

*Legal alert in the sphere of antimonopoly regulation
Uzbekistan– June 2024*

Improvement of antimonopoly regulation in the commodity and financial markets.

The Cabinet of Ministers of the Republic of Uzbekistan adopted the Resolution on Approval of Normative Legal Acts on Antimonopoly Regulation in the Commodity and Financial Markets No. 256 on May 1, 2024 (the "**Resolution 256**").

The Resolution will enter into force on August 3, 2024. Please see an overview of the notable novelties introduced by the Resolution 256.

General information

The Resolution 256 approves the procedure for:

- Identification and recognition of the dominant position or superior bargaining power of an economic entity or a group of persons on a commodity or financial market;
- Recognition of the dominant position and superior bargaining power of a digital platform operator, as well as identification of actions resulting in restriction of competition and/or infringement of the rights and legitimate interests of consumers and other economic entities;
- Recognition of economic entity as a subject of natural monopoly;
- Detecting anticompetitive agreements and coordinated actions;
- Obtaining prior consent for economic concentration;
- Determining monopolistically high and monopolistically low prices of services in the financial market;
- Forced split-off or separation of economic entities.

Recognition of a dominant position in a commodity or financial market

The new version of the regulation on the procedure for identification and recognition of the dominant position or superior bargaining power of an economic entity or a group of persons on a commodity or financial market (Annex No. 1 to the Resolution 256) introduces an additional power of the Committee for competition development and consumer protection (the "**Committee**"), enabling the head of the Committee to recognize the cancellation ("**Recognition of cancellation**") of the dominant position or superior bargaining power of an economic entity or a group of persons on a commodity or financial market.

The head of the Committee may issue an order Recognizing the cancellation in the following cases:

- change of the position of the economic entity and group of persons to the extent at which the cancellation of a dominant position or superior bargaining power may be recognized;
- complete termination of production and sale of a type of goods (rendered service) by an economic entity recognized as having a dominant position or superior bargaining power;
- application of liquidation proceedings with respect to the economic entity.

Recognition of a dominant position of a digital platform operator

The Regulation on the procedure for recognition of the dominant position and superior bargaining power of a digital platform operator, as well as identifying actions resulting in restriction of competition and/or infringement of the rights and legitimate interests of consumers and other economic entities ("**Regulation on recognition of the dominant position of a digital platform operator**") (Annex No. 2 to the Resolution 256) introduces new terms, including digital space, digital platform operator, digital products, pricing algorithm, network effect and other terms.

At the same time, the Regulation on recognition of the dominant position of a digital platform operator mentions the following forms of digital platforms¹:

- marketplaces (electronic trading platforms);
- aggregators (intermediaries);
- online maps;
- crowdfunding (collective financing) platforms;
- crypto asset exchange platforms;
- and other forms of digital platforms.

The procedure for recognition of the dominant position of a digital platform operator is also defined as one of the following conditions being met, as well as if there is a direct and indirect network effect²:

- if the revenue of the digital platform operator for the previous calendar year within the borders of the digital space is equal or more than one hundred times the basic calculation value (UZS 34 million or USD 2,700³);
- if the total average monthly number of active users of the digital platform is at least fifty thousand or the average monthly number of active users-entrepreneurs is at least three thousand.

Moreover, the Committee, when recognizing the dominant position of a digital platform operator through analysis, may determine the boundaries of the digital space, as well as the existence of the possibility to use personal and other user data by the digital platform operator which affects or likely to affect the competitive environment.

The following conditions under which a digital platform operator is recognized as having superior bargaining power are also introduced:

- absence of another digital platform operator providing users with similar services;

¹ According to Article 4 of the Law "On Competition" No. ZRU-850 dated 03.07.2023, "**a digital platform** is an information system that provides paid or free use of digital products via the worldwide information network Internet".

² According to clause 2 of the Regulation on recognition of the dominant position of the digital platform operator, "**network effect** is a phenomenon whereby by changing the number of one group of users of a digital platform, the value of the goods for another group of users changes, resulting in the digital platform operator being able to maintain or increase its economic advantages and its market share through the collection and processing of user data".

³ According to the exchange rate of the Central Bank of Uzbekistan as of June 26, 2024.

- presence of another digital platform operator providing users with similar services, which services are difficult to use;
- limitation of the possibility of simultaneous use of different digital platforms;
- the possibility of the digital platform services' unilateral influence on conditions such as price, quality, volume, and territory.

The regulation recognizing the dominant position of a digital platform operator prohibits the following actions of a digital platform operator to:

- not allow users to simply uninstall previously installed applications or change the default settings of operating systems, virtual assistants, or web browsers referring to the digital platform's products and services, and not provide selection screens for essential services;
- restrict users from installing third-party applications or application stores that use or work with the digital platform;
- restrict users from quickly unsubscribing from the core services of the digital platform.

Recognition of economic entity as a natural monopoly

The new regulation on the procedure for recognizing economic entity as a natural monopoly entity (Annex No. 3 to the Resolution 256) classifies as natural monopoly the economic entity which produces and/or sells goods under natural monopoly conditions⁴ as well as have sectoral infrastructure on the territory of the Republic of Uzbekistan ("**Uzbekistan**") or its part, including entity operating in the following areas:

- transportation of oil and oil products by pipeline;
- transportation and distribution of gas by pipeline;
- transportation and distribution of electric and thermal energy;
- public railroad infrastructure services;
- water supply services by pipeline and sewerage;
- air navigation and airport services.

According to the new procedure, the Committee analyzes (i) data on the production (sale) of goods under natural monopoly conditions received from executive authorities and other sources and (ii) the "questionnaire of a natural monopoly entity" filled out by the economic entity, which contains data on the volume of goods produced.

The list of natural monopoly entities is published on the Committee's official [website](#) at the end of each calendar quarter.

The new procedure provides for the revocation of the status of an economic entity as a natural monopoly in cases of:

- liquidation of an economic entity;

⁴ According to Article 4 of the Law "On Competition" No. ZRU-850 dated 03.07.2023, "**natural monopoly** is a state of the commodity market in which, due to technological features, it is impossible or economically inexpedient to create competitive conditions for satisfying the demand for a certain type of goods."

- complete termination of production (sale) of goods by an economic entity under conditions of natural monopoly.

Identification of anticompetitive agreements and coordinated actions

The Regulation on the procedure for detecting anticompetitive agreements and coordinated actions ("**Regulation on detection of anticompetitive agreements**") (Annex No. 4 to the Resolution 256) contains an expanded definition of coordinated actions.

The Regulation on detection of anticompetitive agreements provides a new definition of anticompetitive agreements. These are agreements of two or more parties in a commodity or financial market made in written form (one or more documents), as well as in oral form, which leads or may lead to restriction of competition or damage to the rights and legitimate interests of consumers.

The additional indicators of coordinated actions and anticompetitive agreements between economic entities have also been introduced, including:

- simultaneous or consecutive increase (decrease) of prices in the absence of economic reasons, common external factors for price increase or decrease, including limitation of acquisition of goods by new buyers based on existing prices (tariffs);
- simultaneous or consecutive establishment of the same prices while having different costs for the production, purchasing, or realization of similar goods.

The Regulation on detection of anticompetitive agreements provides authorizes the Committee to require an economic entity to prove that the suspected price increase (in case of a negative impact on the competitive environment in the market and/or a sharp synchronous price increase for goods (works/services) of the same industry) is not the result of anticompetitive agreements and to indicate reasonable individual economic reasons for the price increase.

The Regulation on detection of anticompetitive agreements in a more detail lists what qualifies as direct evidence and indirect evidence of anticompetitive agreements, coordinated actions, and coordination of economic activities. Thus, contracts (agreements) between the parties to the agreement, providing for execution of agreements or planning their execution, telephone conversations, correspondence in social networks, testimony and evidence of the parties to the agreement, including economic entities that received an offer to participate in the agreement but refused to join it and other may serve as direct evidence.

Exchange of information verbally or electronically, public announcement of prices when there is no need for publication, identical and synchronized actions, the simultaneous or consecutive establishment of identical prices while having different costs of production or acquisition or sale of goods, as well as meetings of persons considered to be parties to anticompetitive agreements and coordinated actions, including visits to the same place, participation of the same economic entities in different tenders and/or the existence of a scheme of sequence (priority) for participation in tenders and price offers and other indicators and other may serve as indirect evidence.

Obtaining prior consent for economic concentration

The Regulation on the procedure for obtaining prior consent for economic concentration ("**Regulation on obtaining consent for economic concentration**") (Annex No. 5 to the Resolution 256) defines the cases of state control over economic concentration, including:

- reorganization of an economic entity through a merger or consolidation;
- acquisition by a person or a group of persons of the right to dispose of more than 25% of voting shares of a joint stock company registered in the Uzbekistan;
- acquisition by a person or a group of persons of the right to dispose of more than one-third of participatory interests in the charter fund (charter capital) of a limited liability company or an additional liability company.

In addition to the above, the economic entity must obtain the Committee's prior consent to economic concentration if one of the following conditions exists:

- the book value of the assets of one of the economic entities or the revenue from the sale of goods for the preceding calendar year is equal or more than two hundred and fifty thousand times the basic calculation value (UZS 85 billion or USD 6,756,756⁵);
- the total book value of assets of the participants of transactions or the total revenue received from the sale of goods for the preceding calendar year is equal or more than five hundred thousand times the basic calculation value (UZS 170 billion or USD 13,513,513⁶).

The Regulation on obtaining consent for economic concentration also details the procedure for obtaining approval for economic concentration:

- (a) in order to obtain the Committee's prior consent, a person or a group of persons must apply to the Committee through the Public Services Center;
- (b) the fee is 0.05% of the revenue, but not less than 7 times (UZS 2,38 million or USD 189⁷) and not more than 1,000 times (UZS 340 million or USD 27,027⁸) the basic calculation value.

Determination of monopolistically high and low prices of services on the financial market

The Regulation on the procedure for determining monopolistically high and monopolistically low prices of services in the financial market (Annex No. 6 to the Resolution 256) is similar to the earlier regulation on the procedure for determining monopolistically high and monopolistically low prices of services in the financial market (Annex No. 2 to the Resolution of the Cabinet of Ministers No. 230 of August 20, 2013) and does not contain any significant changes.

⁵ According to the exchange rate of the Central Bank of Uzbekistan as of June 26, 2024.

⁶ According to the exchange rate of the Central Bank of Uzbekistan as of June 26, 2024.

⁷ According to the exchange rate of the Central Bank of Uzbekistan as of June 26, 2024.

⁸ According to the exchange rate of the Central Bank of Uzbekistan as of June 26, 2024.

Forced split-off or separation of economic entities

The Regulation on the procedure for forced split-off or separation of economic entities (Annex No. 7 to the Resolution 256) is similar to the earlier regulation on the procedure for consideration of issues of forced split-off or separation of economic entities (Annex No. 4 to Cabinet of Ministers Resolution No. 230 dated August 20, 2013) and does not contain any significant changes and amendments.

Due to adoption of the Resolution 256, the following normative and legal acts shall cease their force:

- The Resolution of the Cabinet of Ministers on measures to improve antimonopoly regulation in commodity and financial Markets No. 230 dated August 20, 2013;
- The Resolution of the Cabinet of Ministers on measures to further improve antimonopoly regulation in commodity markets No. 249 of March 30, 2018.

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