

Uzbekistan – July 2023

A NEW COMPETITION LAW WAS ADOPTED

The President of the Republic of Uzbekistan (“**Uzbekistan**”) signed the Law “On Competition” No. ZRU-850 dated July 3, 2023, in a new edition (the “**New Law**”). The New Law comes into force on October 3, 2023.

General Provisions

Consequently, the Law of Uzbekistan “On Competition” No. LRU-319 dated January 6, 2012 (the “**Law on Competition**”) and the Law of Uzbekistan “On Natural Monopolies” No. LRU-815-I dated August 19, 1999, are repealed. The New Law introduces a number of new legal concepts such as superior bargaining power, digital platform, state-owned enterprise, affiliates of state-owned enterprises, etc.

Please find below a brief overview of the significant legal developments and amendments set out in the New Law. In our opinion, the most notable, include the concept of superior bargaining power, as well as changes related to economic concentration and obtaining preliminary consent for acquisition of stocks and shares from the Competition Promotion and Consumer Protection Committee of Uzbekistan (the “**Antimonopoly Authority**”).

Economic Concentration

The New Law contains an expanded definition of the term “economic concentration”. *Economic concentration* is now defined as a settlement of transactions, as well as other actions, which lead to the predominance of a business entity or group of entities and which, in turn, affects competition in the commodity and financial markets.

Meanwhile, the state retained its control over the following transactions and actions recognized as economic concentration:

- 1) Reorganization of business entities through mergers and acquisitions;
- 2) Accrual of a right by a person or a group of persons to dispose of shares of joint-stock companies (the “**JSC**”) or limited liability companies (the “**LLC**”) registered in Uzbekistan. Notably, the New Law has decreased the threshold for acquiring shares (stocks) upon which the preliminary consent from the Antimonopoly Authority is required. Thus, preliminary consent is required when acquiring more than 25% of the voting shares in the authorized capital of the JSC, or more than 1/3 of the shares in the authorized capital of the LLC. Previously, the acquisition threshold for obtaining preliminary consent was 50% or more of the shares (stocks).

At the same time, the New Law liberalized additional criteria for transactions on economic concentration. Accordingly, state control over economic concentration will be carried out only if:

- 1) The book value of assets or proceeds from the sale of goods for the last calendar year of one of the business entities participating in the transaction exceeds 250 thousandfold the size of the specified base value (the “**SBV**”) (approximately 6.6 million US dollars); or
- 2) The total book value of assets or revenue from the sale of goods for the last calendar year of the business entities participating in the transaction exceeds 500-thousandfold the size of the SBV (approximately 13.2 million US dollars).

Please note that previously, according to the Law on Competition, preliminary consent from the Antimonopoly Authority was required if:

- 1) The total book value of assets or the total revenue from the sale of goods for the last calendar year of the persons involved in the transaction exceeded 100-thousandfold the size of the SBV (approximately 2.8 million US dollars); or
- 2) One of the transaction participants was a business entity which held a dominant position in the commodity or financial market.

Also, in addition to the previously established documents which are to be submitted to the Antimonopoly Authority for obtaining preliminary consent, applicants will now also need to provide information about individuals – the ultimate beneficial owners exercising actual control over a business entity through direct or indirect ownership of 25% or more shares (stocks).

Please note that the New Law also stipulates that preliminary consent must also be obtained for the establishment (re-organization) of enterprises with the state participation and their affiliated entities, changes in type of their activities, as well as the acquisition of shares (stocks) by such enterprises.

Dominant Position

The New Law changed the criteria for determining a dominant position.

The dominant position under the Law on Competition	The dominant position under the New Law
<p>The position of a business entity or a group of persons with a market share of goods in the amount of:</p> <ul style="list-style-type: none"> ➤ 50% or more; ➤ From 35% to 50% if the following conditions are met: <ul style="list-style-type: none"> • stability of the business entity's share in the commodity market for at least 1 year; 	<p>The dominant position in the market is the position of a business entity or a group of persons when the following circumstances are met:</p> <ul style="list-style-type: none"> ➤ absence of other competitors in the relevant market; ➤ when such entity/group is recognized as a natural monopoly entity; ➤ if the market share is 40% or more; ➤ if there are exclusive rights to manufacture, sell or purchase a certain product.



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| <ul style="list-style-type: none">• the relative size of shares in the commodity market owned by other business entities (competitors);• the possibility for new business entities (competitors) to enter into the relevant market. | |
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Moreover, according to the New Law, a business entity or a group of persons do not occupy a dominant position in the commodity or financial market if their revenue from the sale of goods for the last calendar year is less than 30 (thirty) SBV (approximately 860 thousand US dollars). Exceptions to this rule include natural monopoly entities and business entities whose prices for goods are regulated by the state.

Superior Bargaining Power

The New Law introduces the concept of “superior bargaining power” defined as the assumed ability of a business entity or a group of entities, despite not occupying a dominant position, to unilaterally influence the determination of the following:

- Terms of the transaction;
- Territories;
- Prices for the sale of goods.

The New Law introduces several restrictions that are imposed on business entities with a dominant position or superior bargaining power. These restrictions aim to prevent the abuse of the position/power by these entities, which can ultimately lead to a restriction of competition in the commodity and financial markets, as well as the violation of rights and legitimate interests of the consumers.

Limitations of Dominant Position and Superior Bargaining Power

The New Law prohibits certain actions by business entities with a dominant position or superior bargaining power that include:

- Establishment of monopolistically high and monopolistically low prices for goods;
- Allowing infringement of the rights of consumers to receive goods of the required quantity and quality;
- Charging fees in excess of the established price for goods subject to state price regulation or violation of the order of state price regulation, as well as charging fees for services that are not provided or services that should be provided free of charge;
- Reducing the volume of circulation of goods with the intention of creating or maintaining a deficit in the commodity or financial markets, leading to higher prices and/or harming the rights and legitimate interests of the consumer;

- Prohibition or restriction of the purchase or sale of goods produced by other business entities;
- Providing consent to the conclusion of the contract only on the condition that the counterparty receives or sells other goods, or refrains from receiving goods from other business entities or selling them to other business entities;
- Preventing other business entities from entering the commodity or financial market.

Digital Platforms

In addition, the New Law introduces the concept of a digital platform. According to the New Law, a digital platform is defined as an information system that offers paid or free access to digital products via the Internet.

The New Law introduces an additional restriction for the operator of the digital platform which occupies a dominant position. If the operator of the digital platform is recognized as having a dominant position, it is prohibited engaging in actions that restrict competition by imposing requirements for the use of information, technologies, and digital products.

State Participation

The New Law prohibits the following types of state participation:

- 1) The establishment of an enterprise with the participation of the state and its affiliated persons in a market with developed competition, where there are 5 (five) or more private business entities operating in the commodity or financial market;
- 2) The establishment of enterprises by the state executive authorities and other organizations in areas where these authorities are entitled to accredit, license, and issue other permits, as well as acceptance through a special electronic notification system;
- 3) The establishment by an enterprise with state participation, which is a single supplier or endowed with such right or having a dominant position, of affiliated entities whose activities depend on the use of goods (resources) or the founder's network infrastructure, and who are engaged in activities competing with private business entities, except in cases of establishing such affiliated entities as a result of the separation while ensuring equal conditions with the competitors;
- 4) Carrying out activities not related to the main activity of a state body in a market with developed competition;
- 5) Possession or accrual of participation shares in charter capital of business entities in areas with well-established competition by enterprises with state participation.

Other Provisions

In addition to the above, the New Law defines a list of entities which are required to implement an antimonopoly compliance system. These entities, *inter alia*, include:

- Republican executive authorities and other organizations;

- Business entities which hold a dominant position in the commodity or financial markets;
- Legal entities with an average annual revenue from the sale of goods over the past 3 (three) years exceeding 100-thousandfold SBV (approximately 2.9 million US dollars), while having 50% or more of their authorized capital owned by the state;
- Legal entities with an average annual revenue from the sale of goods over the past 3 (three) years exceeding 100-thousandfold SBV (approximately 2.9 million US dollars), while having 50% or more of their share in the authorized capital owned by the legal entity, where 50% or more of the shares are owned by the state;
- Associations of legal entities.

Liability for the Violation of Competition Law

In case of a violating competition legislation, the New Law outlines the following types of liability which can be imposed on public administration bodies, other organizations, associations of legal entities, business entities, their officials, and individuals:

- Fulfillment of the instruction to eliminate the violations within the prescribed period.
- Compensation of the damages caused.
- Return of unduly received income.
- Payment of an administrative fine.

Moreover, the New Law additionally provides for the possibility of imposing financial sanctions (similar to administrative fines) on legal entities for violating competition law, including:

- Abuse by a business entity of the dominant position or a superior bargaining power in the market, resulting in an unjustified increase in prices for products of social and strategic importance
 - *a penalty amounting to 5% of the income received from the sale of goods in the market during the period of violating competition legislation, limited to a maximum of 3 (three) recent years;*
- Conducting transactions related to mergers, acquisitions of business entities, and acquisition of shares (stocks) in the authorized capital of business entities without obtaining preliminary consent from the Antimonopoly Authority, where the consent is required
 - *a penalty of 1,000 SBV (approximately 28.8 thousand US dollars);*
- Carrying out unfair competition actions
 - *a penalty of 2% of the revenue received from the sale of goods or services in the market during the period of violating competition legislation, limited to a maximum of 3 (three) recent years;*
- Violations of the legislation on public tenders by business entities, legal entities acting as customers in public procurement, electronic bidding operators, and organizers
 - *a penalty of 3% of the original price of the subject of the bidding;*
- Failure to provide information to the Antimonopoly Authority or a late submission, as well as the submission of false information to business entities

- a penalty of 50 times the amount of SBV (approximately 1.5 thousand US dollars).

After or pending the New Law comes into force, the state must also adopt or amend certain provisions, such as, the procedure for implementing and enforcing antimonopoly compliance, the procedure for recognizing the dominant position of business entities or a group of persons, as well as the procedure for regulating competition in the field of digital platforms. These provisions are necessary to regulate and enforce the new requirements and procedures.

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