

Law of the Republic of Kazakhstan “On Natural Monopolies”

- 5) This Law shall regulate the activities of the natural monopolies in the Republic of Kazakhstan; it is aimed at ensuring the protection of the interests of customers and natural monopoly entities.

Article 1. Purposes of the Law

The purposes of this Law shall be stated as follows:

- determining a legal foundation for the national policy for regulating prices and tariffs on services (goods, works) provided by natural monopoly entities; and
- encouraging the development and improvement of the conditions of production and delivering services (goods, works) in the sphere of the natural monopolies.

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Article 2. Scope of Law Application

1. This Law shall govern the relations available on the service (goods, works) market related to the existence and operation of natural monopoly entities.
2. Provisions of this Law shall be applied to the acts (omission of acts) taken by a natural monopoly entity, founders (participants) thereof outside of the Republic of Kazakhstan in the cases when such acts (omission of acts) contravene this Law and cause damage to customers of natural monopoly services (goods, works).
3. This Law shall not be applied to the legal entities performing activities attributed to the sphere of natural monopolies, but related to constructing and operating of facilities intended mainly for their own needs.
4. Legal relations not covered by this Law shall be regulated by the anti-monopoly and other legislation of the Republic of Kazakhstan.

7) Article 3. Concepts Used in the Law

The following concepts shall be used in this Law:

- 1) **universal service:** providing of services and production of goods and works by natural monopolies for all customers within a particular region of the Republic of Kazakhstan where the natural monopoly entities operate and are capable of providing the services (goods, works);
- 2) **a group of entities:** a group of legal entities, or legal entities and individuals, or a group of individuals who hold ten or more percents of voting stock (participatory shares), and who, based on a joint agreement, are eligible to directly or indirectly take decisions and/or to influence the decisions taken by a natural monopoly entity;
- 3) **natural monopoly:** — the state of a commodity, works and service market, where the creation of competitive conditions for satisfying demand for a particular type of services (goods, works) is impossible or economically inexpedient due to the technical peculiarities of producing and providing of this type of services (goods, works);

- 4) **customer of services (goods, works) of natural monopoly entity:** an individual or a legal entity utilizing goods, works and services of a natural monopoly entity;
- 8) **natural monopoly entity:** a legal entity or individual entrepreneur producing goods and works and/or providing services to customers under natural monopoly condition;
- 9) the Authorized Body means a government authority which supervises and regulates the activities carried out by natural monopoly entities;
- 10) **natural monopoly services** – services, goods, works provided and consumed under natural monopoly conditions, including rendering services by delivering certain goods to a customer; and
- 11) **emergency regulatory measures:** measures taken by the authorized natural monopoly regulatory agency for the purpose of protecting health and lives of the citizens as well as the property of legal entities and physical persons .
- 12) **Article 4. Sphere of Activities of Natural Monopoly Entities**

- 1. The following types shall be ascribed to the sphere of natural monopolies:
 - 1) transportation of oil and oil products through trunk pipelines;
 - 2) transportation of gas and gas condensate through trunk and distribution pipelines;
 - 3) transmission and distribution of electric power and heat;
 - 4) operation of railroad routes;
 - 5) air-navigation, port and airport services;
 - 6) rendering telecommunication services via local line networks;
 - 7) water supply and sewerage services;
 - 8) postal services; and
 - 9) other areas determined by legislative acts of the Republic of Kazakhstan.
- 2. Legal entities which perform those types of activities attributed to the sphere of natural monopolies shall be subject to inclusion into the State Register of Natural Monopoly Entities.
- 3. The procedure for admission of a legal entity to the State Register of Natural Monopoly Entities or exclusion therefrom shall be determined by the Authorized agency.

Article 5: Prohibitions on Behaviour Specific to Natural Monopoly Entities

- 1. A natural monopoly entity shall be prohibited from:
 - 1) rendering services and performing other activities outside the sphere of prime activity performed by the natural monopoly entity;
 - 2) owning (having under economic jurisdiction) assets other than those required to produce and provide services (goods, works) of the natural monopoly entity;
 - 3) owning stock (shares), or otherwise participating in activities of other commercial entities;
 - 4) purchasing, for purposes rather than their own consumption, the goods, works and services transported or transmitted by this entity
 - 5) charging prices for services (goods, works) exceeding those established by the Authorized agency;

- 6) alienating the fixed assets without obtaining the approval of the authorized agency; and
- 7) imposing conditions for access to services of natural monopoly entities, or otherwise performing any acts that result in discrimination against customers of services of natural monopoly entities, or generation of revenues from the customers in excess of established tariffs.

Article 6. Rights of Natural Monopoly Entity

A natural monopoly entity shall have the right:

- 1) to establish, in accordance with the legislation, technical requirements binding for natural monopoly customers;
- 2) to submit proposals with regard to the draft decisions of the Authorized agency that affect its activities and legal status;
- 3) to challenge in a court the acts (omission of an act) taken by the authorized agency that are in conflict with the legislation of the Republic of Kazakhstan;
- 4) to appeal to the Authorized agency or to a court of other entities or of the authorized agency that affect its activities, revenue, ownership or legal status;
- 5) to apply, in accordance with the procedure established by legislation, to the Authorized agency for its removal from the Register of Natural Monopoly Entities; and
- 6) to enjoy other rights provided for by legislative acts of the Republic of Kazakhstan.

Article 7. Obligations of Natural Monopoly Entities

A natural monopoly entity shall be under the obligation:

- 1) to implement the decisions taken by the Authorized agency that do not contradict the current legislation;
- 2) to provide customers with high quality service at prices, tariffs and payment terms established by the Authorized agency for providing services (goods, works);
- 3) to provide equal opportunities for customers to consume the services of a natural monopoly entity;
- 4) to procure inventory and financial resources and equipment for production needs on a tender basis according to the procedures established by legislation of the Republic of Kazakhstan;
- 5) upon request of the Authorized agency, to present financial statements and other required information;
- 6) to choose and employ the most effective methods and technologies for providing natural monopoly services consistent with public health and safety;
- 7) to conduct annual audits (statutory audit) by auditing organizations and publish the outcomes of such an audit in the mass media; and
- 8) to enter into contracts with customers for providing services (goods, works);
- 9) to install the devices for recording the services delivered to consumers.

Article 8. Disposition of Natural Monopoly Assets and Acquisition of Stock (Shares) of a Natural Monopoly Entity

1. Natural monopoly assets, in whole or in part, may be disposed of upon agreement of the Authorized agency, but only if the disposition of such assets or portions thereof does not result in violating the terms of contracts concluded with the customers.

2. State-owned property of a natural monopoly entity may be privatized with the consent of the Authorized agency.

3. A physical person or a legal entity (or a group of entities) purchasing more than 10% of the voting stock (participatory shares) in the charter capital of a natural monopoly entity must submit a prior notice thereof to the Authorized agency.

Article 9. Reorganization and Liquidation of Natural Monopoly Entities

1. Procedures for reorganization or liquidation may be applied to a natural monopoly entity according to the legislation of the Republic of Kazakhstan.

2. Natural monopoly assets may be transferred under trust management in accordance with the legislation of the Republic of Kazakhstan provided that that will not cause long-term interruption or considerable reduction of the amount of goods and works produced and services delivered by the natural monopoly entity.

3. Rehabilitation procedures may also be applied to a natural monopoly entity with the purpose of preventing the long-term interruption or significant reduction in the level of goods and works produced or services provided by the natural monopoly entity.

Article 10. Rights of a Customer of Services (Goods, Works) of Natural Monopoly Entity

A customer of the services (goods, works) of a natural monopoly entity shall have the right:

- 1) to purchase natural monopoly services according to the procedure, at prices and tariffs established by the Authorized agency;
- 2) to file a petition with the Authorized agency to issue, amend, or repeal the existing decisions;
- 3) to apply to a court against the commission (omission) of an act by the Authorized agency, as well as the decisions taken by the Authorized agency;
- 4) to file protests with the Authorized agency and with a court with regard to acts of a natural monopoly entity taken in violation of the Law; and
- 5) to enjoy other rights stipulated by legislation of the Republic of Kazakhstan.

Article 11. Obligations of Customer of Natural Monopoly Services (Goods, Works)

1. A customer of natural monopoly services (goods, works) shall be obligated to:

- 1) pay in full and on time for services provided by natural monopoly entities; and
- 2) adhere to any technical requirements established by natural monopoly entities in conformity to the legislation of the Republic of Kazakhstan.

2. A customer of the service of a natural monopoly entity shall be prohibited from owning (or otherwise controlling) through itself, or in conjunction with a group of related

entities more than 25% of voting shares (participatory shares) of the natural monopoly entity, that is providing it with services (goods, works).

3. The Authorized agency may, upon a motion filed by a natural monopoly customer, waive the restrictions fixed in this paragraph, if that would result in reduction of the prices and tariffs.

Article 12 . Authorized Agency

1. Regulation of and oversight over the activities performed by natural monopoly entities shall be carried out by the state natural monopoly regulatory body (hereinafter referred to as the Authorized agency).

2. The procedure for organization of the activities of the Authorized agency and the structure thereof shall be subject to approval by the Government of the Republic of Kazakhstan.

Article 13. Functions of the Authorized Agency

The Authorized agency shall fulfill the following functions:

- 1) to form and maintain the State Register of Natural Monopoly Entities, to carry out state regulation of and oversight over their activities;
- 2) to oversee, within its competence,, the observance of the requirements set forth by this Law and by other regulatory legal acts of the Republic of Kazakhstan governing the operation of natural monopolies, and to take measures for eliciting, preventing and redressing violations;
- 3) to submit, in accordance with the established procedure, proposals for improvement of the legislation on natural monopolies;
- 4) to develop and introduce non-discriminatory methods for establishing prices and tariffs in the sphere of natural monopolies.

Article 14. Rights of the Authorized Agency

1. The Authorized agency shall have the right:

1) to take decisions on inclusion of entities that conduct their activities in the natural monopoly area into the State Register or exclusion them therefrom;

2) to take decisions regulating natural monopoly activities in conformity with this Law and other legislative acts;

3) to take decisions, binding for natural monopoly entities, on introduction, modification or termination of state regulation ;

4) to take, within the scope of its authorities, decisions in response to the facts of violation of this Law for preventing the violations and redressing the consequences thereof in a natural monopoly area;

5) to pass in the manner and in the instances, established by the legislation, the regulations and orders which shall have a binding effect on natural monopoly entities regarding the conclusion of agreements with customers, introduction of amendments into the concluded agreements, transfer of the income, generated as a result of the commission of an act (omission of an act) in violation of this Law, into the state budget and/or imposing administrative penalties;

6) to furnish a natural monopoly entity with compulsory instructions to dispose of the technologically related production facilities which are not a natural monopoly;

7) to file a petition with a court when the Law is violated;

8) to obtain information required for executing the powers, from legal and physical entities, including the state bodies, local self-governance bodies, as well as from their officials;

9) to examine administrative cases relating to the violations of the legislation of the Republic of Kazakhstan on natural monopolies on its own initiative, on the basis of the news reported by mass media or any other materials available, on the grounds of written statements and messages provided by state agencies, legal entities, citizens, parties concerned and applications of natural monopoly entities;

10) to exercise other authorities determined by legislation of the Republic of Kazakhstan.

2. The Authorized agency and its employees shall in the manner stipulated by the legislation, bear the responsibility for disclosing the information containing state, commercial and official secrets.

Article 15. Regulation of Activities of Natural Monopoly Entities

The Authorized agency shall regulate the activities of natural monopoly entities by the following:

- 1) establishing prices (tariffs) or the ceilings thereof;
- 2) applying the specific procedure for costs formation;
- 3) other measures stipulated by the legislation of the Republic of Kazakhstan.

Article 16. Procedures for Submitting Proposed Prices and Tariffs

1. In the case of a necessity to approve (change) the prices and tariffs for goods, works and services provided by a natural monopoly entity, the latter shall file an application with the authorized agency for consideration of new prices and tariffs.

2. A natural monopoly entity shall be obligated to attach a list of the proposed prices and tariffs to the application 45 days prior to the validation thereof.

3. The proposed prices and tariffs shall be reviewed by the Authorized agency within 30 days provided that economically justified estimates have been submitted in compliance with the requirements of the Authorized agency. The period of time for review shall start from the day the required documents have been submitted.

Article 17. Procedures for Reviewing the Proposed Prices and Tariffs

1. If the current prices and tariffs for the services (goods, works) of the natural monopoly entities need to be changed, the Authorized agency shall carry out the following:

1) conduct expert assessment of the proposed prices and tariffs, involving independent experts, state bodies, public associations including consumer societies and the natural monopoly entity that submitted the proposal;

2) develop, on the basis of the outcomes of the expert's assessment, a preliminary decision on the proposed prices and tariffs for services (goods, works) of the natural monopoly entity.

2. Requirements set forth in paragraph 1 of this article shall apply neither to the decisions of the Authorized agency on prolongation of the validity period of the previously

set prices and tariffs, nor to the decisions taken by the Authorized agency as emergency regulatory measures.

Article 18. Procedures for Approving Prices and Tariffs

1. The prices and tariffs of a natural monopoly entity approved by the Authorized agency, must not be lower than the costs required for the delivery of the services (production of goods, works), and must provide for the possibility for the natural monopoly entity to gain return which would ensure an efficient operation of the natural monopoly entity.
2. The final decision on the proposed prices and tariffs for the services (goods, works) of a natural monopoly entity must be sent to this entity no later than 15 days prior to the moment of validation thereof.
3. Tariffs for the services (goods, works) of a natural monopoly entity may be changed only once a quarter. New prices and tariffs shall be introduced on the 1st day of the quarter.
4. The natural monopoly entity must communicate the authorized agency's decision on prices and tariffs to its customers at least 10 days prior to the official validation thereof.

Article 19. Consequences of Violations of this Law

1. In the case of violation of this Law, natural monopoly entities, their managers shall be obligated to:

- 1) cease the violations of this Law and redress the consequences thereof;
 - 2) restore the original state of affairs or take other actions stipulated in the instructions;
- and
- 3) take measures in order to indemnify the damage caused and (or) losses incurred either directly or by temporary reduction of prices and tariffs.

2. The Authorized agency must take a decision on indemnifying losses to the customers caused by a natural monopoly entity by charging illegally high prices and tariffs, by introducing temporary compensating (reduced) prices and tariffs.

Article 20. Liability of Natural Monopoly Entity Director and Officials for Violations of the Law

Natural monopoly entity directors, the officials of authorized regulatory agencies and executive bodies shall be held liable for violations of this Law in accordance with the legislation of the Republic of Kazakhstan.

Article 21. Restitution by Natural Monopoly Entity of Losses Suffered as Result of Violations of this Law

Should the commission (or omission) of an act by a natural monopoly entity in violation of this Law cause losses to another legal or physical entity, including the losses caused by charging prices (tariffs) higher than those established, or by unjustified refusal to enter into or

perform contracts for provision of services, such losses shall be subject to restitution by the natural monopoly entity in accordance with the legislation of the Republic of Kazakhstan, provided that losses suffered by such physical or legal entities were not and will not be indemnified by means of establishing temporary compensational tariffs prescribed by the Authorized agency.

President of the Republic of Kazakhstan

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