
Court practice on the matter of protection of competition

November 2017

Dispute between a Company and the Department of the Committee on Regulation of Natural Monopolies and Protection of Competition under the Ministry of National Economy of the Republic of Kazakhstan (“the authority”)

Claimed amount for confiscation: KZT 49,225,770

Amount of penalty: KZT 5,853,250

Court: Supreme Court of the Republic of Kazakhstan

Date of hearing: August 2017

Decision : Rejection of the claim made by the authority on recovering monopoly income

Facts in issue:

A Company was alleged by the authority for abuse of a dominant or monopoly position in its activity in a region and was claimed for confiscation of monopoly income amounted to KZT 49,225,770.

The Company’s activity was to provide maintenance services for gas distribution pipelines and household gas equipment (“the services”).

As per the claim of the authority, the Company concluded agreements with organizations and individuals in the region for provision of the services without notifying them of the possibility of concluding such agreements with other service providers specialized and certified for the same services. As the organizations and individuals could have accessed to other options, if otherwise, the authority recognized the company’s activity as abuse of a dominant or monopoly position, and calculated the monopoly income for confiscation as given above.

Position of the Supreme Court:

The Supreme Court decided in favor of the Company by revoking the confiscation claim of the authority.

The court decision was based on Article 225 of the Entrepreneurial Code of Republic of Kazakhstan (“EC”) which provides grounds for determining monopoly incomes. The court concluded that the claimed activity of the Company does not imply any of the grounds stipulated by Article 225 of EC and that there is no grounds for imposing confiscation of the monopoly income.

Our comments:

The concept and grounds for determining monopoly incomes stipulated in Article 225 of the EC include:

- 1) abuse of a dominant or monopoly position by the establishment of monopolistically high price
- 2) abuse of a dominant or monopoly position by the establishment of a monopolistically low price;
- 3) abuse of a dominant or monopoly position by the establishment of a monopossonically low price;
- 4) antitrust collusion.

Taking into consideration that the claimed actions of the Company do not meet any of the grounds mentioned before, we believe that, the court's decision to revoke the confiscation of the monopoly income is justified.

Tax and Legal Alert

PwC Kazakhstan

Let's discuss

If you are interested in further information of how this might affect your business, please contact PwC team members servicing your company, or any person below:



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