

On Unfair Competition

Law of the Republic of Kazakhstan of June 9, 1998 # 232
Bulletin of the RK Parliament, 1998, #9-10, p. 84

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This Law shall define actions as unfair competition, set up mechanism to prevent and eliminate unfair competition and its consequences, as well as responsibility for unfair competitive actions.

Article 1. Basic Notions

This Law shall make use of the following notions:

Discredit shall mean willful action to deprive of confidence, to undermine and derogate reputation of the competitor, and goods, works and services thereof;

Competitor (in the market) shall mean a market entity performing with the capacities to decrease or increase market share of another market entity in the event of any changes in the performance;

Infringing Products shall mean products manufactured by certain market entities for the purpose of unfair competition and deceit of consumers;

Unfair Competition shall mean any action (or inaction) of a legal entity and/or individual, as well as state bodies and local authorities to get unjustified advantages in business by means of elimination or restriction of competition;

Agreement shall mean any agreement of the parties (vertical, horizontal, or conglomerated) to restrict or eliminate competition, to get unjustified advantages in business;

Market Entity shall mean a legal entity or an individual involved in business and acting as operator of goods, works, and services circulation;

Antimonopoly authority shall mean a governmental entity in charge of implementation of governmental policy to assist and develop competition, as well as prevent, restrict and stop unfair competition*.

Footnote. Article 1 is amended by RK Law of December 15, 2000, # 125; of December 20, 2004, # 139 in force since January 1, 2005); of July 7, 2006 # 174.

Article 2. Legislation on Unfair Competition

1. Legislation on unfair competition shall be based on the Constitution of the Republic of Kazakhstan and shall consist of norms of the Civil Code of the Republic of Kazakhstan, this Law and other legal enactments of the Republic of Kazakhstan issued in compliance thereof.
2. If an international treaty ratified by the Republic of Kazakhstan sets other regulations different from legislation on unfair competition then regulations of the international treaty shall apply.

Article 3. Scope of this Law

This law shall cover individuals and legal entities, state bodies and local authorities of the Republic of Kazakhstan, as well as foreign individuals and legal entities and people without citizenship if actions thereof restrict or eliminate competition in the markets of goods (works, services) of the Republic of Kazakhstan*.

Footnote. Article 3 is edited as in RK Law of December 15, 2000, # 125.

Article 4. Impermissibility to Restrict or Eliminate Competition

1. Any activity aimed to restrict or eliminate competition by means of violation of rights of other businessmen for free competition, as well as rights and lawful interests of consumers shall not be permitted.
2. State bodies and local authorities shall be forbidden to adopt legal norms and other enactments and (or) take other actions to create favorable or discriminating environment for the performance of certain market entities or groups thereof; to eliminate or restrict competition; as well as to violate interests and rights of consumers unless otherwise is provided by legal enactments.
3. Market entities shall be forbidden to take actions aimed at elimination or restriction of competition, as well as creation of discriminating environment for the performance of market entities involved in similar operations.*

Footnote. Article is amended by RK Law of December 15, 2002, # 125

Article 5. Types of Unfair Competition

Types of unfair competition shall be the following:

- 1) illicit use of firm-name, trademark, service mark and (or) other commercial indication of a businessman able or capable of deceiving consumers about manufacturer or seller of goods (works, services);
- 2) imitation of a competitor by means of direct reproduction of the competitor's attributes, firm-name thereof, goods marking, trademark, other commercial indication, as well as advertising materials, branded packaging, form and other attributes of goods able to deceive consumers about manufacturer or seller of goods (works, services);
- 3) dissemination of deliberately false information or assertions in regard to competitor's goods (works, services), including origin, manufacturer, seller, as well as quality, consumer characteristics, purpose, method and place of manufacturing goods (works, services) and other deliberately false information which discredit goods (works, services), good name and reputation of the competitor;
- 4) *(excluded from July 7, 2006, # 174);*
- 5) dissemination of advertising and other information with incorrect comparison with goods (works, services) or performance of other competitors;
- 6) willful distortion or concealment of information on true characteristics, quality and prices of goods (works, services) in advertising information;
- 7) *(excluded from July 7, 2006, # 174);*
- 8) *(excluded from July 7, 2006, # 174);*
- 9) receipt, use and disclosure of scientific and manufacturing documentation and other information being a commercial or official secret without consent of the holder thereof;
- 9-1) achieving advantages in competition by means of dumping prices;
- 10) other action (inaction) which brings to getting unjustified advantages in business by means of elimination or restriction of competition.*

Footnote. Article 5 is amended by RK Law of December 15, 2000, # 125; of July 7, 2006, # 174.

Article 5-1. Control of Compliance with Legislation of the Republic of Kazakhstan on Unfair Competition

1. The antimonopoly authority shall control compliance with legislation of the Republic of Kazakhstan on unfair competition by market entities, state bodies (hereinafter – inspected objects).
2. The antimonopoly authority shall perform control on regular and extraordinary basis. Regular control shall cover a range of issues related to compliance with legislation on unfair competition by inspected objects, and shall be performed not over twice a year.

Regular control can be held at the whereabouts of the inspected objects or structural subdivision thereof.

Action Plan of antimonopoly authority approved by the Chairman every year shall serve as the basis for regular control. The Plan should contain a list of inspected objects, as are planned for control and the period for such inspection.

Extraordinary control shall be control beyond the Action Plan of antimonopoly authority and shall be performed to verify information on violation of legislation of the Republic of Kazakhstan on unfair competition which has arrived to antimonopoly authority or was revealed on its own.

3. The basis for extraordinary control shall be:

- Application from individuals or legal entities on violation the rights thereof as a result of unfair competition;
- Information on violation of legislation of the Republic of Kazakhstan on unfair competition which arrived from other state bodies;
- Initiative of the antimonopoly authority based on analysis of goods markets, mass media and other sources;
- The result of investigation by antimonopoly authority on violation of legislation of the Republic of Kazakhstan on unfair competition.

4. For the purpose of the control, the antimonopoly authority shall accept instruction in the form of strict reporting signed by the Head of antimonopoly authority, authenticated with a stamp and registered at the competent state body in charge of legal statistics and special accounts in the legal procedure; as well as an Order on designating control; and the plan of control shall be approved.

Instruction on control shall be made in two copies to be submitted to competent state body in charge of legal statistics and special accounts for registration. One copy with registration note shall be attached to the file.

A copy of instruction with a note on registration at the competent state body in charge of statistics and special accounts and a control schedule shall be delivered to the head of inspected object on the day of control.

A copy of instruction on control delivered to inspected object without note on registration at the competent state body in charge of legal statistics and special accounts shall be considered void.

Control can be performed only by the official (officials) stated in instruction.

For the purpose of control, the Head of antimonopoly authority shall issue an order on establishing a Working Group, approve members of the group and determine Chairman and Deputy Chairman of the Working Group.

In the event the inspected object refuses to accept instruction on control and impedes access of officials of antimonopoly authority in charge of control to information required for control, a protocol shall be made up.

The protocol shall be signed by antimonopoly official in charge of control and authorized persons of inspected object.

The authorized person of inspected object can refuse to sign a protocol upon a written justification of refusal.

Refusal from receiving instruction on control shall not be considered as basis to cancel control.

5. Control schedule shall contain the following:

- Time period for control;
- Objectives and aims of control, implementation procedure;
- List of issues and context to be established during control;
- Control schedule;
- Other information in compliance with profile of the inspected object.

6. Time period for inspection shall be set in view of scope of works and objectives and should not be over thirty calendar days since registration of instruction on control at competent state body in charge of legal statistics and special accounts.

In the events when due to specifics of inspected object and significant scope of works the inspection can not be completed in the time period set by law, the official of antimonopoly authority in charge of control shall submit a memorandum to the Head of the authority which includes results of work and reasons to prolong control period.

The Head of Antimonopoly authority shall enjoy the right to issue order on prolonging inspection period. The Head of Antimonopoly authority shall introduce a note on prolonging inspection period to the inspection instruction and inspection plan.

Inspection period can not be prolonged over thirty calendar days.

A copy of Order to prolong inspection shall be delivered to the head of inspected object on the day of registration.

The completion of inspection period shall be a day when an inspected object receives statement of inspection results but not later the period of inspection completion stated in instruction.

7. During inspection antimonopoly officials shall enjoy right:

- 1) For unimpeded access to the premises of inspected subject;
- 2) For access to automated databases (information systems) of inspected object in compliance with subject of inspection;
- 3) To request information from leadership, officials and other employees of inspected object and get required information, documents or copies thereof related to the subject of inspection, verbal and written explanations on issues coming up during inspection, as well as to get written and verbal clarifications to the evidence of violations of antimonopoly legislation of the Republic of Kazakhstan.

In the event the head and officials of inspected object refuse to provide information, documents or copies upon verbal request of antimonopoly official in charge of inspection a relevant written request shall be delivered to them. If a written request can not be delivered to the head of inspected object it shall be delivered by mail addressed to the head of inspected object as a registered letter with notification.

A commercial secret required for implementation of the functions of antimonopoly authority can not serve as grounds to refuse to provide information.

8. Any information on inspected object received by antimonopoly authority during inspection shall not be disseminated except the events when this information is passed to another state body in compliance with laws of the Republic of Kazakhstan.

Antimonopoly authority shall enjoy the right to involve specialists of other state bodies of the Republic of Kazakhstan, as well as scientists and experts to inspection.

The officials of antimonopoly authority performing inspection shall be forbidden to require and apply requests with no relation to the subject of inspection.

9. Upon detecting violations of legislation of the Republic of Kazakhstan on unfair competition an official of antimonopoly authority shall have the right to apply necessary measures of antimonopoly response towards inspected object before inspection is completed in compliance with this Law and legislation of the Republic of Kazakhstan on administrative violations.

10. The results of inspection shall be recorded in statement which contains analysis, conclusions and comments on overall inspected issues and shall be made in two copies. One copy shall be delivered to the Head of inspected object.

The results of inspection shall be recorded in statement based on checked data and facts relying on relevant documents. The statements shall not contain any conclusions, proposals and data not proved by documents.

If the inspection does not detect any violations of legislation of the Republic of Kazakhstan on unfair competition a relevant entry shall be recorded in the statement.

If the head of inspected object has any comments and (or) objections he/she shall record them in written form

Comments and (or) objections on results of inspection can be attached to the statement with a relevant note.

If the Head of inspected object refuses to sign the statement on results of inspection an official of antimonopoly agency in charge of inspection shall record a relevant entry in the statement.

Second copy of the statement after completion of inspection by official of antimonopoly agency in charge of inspection shall be delivered to the head of inspected object.

If the statement can not be handed to the head of inspected object it shall be delivered by mail addressed to the head of inspected object as a registered letter with notification.

11. In the event of violation of rights and lawful interests of inspected objects during inspection an inspected object shall enjoy the right to appeal against action (inaction) of antimonopoly authority in the procedure set by laws of the Republic of Kazakhstan.

12. Wrong actions (inaction) of officials of antimonopoly authority during inspection shall result in responsibility according to laws of the Republic of Kazakhstan.

Footnote. The Law is supplemented with Article 5-1. – Law of the Republic of Kazakhstan of January 31, 2006 # 125; amended by RK Law of July 7, 2006 # 174.

Article 6. Responsibilities for Violation of This Law

1. Responsibility for violation of this Law shall be applied as penalty according to the following:

- 1) evasion from execution of instructions of the authorized entity issued according to requirements of this Law;
- 2) non-providing documents, reference materials and other information, as well as written clarifications to the authorized entity, or providing willfully unreliable and false information. The period for submitting reference and other information shall be set by the authorized body and shall not exceed 15 days;
- 3) actions (inaction) provided by Article 5 of this Law;
- 4) actions of officials of state bodies and local authorities which contribute to restriction or elimination of competition.

2. In the event of violation of this Law the market entities, state bodies and local authorities and officials thereof shall be obligated:

- 1) according to instructions of authorized body to terminate violation upon detecting unfair competition, to cancel or amend agreement (agreed actions) aimed at elimination or restriction of competition; and to take other actions as provided by instruction;
- 2) to reimburse losses (damage) caused by unfair competition in the legal procedure;
- 3) to transfer income from unfair competition and penalty to state budget in the legal procedure. In the event of impossible extraction of income from unfair competition, the income received during unlawful actions but not exceeding the last reporting period preceding the year of detecting such actions shall be withdrawn to state budget*.

Footnote. Article 6 in the reading of RK Law of December 15, 2000, # 125.

Article 7. Competence of Antimonopoly Authority

1. (excluded)

2. The Antimonopoly authority shall enjoy rights:

- 1) in the procedure set by legislation of the Republic of Kazakhstan to consider cases on unfair competition at certain goods markets, to take decisions on administrative punishments and deliver binding instructions to cancel actions aimed at elimination or restriction of competition to guilty persons;

- 2) to take decisions on terminating unfair competition and eliminating its consequences, as well as transferring income from unfair competition to budget binding for market entities;
- 3) To request and get information, including verbal and written explanations from individuals and legal entities, as well as state bodies and local authorities, officials thereof required for considering facts of unfair competition;
- 4) To introduce binding instructions on cancellation or amendment of unlawful acts which restrict or eliminate competition to state agencies;
- 5) To apply to court to stop unfair competition and eliminate consequences hereof, to extract income received from unfair competition to the republican budget; to collect losses caused to individual entrepreneur or legal entity, as well as consumers in the period of exercising unfair competition, to acknowledge the products as infringing;
- 6) To send materials to law enforcement authorities to initiate criminal proceedings against unfair competition;
- 7) To request information from Oblast (city of the republican status and capital) executives;
3. Instructions on eliminating violations of this Law provided to markets entities, state bodies and local authorities shall be binding unless the instructions are appealed in the legal procedure.*

Footnote. Article 7 is amended by RK Law of December 15, 2000 # 125; of December 20, 2004, # 13 (in force since January 1, 2005); of July 7, 2006, # 174.

Article 7-1. Competence of Oblast (City of the Republican Status, Capital) Executive Authority in the Field of Antimonopoly Policy

(Excluded by RK Law of July 7, 2006, # 174).

Article 8. Seizure of Unlawful Income and Reimbursement of Losses Caused by Unfair Competition

1. Losses caused to legal entity or individual, as well as consumers from unfair competition shall be reimbursed in the legal procedure. According to court decision income from unfair competition received by market entity shall be seized to state budget.
2. Penalty shall be imposed against actions aimed at restriction or elimination of competition in the legal procedure.

Article 9. Complaints against Decisions, Instructions and Directions of the Authorized Entity

Legal entities and individual entrepreneurs, state bodies and local executives, as well as other stakeholders shall have the right to apply to court to fully or partially declare decisions, prescriptions and directions of the authorized entity void, or change decisions on administrative punishment.

President of the Republic of Kazakhstan