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## Global Forum on Competition

### IMPROVING INTERNATIONAL CO-OPERATION IN CARTEL INVESTIGATIONS

#### Contribution from Kazakhstan

-- Session II --

*This contribution is submitted by Kazakhstan under Session II of the Global Forum on Competition to be held on 16 and 17 February 2012.*

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## IMPROVING INTERNATIONAL CO-OPERATION IN CARTEL INVESTIGATIONS

-- Kazakhstan --

### 1. Existing tools for international co-operation

**1.1** *Please identify any formal mechanisms and/or co-operation agreements you have entered into with a foreign country or antitrust authority, the type of agreement (MLAT, MOU, RTA, etc) and the powers available under this agreement. For example, does the agreement allow your authority to conduct searches and inspections on behalf of a competition authority from another jurisdiction?*

1. The Agency of the Republic of Kazakhstan for Competition Protection (“Agency”) has signed the Agreement on cooperation for information exchange (on current legislation, changes in it, etc.), conducting joint training workshops, delegations exchange.

**1.2** *Please describe the informal mechanisms your competition authority has in place for co-operating with other jurisdictions, and how these have helped in cartel investigations. For example, has your authority conducted any joint inspections/dawn raids in conjunction with another competition authority?*

2. The Agency has held in conjunction with the Federal Antimonopoly Service of Russia (“FAS Russia”) joint investigations in relation to the biggest cellular operators of the Republic of Kazakhstan and Russian Federation, the results of which have demonstrated that the international roaming services tariffs concerned were set on the unjustifiably high levels. For instance, the level of tariffs within CIS from 3 to 10 times exceeded analogous tariffs within EU states.

3. According to the results of the indicated investigations held by antimonopoly bodies of two states, the actions of cellular operators of setting unjustifiably high tariffs for roaming services were qualified as abuse of dominant position, aimed at setting monopolistically high prices.

4. During the course of the indicated work Agency cooperated with the FAS Russia by means of phone, official and electronic correspondence, as well as meetings.

5. At the present time, materials of the indicated investigations are undergoing judicial proceedings, however, it is worthy to mention that investigations held by antimonopoly bodies induced Kazakhstani and Russian cellular operators to voluntarily lower the tariffs of international roaming services. Thus, during the investigation Kazakhstani cellular operators decreased the tariffs of some international roaming services, in particular, voice call service – from 1.5 to 2 times, text messages – from 3 to 10 times, GPRS (Internet) – from 6 to 10 times per 1 Mb. Similar tariff cuts of cellular operators’ international roaming services were achieved by FAS Russia.

**1.3** *To what extent have you used OECD instruments, e.g. the 1995 Recommendation concerning Co-operation between Member Countries on Anticompetitive Practices Affecting International Trade and the 2005 Best Practices for the Formal Exchange of Information between Competition Authorities*

*in Hard Core Cartel Investigations, in your investigations? For what purpose were they used and how helpful were they?*

6. Since Agency was found in 2008, unfortunately, it hadn't applied the indicated OECD acts.

## **2. Types of co-operation**

*2.1 What type of co-operation does your agency request from other agencies in cartel investigations? What type of co-operation is received? At what stage of the proceedings does this co-operation take place and on what issues? For example, is co-operation related to the exchange of relevant information, the organisation and execution of dawn raids, the setting of fines or to the discussion of substantive issues, such as market definition, theory of harm, etc?*

7. Primarily, cooperation was exercised by means of information exchange and joint discussion of further investigative actions.

*2.2 How does the co-operation take place? For example, is it by telephone, email or through face to face meetings? How successful has the co-operation been? What aspects of co-operation have worked particularly well and what has been less successful?*

8. Cooperation is conducted by all means, including phone, e-mail, meetings, videoconferences, and the results are thus effective.

## **3. International vs regional co-operation**

*3.1 Which competition authorities you co-operate with the most? How often do you co-operate? Do you co-operate more with authorities located geographically close-by?*

9. The closest cooperation is exercised with the FAS Russia and other states of Commonwealth of Independent States ("CIS"). Cooperation is exercised on the permanent basis, in accordance with Treaty on Implementation of Coordinated Antimonopoly Policy of CIS Member States ("CIS Treaty").

*3.2 Are you part of a regional competition network? If so, to what extent has this network assisted in the cartel investigations you have carried out?*

10. The Republic of Kazakhstan is a member of the CIS Treaty since 1993.

*3.3 If you are a new/young agency to what extent do you co-operate with your neighbouring competition authorities, other new competition authorities in the region, and/or mature agencies either in the region or overseas? If you are a mature agency, which are the competition authorities with which you co-operate most, and how do you respond to and prioritise requests received from newer agencies?*

11. Even though Agency was found in 2008, it is an active member of International Competition Network ("ICN") and cooperates with all antimonopoly bodies of the CIS Member States, the ICN Member States, the OECD, as well as the antimonopoly bodies of the Organisation of Islamic Cooperation Member States.

12. For instance, for the purposes of training and experience exchange the Agency staff permanently cooperates with the OECD-GVH Regional Centre for Competition in Hungary. Similarly, with the aim of experience exchange Agency delegation visited the Competition Commission of Singapore and the FAS Russia.

13. Furthermore, the Agency also invited the staff of Azerbaijan's State Service for Antimonopoly Policy and Protection of Consumers' Rights to training workshop in the Agency.

14. The Agency responds to all requests sent by the antimonopoly bodies of other states.

#### **4. Identifying gaps and improving the current frameworks**

**4.1** *What are the current challenges faced by your competition authority in cartel investigations which have a cross-border dimension (e.g. anti-competitive cross-border effects or evidence located in foreign jurisdictions)? To what extent would international co-operation with other competition authorities overcome these challenges?*

15. Cooperation by virtue of interactions and information exchange will be continued within the framework of the current treaties.

**4.2** *How do you deal with co-operation in cartel cases that encompass both criminal and civil enforcement regimes? For example, how do you ensure that the privilege against self incrimination is respected when using the information exchanged with other agencies in criminal proceedings against individuals? If you have a civil system in place for cartel enforcement, have you faced any particular problems coordinating with those jurisdictions with a criminal enforcement system and vice versa? What issues have arisen and how do the different systems affect the quality and/or intensity of coordination?*

16. This issue has not been encountered in practice.

**4.3** *Have there been any instances in which a cartel investigation or case could have benefited from information or co-operation from a foreign competition agency, but your agency did not request such assistance because you knew that it could not or would not be granted?*

17. There have not been such precedents.

#### **5. Information Sharing**

**5.1** *What are the main barriers to information sharing that you have encountered when requesting information from another jurisdiction? Please provide examples. How have these affected cartel investigations in your jurisdiction? Have you managed to obtain the information using any other means?*

18. The Agency has not encountered any obstacles for information exchange with other states; cooperation is exercised by means of official correspondence, as well as during meetings.

**5.2** *Are there any legal constraints which would prevent your agency from providing information related to a domestic or international cartel to the competition authority of another jurisdiction? What are these constraints? Do you have any legislation preventing information exchange?*

19. On the basis of the information given by the FAS Russia, the Agency has detected anticompetitive agreements between national pharmaceutical companies related to sharing consumers of the sales market of scale inhibitors (IOMS-1), produced by Open JSC "Himprom", on the territory of the Republic of Kazakhstan, which led to limiting competition in the relevant market.

**5.3 Does your jurisdiction/agency have any legislation, rules or guidelines regulating the protection of confidential information which is exchanged with an agency in another jurisdiction? What safeguards do you have in place for the protection of confidential information when co-operating with foreign government agencies?**

20. Pursuant to the Law of the Republic of Kazakhstan “On Competition” (“Law”), antimonopoly body of Kazakhstan has a right to make requests and receive information, including information composing commercial and other secrets protected by laws, in the manner prescribed by laws of the Republic of Kazakhstan, which is necessary for exercising its powers, including those for undertaking investigations of the violations of the antimonopoly legislation, provided by Law (subparagraph 18 of Art.39 and paragraph 3 of Art.64 of Law).

21. However, the staff of the antimonopoly body bears responsibility, prescribed by laws of the Republic of Kazakhstan, for disclosing information composing commercial, professional and other secrets protected by laws.

**5.4 What is your policy for exchanging information with other jurisdictions that has been provided as part of an amnesty/leniency programme? Do you request (and receive) waivers from companies being investigated in order to facilitate information exchange with other agencies investigating the same cartel? In practice do you request waivers as part of the leniency application? How important are waivers, and the information received from other investigating authorities as a result, to the effectiveness of the cartel investigation?**

22. This issue has not been encountered in practice.

## **6. International co-operation within other policy areas**

**6.1 Are you aware of any other law enforcement areas in your jurisdiction (for example tax, bribery or money laundering) which face similar challenges in international co-operation as those faced by competition authorities in cross-border cartel cases?**

23. No such law enforcement areas are known.