



# Kazakhstan ❖

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

The Kazakh natives were conquered by Russia in the 18<sup>th</sup> century and Kazakhstan became a Soviet Republic in 1936. During the 1950s and 1960s “Virgin Lands” programme, Soviet citizens were encouraged to help cultivate Kazakhstan’s northern pastures. The influx of immigrants skewed the ethnic mix and non-Kazakhs outnumbered natives. The *Perestroika* in 1991 caused many of these newcomers to emigrate. Kazakhstan is the largest of the former Soviet Republics after Russia and extremely sparsely populated (6 per km<sup>2</sup>).

## Economy

Kazakhstan, geographically the largest of the former Soviet Republics, excluding Russia, possesses enormous fossil fuel reserves and plentiful supplies of other minerals and metals. Agricultural sector has also an important role in the Kazakhstan economy. In 2002, Kazakhstan was the first country in the former Soviet Union to receive an investment-grade credit rating. Although the country is aggressively pursuing diversification strategies for the growth but industrial sector have been playing a vital role in its growth.

Since 2009, Kazakhstan’s economy has been growing on fast pace largely because of increased oil and gas production. Oil output is projected to reach 2.1 million barrels a day by 2020. Kazakhstan has an estimated 15 percent of world uranium reserves and remains the world’s largest producer of uranium. Dependence on commodity exports is excessive, but energy and manufacturing have recently shown solid growth. Trade with China is increasingly important. Kazakhstan has an ambitious economic development programme, but resource nationalism and corruption deter progress.

## PROFILE

Population:	17.73 million**
GDP (Current US\$):	201.68 billion**
Per Capita Income: (Current US\$)	12,007 (Atlas method)** 14,100 (at PPP)**
Surface Area:	2.724 sq. km
Life Expectancy:	69.94 years*
Literacy (%):	99.5 (ages 15 and above)*
HDI Rank:	69*

### Sources:

- World Development Indicators Database, World Bank 2011
- Human Development Report, UNDP, 2011
- CIA World Fact Book 2012

\* For the year 2011

\*\* For the year 2012

Kazakhstan’s Caspian Sea ports, pipelines, and rail lines carrying oil have been upgraded, civil aviation and roadways continue to need attention. Telecoms are improving, but require considerable investment, as does the information technology base. Supply and distribution of electricity can be erratic because of regional dependencies, but the country is moving forward with plans to improve reliability of electricity and gas supply to its population. At the end of 2007, global financial markets froze up and the loss of capital inflows to Kazakhstani banks caused a credit crunch.

The subsequent and sharp fall of oil and commodity prices in 2008 aggravated the economic situation, and Kazakhstan plunged into recession. While the global financial crisis took a significant toll on Kazakhstan’s economy, it has rebounded well, helped by prudent government measures. GDP increased 7.5 percent year-on-year in 2011, and 5.0 percent in 2012. Rising commodity prices have helped the recovery. Despite solid macroeconomic indicators, the government realises that its economy suffers from an overreliance on oil and extractive industries, the so-called

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“Dutch disease”. In response, Kazakhstan has embarked on an ambitious diversification programme, aimed at developing targeted sectors like transport, pharmaceuticals, telecommunications, petrochemicals and food processing. In 2010, Kazakhstan joined the Belarus-Kazakhstan-Russia Customs Union in an effort to boost foreign investment and improve trade relationships and is planning to accede to the World Trade Organisation (WTO) in 2013.<sup>1</sup>

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

### Competition Evolution and Environment

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

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

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

The Agreement on Common Principles and Rules of Competition has entered into force since January 2012

(signed between Kazakhstan, Russia and Belarus). The Agreement provides for the development by the parties of a common competition policy to ensure the free movement of goods, services and capital, harmonise the parties’ national legislation on competition, and guarantee free economic activity and effective functioning of commodity markets within the common customs territory of the Customs Union member states. It sets forth the procedure for the parties’ anti-monopoly agencies interaction as regards to competition policy.

Besides, just as other CIS countries, Kazakhstan had a relevant piece of legislation – the Law on Natural Monopolies of July 1998, which regulates the activities of natural monopolies in Kazakhstan and provides for one of the functions of the anti-monopoly authority.

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

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

The anti-monopoly regime in Kazakhstan, as such, is fairly well-developed, and is, in many respects, very similar to those of the other Central Asian CIS countries. The country has an old law called the ‘Law on Unfair Competition’ passed in 1998, which was subsequently amended by Law No. 125 of 2000 of the Republic of Kazakhstan, effective from 2001. The Law of the Republic of Kazakhstan On Competition and Restriction of Monopolistic Activities adopted on July 07, 2006 (the “2006 Competition Law”) replaced the 2001 Competition Law.

On July 27, 2007, the Law of the Republic of Kazakhstan on Amendment of Certain Legislative Acts of the Republic of Kazakhstan Concerning the Activities of Sector Regulators amended the 2006 Competition Law. This regulatory legal act became a milestone in the regulation of competition protection and turned the unreasonably rigid approach into a liberal approach.<sup>3</sup> On 25 December 2008, Kazakhstan adopted a new competition law (the “Competition Law”).<sup>4</sup>

## Competition Law

After 2001 Anti-monopoly law, Kazakhstan's Competition law has been amended several times i.e in 2006, 2007 and 2008. On 25 December 2008, Kazakhstan adopted a new competition law (the "Competition Law"), effective to date, which continued the trend for liberalisation of business regulation. However, this law contains numerous contradictory provisions, which superfluously restrict free entrepreneurship.

Besides, one of the key anti-market provisions of the 2006 Competition Law regarding the public regulation of prices for goods, works and services of the entities included into the state Register was not radically revised but just transferred to the Law of the Republic of Kazakhstan on Natural Monopolies and Regulated Markets of July 09, 1998 as an amendment thereto.

Below are some of the ambiguous provisions of the Competition Law:

1. The Competition Law does not recognize the following persons as market participants: foreign nationals; stateless persons; foreign profit-making organisations not being legal entities, such as partnerships being the most common form of business incorporation all over the world; non-profit organisations, e.g. industry associations of businessmen which are not engaged in any entrepreneurial activities but, in spite of that, capable to coordinate the activities of their members, including the activities intended to restrict competition in a certain sector; attorneys; and notaries.
2. The Competition Law replaced not only the 2006 Competition Law but also the Law of the Republic of Kazakhstan On Unfair Competition of June 09, 1998. Besides, it contains a serious error in the definition of "unfair competition" and shortlists 14 forms of unfair competition (though there are several hundreds of them). As a result, many forms of unfair competition may not be recognised officially as an offence.
3. The Competition Law recognises a dominant market participant based mainly on one criterion, i.e. market share, whereas the market share determined as sufficient for dominance recognition is substantially understated due to erroneous interpretation of the collective dominance concept. As a result, any market participant who in practice does not enjoy a significant market power may be recognised as dominant and, accordingly, subject to serious restrictions.
4. The Competition Law construes similar prices of various companies as anti-competitive concerted practice, even though the establishment of similar prices by competitors on a certain market does not necessarily prove that they pursue an agreed pricing policy.

5. The Competition Law retained the provision regarding the compulsory maintenance of the State Register of Entities Holding a Dominant (Monopoly) Position in Commodity Markets.
6. The Competition Law equally invalidated both vertical and horizontal anti-competitive agreements and stipulated equal legal liability therefor. However, the law did not take into account that vertical restrictions of competition, in contrast to horizontal (cartel) anti-competitive agreements, most often are pro-competitive and/or do more good than harm.
7. The Competition Law does not support the priority of customers' interests over the state's interests with regard to indemnification of damages by market participants as a result of their monopolistic activities.<sup>5</sup>

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

The Anti-monopoly Law prohibits any horizontal agreement between market entities that infringe the legitimate interests of consumers and (or) may lead to following:<sup>6</sup>

- 1) establishment or fixing of prices (tariffs), discounts, mark-ups;
- 2) increase, decrease or fixing of prices at tenders;
- 3) market sharing based on territory, volume, choice or combination of buyers or sellers;
- 4) restriction or termination of production;
- 5) refusal to conclude agreements with certain buyers or sellers.

The Law also prohibits, fully or partially, any agreement between "non-concurrent market entities, one of which holds the dominant (monopolistic) position and the other is a supplier or buyer (customer) of such entity" (vertical collusion), when such an agreement may lead to resale price fixing (except when a seller sets a maximum resale price) or such an agreement contains an obligation of the buyer not to sell goods of the seller's competitor (this, however, does not extend to agreements on distribution of goods under certain trademark or through other means of differentiation of the seller of producer).

In addition, the Competition Law prohibits any agreements (both horizontal and vertical) that may lead to restriction of competition, except for concession and franchise agreements and cases when an aggregate share of market subjects does not exceed twenty percents.<sup>7</sup>

Violation of these requirements may result in significant fines.

## Competition Institutions and Competencies

The governmental body in Kazakhstan, which is authorised to develop commodity markets and competition, prevent, restrict and suppress monopolistic activities, protect the rights of consumers, supervise compliance, regulate prices and coordinate the activities of the other state bodies in the sphere of anti-monopoly policy, is the Anti-monopoly Agency, as mentioned before. The Agency of the Republic of Kazakhstan for Competition Protection (Anti-monopoly Agency) was established under the Kazakhstan President's Decree # 425 "On measures for further improvement of the public management system of the Republic of Kazakhstan" on October 13, 2007. The Agency's mission is to protect competition, restrict monopolistic activity, prohibit unfair competition, and coordinate intersectoral activity of the competition development public authorities. The strategic direction of the Agency is considered to create conditions for competition development; the objective of the Agency is to reduce undeveloped competition markets.<sup>8</sup> It is a system composed of the central executive body and the territorial units subordinated to the Anti-monopoly agency. The Anti-monopoly agency also has a council of experts attached to it, comprising of scientists, specialists and representatives of state bodies and market entities.

The Antimonopoly Agency is entrusted to:

- Carry out analyses to identify market entities that hold the dominant position;
- Evaluate other laws that relate to the development of competition;
- Submit reports to the Parliament and Government of the Republic of Kazakhstan; and
- Hear and decide on cases concerning the violation of anti-monopoly legislation.

In the event of violation of antitrust legislation, the Anti-monopoly agency is entitled to issue mandatory instructions to the market entity and also to the heads of such entities. It has the right to impose fines on the market entities, their heads or even official persons of state bodies that may obstruct the development of competition.

Official persons of state bodies, market entities and their heads, and also physical persons "shall be obliged pursuant to the demand of the anti-monopoly body to present reliable documents, written and verbal explanations, and any other information required for the anti-monopoly body for the performance of its activity". Such information may also contain commercial, business or any other protected secrets.

The Anti-monopoly Law also has clear restrictions on the kind of activities that state bodies may take up and kind that they may not, in the interest of competition. "The state bodies shall be prohibited to adopt acts and (or) to commit actions which may lead to restriction or limitation of competition or infringing of consumers' legitimate interests, except for cases established by Kazakh legislation

for purposes of protecting constitutional and public order, rights and freedoms of human beings, health and morality of population.

The Anti-monopoly Agency's preliminary approval may be required for following types of economic concentration:

- 1) reorganisation of a market entity by merger or accession;
- 2) acquisition by a person (group of persons) of voting shares (participatory interest, unit shares) in the charter capital of a market subject in case of which such a person (group of persons) obtains the right to dispose more than 25 percent of the shares (participatory interest, unit shares) if such a person (group of persons) prior to the transaction did not have a right to dispose more than 25 percent of shares (participatory interest, unit shares) in the market subject in question;
- 3) receiving the main production assets and (or) intangible assets of another market subject in the event the value of assets in question exceeds 10 percent of the value of assets per balance-sheet of the main production assets and intangible assets of the market subject disposing the assets; whereas for following types of economic concentration a notification may be sufficient (still a preliminary approval can be requested by parties):
- 4) acquisition by a market subject of rights (in particular on the basis of a trust management agreement, joint activity agreement, agency agreement) allowing to give binding instructions to another market subject or to perform functions of its executive body; and
- 5) participation of the same individuals in executive bodies, board of directors, supervisory councils or other management bodies of two and more market subject provided that these individuals are entitled to determine conditions of conducting such market subjects' business activity.

The triggers are:

- a value of assets or turnover of market subjects participating in the planned transactions; and
- participation in the transactions of a market subject holding a dominant position.

If a market entity holding dominant position commits two or more violations set in Articles 10, 11, 13 of the Competition Law in one calendar year, then the Antimonopoly agency has the right to "bring a lawsuit for the compulsory division or segregation out of their membership of one or several legal entities".

All market entities and even state bodies are obliged to comply with the prescriptions/decisions of the Anti-monopoly agency. If they do not, the Anti-monopoly agency has the right, in an administrative procedure, to impose fines in accordance with the legislative acts of the Republic of Kazakhstan. Any state body/ market entity has "the right to address to the court with the application for

the recognition as invalid, fully or partially, of any prescription or decision of the anti-monopoly agency” as per the established deadlines.

### **Regulatory Framework**

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

#### ***Telecommunications<sup>9</sup>***

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

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

The provision of services via the local telecommunications network (local voice telephony, fax etc.) is considered as the natural monopoly under the Law on Natural Monopolies. According to this law, the tariffs for the provision of these services are fixed by the government.

All major policy and regulatory functions were delegated to the state regulation body – the Committee on Communications and Information (CCI), which was established in 2000 as a Ministry of Transport and Communications department.

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

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

On July 10, 2009 Kazakhstan President Nursultan Nazarbaev signed into law the Statute “On Amendments

to Some Legislative Acts of the Republic of Kazakhstan concerning Information and Communication Networks”, earlier adopted by the national legislature. In particular, amendments are introduced into the provisions of the 1999 Statute “On Mass Media”.

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

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

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

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

Kazakhstani law restricts foreign ownership in telecommunications companies to 49 percent and in mass media companies, including news agencies, to 20 percent. In connection with its World Trade Organisation (WTO) accession negotiations, Kazakhstan has agreed that after a two and a half year transition period, it will remove the foreign ownership limit for telecommunications operators serving long distance and international phone calls, except for the country’s main carrier KazakhTeleCom JSC. However, the 20 percent limit for foreign participation in mass media companies will remain in force after Kazakhstan joins the WTO.<sup>10</sup>

### **Consumer Protection**

Kazakhstan does not have a specialised consumer protection agency. The Consumer Rights Law of Kazakhstan has been passed on May 10, 2010. The law defines the legal, economic and social bases of consumer rights protection and the measures for provision of consumers with the qualitative goods, works and services.

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

### **Concluding Observations and Future Scenario**

Much of the increased attractiveness of Kazakhstan as a destination for foreign investment can be attributed to the relative success with which its government has restructured its centrally-planned economy to move towards a more free-market based system. Its successes include the creation

from scratch of a sophisticated financial services sector (the most advanced in the former Soviet Union), introduction of a private pension plan, privatisation of the electricity industry, civil service reforms, decentralisation to give greater autonomy to local government and the creation of a National Oil Stabilisation Fund.<sup>11</sup>

In spite of all the achievements, a number of challenges remain to be dealt with if Kazakhstan is to maintain its current high rates of growth, Foreign Direct Investment (FDI) and government spending and make it to the top list of developed countries in the world, such as that of diversifying the economy, promoting the competitiveness of non-oil exports, addressing the severe income inequalities, improving the corruption record, developing innovative technologies and human capital, and of course, no less importantly, that of strengthening and developing the competition regime in the country. This is crucial to ensure that the benefits gained from liberalisation, global and regional integration and privatisation accrue to a large part of the society, as well as to ensure long-term dynamic efficiency and improved consumer welfare.

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### **Endnotes**

- 1 CIA World Factbook 2012
- 2 <http://r0.unctad.org>
- 3 [http://www.szp.kz/up\\_files/Bikebaev\\_Competition\\_Law\\_31072012.pdf](http://www.szp.kz/up_files/Bikebaev_Competition_Law_31072012.pdf)
- 4 <http://www.lexology.com/library/detail.aspx?g=1d806ff4-1817-4f75-bf3e-4418daad0626>
- 5 [http://www.szp.kz/up\\_files/Bikebaev\\_Competition\\_Law\\_31072012.pdf](http://www.szp.kz/up_files/Bikebaev_Competition_Law_31072012.pdf)
- 6 Article 10.1 of the Competition Law.
- 7 Article 10.3 of the Competition Law.
- 8 [http://azk.gov.kz/eng/verxnee\\_menju/ob\\_agentstve/obschaya\\_informaciya/](http://azk.gov.kz/eng/verxnee_menju/ob_agentstve/obschaya_informaciya/)
- 9 <http://mkacceb.cec.eu.int>
- 10 [http://www.ustr.gov/sites/default/files/Kazakhstan\\_0.pdf](http://www.ustr.gov/sites/default/files/Kazakhstan_0.pdf)
- 11 [www.cisstat.com](http://www.cisstat.com)