

Law of the Republic of Kazakhstan

“On Unfair Competition”

This Law shall define the actions recognized as unfair competition, establish the mechanism for prevention and elimination of unfair competition and consequences thereof, as well as provide for liabilities for unfair competitive acts.

Article 1. Basic Terms

The following terms shall be used in this Law:

discredit – intentional acts aimed at depriving of confidence, undermining the authority of a competitor, goods and services thereof;

competitor (at a market) - a market entity, the change of the scope of activity of which leads to reduction or increase of the market share of the other market entity;

unfair competition - any acts (omission of acts) of a legal and(or) physical entity, as well as of state bodies and local self-governance bodies, aimed at obtaining unjustified advantages in the entrepreneurial activities by eliminating or limiting the competition;

agreement – any contractual relationship (vertical, horizontal, conglomerate) between the parties aimed at limiting or eliminating the competition, receiving unjustified advantages in the entrepreneurial activities;

market entity - a legal or physical entity performing entrepreneurial activities and participating in the turnover of goods, works, services;

authorized agency - an agency determined by the Government of the Republic of Kazakhstan to conduct state policy on promotion and development of competition as well as prevention, restriction and elimination of unfair competition.

Article 2. Legislation Governing Unfair Competition

1. Legislation governing unfair competition shall be based on the Constitution of the Republic of Kazakhstan and be comprised of the norms of the Civil Code of the Republic of Kazakhstan, this Law and of other legal normative acts of the Republic of Kazakhstan issued in accordance with them.

2. Should an international treaty ratified by the Republic of Kazakhstan establish the rules different from those found in the legislation governing unfair competition, the rules of the international treaty shall apply.

Article 3. Sphere of Application of This Law

1. This Law shall apply to legal and physical entities of the Republic of Kazakhstan, government agencies and self-government agencies, as well to foreign

legal entities, whose acts limit or eliminate free competition at commodity markets of the Republic of Kazakhstan.

Article 4. Inadmissibility of Limitation or Elimination of Competition

1. Any activity aimed at limiting or eliminating the competition by means of impairing the rights of other entrepreneurs to free competition, as well as the activity that violates the rights and legitimate interests of consumers, shall be prohibited.

2. Government agencies and self-government agencies shall be prohibited from passing normative legal acts and other acts and(or) committing actions aimed at creating favorable or discriminatory conditions for the activity of certain market entities or their groups, eliminating or restricting the competition, as well as violating the rights and interests of consumers, unless otherwise provided for in legislative acts.

Article 5. Types of Unfair Competition

The following shall be the types of unfair competition:

1) illegal use of trade names, trademarks, service marks and(or) any other commercial designations of an entrepreneur that confuse or may confuse the consumers as to the producer or the seller of the commodities (works, services);

2) imitation of the competitor by means of flat reproduction of the appearance of a competitor's product, its trade names, marking features, trademarks, service marks and/or any other commercial designations, as well as promotion materials, firm containers, form and other appearance of the good which may confuse the consumers as to the producer or the seller of the commodities (works, services);

3) dissemination of knowingly false information and statements regarding the competitor's goods (works, services), including [the information and statements] on their origin, manufacturer, seller, as well as the quality, consumption features, functions, method and place of manufacture of the goods (works, services) and other designedly untrue information discrediting the goods (works, services), good name and reputation of a competitor;

4) imposition by the seller who has no competitors on the buyer of additional terms of sale, which neither by their nature nor by commercial purpose relate to the subject of the contract;

5) placing advertisements and spreading other information that contains improper comparison with the goods (works, services) and activities of another competitor;

6) intentional perversion or non-disclosure in advertising materials of information regarding the real characteristics and qualities of goods (works, services)

7) conclusion and performance of any agreements between competitors on prices, division of markets, removal of other entrepreneurs and on other conditions of activity aimed at eliminating or considerable limiting of the competition;

8) horizontal mergers of market entities which result in considerable limiting or eliminating of the competition;

9) obtaining, using or disclosing scientific and technical, industrial and other information representing a trade secret and official secrecy without the consent of its owner;

10) performing other acts entailing the elimination or restriction of competition, providing and(or) receiving unjustified advantages.

Article 6. Liability for Unfair Competition

1. For the commitment of acts (omission of acts) that violate the freedom of competition legal and physical entities, as well as government agencies and self-governance agencies and their officials shall bare liability stipulated by this Law and other legislative acts of the Republic of Kazakhstan.

2. In the case of the violation of this Law market entities, government agencies, self-governance agencies and their officials must:

1) pursuant to the orders of the authorized agency, cease the violation in respect to unfair competition, cancel or modify agreements (concurrent acts) aimed at eliminating or limiting the competition and commit other acts as stipulated in the order;

2) compensate for losses (damages) suffered as the result of unfair competition in the manner established by legislation.

Article 7. Rights of the Authorized Agency to Suppress Unfair Competition

1. For purposes of carrying out the state policy aimed at encouraging and promoting competition, as well as at preventing, restricting and eliminating unfair competition, the Government of the Republic of Kazakhstan shall determine an authorized agency.

2. The authorized agency shall have the right:

1) to take decisions of a binding effect for the market entities to cease unfair competition and redress the consequences thereof;

2) to request and obtain information required for consideration of facts of unfair competition, including written and oral explanations of legal entities and individuals, as well as state bodies, self-governance agencies and their officials;

3) to consider administrative cases on unfair competition in the manner established by the legislation, and to render decisions on imposition of administrative sanctions; to communicate to the guilty entities binding orders to cease the acts which restrict or eliminate competition;

4) to issue binding orders for the state and local self-governance bodies to annul or revise illegal acts that restrict or eliminate competition;

5) to file a petition with a court to suppress the unfair competition, redress the consequences thereof, surrender of the profits generated as a result of unfair competition to the state budget, as well as to recover losses suffered by a legal entity or individual entrepreneur or by a physical entity as the result of the unfair competition;

6) should there be indications of a criminal offense associated with unfair competition, to forward the materials to the law enforcement agencies to decide on initiation of a criminal case.

7) to exercise other authorities stipulated by the legislation of the Republic of Kazakhstan.

Article 8. Surrender of Illegally Gained Profits and Indemnification of Losses Inflicted as a Result of Unfair Competition

1. Losses inflicted by a legal or physical entity or by consumers as a result of unfair competition, shall be subject to indemnification in the manner established by the legislation. Profits illegally generated by a market entity as the result of unfair competition, shall be subject to surrender to the national budget pursuant to a judicial decision.

2. A fine shall be imposed [on an entity] for performance of acts aimed at restricting or eliminating legitimate competition, in the manner and amounts established by legislative acts.

Article 9. The Procedure for Appealing Decisions, Orders and Resolutions of the Authorized Agency

Legal entities or individual entrepreneurs, state and local self-governance bodies as well as other entities concerned shall have the right to file a petition with a court on partial or full invalidation of decisions, orders and resolutions of the authorized agency or on modification of the decision regarding the imposition of administrative penalties.

President
of the Republic of Kazakhstan
N.Nazarbayev

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