

Law of the Azerbaijan Republic

About antimonopoly activity

Section I. General

Article 1. Objectives of the Law

The Law determines organisational and legal foundations for prevention, restriction and suppression of the monopoly activity.

Article 1-1. Antimonopoly legislation

Antimonopoly legislation of the Azerbaijan Republic consists of Constitution of the Azerbaijan Republic, the present Law and other normative-legal acts.

Article 2. Sphere of application

1. The Law is valid all over the territory of Azerbaijan Republic and is applicable to all legal entities and physical persons.
2. The Law applies also in such cases when agreements and contracts concluded with economic subjects, executive power and administrative bodies with physical persons and legal entities of foreign countries lead to restriction of competition in the national market.
3. The Law is not applicable to relationships resulted from the rights of economic subjects to inventions, trade marks and authorship except cases of deliberate use of such rights with the aim of restriction of competition.

Article 3. State bodies of Azerbaijan Republic implementing antimonopoly policy

State policy on prevention, restriction and suppression of the monopoly activity, coordination of activities of other state bodies in this sphere are carried out, within the limits of its authority, by respective executive power body. Respective executive power body can issue orders obligatory for implementation in connection with violation of provisions of the present Law and carry out other powers in accordance with legislation.

Article 4. Main definitions

The following definitions have been accepted within the limits of the present Law:

executive power and administrative bodies — executive power and administrative bodies of Azerbaijan Republic, its cities, regions and constituent administrative-territorial units. All unions, associations, concerns, consortiums and other unions of enterprises whenever they exercise administrative functions (placement of state orders, establishment of limits for material resources etc.) are also regarded as management bodies;

market subjects — economic subjects and administrative bodies being participants of market relationships;

competition — such form of fighting for the most favourable conditions of business activity between market subjects when their independent activities restrict seriously possibilities of each of them to influence general conditions of circulation of commodities in the market and to stimulate production of commodities which the customers need;

means for restriction of activity — means used by economic subjects for protection and isolation of their sphere of activity from competitors in one or other market, and thus, for restriction of competition in this particular market (taking into possession resources and sale channels, joining and amalgamation of economic subjects, conclusion of agreements with the objective of division of the market, manipulations with prices, boycott against competitors, patent monopoly etc.);

dominating position — exceptional position of economic subject which allows, using its economic potential, to influence competition and so to restrict access of other market participants to the market. Position of the economic subject with the share in the market exceeding 35 percent or other ultimate figure specified by legislation is regarded as dominating;

monopoly activity — activity of economic subjects or executive power and administrative bodies which, being in one or another form monopolistic, is directed to prevention of competition, its restriction or elimination;

market barriers — barriers for restriction of access of new competitors to the market (entry barriers) and for prevention of economic subjects operating in the market to leave it (exit barriers);

horizontal agreements — agreements between economic subjects being at one and the same level of production sequence or acting in one and the same market, in order to avoid competition;

vertical agreements — agreements between economic subjects being at different levels of production sequence or between economic subjects and their clients and suppliers of commodities;

natural monopoly — kinds of monopolistic activity in existing conditions, in the sphere where competition is impossible or inexpedient.

Section II. Monopolistic activity

Article 5. State monopoly

The following are regarded as illegal actions of executive power bodies which result or might result in restriction of elimination of competition, infringement of interests of economic subjects and customers:

- 1) issue of directive orders concerning production and sale of products and obligatory state orders for economic subjects operating outside the state economy sector;
- 2) ungrounded control over prices on commodities produced and sold by independent economic subjects;
- 3) authorisation of administrative structures with rights resulting in restriction of competition;

- 4) imposition of ungrounded bans on movement of commodities between the regions of the Republic;
- 5) establishment of enterprises and other organisational-administrative structures, activity of which stipulates restriction of competition;
- 6) ungrounded provision of tax, credit and other privileges to some economic subjects thus putting them into preferential position relative to other subjects of the same market;
- 7) prohibition or restrictions on production of certain kind of commodities (services) or certain kind of productive activity, except cases envisaged by legislation;
- 8) establishment of unduly low (high) tax duties for foreign economic subject or exemption thereof from taxation;
- 9) imposition of ban on purchase and sale activity or its restriction, except sale of commodities if their production and sale are prohibited by legislation;
- 10) imposition of ungrounded restrictions on foreign-economic activity of economic subjects;
- 11) implementation of merchandise intervention in the market of certain commodities with the objective of manipulations with prices (their increase, decrease or maintenance at one and the same level) in cases when this is directed to restriction of competition and infringes customers' interests;
- 12) establishment of control over information network in the demand and supply sphere, except cases envisaged by legislation.

Article 6. Branch monopoly

The following are regarded as illegal actions of branch administrative bodies which result or might result in restriction or elimination of competition against interests of economic subjects and customers:

- 1) establishment of artificial barriers to entry of new economic subjects into branch market;
- 2) establishment of channels of ungrounded supply of non-governmental economic subjects with material resources in centralised order;
- 3) creating obstacles to formation of parallel structures for distribution, procurement and sale of products;
- 4) ungrounded restriction of independence of economic subjects;
- 5) establishment of organisational-administrative structures or holding companies with the objective of restriction of competition;
- 6) purchase of major shareholder holding in the process of privatisation of economic subjects of branch subordination;
- 7) establishment of ungrounded barriers to free entry of capital from one sphere to another;
- 8) establishment of ungrounded barriers to development of new products or establishment of new enterprises if said doesn't contradict existing legislation;
- 9) establishment of ungrounded control over production of commodities — substitutes, import of commodities;

- 10) ungrounded provision of financial and other privileges to low efficient or unprofitable economic subjects if such privileges are not stipulated by public interests and bring losses to intrabranh competition;
- 11) creation of conditions for subordinate economic subjects to implement damping with the objective of restriction or elimination of competition.

Article 7. Local monopoly

The following are regarded as illegal actions of local bodies of executive power (regional, city and constituent administrative-territorial formations) which result or might result in restriction or elimination of competition against interests of economic subjects and customers:

- 1) implementation of legal, organisational and economic obstacles against entry of economic subjects and capital investments into local market;
- 2) use of objects of municipal property, resources of local budget and also local extra-budgetary funds with the objectives of establishment of one-sided privileges for local economic subjects in cases when this might result in restriction of competition;
- 3) use of their own authorities in the sphere of taxation, privatisation, control over relationships concerning land with the objective of restriction of business activity as regards the local market;
- 4) establishment of tax and other privileges giving one-sided preference to local economic subjects or their unions having dominating position in the local market;
- 5) establishment of organisational-administrative structures or holding companies with the objective of achievement of dominating position in the market;
- 6) establishment of restrictions on import and export of the products;
- 7) misuse of local order (state order) for some economic subjects leading to restriction of competition.

Article 8. Monopoly of economic subjects

The following are regarded as illegal actions of economic subjects having dominating position in the market which result or might result in restriction of competition, violation of interests of other economic subjects and customers:

- 1) ungrounded limitation or termination of production of commodities that are in shortage with economy, people, individual economic subjects;
- 2) change of production volume and withdrawal of commodities from circulation with the objective of creation of artificial deficit or increase of prices;
- 3) establishment of ungrounded barriers to entry to the market and exit therefrom of other economic subjects;
- 4) manipulations with prices (their increase, decrease or maintenance on one and the same level) with the objective of getting additional privileges in the market;
- 5) refusal in sale or purchase of products in case of absence of alternative sellers or buyers of said products with the objective of creation of discrimination between economic subjects;
- 6) creation of closed sale networks for economic subjects of wholesale and retail trade systems;

- 7) allowing discrimination with similar or comparable terms of conclusion of agreements that might restrict competitive abilities of counteragents compared to other economic subjects;
- 8) imposition of contractual terms which are unprofitable for counteragent or do not pertain to the subject of agreement;
- 9) ungrounded refusal in conclusion of agreement with counteragent when there exist vacant productive facilities;
- 10) violation of existing economic relations, without preliminary notification and consent of counteragent.

Article 9. Financial-credit monopoly

The following are regarded as illegal actions of financial-credit organisation which result or might result in restriction of competition:

- 1) restriction of mobility of financial resources, creation of ungrounded barriers for capital entry from one sphere of activity into another;
- 2) conclusion of agreements on uniform policy in establishment of percent rates between commercial banks;
- 3) establishment of ungrounded discrimination of economic subjects depending on the form of property and organisation-legal procedures when obtaining bank credits;
- 4) imposition of conditions not envisaged by legislation and making them more difficult for companies looking for bank credits;
- 5) establishment of ungrounded barriers to entry to the financial market (or for exit from the financial market) of other financial-credit organisation;
- 6) decrease or termination of allotment of credits with the objective of creation or maintenance of artificial deficit and also increase of credits rates in the credit resources market.

Article 10. Monopoly formed as a result of horizontal and vertical agreements of market subjects

The following are regarded as illegal horizontal and vertical agreements between executive power and administrative bodies, between economic subjects or between the bodies of executive power, administration and economic subjects which become or might become the cause of restriction of competition:

- 1) agreements concluded between competing subjects if one of them occupies dominating place in the market, and leading to monopolisation of the market by means of restriction of activity, as follows:
 - division of the market according to territorial principle, volume of sales or purchases, assortment of commodities or contingent of buyers (customers);
 - establishment of fixed prices (tariffs), discounts, extra payments (extra charges);
 - restriction on entry to the market, boycott against competitor and refusal in business relations;
 - coordination of production quotas aimed to artificial change of amount of proposals;

- increase, decrease or maintenance of prices on one and the same level at auctions and sales;
 - blocking market prices;
 - establishment of price discrimination;
 - holding several administrative posts in two and more market subjects producing and selling similar products by one and the same person;
- 2) agreements between non-competing market subjects, one of them occupying dominating position, another being its supplier or buyer (customer) which are or might become the cause of restriction of competition in the market;
 - 3) agreements ending by joining or amalgamation of economic subjects when their integral market share results in or strengthens their dominating position;
 - 4) agreements on establishment of joint ventures incorporated between market subjects with the objective of restriction or elimination of competition;
 - 5) agreement about acquisition of foreign company by Azerbaijani Company which might result in restriction of competition in the national market;
 - 6) binding agreements which put out conditions of sale of specific product or purchase of specific product;
 - 7) exclusive agreements requesting purchase of some product from specific seller rather than from his competitors;
 - 8) agreements leading to establishment of standards on produced commodities with the objective of replacement of competitors from the market and creating in such a way barriers to entry of other economic subjects to the market.

Article 11. Natural monopoly

1. Antimonopoly control over activity of the administrative bodies and economic subjects which, abusing their own authority as the only monopolist in the sphere of production of one or another commodities and services, cause damage to the interests of the country, economic subjects and customers' rights, is accomplished separately.
2. List of natural monopolists is approved by the *Milli Mejlis of Azerbaijan Republic* on application of respective executive power body.

Article 12. Patent-license monopoly

The following are regarded as illegal actions of administrative bodies and economic subjects abusing, with the objective of restriction or elimination of competition in some market, their monopolistic right on patents and licenses:

- 1) failure to use the patent by its owner and ungrounded refusal in granting license thereto;
- 2) restrictions in technical policy of the licensee;
- 3) restrictions in use of licensed technology by the licensee;
- 4) restrictions in commercial activity of the licensee;
- 5) making more difficult terms of payment for the license by its owner.

Section III. Means of antimonopolistic control

Article 13. State control over observance of antimonopoly legislation when establishing, reorganising and liquidation of economic subjects

1. *Respective body of the executive power implementing state control on prevention of economic subjects' abuses of key positions or their actions, restricting competence in the following cases:*

- *amalgamation and association of economic subjects (if it will be resulted in establishment of economic subjects, the share of which exceeds 35% at respective commercial market);*
- *association and amalgamation of economic subjects, the total value of which assets exceeds 75-ths-fold minimal amount of salary;*
- *liquidation (except for cases of liquidation of enterprises according to judgement of court) and division of the enterprises, the total value of assets of which exceeds 50-ths-fold minimal amount of salary, and also municipal enterprises (if it will be resulted in establishment of economic subjects, the share of which exceeds 35% at respective commercial market).*

2. *Establishment, reorganisation and liquidation of economic subjects, envisaged in the first paragraph of the present Article is to be carried out on the basis of consent of respective executive power body. Persons or economic subjects, making the decision about establishment, reorganisation and liquidation of specified economic subjects apply to respective executive power body for receiving of this consent. The documents corresponding to legislation on state registration and information about volumes of sale of main production (services) at respective commercial market are enclosed to the application.*

It is not admitted to demand from economic subjects any other documents for receiving of the consent of respective executive power body for their establishment, reorganisation and liquidation in cases, stipulated in paragraph 1 of the present Article.

The respective executive power body should inform in written form the applicant about decision not later than 15 days after receiving of required documents.

3. *Establishment, reorganisation and liquidation of economic subjects without consent of respective executive power body in cases, stipulated in paragraph 1 of the present Article may be considered as invalid by respective judgement of the court according to action of relevant executive power body.*

Article 13-1. State control over observance of antimonopoly legislation in carrying out of transactions, concluded between economic subjects when purchasing the shares

1. *Transactions, concluded between economic subjects are carried out after obtaining of the consent of respective executive power body with exceptions, stipulated in the paragraph 2 of the present Article in the following cases:*

- *when purchasing more than 20% of shares constituting partnership capital of one economic subject and giving the voting right to other economic subject (association of economic subjects). These restrictions are not concerning Constitutors in the case of establishment of economic subject by him;*

- *if in the case of transfer of main assets of the production or non-material assets of one economic subject to the ownership or use of another economic subject (association of economic subjects), the balance value of the property, being the subject of transaction, exceeds 10 percents of main assets of the production and non-material assets of economic subject, alienating this property;*
 - *when the other economic subject (association of economic subjects) purchases the rights of one economic subject, specifying terms of business activity or giving the possibility to carry out the functions of his high management body by.*
2. *The consent of respective executive power body for carrying out of transactions, specified in first paragraph of the present Article is required only in the following cases:*
- *if total balance value of assets of economic subjects, specified in first paragraph of the present article exceeds 75-ths-fold amount of salary;*
 - *if the share of one of economic subjects at respective commercial market exceeds 35%;*
 - *if the economic subject, purchasing shares controls the activity of economic subject, alienating these shares.*
3. *For obtaining of consent for carrying out of transactions, specified in the paragraph 1 of the present Article it is required to present the application, documents and information, specified in the second paragraph of the present Law in an established order.*

Article 14. Restriction of monopoly activity

Whenever economic subjects abusing their dominating position carry out monopolistic activity and their actions result in restriction of competition and violation of the customers' interests, and their forced desegregation doesn't seem possible due to technological, territorial and organisation reasons respective executive power body might apply to the executive power bodies and administrative bodies with respective proposals concerning:

- 1) establishment of state control over the prices on products (services) of economic subjects — monopolists, in certain cases — fixation of permissible limits of market prices on one or another product (service);
- 2) application of progressive tax rates to taxes withdrawn from the income of economic subjects in accordance with their market share;
- 3) establishment of fixed rates of excise taxes for economic subjects which, being natural monopolists, abuse their independent position in the market;
- 4) application of unified standards to produced commodities with the objective of simplification of entry barriers to any market;
- 5) replacement of accelerated depreciation with normative depreciation;
- 6) making terms of credit allotment more rigid;
- 7) forced licensing of new patents at relatively moderate cost whenever economic subject abuses its right to patent;
- 8) annulment of limitation provisions in agreements concluded between the market subjects whenever one of them or they all together exercise monopolistic activity;
- 9) holding up all kinds of state support;
- 10) establishment of bans on barter operations;
- 11) annulment of issued licenses on import-export operations.

Article 15. Termination of monopoly activity

If economic subjects occupying dominating position begin monopolistic activity and their actions lead to significant restriction of competition, respective executive power body whenever organisation, technological and territorial conditions allow, might make decision about their forced desegregation. In this case respective executive power body, taking into account specificity's of economic subjects, establishes terms of their forced desegregation in at least 6 month period.

Article 16. Right of the respective executive power body to information

1. Respective executive power body has the right to obtain from state control bodies, organisation-administrative structures, economic subjects any information necessary for implementation of its obligations and functions, including written (oral) explanations in connection with violation of antimonopoly legislation.
2. State Committee of Azerbaijan Republic on statistics supplies respective executive power body statistical data determining dominating position of the enterprises in the national market based on agreed programme on keeping State Register of the enterprises-monopolists.
3. The enterprises-monopolists present to respective executive power body report about monopolistic points of their activity based on state statistical accountancy approved in an order established by the State Committee on statistics at request of the respective executive power body.
4. The respective executive power body shall keep confidential information obtained within the limits of the present article.

Section IV. Conclusions

Article 17. Consequences of violation of the present Law

1. In case of violation of the present Law, economic subjects, executive power bodies and their officials should:
 - *repayment of the profit obtaining as a result of violation of this Law, to the state budget in an order envisaged by the legislation;*
 - based on decrees of the respective executive power body, stop violations, restore original situation, change or annul the agreement and undertake other actions envisaged in said decrees;
 - reimburse losses;
 - pay penalties.
2. Caused losses are recovered by the law court or court of arbitration.

Article 18. Responsibility for violation of the Law

For violation of the present Law economic subjects, their managers and officials of respective executive power bodies will be responsible as follows:

1. *Economic subjects are liable to penalty:*

- *in case of non-fulfillment of legal instructions of respective executive power body within stipulated terms, for each day of delay - up to 50-fold minimal amount of salary, but not exceeding in total 20-ths-fold minimal amount of salary;*
- *in the form of financial sanction - up to 5-ths-fold minimal amount of salary in case of non-presentation of information and documents, specified in articles 13, 13-1 and 16 of the present Law to respective executive power body or presentation of wrong information.*

The economical state of economic subjects is taking into consideration when determining the amount of penalty.

2. *Managers of economic subjects and officials of executive power bodies:*

- *in case of non-fulfillment of legal instructions of respective executive power body within stipulated terms are warned or penalized in 200-fold minimal amount of salary in an administrative order;*
- *in case of violation of requirements of articles 13, 13-1 and 16 of the present Law and non-presentation of the documents are warned or penalized in 150-fold minimal amount of salary in an administrative order*

3. *Persons, specified in paragraph 2 of the present article in case of two repetitions within the year (after taking of administrative measures) of such violations bear criminal responsibility stipulated by the legislation.*
4. *Penalties in the form of penalty sanctions, stipulated in paragraph 1 of the present Article are indisputably levied to the state budget within 30 days after taking the decision about it by respective executive power body.*

In case of untimely payment or partial payment of the penalty by economic subjects respective power executive body may apply to the court about payment of fine in the amount of 1% from the total sum or unpaid part of the penalty for each day of delay.

5. *The procedure of consideration of matters on violation of antimonopoly legislation is determined by the respective executive power body.*

Article 19. Responsibility of officials of respective executive power body

Officials of respective executive power body are responsible in an order established by the legislation for non-disclosing of information, being state and commercial secret and also for causing damage to economic subjects and state in the result of wrong fulfillment of their official duties.

President of Azerbaijan Republic

Abulfaz Elchibey.

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