

## DRAFT COMPETITION CODE UP FOR PUBLIC HEARING

The parliament has submitted for a public hearing the draft Competition Code that the president of the Republic earlier proposed. Along with the physical hearing held in the parliament's committee for economic policy, industry, and proprietorship in September, the bill is open for a public hearing through the parliament's website. The first draft of the Code proposed back in 2006 having passed two readings at the parliament was shelved for most of the time until a presumably reworked draft is introduced now.

The present bill consists of twelve chapters and 84 articles. As such, it will codify and replace the existing competition legislation including the Laws on Antimonopoly Activity, Unfair Competition, and Natural Monopolies, and a somewhat defunct Law on Anti-Dumping, Subsidies, and Safeguards. It is reported the Code would be instrumental to Azerbaijan's accession to the World Trade Organization.

The bill proposes new concepts and definitions and redefines most concepts presently applicable.

A definition of a relevant market is introduced as that of a market, from where a customer outside geographic borders does not consider for economic, technical, or other practical considerations procuring a relevant commodity, and where commodities of the same specifications, price, and intended use or fungible are offered. The bill introduces the concepts of, among others, a low monopoly price, barriers to entry, and concentration of economic subjects.

The concepts that are being redefined are those of a dominant position in the market, incidents of abusing the position, unfair trade practices, natural monopolies, and the requirements for the state interventions on competitive grounds. The bill, *inter alia*, redefines the concepts of a qualifying market share, dumping, and cartel transactions.

It is especially important that the concept of a dominant position in a market is redefined. A dominant position exists where an economic subject's market share is 50 percent or more. An economic entity with a market share of less than 50 percent but more than 35 percent is considered to have a dominant position if it has the ability to influence the relevant market.

Further, two and more economic entities ..., whose activities are directly or indirectly joint ..., each of which has a market share of more than 10 percent, are considered to be in a joint dominant position:

- when the combined market share of two or three economic entities exceeds 50 percent; or
- when the combined market share of four or five economic entities exceeds 70 percent.

To identify and obtain evidence of horizontal agreements that restrict competition, the following are considered:

- a reduction in the number of business entities by 20 percent and more and withdrawal from a market;
- a change in a trade turnover by 20 percent and more;

- a price change by more than ten percent in 30 days; and
- price changes by more than ten percent in 30 days by parties to an agreement with a joint share in a market of 30 percent and more.

Forms of unfair competition are enhanced by the following:

- an aggressive behavior towards customers;
- misleading and deceiving customers; and
- an illegal acquisition, use or distribution of a trade secret.

The bill also contains provisions on the state control of compliance with the competition legislation, rules for considering cases of violation of it, liability for the violations.

The bill passed the second reading at the parliament in late October.

\* \* \*

**November 2023 Legal Update\***

\*Information does not, and is not intended to, constitute legal advice

**Republic of Azerbaijan**

**For Further Information:**

67, Neftcilar Avenue

Baku, AZ1095

**ContactUs@Bureau28a.com**

Republic of Azerbaijan

[www.bureau28a.com](http://www.bureau28a.com)

**©2023 “Bureau 28a” LLC**