



On approval of the methodology for assessing the economic concentration in commodity markets

Unofficial translation

Order of the Minister of National Economy of the Republic of Kazakhstan of December 14, 2017 No. 416. Registered with the Ministry of Justice of the Republic of Kazakhstan of December 28, 2017 No. 16161.

Unofficial translation

In accordance with subparagraph 16) of Article 90-6 of the Entrepreneurial Code of the Republic of Kazakhstan of October 29, 2015 **I hereby ORDER:**

1. To approve the attached Methodology for assessing the economic concentration in commodity markets.

2. The Committee on Regulation of Natural Monopolies, Protection of Competition and Consumer Rights of the Ministry of National Economy of the Republic of Kazakhstan, in accordance with the procedure established by the legislation of the Republic of Kazakhstan shall:

1) ensure the state registration of this order with the Ministry of Justice of the Republic of Kazakhstan;

2) within ten calendar days from the date of state registration of this order with the Ministry of Justice of the Republic of Kazakhstan, send its copy on paper and electronic form in Kazakh and Russian languages for official publication in periodicals, as well as to the Republican State Enterprise on the Right of Economic Management " Republican Center of Legal Information " for official publication and inclusion in the Reference Control Bank of Regulatory Legal Acts of the Republic of Kazakhstan;

3) place this order on the Internet resource of the Ministry of National Economy of the Republic of Kazakhstan;

4) within ten working days after the state registration of this order with the Ministry of Justice of the Republic of Kazakhstan, submit to the Legal Department of the Ministry of National Economy of the Republic of Kazakhstan the information on the implementation of measures provided for in subparagraphs 1), 2) and 3) of this paragraph.

3. Control over the implementation of this order shall be entrusted to the supervising Vice-Minister of National Economy of the Republic of Kazakhstan.

4. This order shall enter into force on January 1, 2018 and shall be subject to official publication.

*Minister of National Economy of
the Republic of Kazakhstan*

T. Suleimenov

Approved

Methodology for assessing the economic concentration in commodity markets

Chapter 1. General Provisions

1. This Methodology for assessing the economic concentration in commodity markets (hereinafter referred to as the Methodology) has been developed in accordance with subparagraph 17) of Article 90-6 of the Entrepreneurial Code of the Republic of Kazakhstan as of October 29, 2015 (hereinafter referred to as the Code) and shall be applied to consider the applications for consent to economic concentration or notifications of implemented economic concentration.

2. The methodology determines the mechanism for assessing economic concentration in commodity markets by the antimonopoly authority.

Footnote. Paragraph 2 is in the wording of the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.07.2023 № 10 (shall be enforced upon expiry of sixty calendar days after the day of its first official publication).

Chapter 2. Basic Concepts

3. The following concepts shall be used in the Methodology:

1) a competent authority - a state body that manages the relevant branch (sphere) of the economy;

2) goods of the participants in the transaction - goods (works, services) sold by the participants in the transaction before making the economic concentration transaction and planned (scheduled) for sale by the participants in the transaction after its making;

3) an applicant - a person who has filed an application for consent to economic concentration or a notification of economic concentration;

4) suppliers (sellers, customers) of goods (works, services) - market entities selling goods (works, services) of their own activities, as well as trade and intermediary organizations, providing services to promote goods from manufacturers to end consumers;

5) consent to economic concentration - the consent of the antimonopoly body to carry out transactions provided for by subparagraphs 1), 2), 3) of paragraph 1 of Article 201 of the Code;

6) a participant in economic concentration – an individual or a legal entity who has performed or intends to perform economic concentration;

7) prohibition on economic concentration - prohibition of the antimonopoly body to carry out transactions provided for in subparagraphs 1), 2), 3) of paragraph 1 of Article 201 of the Code, and (or) issuance by the antimonopoly body of an instruction to cancel economic

concentration transactions provided for in subparagraphs 4) and 5) paragraph 1 of Article 201 of the Code.

Other concepts and terms used in the Methodology shall be applied in accordance with the legislation of the Republic of Kazakhstan.

Footnote. Paragraph 3 - is in the wording of the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 24.02.2021 № 3 (shall be enforced upon expiry of ten calendar days after the day of its first official publication)

Chapter 3. Grounds and stages for assessing economic concentration

4. The grounds for the assessment of economic concentration shall be the submission to the antimonopoly body of:

- 1) a petition for consent to economic concentration, submitted by the applicant in the form in accordance with Appendix 1 to the Methodology (hereinafter-the petition);
- 2) a notification on the performed economic concentration, provided for in subparagraphs 4) and 5) of paragraph 1 of Article 201 of the Code, submitted by the applicant in the form in accordance with Appendix 2 to the Methodology (hereinafter-the notification).

Footnote. Paragraph 4 - is in the wording of the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 24.02.2021 № 3 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

5. Within 40 calendar days (with the right to suspend the deadlines in accordance with paragraphs 3 and 5 of Article 205 of the Code), the assessment of economic concentration by the antimonopoly body during the consideration of the petition includes the following stages:

- 1) verification of the completeness and reliability of documentation attached to the petition, provided for in Article 204 of the Code;
- 2) conducting an analysis of the state of competition in commodity markets when performing economic concentration in the event that the persons participating in the transaction (a group of persons) carry out activities for the sale of interchangeable goods and (or) there are signs of restriction of competition;
- 3) calculation of indicators of restriction of competition, when identifying the emergence or strengthening of restriction of competition on one or more commodity markets;
- 4) taking a decision by the antimonopoly body based on the results of the assessment of economic concentration.

Footnote. Paragraph 5 is in the wording of the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 24.02.2021 № 3 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

6. The assessment of economic concentration by the antimonopoly body in the course of consideration of a notification includes the following stages:

1) verification of the completeness and reliability of documentation and information attached to the notification, provided for in Article 207 of the Code;

2) consideration of the contract or other document confirming the performance of economic concentration for compliance with the requirements of the Code;

3) consideration of economic concentration with a view to limiting or eliminating competition, including through the emergence or strengthening of the dominant position of a market entity;

4) taking a decision by the antimonopoly body on the notification of the performed economic concentration in accordance with Article 209 of the Code.

Footnote. Paragraph 6 - is in the wording of the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 24.02.2021 № 3 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

7. When assessing economic concentration as information, if necessary, it shall be used the data obtained:

1) from the participants in economic concentration;

2) in the course of a survey of consumers;

3) from the state body exercising management in the field of state statistical activity;

4) from the competent state bodies;

5) from market entities engaged in the production, sale, export or import to the Republic of Kazakhstan of goods similar or interchangeable with participants in economic concentration;

6) in the course of own researches of the antimonopoly body;

7) from associations, public unions, the National Chamber of Entrepreneurs of the Republic of Kazakhstan "Atameken";

8) data from marketing, sociological researches, sample surveys and questioning of market entities, citizens, public organizations.

Footnote. Paragraph 7 - is in the wording of the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 24.02.2021 № 3 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

Chapter 4. Conducting an analysis of the state of competition in the commodity market when performing economic concentration

8. If there are no similar or interchangeable goods among the goods of participants in economic concentration and (or) there are signs of restriction of competition, the head of the antimonopoly body or his/her deputy shall make a decision on the consent to economic

concentration and within three working days from the date of making such decision shall send it to the applicant.

Footnote. Paragraph 8 - is in the wording of the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 24.02.2021 № 3 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

9. If the persons participating in the transaction (group of persons) carry out activities to sell similar or interchangeable goods and (or) if there are signs of restriction of competition, the antimonopoly authority shall conduct an analysis of the state of competition in the commodity market in accordance with Article 196 of the Code and paragraph 7 of the Methodology for analyzing the state of competition in commodity markets, approved by order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated May 3, 2022 № 13 (registered in the Register of state registration of regulatory legal acts under № 27883).

Footnote. Paragraph 9 is in the wording of the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.07.2023 № 10 (shall be enforced upon expiry of sixty calendar days after the day of its first official publication).

10. If, according to the results of the analysis of the state of competition in the commodity market, the total share of participants in economic concentration in the commodity market is 35% or less, and there are no signs of restricting competition, the antimonopoly body shall grant consent to economic concentration.

Footnote. Paragraph 10 - is in the wording of the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 24.02.2021 № 3 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

11. If, based on the results of the analysis of the state of competition in the commodity market, the total share of participants in economic concentration in the commodity market is more than 35%, the antimonopoly body shall calculate the indicators for restricting competition when performing economic concentration.

The antimonopoly body shall not allow the performance of economic concentration if economic concentration leads to restriction of competition.

Footnote. Paragraph 11 - is in the wording of the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 24.02.2021 № 3 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

Chapter 5. The calculation of indicators of restriction of competition when performing economic concentration

12. In order to identify the presence, occurrence or intensification of the restriction of competition, the antimonopoly body shall use the following indicators of restriction of competition:

1) the total share of the participants in the transaction will amount to or exceed 35% in the relevant commodity market after the transaction;

2) change in market concentration indicators: in the event of a transaction, the Herfindahl-Hirschman market concentration index (HHI) in the relevant commodity market will change:

more than 250 for a moderately concentrated market ($1000 < \text{HHI} < 2000$);

more than 100 for a highly concentrated market ($2000 < \text{HHI} < 10000$);

negative consequences on the market as a result of the merger of market entities in low-concentration markets ($\text{HHI} < 1000$) are unlikely;

3) the emergence of possible barriers to entry /exit to the market after the transaction;

4) the emergence or strengthening of market power after the transaction by one of the participants in the transaction, when the Lerner Index ≥ 0.5 .

Footnote. Paragraph 12 - is in the wording of the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 24.02.2021 № 3 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

13. The Herfindahl-Hirschman market concentration index (HHI) shall be calculated as the sum of the squares of the shares of all enterprises operating in the market and shall be measured in fractions or percents:

$$\text{HHI} = S_1^2 + S_2^2 + \dots + S_n^2,$$

where:

$S_1, S_2 \dots S_n$ - shares of firms in the market (%);

n - the number of economic entities in the market.

The Herfindahl-Hirschman index of market concentration makes it possible to make a preliminary assessment of the degree of market monopolization, the uniformity (or unevenness) of the presence of market actors on it. The more suppliers with a multi-scale supply of products acting on the relevant product market, the less important this indicator shall be.

When determining the market concentration in the relevant product market, a group of persons shall be determined. At the same time, a group of persons shall be considered as a single market entity.

14. Barriers to entry / exit to the market after the transaction shall include:

1) economic restrictions, including:

the need to make significant initial capital investments with a long payback period of these investments;

higher costs of attracting financing for potential participants in comparison with the market entities operating in the product market under consideration;

the cost of obtaining access to the necessary resources and intellectual property rights, to obtain information;

the lack of access of potential participants to the resources, the supply of which is limited and which are distributed among the market entities operating in the considered commodity market;

the presence of an economically feasible minimum volume of production, which determines higher costs for the market entities per unit of production until such production is achieved (effect of production scale);

the advantages of market entities operating in the commodity market under review over potential market participants, in particular, per unit cost and demand for goods;

2) administrative restrictions imposed by state bodies, including:

licensing conditions for certain types of activities;

quoting;

restrictions on the importation and exportation of goods;

requirements of mandatory satisfaction of a certain demand, maintenance of mobilization capacities, preservation of jobs and social infrastructure;

provision of benefits to individual market entities;

obstacles in the assignment of land, the provision of industrial and other premises;

conditions for competitive selection of suppliers of goods for state needs;

environmental restrictions, including the prohibition of the construction of production facilities and transport infrastructure;

standards and quality requirements;

3) technological limitations, which imply technological superiority of companies already operating in the commodity market;

4) other restrictions:

strategy of behavior of market entities operating in the commodity market, aimed at creating barriers to entry to the market, including:

setting monopoly low prices;

unfair competition;

the presence of vertically integrated market entities among the market entities operating in the commodity market, which leads to the creation of entry barriers to the market, including:

creates advantages for participants of vertically integrated market entities compared to other potential market participants;

requires the participation of potential market participants in vertical integration, which increases the cost of market entry;

other restrictions on entry into the commodity market, revealed during the analysis of the state of competition in the commodity market.

15. The Lerner index shall be calculated as the difference between the price of the goods and the marginal costs of its production, related to the price:

$$L = (P - MC) / P,$$

L - Lerner Index;

R - the selling price of the goods;

MS - marginal costs of production of the goods.

This indicator shall reflect the price deviation from the marginal costs associated with inefficient allocation of resources in a monopoly environment.

The more the sales price of an enterprise deviates from competitive prices, the higher shall be the Lerner coefficient.

This coefficient for a completely competitive market shall be equal to zero (there is no market power); for the market of monopolistic competition shall be in the range of 0.3 - 0.5; for the oligopoly market - in the range of 0.6 - 0.8, depending on the number of enterprises (the smaller they are, the greater the Lerner coefficient shall be); for markets with a dominant enterprise, it may reach 0.8-0.9, and for a monopoly market it may verge to 1.

Chapter 6. Conclusions from the assessment of economic concentration

16. Based on the results of the assessment of economic concentration, an opinion shall be formed, which is signed by the head of the relevant structural unit of the antimonopoly body or by his/her deputy.

Footnote. Paragraph 16 - is in the wording of the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 24.02.2021 № 3 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

17. Based on the results of consideration of the opinion by the head of the antimonopoly body or a his/her deputy, one of the following decisions shall be made:

1) on the consent to economic concentration;

2) on the prohibition of economic concentration.

Footnote. Paragraph 17 - is in the wording of the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 24.02.2021 № 3 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

18. Based on the results of consideration of the notification by the antimonopoly body, a decision shall be made in accordance with Article 209 of the Code.

Footnote. Paragraph 18 - is in the wording of the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 24.02.2021 № 3 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

to the Methodology
for assessing the economic concentration
in commodity markets

Form

To the chairman of the Agency for
protection and development of
competition
of the Republic of Kazakhstan

from _____

(full name and
(or) surname, name,
patronymic (if any)
of a service recipient BIN and
(or) IIN (if any)

A petition for the consent to economic concentration

Footnote. Appendix 1 - is in the wording of the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 24.02.2021 № 3 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

In accordance with paragraph 2 of Article 200 of the Entrepreneurial Code of the Republic

Kazakhstan (hereinafter- the Code), I hereby ask to provide a consent to the economic concentration, consisting

(description of the transaction, action, indicating the subject and parties to the transaction, action)

This petition for the consent to economic concentration is submitted by

(indicate the name/surname, name, patronymic (if any) of the service recipient)
based _____

(subparagraph of paragraph 1 of Article 201 of the Code is indicated)

Documentation is attached in accordance

(paragraph of Article 204 of the Code is indicated)

Submitted documents are numbered (electronic media is attached).

I confirm the completeness and reliability of the attached documents and information.

I agree to the use of information constituting a legally protected secret, contained in information systems.

Signature of the head or his/her deputy _____

Date of submission of the petition " ____ " _____

Contacts of the representative _____

Appendix 2
to the Methodology
for assessing the economic concentration
in commodity markets

Form

To the chairman of the Agency for
protection and development of
competition
of the Republic of Kazakhstan

from _____

(full name and
(or) surname, name,
patronymic (if any)

of a service recipient BIN and
(or) IIN (if any)

Notification on the performed economic concentration

Footnote. Appendix 2 - is amended in the wording of the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 24.02.2021 № 3 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

In accordance with paragraph 1 of Article 200 of the Entrepreneurial Code of the Republic

Kazakhstan _____

(name, surname, name, patronymic (if any) of the participants in the transaction)

I hereby inform on the performed (planned) economic concentration, consisting in:

acquisition of the rights by a market entity (including on the basis of a trust management contract, a joint activity contract, an assignment contract) allowing to give binding instructions to another market entity when conducting entrepreneurial activity or to perform the functions of its executive body	
participation of the same individuals in the executive bodies, boards of directors, supervisory boards or other management bodies of two or more market entities, provided that the specified individuals in these entities shall determine the conditions for conducting their entrepreneurial activity	

Description of the transaction, action _____

Information about the applicant:

Name/surname, name, patronymic (if any)

BIN/IIN

□	□	□	□	□	□	□	□	□	□	□	□
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The submitted documents are numbered (electronic media is attached).

I confirm the completeness and reliability of the attached documents and information.

I agree to the use of information constituting a legally protected secret, contained in information systems.

Signature of the head or his/her deputy _____

Date of submission of the petition " ____ " _____

Contacts of the representative _____