purchase at least 600 new containers, renew equipment to Euro-4 and 5 levels, refresh up to 300 handed over garbage containers every year*). As a result, Clean City NC LLP was identified as the only supplier of solid waste removal services in this region, that is, requirements were prepared for a specific company. Astana Department of the Agency has submitted a notification according to which Department of Environmental Protection and Nature Management in Astana is ordered to conduct competitive procedures **taking into account administrative and territorial boundaries** within the city (*split into sectors*) (*repeated tender by Astana city Department of Environmental Protection and Nature Management will be announced after the end of court proceedings*).

In 2017, Almaty Department of Ecology and Environment signed an agreement with a consortium consisting of: AK Tartyp LLP, KazWasteConversion LLP, Green Recycle LLP through **direct negotiations** with 25-year period (*until December 31, 2042*), that limited access to solid waste market to other potential suppliers. Almaty Department of the Agency has submitted a notification to Almaty Department of Ecology and Environment about termination of PPP contract (*Department filed a lawsuit to the court for termination of PPP contract. The court proceedings are currently ongoing*).

There is also **restriction of access to landfills** for solid waste disposal. Practice shows that local executive bodies transfer landfills into possession for a long time. For example, in 2011, Kolkainar rural district of Zhambyl district akimat rented landfill to Zhasyl El Taraz LLP (*100% state participation*) for 49 years.

In addition, facts of assigning participants of solid waste market without conducting competitive procedures have been revealed. For example, Burabay district akimat by its resolution determined Clean City NC LLP as the only supplier in Shchuchinsk city. Akmola region Department of the Agency made a notification according to which Burabay district akimat was ordered to cancel abovementioned resolution (*order was executed*);

3) **presence of state** in solid waste market, despite measures taken to reduce its participation. As of today, 379 enterprises provide solid waste collection and removal services in the country, more than 90% of them are private organizations, that confirms non-expediency of state's presence at the market. However, local executive bodies initiate exclusion of their subordinate organizations from list of organizations subject to privatization. For example, Akimat of Zhambyl region proposes to exclude Zhasyl El Taraz LLP from Comprehensive Privatization Plan for 2021-2025 due to rehabilitation procedure and risks of tariffs increase by private company.

In general, as part of analysis, 12 territorial departments of the Agency identified **13 violations** of competition protection legislation, including assigning solid waste market participants **without competitive procedures** and imposition of **excessive requirements** to participants of the competition.

Proposals and recommendations for competition development

The Agency, taking into account identified barriers to development of competition, proposes to develop, together with Ministry of Ecology, Geology and

Natural Resources, the draft roadmap for development of competition in market for collection, removal, sorting and disposal of solid waste, which should provide for the following activities:

1) **revising norms** of calculating tariff for collection, removal, processing and disposal of solid waste (*introduce tariff indexation or establish deadlines and procedure for reviewing tariffs*);

2) make amendments and additions to Municipal Waste Management Rules in terms of determining **criteria** for selecting potential participants of solid waste market based on results of competition, eliminate transferring state property (*land plots, special equipment, containers*) **by one lot**, determine that validity of contracts concluded with service providers for collection, removal of solid waste should not exceed 5 years, for burial - no more than 10 years, regulate **division of market boundaries** for collection, removal of solid waste (*by districts and plots*) in cities of regional, republican significance by lots;

3) include into **Comprehensive Privatization Plan** organizations with state participation that provide services for collection and removal of solid waste in regions with well-developed competition.

For reference: On January 23, 2023, discussion with experts of results of analyzing market for collection, removal, sorting and disposal of solid waste with participation of MEGNR, Kazakhstan Waste Management Association "KazWaste", "Atameken" NCE took place, following which experts supported the Agency's proposals.

Based on results of analysis, the Agency, together with Ministry of Ecology, Geology and Natural Resources, developed draft **roadmap for development of competition in solid waste market** (March 27, 2023, sent for approval to MEGNR), which includes measures aimed at reducing state participation, removing barriers to entry of subjects into market of collection, export, burial, sorting of solid waste. Implementation of these measures will reduce concentration of market for collection and removal of solid waste (CR-1) from **80 to 35%** and volume of services for collection and removal of solid waste will be redistributed among its participants. According to forecast data, average volume of solid waste market will increase by 4 billion KZT.

2.19. Auto loan financing services market.

Analysis of auto loan financing services market was carried out in accordance with the Agency's Work Plan for 2022.

According to results of the analysis, it was found that the market of auto loan financing services is highly **concentrated**.

For the period from 2020 and 2021, dominant position of "Kaspi Bank" JSC, "Sberbank" (*Bereke Bank*) JSC, "Eurasian Bank" JSC has been identified, with combined share of dominance more than 70%. According to results of 9 months of 2022, "Eurasian Bank" JSC, "Kaspi Bank" JSC, "Bank Center Credit" JSC occupy dominant position with total share of 70%.

In 2022, market share of "Eurasian Bank" JSC and "Bank Center Credit" JSC increased due to participation in program for preferential auto loans without down payment **at 4% interest rate**

Outside preferential auto loans, largest volume of auto loans belongs to "Kaspi Bank" JSC. This bank provides auto loan services at "Kolesa" digital platform, acquired in 2013. With that, interest rate at this platform was **34%**.

Along with this, practice shows that when a bank provides loan, **insurance products of affiliated company are imposed**. For example, larger number of vehicles, purchased under auto loans issued by "Eurasian Bank" JSC, are insured through its affiliated "SC Eurasia" JSC.

Thus, there is **low level of competition** in auto loan services market, while market position of individual players is enhanced by expansion of their own digital platforms, resulting in high interest rates in commercial segment, risks of restrictions in choosing financial institution.

With that, as part of analysis, the Agency studied mechanism of distributing funds within the framework of preferential auto loans in 2022.

Within the framework of Rules for financing extended responsibility of producers (*importers*) by Operator, the organizations, fifty or more percent of voting shares (*participation shares in authorized capital*) of which are directly or indirectly owned by state and (*or*) national management holding, for further financing of projects in the manufacturing industry aimed at improving environment condition, approved by Government's Decree on September 2, 2021, No. 604 (*hereinafter referred to as Rules 604*), **100 billion KZT was allocated** for renewal of motor vehicles fleet by stimulating demand of population.

In accordance with the abovementioned Rules 604, Protocol of Commission of Industrial Enterprises dated May 13, 2022 established **funding limits** between Saryarka Avtoprom LLP and Hyundai Trans Kazakhstan LLP in amount of **58.4 and 41.6 billion KZT**.

The abovementioned mechanism of distributing funds was carried out through loan financing by quasi-public sector entities to second-tier banks.

"Zhasyl Damu" JSC provided a loan in amount of 100 billion KZT to "Industrial Development Fund" JSC (*hereinafter – IDF*) with interest rate of 0.1% for further lending to second-tier banks.

One of IDF's conditions at granting loans to second-tier banks is availability of branch network in the Republic of Kazakhstan. This requirement limited number of participants (*Freedom Finance Bank JSC did not meet this requirement*).

Based on the results of considering applications, "Industrial Development Fund" JSC distributed 100 billion KZT among 4 second-tier banks "Eurasian Bank" – 35 billion KZT, "Bank Center Credit" JSC – 27.5 billion KZT, "Halyk Bank" JSC – 22.5 billion KZT and "Forte Bank" JSC - 15 billion KZT by concluding long-term loan agreement for 30 years with interest rate of 1%.

With that, according to loan agreements, IDF has determined financing limits for each automaker, that excludes **competition between these second-tier banks**.

In general, it should be noted that, since 2015, preferential auto loan financing programs had following problematic aspects.

Main problem of preferential financing of auto loans is related to **discrepancy between supply and demand of cars**. Due to increased demand, preferential programs had to be suspended because allocated funds were running out.

As a result, borrowers has to **stand for a long time** in line for considering application at the bank, waiting for receipt of revolving funds.

This situation was aggravated by **long delivery of spare parts** due to lengthening of logistics routes during the pandemic, as well as **imposing additional equipment** by car dealers selling cars of domestic assembly.

Such actions constitute violation of paragraph 3 of Article 8-1 of the Law "On Consumer Rights Protection", which prohibits establishment of consumer obligations for paid goods (*works, services*), imposed additionally by the seller (*performer, manufacturer*)

With that, there is no administrative responsibility for violation of this norm. Consumer protection authorities, including Committee for Consumer Protection under Ministry of Trade and Integration and Ministry of Industry and Infrastructure Development itself in terms of protecting rights of consumers of Kazakh automotive industry, are limited only by right to file lawsuits to court for elimination of violations.

Imposition of compulsory accessories during sale of goods is also a violation of competition protection legislation, but only on condition that these actions violate rights of other suppliers of equipment, which requires them to submit appropriate applications and establish facts of restricting competition in the market for supply of additional equipment.

With that, the Agency believes that this measure of state support creates **risks of rising prices for domestic assembly cars**. Thus, according to information of Ministry of Industry and Infrastructure Development, in the first quarter of 2022, prices for passenger cars of domestic assembly **increased by 16%** compared to the same period of last year.

Earlier, on May 4, 2022, the Agency sent a letter to Ministry of Industry and Infrastructure Development about the need to **freeze prices at current level** until the limit of allocated funds is exhausted, in order to prevent speculative price increases. However, the Agency's proposal was not taken into account when launching preferential auto loan program.

Barriers for competition development

According to the results of the Agency 's analysis, the following barriers to development of competition were identified:

1) competition between automakers and second-tier banks is excluded due to preliminary distribution of financing limits, as a result of which consumer's choice of quality product is limited;

2) high interest rates in commercial segment, risks of imposing financial institution, limited choice of insurance company.

Proposals and recommendations for competition development

Taking into account identified barriers for development of competition, the Agency proposes:

- recommend to Ministry of Industry and Infrastructure Development to review mechanism of preferential auto loans in terms of eliminating limits of financing automakers;

- recommend to the Agency for Financial Market Regulation and Development to ensure possibility of choosing insurance organizations at lending (*Rules for provision of banking services and consideration by banks, organizations engaged in certain types of banking transactions, customer requests arising in the process of providing banking services*).

These recommendations have been sent to designated authorized state bodies and to National Bank.

Exclusion of financing limits will ensure choice of auto loan with most favorable annual effective lending rate. According to information of second-tier banks, corridor of annual effective lending rate has been developed in range **from 4 to 7.5%**. Thus, subject to application of minimum rate (4%), it is possible to **reduce overpayment** of loan by consumers in seven-year period **to 2.5 million KZT**.

Chapter 3. Tasks of antimonopoly authority

In 2023, the Agency's activities will continue in the following **key areas**.

1. Improvement of competition protection legislation

Despite the consistent development of competition protection legislation, the rapidly changing external environment actively creates new challenges for competition and requires measures to further improve competition protection legislation. In 2023, taking into account the execution of instructions to **improve the efficiency of competition regulation in order to change the structure of commodity markets and business development**, given by the Head of State at an expanded Government meeting on the country's socio-economic development on April 19, 2023, the Agency plans to develop a number of legislative measures forming the basis for "**sixth antimonopoly package**", including the following areas:

1) obtaining **access to information bases** of state bodies.

The main activity of antimonopoly authority is based on collecting and processing data (*information*), which makes it possible to determine the structure of markets and take antimonopoly response measures. Taking into account that access to departmental information of state bodies is legally limited, the Agency is working on legislative provision of **access** to information and databases of state bodies.

With that, for the purpose of information-and technical access to data, it is planned to develop **a digital ecosystem** for the Agency (*creation of a digital platform, integration with databases of government agencies, including through Smart Data Ukimet*);

2) **reducing the administrative burden** on market entities and business development.

Violation of competition protection legislation is expressed in monopolistic activities limited by the Code, carried out by market entities, including micro and small business entities.

In order to identify and suppress violations committed in commodity markets where large business entities operate, it is proposed to **exclude micro and small businesses** from the sphere of antimonopoly control.

Also, for further development and support of business, the Agency proposes **exclusion** of administrative liability for certain antimonopoly violations (*concerted actions, unfair competition*);

3) **strengthening** antimonopoly response measures.

In order to fulfill urgent orders of the Head of State, it is proposed to carry out an analysis to identify the dominant or monopoly position of a market entity **during the investigation** itself.

The proposed procedure will allow the Agency to take emergency response measures in emergency situations in the socio-economic sphere.

In turn, it is proposed to provide a **simplified procedure** for conducting unscheduled analysis for operational response measures;

4) measures to **demonopolize** entities of commodity markets.

In order to **activate** a mechanism for demonopolization of market entities that restrict competition, it is proposed to **increase** the period of repeated abuse by a market entity of its dominant or monopoly position from one calendar year to five years. An increase in the period of repeated abuse will be the basis for applying to court with a claim for a **forced split** of the market entity. Today, the use of the current mechanism is not possible due to the long period (*up to 2-3 years*) associated with proving the existence of violation;

5) consolidation of legal status and powers of the Agency's Management Board at the legislative level, the introduction of preliminary public discussion of transactions on economic concentration, and its optimization.

To increase the transparency of the Agency's decisions, it is proposed to determine the status and powers of the Agency's **Management Board** at the legislative level.

In addition, at present, information about economic concentration is a trade secret of market participants and is not disclosed without their consent. With that, considering that in practice such transactions can be carried out in order to strengthen market influence, it is proposed to introduce a **preliminary public discussion** of such transactions to maximize the involvement of the public and business community in this process. This will minimize negative consequences (*restriction, elimination of competition*) as a result of transactions.

Also, in order to reduce the regulatory burden on businesses, the Agency proposes to **reduce the number of transactions** requiring prior approval by antimonopoly authority and completely remove transactions with certain assets (*land plots, buildings, structures, facilities, premises/parts of premises, construction works-in-progress that do not have industrial purposes*) from regulation. Moreover, when approving these transactions, it is planned to **reduce the list** of necessary documents by about 2 times and optimize procedural deadlines.

In turn, it is planned to adopt legislative measures aimed at introducing measures provided for roadmaps for the development of competition adopted jointly with the sectoral central state bodies, which, among other things, provide for point solutions for demonopolization of commodity markets. These are deregulation, including price deregulation, separation of monopoly groups with state participation, privatization of state-owned companies, measures to ensure direct and equal access to monopoly resources and infrastructure, increased exchange trading, evaluation of efficiency of use, and competitive distribution.

A separate direction for improving competition protection legislation is related to executing instructions announced in the Presidential Address dated September 1, 2022.

In his speech, the Head of State K.K. Tokayev noted that "institutional solutions are required for further demonopolization of the economy. It is necessary to define the concept of "**conglomerate**" at the legislative level. Inter-related market entities are required to obtain permission for economic concentration. All their transactions should be carefully checked, including signs of using non-market prices."

Taking into account these instructions, the Agency proposed a **definition of conglomerate** that is relevant from an antimonopoly regulation point of view, in particular, the following **qualifying features of conglomerate** are identified:

- the presence of dominant (*monopoly*) position in the commodity market (*without share, the entity does not have "market power"*);
- simultaneous presence of an entity in adjacent commodity markets.

The formation of conglomerates leads to a high degree of market concentration, the emergence of barriers to entry into commodity markets, selective patronage, and favoritism from the state. Monopoly groups of companies, using limited resources and infrastructure, restrict access of other entities to relevant and adjacent commodity markets.

In addition to the concept of conglomerate, the Agency proposed to maintain a **register of conglomerates**, as well as analyze and monitor their activities. In order to ensure control over the creation of conglomerates, an amendment to Article 205 of the Code on analysis of vertical Mergers and Acquisitions has been proposed.

In general, these amendments will prevent unjustified price increases for monopoly products of large holdings and thereby reduce the economic burden and marginal costs of small and medium-sized businesses using these products when selling goods or providing services. The amendments are included in the draft Law "On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Business issues".

2. Restriction of state participation in entrepreneurial activity

Taking into account the observed trend of increasing state participation in entrepreneurial activity, it is extremely important **to change the current role of the state** in the economy by selectively reducing it and ensuring equal conditions for all market participants. In this regard, **limiting the state's participation in entrepreneurial activity** is identified as one of the key areas in the Agency's activities.

Privatization

1) An important task is to ensure **an effective and balanced privatization process**. There are successful examples in international practice, for example, "rapid" privatization in Poland, balance is needed between "shock therapy" and planned IPO. It is necessary to use basic **selection indicators**, upon reaching which the entity will be subject to privatization. Decisions on sales options should be made taking into account the current **market structure**. One of the new approaches is **privatization "on request"**, it gives the entrepreneurs the right to choose the object of privatization. The object is subject to sale if there is a private initiative.

2) In addition, there is a task to conduct an analysis of state property in order to form a list of new objects **for transfer to a competitive environment** (*as part of the protocol of the expanded meetings of the Government with the participation of the President dated January 26, 2021*). With that, in order to prevent the increasing presence of the state in entrepreneurship, the Government needs to regulate the procedure for **excluding enterprises from privatization plan** in coordination with antimonopoly authority, providing for the responsibility of political officials for its non-fulfillment.

3) In order to prevent monopolization **in the private sector**, it is necessary to legislate developed amendments to the Agency for Privatization of Large Facilities. Execution of the Agency's proposals will reduce the share of state participation in the economy, becoming an additional incentive for the development of private entrepreneurship and competition.

4) Along with this, there is a task to ensure the implementation of all projects with a state participation share of less than 50% **in enterprises that have already paid off** and the introduction of a **limit on the period of state participation** in such projects to 5 years.

***For reference:** in accordance with paragraph 5 of Article 192 of the Code, the creation of legal entities, if than 25% of their shares (participation interests) belong to the state, is carried out with subsequent sale of shares (participation interests) of the state, taking into account payback period of the project. With that, according to preliminary data, today there are more than 2,630 enterprises with 50% or less state participation.*

Reducing list of activities permitted for quasi-public sector entities

1) Today, the problem of non-compliance of activities actually carried out by certain quasi-public sector entities, with current List - 1095 remains unresolved, which became possible thanks, inter alia, to presence of a norm in the Code that allows state to participate in entrepreneurial activities in the form of **previously established** state enterprises, legal entities, more than 50% of shares (*participation shares*) in which belong to state, and their affiliates.

In this regard, it is necessary to **exclude** subparagraph 5 of paragraph 1 of Article 192 of the Code, followed by bringing into compliance activities of subordinate legal entities (*direct or indirect ownership of shares (participation shares) in which is more than 50%*), by excluding activities that do not correspond to those approved in List - 1095 from statutory documents.

2) In addition, the Government needs to conduct **audit** of activities of all quasi-public sector enterprises for compliance with the Code, taking into account violations identified during monitoring by the antimonopoly authority of the activities of quasi-public enterprises by antimonopoly authority (*described in section 1.3 of this report*).

3) In addition, there is a task to adopt **new format of list** of activities permitted for quasi-public sector entities (*hereinafter referred to as the new format of the List*) with information concerning names of market entities, definition of geographical boundaries and timing of their activities, followed by cancelation of current List 1095. This is due to need for more effective reduction of state participation in economy.

The Agency has already developed new format for the List. In addition, amendments in terms of granting the Government with competence to specify information on names of market entities, determining their geographical boundaries, timing of activities are **included in draft** Law "On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on development of quasi-public sector", developed by the Ministry of National Economy.

4) In addition, it is necessary to take exhaustive measures to **review functionality** of all subordinate analytical and research organizations for their **duplication** with

competence of state bodies, excluding such facts if they exist. Earlier, according to results of the audit (*40 subordinate analytical and research structures*), it was found that various research topics are planned annually to finance subordinate institutes, which are formally executed to receive funding.

Measures, implemented to limit state participation in entrepreneurship will also be aimed at reducing number of state operators and state orders. With that, in order to eliminate negative effects for Kazakhstan's economy, it is necessary to introduce **prohibition** on creation of single operators as monopolies that harm healthy economy. In order to increase efficiency of state property management, reduce state participation in entrepreneurship and create conditions for development of private sector, it is necessary to resume previously existing **moratorium** on creation of quasi-public sector entities, with exception of its effect on social sphere entities and (or) life support of settlements. The task of introducing moratorium until December 31, 2025 is provided for Action Plan for reform of quasi-public sector in the Republic of Kazakhstan²⁹.

Also, significant driver for development of private initiative could be adoption of measures to **abolish** institution of state orders, implementing particularly urgent and important projects through public procurement mechanism, if necessary, purchasing them from single source.

The corresponding work is planned to be completed by the end of 2023.

3. The most important task is to increase coverage of state support measures for private entrepreneurs on competitive principles. Now personalization of state support is underway – large businesses are mainly supported.

In this regard, **equal access to state support measures** is an important strategic direction. According to the new law, monitoring of existing and approval of new state support measures is underway. The final beneficiaries of recipients of state support measures (*concessional lending, subsidies, equity participation, offtake contracts, etc.*) will be analyzed.

Important aspect is procurement of public and quasi–public sectors. It is advisable to consider them as additional business support tool with an emphasis on supporting SMEs.

4. The Agency also faces a number of new challenges, including **phasing out from price regulation**. In his Address, dated September 1, 2022, the Head of State K.K. Tokayev outlined the need to solve a number of priority tasks, in particular, it was noted that "administrative price regulation reduces investment attractiveness of entire industries, leads to shortage of goods and dependence on imports. Therefore, it is necessary to **phase out state intervention in pricing**. The exception will be made for uncompetitive markets – monopolists' tariffs will remain under tight control."

²⁹ Resolution of the Government of the Republic of Kazakhstan dated September 6, 2022 No. 654 "On approval of Analytical Report on reform of quasi-public sector in the Republic of Kazakhstan and Action Plan for its implementation" // <https://adilet.zan.kz/rus/docs/P2200000654>;

Price regulation, being an intervention in market pricing process, gives incorrect investment signals to potential competitors regarding profitability of corresponding commodity market.

Attempts to regulate prices for individual goods by setting **price limit have led to "pull-up" effect, when prices begin to pull up to limit threshold** set by the state. **Costly pricing method** reduces efficiency of resource allocation, pushing regulated market entities to increase their expenditure side (*Averch-Johnson effect*), its growth is subsequently covered by direct increase in selling prices.

Differentiation of prices and tariffs by consumer groups (*for cross-subsidizing*) remains a significant problem, which, for example, negatively affects competition between energy supply organizations for household consumers and in turn leads to increase in average tariff (*after decrease in volumes, costs and losses fall on remaining consumers*).

In this regard, it is important to increase efficiency of markets, create favorable institutional and organizational conditions for free competition, and shift emphasis from state regulation of prices to **market pricing**. Work in this direction is already underway: **phased deregulation of prices for medicines** has been proposed.

5. Improving activities of antimonopoly authority

The development of competition policy requires significant improvement in quality of measures to protect and promote competition, further improvement of law enforcement practice. In this regard, work will continue on improving activities of antimonopoly authority.

In particular, one of the main tasks is conducting full-fledged multi-factorial economic analysis of market situation, taking into account current trends in development of competition protection legislation. In this regard, methodology of conducting planned analyses will be revised ³⁰ in order to improve quality of assessing mechanisms of state, normative regulation of markets, economic conditions of their functioning, impact of competition measures on economic macro indicators, using econometric methods of analysis.

Transparency of analyses, publication of results and the measures taken will be ensured. Experts, entrepreneurs and their associations, as well as scientific personnel of higher educational institutions will be involved in this work. This will improve quality of analyses with a focus on identifying barriers and forming system solutions.

To improve efficiency of antimonopoly authority, a functional analysis of the Agency will be carried out. Based on the results of analysis, an algorithm of interaction between central office and territorial divisions will be developed, eliminating duplication and aimed at strengthening internal control. For this purpose, forms of collecting information, reports, automated accounting, deadlines for submission of

³⁰ Order of the Chairman of the The Agency for Protection and Development of Competition of the Republic of Kazakhstan dated May 3, 2022 No. 13 "On approval of Methodology for analyzing state of competition in commodity markets" // <https://adilet.zan.kz/rus/docs/V2200027883>;

information and its analysis, range of issues to be rechecked and monitored, will be developed. Investigations and analyses will be conducted on ongoing annual basis.

Improving effectiveness of antimonopoly regulation will be one of the Agency's main tasks. To this end, appropriate amendments will be made to regulatory legal acts regarding investigation procedures and analyses conducted within the framework of antimonopoly control.

Conditions for selecting commodity markets and their participants for analysis and monitoring will be specified. Procedure for conducting unscheduled analyses will be optimized taking into account practice and new requirements of price control at commodity markets.

Special attention will be paid to applying current methodology for analysis of competition in relation to digital economy. Emergence of new digital products offered under new monetization models, mechanisms of interaction between suppliers and buyers leads to change in market structures, and antimonopoly authorities of many countries face the need to change traditional sets of tools used by regulatory authorities to perform their functions.

Practice of conducting investigations will be strictly regulated through adoption of appropriate instructions, which will determine signs of each type of antimonopoly violations, timing of examinations, requesting and studying requested information.

The monitoring carried out within the framework of price control will be supplemented by conditions for selecting commodity markets and information sources. In order to reduce the burden on businesses, priority will be given to existing databases of state authorities, following the definition of information interaction with them.

In order to optimize the process of collecting information necessary for analysis and response measures, work will be carried out to expand indicators and the list of commodity markets of the dashboard "analytical map of competition state", which will allow monitoring changes in the concentration of commodity markets, dynamics of sales volumes, prices and basic costs of participants in real-time.

Taking into account the corporate governance mechanism implemented in the Agency, which provides for a collegial format of coordinating results of investigations, analyses, economic concentration, and types of activities, this will increase the transparency in making key decisions.

Measures developed to improve mechanisms for protection and development of competition will be aimed at reducing a number of violations by increasing the effectiveness of **preventive measures** of antimonopoly regulation (*development of incentives for market participants to adopt acts of antimonopoly compliance, developing practice of explanations and recommendations*), as well as improving quality of decisions taken by the antimonopoly authority.

An important task for effective competition policy, proceeding from the President's instructions, given at an extended meeting of the Government with the participation of the President on April 19, 2023, is to **improve the qualifications of judges** specializing in cases involving violations of the antimonopoly legislation.