



On approval of the Methodology for measuring economic concentration in financial markets

Unofficial translation

Order of the Minister of National Economy of the Republic of Kazakhstan of December 29, 2017 No. 442. Registered with the Ministry of Justice of the Republic of Kazakhstan of January 12, 2018 No. 16226.

Unofficial translation

In accordance with subparagraph 17) of Article 90-6 of the Entrepreneurial Code of the Republic of Kazakhstan as of October 29, 2015, I hereby **ORDER**:

1. To approve the appended Methodology for measuring economic concentration in financial markets.

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

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

2) within ten calendar days of the state registration of this order by the Ministry of Justice of the Republic of Kazakhstan, send its Kazakh and Russian hard and soft copies to periodicals for its official publication, and also to the Republican Center of Legal Information Republican State Enterprise With the Right of Economic Management for its official publication and inclusion into 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 of the state registration of this order by the Ministry of Justice of the Republic of Kazakhstan, submit information on the implementation of measures, provided for in subparagraphs 1), 2) and 3) of this paragraph, to the Legal Department of the Ministry of National Economy of the Republic of Kazakhstan.

3. Control over execution of this order shall be entrusted to the supervising vice-minister of national economy of the Republic of Kazakhstan.

4. This order shall take effect on January 1, 2018 and be officially published.

*Minister of National Economy
of the Republic of Kazakhstan*

T. Suleimenov

“AGREED”

Chairman of the National Bank

of the Republic of Kazakhstan

_____ D. Akishev
as of _____ 2017

Approved
by order № 442 as of December
29, 2017 of the Minister of
National Economy of the Republic
of Kazakhstan

Methodology for measuring economic concentration in financial markets

Chapter 1. General provisions

1. This Methodology for measuring economic concentration in financial markets (hereinafter referred to as the Methodology) was 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 is used to consider applications for consent to economic concentration or notifications of implemented economic concentration.

2. The methodology shall determine the tool for assessment of economic concentration in financial markets by the anti-monopoly body.

Footnote. Paragraph 2 - as amended by the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.03.2021 No. 4 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

Chapter 2. Basic concepts

3. The following concepts are used in the Methodology:

1) consent to economic concentration – the consent of the anti-monopoly body to business transactions provided for in subparagraphs 1) - 3) of paragraph 1 of Article 201 of the Code;

2) prohibition on economic concentration in financial markets – prohibition of the anti-monopoly body on business transactions provided for in subparagraphs 1) - 3) of paragraph 1 of Article 201 of the Code;

3) service providers – market entities engaged in business activity on providing financial services;

4) financial services – the activity of participants in the insurance market, securities market, voluntary accumulative pension fund, the banking activity, the activity of organizations on certain types of banking operations carried out on the basis of licenses obtained in accordance with the Law of the Republic of Kazakhstan “On Government Regulation, Control and Supervision of the Financial Market and Financial Organizations” as of July 4, 2003 (hereinafter referred to as the Law);

5) prescription – making decision by the anti-monopoly body requiring to cancel transactions provided for in subparagraphs 4) and 5) of paragraph 1 of Article 201 of the Code;

6) an applicant - a person who submitted an application for consent to economic concentration in financial markets or a notification of implemented economic concentration in financial markets;

7) participant in economic concentration – an individual or a legal entity that has implemented or intends to carry out an economic concentration in financial markets.

Other concepts and terms used in the Methodology are defined by the Code and the Law, as well as other regulatory legal acts of the Republic of Kazakhstan in the field of financial market regulation.

Footnote. Paragraph 3 - as amended by the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.03.2021 No. 4 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

Chapter 3. Grounds for and stages of measuring economic concentration in financial markets

4. The grounds for assessing the economic concentration in the financial markets shall be the submission to the anti-monopoly body:

1) an application for consent to an economic concentration in financial markets submitted to it by an applicant in accordance with the form established in Appendix 1 to the Methodology (hereinafter referred to as the application);

2) a notification of implemented economic concentration in financial markets when making transactions provided for in subparagraphs 4) and 5) of paragraph 1 of Article 201 of the Code, submitted by an applicant in accordance with the form established in Appendix 2 to the Methodology (hereinafter referred to as the notification).

Footnote. Paragraph 4 - as amended by the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.03.2021 No. 4 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

5. Within forty calendar days (with the right to suspend deadlines in accordance with paragraphs 3 and 5 of Article 205 of the Code), the assessment of economic concentration in financial markets by the anti-monopoly body, when considering an application, shall include the following stages:

1) verification of the completeness and reliability of the documents and information attached to the application provided for in Article 204 of the Code;

2) analysis of competitive situation with regard to financial organizations when carrying out an economic concentration in financial markets if participants in the transaction (group of

persons) are engaged in selling similar or interchangeable financial services and (or) there are signs of competition restraints;

3) calculation of indicators of competition restraints in the financial market when identifying signs of competition restraints, also in case of emergence of a dominant position in financial markets or its strengthening;

4) making the decision by the anti-monopoly body on results of the assessment of economic concentration in financial markets.

At the same time, the conclusion of transactions related to ensuring financial stability and protecting the rights of consumers of financial services shall not be a restriction of competition in the course of economic concentration.

Footnote. Paragraph 5 - as amended by the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.03.2021 No. 4 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

6. Within thirty calendar days of the notification of implemented economic concentration in financial markets received by the anti-monopoly body, assessing the economic concentration in the course of consideration of the notification, shall include the following stages:

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

2) consideration of a contract or another document confirming implementation of economic concentration in financial markets;

3) consideration of economic concentration for competition restraints, including through emergence of a dominant position in financial markets or its strengthening;

4) making the decision by the anti-monopoly body on notification in accordance with Article 209 of the Code.

Footnote. Paragraph 6 - as amended by the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.03.2021 No. 4 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

7. When assessing the economic concentration in financial market, for information, if necessary, the following data are used:

1) those obtained from participants of economic concentration in financial markets;

2) those obtained from the authorized body for regulation, control and supervision of the financial market and financial organizations;

3) those obtained from the authorized body in the field of state statistics.

Footnote. Paragraph 7 - as amended by the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.03.2021

No. 4 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

Chapter 4. Analysis of competitive situation with regard to financial organizations when carrying out economic concentration in financial markets

8. If there are no similar or interchangeable financial services among those provided by persons participating in a transaction (group of persons), and there also no signs of competition restraints, the head of the anti-monopoly body or his/her deputy makes a decision to consent to economic concentration in financial markets and, within three working days of such a decision, it is sent to the applicant and to the authorized body for regulation, control and supervision of the financial market and financial organizations.

Footnote. Paragraph 8 - as amended by the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.03.2021 No. 4 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

9. When carrying out of activities on selling similar or interchangeable financial services by persons, participating in a transaction (group of persons), and (or) there are signs of competition restraint, the anti-monopoly body shall analyze the competitive situation with regard to financial organizations in accordance with the Methodology for analyzing competitive situation with regard to financial organizations, approved by Order No. 85 of the National Economy Minister of the Republic of Kazakhstan as of February 27, 2017, registered in the State Register for Registration of Regulatory Legal Acts, entry number No. 14927 (hereinafter referred to as Methodology No. 85).

Footnote. Paragraph 9 - as amended by the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.03.2021 No. 4 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

10. According to the results of conducted analysis of the competitive situation with regard to financial organizations, the anti-monopoly body shall provide a consent to carry out economic concentration in financial markets in the following cases:

the aggregate share of no more than two financial institutions that own the largest shares in the relevant financial services market is less than fifty percent;
there are no signs of competition restraints.

Footnote. Paragraph 10 - as amended by the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.03.2021 No. 4 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

11. According to the results of analysis of the competitive situation with regard to financial organizations, the aggregate share of participants of economic concentration in the financial market amounts to:

no more than two financial organizations, owning largest shares in relevant financial services market, is fifty or more percent;

no more than three financial organizations, owning largest shares in relevant financial services market, is seventy or more percent;

the anti-monopoly body calculates the indicators of competitive situation in case of carrying out an economic concentration, in accordance with Methodology No. 85.

Economic concentration is prohibited if it leads to competition restraints.

Footnote. Paragraph 11 - as amended by the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.03.2021 No. 4 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

Chapter 5. Calculation of indicators of competition restraints when carrying out economic concentration in financial markets

12. To identify the presence, occurrence or strengthening of competition restraints, the anti-monopoly body uses the following indicators of competition restraints:

1) in case of economic concentration, the aggregate share of participants in a transaction in a relevant financial services market will be 50% or more;

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

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

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

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

3) the emergence of possible barriers to entry into the market in case of economic concentration.

Footnote. Paragraph 12 - as amended by the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.03.2021 No. 4 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

13. The Herfindahl-Hirschman market concentration index (HHI) is calculated as the sum of the squares of the shares held by all the providers operating in the financial services market, and is measured in shares or in percentage terms:

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

where:

S_1, S_2, \dots, S_n – is the share of entities in the market (%);

n – is number of entities in the market.

The Herfindahl-Hirshman market concentration index makes it possible to preliminarily measure the degree of market monopolization, equal (or unequal) market entities' presence therein. The more suppliers with a multi-scale supply of products operate in a relevant financial market, the less value this indicator has.

When determining market concentration, a group of persons in a relevant financial market shall be identified. In this case, a group of persons is considered as a single market entity.

14. Barriers to entry into the financial services market include quality indicators:

1) the structural features of this market (initial and current costs, demand level, market maturity, the type of competition);

2) actions of government authorities in the course of state regulation (licensing, taxation and other actions of government authorities);

3) agreements and actions on the part of financial organizations operating in the market.

15. Barriers due to structural features of the financial market and actions of government authorities in the course of state regulation are as follows:

1) limitation of market capacity, high degree of demand satisfaction, which testifies to both high market saturation and low consumer solvency, is a serious obstacle for market development by potential competitors and makes this market unattractive for new financial organizations;

2) high level of start-up costs is one of essential restrictions to possible entry into a market ;

3) higher level of costs, costs of providing financial services of already operating financial organizations are lower than those of financial organizations re-entering the market due to:

unequal starting conditions in the market;

technological superiority of financial organizations operating in the market over potential competitors;

costs of advertising and branch network development;

economies of scale - if the maximum efficient scale of activity in this market is high, then financial institutions re-entering the market have significantly higher unit costs in the initial period than financial institutions operating in the market and, therefore, are less competitive;

vertical and horizontal integration of financial institutions operating in the market. Financial organizations, integrated into vertical or horizontal structures, enjoy all the advantages of intragroup relations in the form of access to aggregate investment, financial and information resources;

4) economic and organizational restrictions - the state's investment, credit, tax, price policies;

5) administrative restrictions, including the licensing of financial organizations (restrictions and rules established by the authorized body for regulation, control and supervision of the financial market and financial organizations).

Compared with product markets, regulatory bodies have a significant impact on demand and on the number of competitors in the financial services market. Licensing requirements to financial organizations set the height of barriers to entry into financial markets, thereby affecting the level of concentration and composition of market participants.

16. Barriers caused by the activity of financial organizations operating in the market, which aim at preventing new competitors from entry into it, include:

1) steps taken by a financial organization operating in the market in response to the emergence of a new competitor, for example, changes in the interest-rate policy;

2) anti-competitive agreements and concerted actions of financial organizations, also involving state and local government bodies;

3) lobbying in government authorities of licensing criteria or other criteria for admission to a particular sector of the financial market, limiting market entry to potential competitors.

17. The list of factors analyzed in the course of identifying barriers to entry into this financial market may be longer (or shorter) than the one mentioned, different from it, due to peculiarities of main activities of financial organizations and specific nature of a region.

18. The possibility to overcome barriers to entry into the financial services market is estimated on the basis of the timing and amount of costs of overcoming such barriers.

Barriers to entry into the market are considered surmountable if the costs of overcoming barriers to entry into the market in question are economically justified by revenues (benefits) that a potential market participant, planning to provide services in the financial services market, will receive.

19. When assessing the degree of possibility to overcome barriers to entry into the financial services market, it is necessary to take into account equal significance of a barrier to each financial organization, its temporary or permanent nature.

Chapter 6. Conclusions pursuant to the measurement of economic concentration in financial markets

20. According to the results of analysis of the competitive situation with regard to financial organizations an opinion is drawn up which is signed by the head of the relevant structural unit of the anti-monopoly body or his/her deputy.

Footnote. Paragraph 20 - as amended by the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.03.2021 No. 4 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

21. Based on the results of consideration of an opinion by the head of the anti-monopoly body or his/her deputy, one of the following decisions shall be made:

1) on the consent to economic concentration in financial markets;

2) on prohibition of economic concentration in financial markets, with provision of a reasoned opinion.

A decision of the anti-monopoly body on consent to economic concentration in financial markets or on prohibition of economic concentration in financial markets is documented by the anti-monopoly body and within three working days after making such decision shall be sent to the person, submitted the application, as well as for information to the authorized body for regulation, control and supervision of the financial market and financial organizations.

According to the results of consideration of the notification, one of the following decisions shall be made:

failure to send a prescription on the need to cancel the transaction to the applicant upon receipt by the antimonopoly body after thirty calendar days after receipt of the notification, the economic concentration in the financial markets is considered to be carried out;

the anti-monopoly body issues a prescription to cancel the transaction in case of establishment of the fact that an economic concentration in financial markets has led or may lead to competition restraints or elimination, also through the emergence of a dominant position in financial markets or its strengthening.

Footnote. Paragraph 21 - as amended by the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.03.2021 No. 4 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

Appendix 1 to the Methodology of
assessment of economic
concentration in financial markets

Footnote. Appendix 1 - as amended by the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.03.2021 No. 4 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

Form
to the Chairman of the Agency for
Protection and Development of
Competition of the Republic of
Kazakhstan

from _____
(full name and (or)
last name, first name, patronymic
(if any)
of a service recipient, BIN and IIN (if any
)

Application for a consent to economic concentration

In accordance with paragraph 2 of Article 200 of the Entrepreneurial Code of the Republic of Kazakhstan (hereinafter referred to as the Code) I apply for your consent to economic concentration involving _____

—

(description of a transaction, action, with the indication of the subject of and parties to the transaction, action)

This application for your consent to economic concentration is submitted by _____

—

(indicate the name/ last name, first name, patronymic (if any) of the service recipient) based on _____

—

(indicate the subparagraph of paragraph 1 of Article 201 of the Code)
The documents are attached in accordance with _____

—

(indicate the paragraph of Article 204 of the Code)
The documents submitted are numbered (the electronic medium is attached).
I confirm the completeness and reliability of the attached documents and information.
I agree to the use of the data, which are a legally protected secret, available in information systems.

Signature of head or his/her deputy _____

Date of application "___" _____

Contacts of the representative _____

Appendix 2 to the Methodology of
assessment of economic
concentration in financial markets

Footnote. Appendix 2 - as amended by the order of the Chairman of the Agency for the Protection and Development of Competition of the Republic of Kazakhstan dated 19.03.2021 No. 4 (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

Form
to the Chairman of the Agency for
Protection and Development of
Competition of the Republic of
Kazakhstan

from _____

(full name and (or)

last name, first name, patronymic
(if any)
of a service recipient, BIN and IIN (if any
)

Notification of implemented economic concentration

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

(the name, last name, first name, patronymic (if any) of the transaction participants)

I hereby inform on the implemented (planned) economic concentration involving:

Acquisition of rights by a market entity (including those on the basis of a trust management agreement, a joint activity agreement, an assignment agreement) allowing to give binding instructions to another market entity conducting its business activity or to perform the functions of its executive body	<input type="checkbox"/>
participation of the same individuals in executive bodies , boards of directors, supervisory boards or other governing bodies of two or more market entities, provided that these individuals specify the conditions for their business activities in these entities	<input type="checkbox"/>

Description of transaction, action _____

Applicant's data:

Name/last name, first name, patronymic (if any) _____

BIN/IIN

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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The documents submitted are numbered (the electronic medium is attached).

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

I agree to the use of the data, which are a legally protected secret, available in information systems.

Signature of head or his/her deputy _____

Date of application " __ " _____

Contacts of the representative _____

