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WAYS TO INCREASE THE EFFICIENCY OF STATE ANTIMONOPOLY POLICY

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ACRONYMS

EU – European Union

APEC - Asia-Pacific Economic Cooperation

SSAPCRP – State Service for Antimonopoly Policy and Consumer Rights Protection

ICAP – Interstate Council for Antimonopoly Policy

OGP – Open Government Partnership

WEF – World Economic Forum

WTO – World Trade Organization

MoE – Ministry of Economy

ICN - International Competition Network

CAO – Code of Administrative Offences

GCI - The Global Competitiveness Index

GCR - Global Competition Review

NAFTA - North American Free Trade Agreement

MERCOSUR - Mercado Comu'n del Cono Sur

NAP – National Action Plan

UNCTD - United Nations Conference on Trade and Development

OECD - Organization for Economic Cooperation and Development

FAS – Federal Antimonopoly Service of Russia

SUMMARY

This research is devoted to the issues related to increasing efficiency of state antimonopoly policies which intend to ensure free and sound competitive environment. The research provides an overview of the current state of antimonopoly policies in the country, the regulatory framework in this field, the institutions implementing public policy and legal basis of their activities, while also covers analyses of relevant reports, the lessons learnt from the foremost international practices, the challenges in the implementation of antimonopoly policy and suggests possible solutions, the ways to overcome potential difficulties in the implementation of recommendations.

The formulation of institutional and legal framework for implementation antimonopoly policies in Azerbaijan commenced in the 90s. Although the State Antimonopoly Policy and Entrepreneurship Committee was established in 1992, it was abolished in 2001, and was initially transformed into department under the state authority implementing economic policy, later into state service.

Laws regulating antimonopoly policy, competition and natural monopolies, as well as, rules and regulations on conducting relevant investigation and monitoring, on permissions of certain activities of natural monopolies, on decision-making process in the event of violations, have been designed with an aim of formulation of normative-legal framework of antimonopoly policies. The comparison of national normative legal acts with foremost international practices has revealed that, they are insufficient and inadequate in the context of the current economic policy. The lack of independence of national authority conducting antimonopoly policy and of the provisional commission, established in cases of violation of competition law, casts doubts on the fairness of their decisions. This research also includes the study of the foremost international practice on this issue.

The factors stipulating low efficiency of antimonopoly policy in Azerbaijan have been grouped as following, according the research:

- *Inadequate antimonopoly and competition legislation;*

- *Equivocal status of the State Service responsible for the implementation of antimonopoly policy and its lack of independence;*
- *Provisional basis of operations of the Commission responsible for examining specific cases of violations of antimonopoly policy, the lack of its independence, and its reliance on the State Service implementing antimonopoly regulation;*
- *Inadequate level of international integration of national agency for antimonopoly policy, and its absence from international rankings;*
- *The protection of monopolistic companies by high-ranked government officials;*
- *The lack of public control, transparency and accountability elements in the operations of SSAPCRP.*

Each factor has separately been considered and recommendations for their resolution have accordingly been designed:

- *Adoption of the Competition Code;*
- *To establish an independent Competition Agency responsible for an implementation of antimonopoly policy, instead of SS-APCRP, which operates under MoE.*
- *To ensure a permanent operational basis of the Commission investigating the specific cases of violations of antimonopoly legislation, dividing the powers between the Competition agency and the Commission;*
- *To ensure bilateral international contracts for the purpose of regulating competitive environment and to ensure an active participation in the working groups of the International Competition Network (ICN) and other respective similar platforms, to carry out the necessary preparatory work for participation in the Global Competition Review (GCR) rankings;*
- *To ensure the compliance with transparency and accountability in the activities of Competition Agency, to establish a public council under the Agency, which is the most advanced form of public control.*

At the same time, the research has reviewed the global competitive-

ness index of the country, the issue of competitiveness of national competition agencies, and the state of their participation in international working groups and platforms.

INTRODUCTION

Monopolism is among the foremost obstacles in the way achieving favorable entrepreneurship environment, in terms of both its importance and urgency of its resolution. Goals of state antimonopoly policies should include increasing efficiency in production through market regulation of economic processes, antimonopolization of economy and the development of competition. It is impossible to formulate efficient antimonopoly policy without a government support. That is why, all executive structures should be involved in this process. The globalization of worldwide economic processes that increasingly affect the structure of national economies requires the adoption of new normative legal acts on the regulation of competition.

In this case, the responsibility of a state antimonopoly policy is, on the one hand, to prevent the activities of dominant economic entities abusing their dominating position that are directed to restrict competition, to avoid anticompetition agreements that aims concentration and forcing out the competitors from the market, and, on the other hand, to create favorable conditions for local producers to achieve competitive production in international and regional markets.

The protection of competition creates a basis for success in all aspects of socio-economic life, changes institutional environment of country's economy, increases the efficiency in distribution and redistribution of limited resources, ensures stability in consumer market, promotes innovative development of economic entities and efficient utilization of resources, formulates the prices in accordance with costs, expands the production range.

This research will explore ways to increase the efficiency of antimonopoly regulation in the country, overcoming the potential difficulties in this respect and will discuss steps to be taken for realization of inherent advantages.

1. THE ESTABLISHMENT AND DEVELOPMENT OF ANTIMONOPOLY POLICY IN AZERBAIJAN

1.1. From Antimonopoly Policy Committee to State Service

The implementation of antimonopoly policy in Azerbaijan commenced in the first years of independence. In line with the Law of the Republic of Azerbaijan “On additional measures to stabilize economic and socio-political life in the Republic” dated June 23, 1992, the State Antimonopoly Policy and Entrepreneurship Committee was established¹.

The formulation of antimonopoly legislation commenced since that date. Laws “On antimonopoly activities” dated March 4, 1993, “On unfair competition” dated June 2, 1995, “On natural monopolies” dated December 15, 1998 were approved, respective amendments and additions were made to them regularly, with an aim of improving legislative acts.

In 2001, the State Antimonopoly Policy and Entrepreneurship Committee was revoked along with the Ministry of State Property, the Ministry of Economy, the Ministry of Trade, Foreign Investments Agency, and, the **Ministry of Economic Development** was created on their basis².

During 2001-2006, the antimonopoly policy in the country was implemented by the Antimonopoly Policy Department of the Ministry of Economic Development. **In 2007, Antimonopoly State Service** was established under the Ministry of Economic Development and the functions of the Department were transferred to the Service. At the same time, the State Service on Control of Consumer Market was established under the Ministry³.

¹Decree of the President on establishment of State Antimonopoly Policy and Entrepreneurship Committee of Azerbaijan Republic, June 23, 1992, No 3.

²Decree of the President dated April 30, 2001, No 475

³Decree of the President “On measures to improve operations of the Ministry of Economic Development of the Republic of Azerbaijan” dated December 28, 2006, No 504

In 2009, the State Service on Antimonopoly Policy and Protection of Consumer Rights under the Ministry of Economic Development was established on the basis of state services on Antimonopoly and Control of Consumer Market, in order to prevent monopolies in the economy, to strengthen the fight against unfair competition, as well as, to improve the state protection of consumer rights in the Republic of Azerbaijan.⁴ The Statue of the Service was approved by the Decree (N°203) of the President of the Republic of Azerbaijan dated December 25, 2009 on ensuring the activities of the State Service on Antimonopoly Policy and Protection of Consumer Rights under the Ministry of Economy and Industry of the Republic of Azerbaijan.

1.2 Antimonopoly and competition law

Currently, the issues related to the prevention, suppression and restriction of monopolistic activities and unfair competition are regulated by the Constitution of the Republic of Azerbaijan, Civil Code, Administrative Offences Code (CAO), Criminal Code, the laws of the Republic of Azerbaijan “On monopolistic activities”, “On unfair competition”, “On natural monopolies”, “On antidumping, compensation, and protection measures”, “On regulating the investigations on entrepreneurship and protection of entrepreneurship rights”, “On advertising”, the acts of the Cabinet of Ministries on “Rules on investigation of the violation cases of antimonopoly legislation”, “Rule on consideration of an application of natural monopolies for permission for state-controlled activities and presentation of respective documents and data”, “Statue on the State Service on Antimonopoly Policy and Protection of Consumer Rights under the Ministry of Economic Development of the Republic of Azerbaijan” and other normative acts.

⁴Decree of the President “On improving operations in antimonopoly policy and protection of consumer rights” dated June 24, 2009, No 113

According to the Constitution, the government of Azerbaijan promotes the development of market economy, provides support to free entrepreneurship, and prevents monopolies and unfair competition in economic relations⁵.

Monopolistic activities are classified as state monopoly, branch monopoly, local monopoly, monopoly of economic subjects, financial-credit monopoly, monopoly formed as a result of horizontal and vertical agreements of market subjects, patent-license monopoly and monopoly for use of earth entrails according to legislation⁶.



The **concept of dominating position** is identified in the existing legislation, although incompletely⁷. That is to say, if the share of the entity in the market exceeds 35% or other ultimate figure specified by legislation, it is considered dominating. The dominating position is an exclusive status of the entity, which enables it to have a decisive impact on competition, owing to its superior economic position, and thereby makes the entry into the market difficult for other participants.

The more common form of monopolies – **cartel agreements** are characterized as voluntary contracts of any form among two or more financially and legally independent economic entities competing in

⁵Constitution of the Republic of Azerbaijan. Chapter 2. The basis of a state. Article 15. Economic development and state.

⁶Law of the Republic of Azerbaijan “On monopoly activity” dated March 4, 1993, No 526

⁷Broad information on dominating position can be found on the following sections

the same goods (services) market that aim 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 competitors 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 and other similar measures restricting competition. These measures are identified as a form of monopoly resulting from horizontal agreements of market entities.

Antimonopoly regulation tools include the state control over observance of antimonopoly legislation when establishing, reorganizing and liquidation of economic subjects; state control over observance of antimonopoly legislation in carrying out of transactions, concluded between economic subjects when purchasing the shares; restriction and termination of monopoly activity⁸.

According to legislation, **competition** is “a form of struggle among market-oriented subjects for more favorable conditions of entrepreneurship, under which their independent activity restricts reasonably opportunity for each of them to affect general state of circulation of goods (products, works and services) in market and stimulates production of goods, requested for consumers”. While **unfair competition** is an “action of market-oriented subject aimed to achieve advantage in entrepreneurship through application of illegal and unscrupulous methods, which can cause prejudice to other market-oriented subjects (competitors) or lessen their business authority”.⁹

The forms of unfair competition in entrepreneurship include the followings:

- copying of economic activity of competitor;

⁸Broad information on the issue is presented under the section “Bodies implementing antimonopoly regulation and state control”.

⁹“Law of the Azerbaijan Republic On unfair competition”, June 22, 1995, No 1049.

- discrediting of economic activity of competitor;
- interference with economic activity of competitor;
- unfair entrepreneurship;
- unscrupulous business behavior;
- delusion of consumers.

Another type of monopolies is natural monopoly. According to national legislation, natural monopoly is “status of commodity market when satisfaction of demand is more efficient in conditions of the absence of competition due to specific technological characteristics of production and commodity produced (sold) by the subjects of monopoly cannot be replaced with another commodity”¹⁰.

1.3 Charges against violating antimonopoly and competition legislation

According to legislation, in case a natural monopoly or a state monopoly does not comply with the independent regulation system specified in the applicable laws, State Service has a right to issue, with the purpose of preventing and eliminating competition violations, binding directives (resolutions) to such entities regarding prices, production capacities, and service terms and to assume measures specified in the antitrust laws.

Alongside administrative offense, monopolistic activities can result in a criminal offense. According to the Criminal Code, the cartel agreements on the implementation of measures restricting competition, such as, removing other competitors from market or preventing the entry of new competitors, participating in such an agreement, or creating market barriers that result in prevention, suppression or restriction of competition, or implementation other monopolistic measures are punished by a penalty equal to twofold of loss (obtained revenue) as a result of crime with a restriction of the

¹⁰The law of the Azerbaijan Republic “On natural monopolies” December 15, 1998, No 505 –IQ.

right to hold certain position and to engage in certain activities for 2 years, or imprisonment of 3 years with or without a restriction of the right to hold certain position and to engage in certain activities for 2 years¹¹. The Criminal Code includes other penalties as well.

2. STATE BODIES IMPLEMENTING ANTIMONOPOLY POLICY

The State Service on Antimonopoly Policy and Protection of Consumer Rights (SSAPPCR) under the Ministry of Economy (MoE) is a body ensuring the prevention, restriction and suppression of the monopoly activity and unfair competition, the state protection of competition, consumer rights and their legitimate interests in goods and services (including financial services) market, the implementation of public policy in this field, the state control over observance of the legislation on antimonopoly (competition), advertising.

The Service investigates the cases of violation of antimonopoly legislation, based on the information provided by market entities operating as natural and legal persons, executive and administrative bodies, enquires of public organizations and other non-commercial organizations, the materials provided by respective state authorities and the information by media. The investigations of the cases of violations of antimonopoly legislation can be carried out with the Service's initiative¹².

The chief of the Service issues an order to organize a Commission on investigating the specific case of violation of antimonopoly legislation and to appoint its chairman, when violations are revealed. The Commission should not be consist at least of three officials. **The Commission is acting on behalf of the Service while investigating the case of violations of antimonopoly legislation.** The decision of the Commission is based on the participation of its

¹¹Criminal Code, Article 199, "Monopolistic actions and restriction of competition".

¹²"Rules of observance of violations of antimonopoly legislation", approved by act of Cabinet of Ministers of Azerbaijan, No 120, dated May 29, 1998.

members and is approved with a simple majority of votes. The chairman and the members of the Commission can not refuse to vote. The chairman of the Commission votes at the end.

The decision is announced after the investigation. The decision comes into force from the date of announcement. If criminal offences by the heads of economic entities, private entrepreneurs and officials of executive power are revealed during the investigation, the Commission will order the materials of the investigation to be sent to the relevant state authority. Commission then orders the elimination of the case of violation of antimonopoly legislation. The order is sent in a notification letter within 10 days, or presented to the person guilty of the violation of legislation with a signature. The instruction is signed by the chief or by his deputy. Order specifies actions and their deadlines that are to be performed to eliminate the case of violation and/or its consequences. The chairman of the Commission delegates the supervision on the implementation of the order to one of the members and it is noted in the protocol.

State Service can appeal to courts if the order to repeal or amend legal acts violating antimonopoly legislation is not performed, or if order to repeal or amend contracts violating antimonopoly legislation or laws on contracts between economic subjects is not performed, or if order to pay the amount of illegal income gained by violating antimonopoly legislation to state budget is not performed.

The antimonopoly agency can impose penalties or financial sanctions for the cases of violation of antimonopoly law. The Commission conducts the investigation on the penalties or financial sanctions within a month following the day of announcement of decision about investigation. In special cases, this period can be extended without exceeding 15 days.

Penalties and financial sanctions for violations of antimonopoly legislation should be paid to the state budget within 30 days of decision, which is unappealable.

State control measures are implemented in the following cases in

order to prevent the activities of economic entities that restrict competition and the cases of misuses of dominating position:

- The merger and association of economic subjects (if this leads to the creation of economic subjects having more than 35% share in the respective goods market);
- The merger and association of economic subjects, the total value of which assets exceeds 75-ths-fold minimal wage;
- Liquidation (except for cases of liquidation of enterprises according to court ruling) and division of the enterprises, the total value of assets of which exceeds 50-ths-fold minimum wage, and also national and municipal enterprises (if it will result in establishment of economic subjects, the share of which exceeds 35% at respective commercial market).

Transactions, concluded between economic subjects when purchasing the shares are carried out with the approval of the MoE in the following cases:

- When purchasing more than 20% of shares constituting partnership capital of one economic subjects and giving the voting right to other economic subject (association of economic subjects or group of persons carrying out the control over property of each other). These restrictions do not apply to the shareholders when they establish the entity;
- If the balance value of a property on the transaction exceeds 10% of the balance value of main factors of production and intangible assets of the other subject, 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 (the association of economic entities or a group of persons controlling one another's property).
- When acquiring the rights of a subject by another (the association of economic entities or persons carrying out the control over property of each other), specifying terms of business activity or giving the possibility to carry out the functions of his high governing body.

Whenever economic subjects abusing their dominating position carry out monopolistic activity and their actions result in restriction of competition and violation of the consumer interests, and their forced desegregation doesn't seem possible due to technological, territorial and organizational reasons State Service might recommend the executive power bodies and administrative bodies to establish state control over the prices of products, to apply progressive tax rates, to apply more rigid lending conditions, to hold up all kinds of state support, to ban barter operations.

On the other hand, termination of monopolies is possible whenever organization, technological and territorial conditions allow through forced desegregation if economic subjects occupying dominating position begin monopolistic activity and their actions lead to significant restriction of competition. In this case, the ministry identifies the period of mandatory desegregation with at least six month period considering the nature activities of economic subjects¹³.

The regulatory law is implemented by the MoE, the Ministry of Finance (MoF) and Tariff Council (TC). The natural monopoly entities are required to get the approval of the MoE for activities identified by legislation¹⁴.

3. COMPETITIVENESS INDEX OF NATIONAL ECONOMY

Various international organizations prepare rankings to assess the competitiveness level of countries: Economic Freedom Index (EFI) by the Heritage Foundation of the USA, Global Competitiveness Index (GCI) by World Economic Forum (WEF), Corruption Perceptions Index by Transparency International and so on. The Global

¹³Law of the Republic of Azerbaijan "On monopoly activities" dated March 4, 1993, No 526

¹⁴"Rule on consideration of an application of natural monopolies for permission for state-controlled activities and presentation of respective documents and data". Approved by the resolution of Cabinet of Ministries of the Republic of Azerbaijan, dated December, 25, 2001, No 201.

Competitiveness Index, which evaluates the competitive ability of the countries worldwide, is the most widely accredited among them. This index is compiled annually by the World Economic Forum and is the product of a special methodology based on the survey conducted among the heads of companies of countries involved in open statistical data and research. Annual research is conducted by the partner network of WEF- with the support of the leading institutions and organizations. This ranking has been prepared since 2004. The authors of this research consider that, the citizens of the countries with higher competitiveness are provided with better living standards.

2 indices are prepared on the basis of research: GCI and Business Competitiveness Index (BCI). Currently, GCI is used to assess the competitiveness level of countries. GCI characterizes competitive ability of countries at various stages of development and includes 113 variables. Two third of these variables are based on the survey of the heads of companies (in order to cover the factors characterizing business environment of included countries), while the rest is based on open sources (statistical data, regular researches conducted by international organizations). All variables are combined under 12 pillars:

- 1) The quality of institutions;
- 2) Infrastructure;
- 3) Macroeconomic environment;
- 4) Health and primary education;
- 5) Higher education and training;
- 6) Goods market efficiency;
- 7) Labor market efficiency;
- 8) Financial market development;
- 9) Technological readiness;
- 10) Market size;
- 11) Business sophistication;
- 12) Innovation.

The selection of variables characterizing these indicators is due to an inability of any single factor to ensure competitiveness of economy. For instance, increasing education costs can be inefficient in the background of inefficiency of labor market or of inadequacy of other institutional structures.

Table 1. Competitiveness ranking of Azerbaijan in GCI (last 5 years)

Years	Global Competitiveness Index		The number of countries in the ranking
	rank	score	
2016-17	37	4.6	138
2015-16	40	4.5	140
2014-15	38	4.5	144
2013-14	39	4.5	148
2012-13	46	4.4	144

According to the recent rankings, among post-USSR countries, Azerbaijan is only behind Estonia (30) and Lithuania (36), but surpasses Russia, Kazakhstan, Latvia, Kyrgyzstan, Georgia, Armenia, Tajikistan, Armenia and Moldova. As can be observed from the table, Azerbaijan is repeatedly placed at higher ranks in recent years. However, several local experts consider that, the methodology used in the evaluation of ranking does not reflect reality, thereby are skeptical about the outcomes.

4. FACTORS UNDERMINING EFFICIENT STATE ANTIMONOPOLY POLICY

There are a number of factors that stipulate the low efficiency of state antimonopoly policy, these factors can be grouped as the followings:

- *Inadequate antimonopoly and competition legislation;*

- *The lack of accuracy in determining the status of the state agency responsible for the implementation of antimonopoly policy and the lack of its independence;*
- *Provisional basis of operations of the Commission responsible for examining specific cases of violations of antimonopoly policy, the lack of its independence, and its reliance on the state agency implementing antimonopoly regulation;*
- *Inadequate level of international integration of national agency for antimonopoly policy, and its absence on international rankings;*
- *The protection of monopolistic companies by high-ranked government officials;*
- *The lack of public control, transparency and accountability elements in the operations of SSAPCRP.*

4.1. Inadequate antimonopoly and competition legislation

Two main laws regulating monopolies and preventing unfair competition are “Law of Azerbaijan Republic about anti-monopoly activity” and “Law on unfair competition” which were adopted at the beginning of the 1990s. Throughout the years, there have been a large number of amendments and additions to these legislative acts, but the advanced legislative base for protection and provision of free and fair competition environment haven’t been formed yet.

Determining dominating position of economic subjects. “Dominating position” is identified only in “Main definitions” section of the law and the only criteria used for its description is 35% of the market. “Monopolistic activity”, which is the second section of “Law about antimonopoly activity”, wrongly includes “Monopoly of economic subjects” (Article 8) in the list of forms of monopolies.

In fact, this article has no connection to forms of monopoly, all of the forms mentioned in the article, namely ungrounded limitation or termination of production of commodities that are in shortage

with economy, people, individual economic subjects; change of production volume and withdrawal of commodities from circulation with the objective of creation of artificial deficit or increase of prices; establishment of ungrounded barriers to entry to the market and exit therefrom of other economic subjects; manipulations with prices (their increase, decrease or maintenance on one and the same level) with the objective of getting additional privileges in the market; 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, are all manifestations of exploitation of dominating position in the market.

There is a number of other criteria used for identification of dominating position in international experience. Anti-monopoly laws of some developed countries do not include market share criteria. In this case, other indicators, such as sustainability of the market and the scope of independent activity are considered.

Determining dominating position of economic subjects involves not only the assessment of subject's market share, but also difference of its market share from its closest competitor or competitors, which is "relative market share" of the economic subject. For example, there is a significant difference in the dominating position of an enterprise with market share of 35%, closest competitors of which have 15% and 18% market share, versus an enterprise with 35% market share, whose competitors have 20% and 30% market share. Dominating position criteria regarding competitors and market shares also depend on the type of the market. For example, if 3 largest players in commodity market have a combined market share that exceeds 50% or 5 largest players with combined share of more than 70%, they are considered to have dominating position. Shares also depend on the type of market. Financial institutions in banking, insurance, leasing, private pension funds sectors that have market share of 25%, up to 3 largest financial institutions with combined share of 45%, up to 5 largest institutions with combined share of 65%, institutions with market cap share of 10% are considered dom-

inating. Assessment of market share should take into account characteristics of the said market (good or service, location etc.).

Connection between the protection of consumer rights and anti-monopoly policies. SSAPCRP in Azerbaijan is not only regulator of anti-monopoly policies, but also ensures “*state protection of consumer rights and legitimate interests*”¹⁵. Seven articles in “Law about anti-monopoly activity” include phrases like “*infringement of interests of customers*”, “*against interests of customers*”, “*violation of interests of customers*” and “*cause damage to customer rights*”, which in some cases are presented as signs of restriction of competition, while in some cases are equated to restriction of competition. There should be a clear distinction in Azerbaijan legislature between laws about consumer rights and laws about anti-monopoly policies. Dominant view in the world is that, consumer rights are protected if there is a free competition, thus protection of consumer rights should not be a direct objective of anti-monopoly laws. For exactly this reason, anti-monopoly policies involving sanctions on producers due to high prices with an aim of protecting customers are very rare. It is stated that, these sanctions will help consumers in the short run by reducing prices, but will eventually hurt them by discouraging new investors and competitors from entering the market. Prospects of higher profits make markets more attractive to producers and investors alike, thus strengthening competition. For example, high prices are not considered a sign of dominating position in Turkish legislation. Producers are not punished for high prices either in USA or in EU. Anti-monopoly watchdog of USA does not monitor or regulate prices, does not protect rights and interests of consumers, and they do not treat price hikes as abuses of dominating position and do not prohibit price increases, based on the Article 2 of Sherman Act. Similarly, there have not been any law or even

¹⁵Regulations for the Antimonopoly Policy and Consumer Rights Protection State Service of the Ministry of Economic Development of the Republic of Azerbaijan, Article 1.

court ruling treating high monopolistic prices as abuses of dominating position.

Principles constituting the base of anti-monopoly and competition legislation in Azerbaijan and US, EU and other developed countries are fundamentally different. Main purpose of our legislation is protection of consumer rights and their short-term interests. SSAPCRP partly succeeds in this, sometimes by violating entrepreneurs' rights. When we take into account that SSAPCRP is also in charge of regulation of natural monopolies, it is clear that the essence of anti-monopoly regulation in Azerbaijan is combatting higher prices, regulation of natural monopoly tariffs and prices of some monopolistic enterprises, all with the pretext consumer right protection.

Other flaws of normative-legal acts. The analysis of anti-monopoly and competition legislation has revealed that, said normative-legal acts lack not only proper definitions of dominating position and its abuse cases, but also full list of restrictive activities that emerging from horizontal and vertical agreements and articles about these restrictive activities.

Same imperfections are observed in issues relating to mergers of entities (analysis of merger, regulation of merger etc.) and compulsory dissolution and demerger of monopolistic entities. The practice of valuation of assets relative to minimum wage during merger and acquisition procedures of economic subjects or dissolution and demerger procedures of state and municipal entities is not acceptable and should be rejected. It would be better to define a specific amount relative to the value of assets of Azerbaijani economy and enterprises.

Protection of competition in financial sector is one of the limitations of our legislature. Also, there are some uncertainties regarding **financial sanctions**. Financial sanction for imitation of competitor's activities are significantly higher than sanctions for defamation of competitors, intervention to competitors' activities, unfair economic activities, unfair entrepreneurial activities, decep-

tion of consumers.

Aforementioned problems are already officially recognized. **“Strategic road maps for the national economy and main economic sectors”** states that, “Achievement of equilibrium point between financial and real sectors can be attained through development of competition environment. It is only in competitive environment we can improve competitiveness of domestic goods and services by stimulating economy. Development of competitive environment requires sound and advanced competition legislation, enforcement of this legislation by an independent and effective authority, and implementation of economic policies that remove barriers to development of competition and prevent monopolies¹⁶.

4.2. Equivocal status of the State Service responsible for the implementation of antimonopoly policy and its lack of independence

SSAPCRP, which enforces anti-monopoly policies in Azerbaijan, is not an independent authority, but a State Service under the Ministry of Economy. Chief of the agency and his/her three deputies are appointed by the Minister of Economy. Agency regularly reports to the Ministry about its activities. Agency is not financially self-sufficient. Chief of the Agency reports to the Minister of Economy regarding the use of funds allocated from state budget.

Equivocality of the Agency’s status refers to the fact that beside its main objectives of prevention and suppression of monopolistic activities and unfair competition, the Agency also monitors the enforcement of legislation on protection of consumer rights and on advertisements, regulates norms and guidelines in trade, provision service and public utilities in consumer market, oversees the enforcement of anti-monopoly legislation in state procurement.

¹⁶Planned Measures. Measure 4.1.1: Developing free competition environment.

Moreover, duties of the Agency also include official control over the quality and safety of grain products, and to ensure that their quality is assessed in specialized laboratories using a single method; administration of expert examinations to determine goods' country of origin, with the assistance of subordinated legal entities, and to issue documents containing the results of such examinations (origin certificate); administration of expert examinations at the enterprises engaged in the production and processing of food products exported to European Union countries, in accordance with infrastructure and product safety criteria, to issue confirmation code numbers to the enterprises and documents containing expert examination results (including quality certificate) - to exporters, to implement control over the quality of such products, to keep a register of such producing and processing enterprises and to ensure the meeting of requirements set by the European Union in this area; cooperation with appropriate agencies in order to ensure compliance with the requirements (standards, safety norms, quality control systems, packing procedures, food product transportation and storage procedures, environmental, veterinary, sanitary and phytosanitary norms as well as methods ensuring compliance with the norms applied to goods, works and services) regarding the quality and safety of goods (works and services).

Furthermore, Agency also administrates permissions for specific activities of natural monopolies. A look at the website of the Agency gives the impression that its main responsibility is protection of consumer rights. "News", "FAQ", "Consumer should know", "Publications", "Notifications" and other sections of the website¹⁷ are solely about consumer rights.

¹⁷www.consumer.gov.az

4.3. Provisional basis of operations of the Commission responsible for examining specific cases of violations of antimonopoly policy, the lack of its independence, and its reliance on the State Service implementing antimonopoly regulation

According to legislation, if there have been a discovery of signs of violations of anti-monopoly legislation, chief of the State Service creates a special Commission to investigate this case of violation and appoints its head. This, in turn, leads to interdependence between two authorities. Consequently, there is no clear division of power and independence of authorities is compromised, which casts doubt on fair resolution of the case.

4.4. Inadequate level of international integration of national agency for antimonopoly policy, and its absence from international rankings

Advent of globalization fundamentally transforms state policies in every aspect of anti-monopoly regulation across world. Thus, anti-monopoly policies of a country are losing their position as a domestic policy issue and gradually becoming an integral part of country's international economic strategy and international economic relations. Members of almost all economic unions and blocs have signed agreements regulating competition. For example, Treaty of Rome of European Union has a "Rules on Competition" section (articles 85-94), Chapter 15 of NAFTA (North American Free Trade Agreement) is called "Competition Policy, Monopolies and State Enterprises" prohibits monopolies to abuse their dominating position in other countries and restricts creation of state enterprises that receive powers from the state, Asia-Pacific Economic Cooperation, APEC, have approved Manila action plan relating to competition, MERCOSUR (Mercado Comu'n del Cono Sur) have adopted "Protocol for protection of competition" in 1996.

Anti-monopoly policies have also become an important element of

activities of large international organizations. UNCTAD (United Nations Conference on Trade and Development) have prepared a relevant document way back in 1980 and model law on competition in 2000. Organization for Economic Cooperation and Development (OECD) have approved a number of recommendatory acts (in 1979, 1995, 1998 and 2005) to harmonize policies.

Since 1990, anti-monopoly measures are becoming an element of bilateral intergovernmental relations. Such agreements between countries doesn't simply outlines general principles, but deals with specific practical problems. For example, there are bilateral agreements between USA and EU, USA and Japan, Japan and EU regarding the implementation of anti-monopoly legislation. Main rationale for these agreements is that domestic legislation regulates domestic markets bu regulation of large multinational corporations was a serious problem for domestic anti-monopoly authorities.

Neither SSAPCRP website, nor reports of the Ministry of Economy contain any information regarding international connections of SS-APCRP. Federal Anti-monopoly Service of Russian Federation (FAS) presents information about "Agreement on coordinated anti-monopoly policies" signed by CIS presidents on December 23, 1993. Azerbaijan is a member of "International Council for Anti-monopoly Policies", established that same year. Each country is represented by 2 officials with 1 voting right each. It is possible to get some information on participation of Azerbaijan in the Council from the annual reports of FAS. But this data is very limited relative to other CIS nations.

Currently there are three dominant tendencies in the development of global anti-monopoly legislation:

- *Anti-monopoly policy taking the form of a network;*
- *Adoption of stricter norms regarding cartels;*
- *Restrictions on concessions presented by states (governments).*

International Competition Network (ICN) was created in 2001 as an outcome of the first trend. The organization was established to

assist cooperation in improvement of efficiency of anti-monopoly policies in leading developed and developing countries. ICN is the only international organization dealing with implementation of anti-monopoly legislation. Membership to organization is voluntary and open for relevant authorities. Two recommendatory documents were adopted in the first conference of the organization. According to the first document, member countries have pledged to implement and promote principles of competition in different sectors of their economy. Second document is comprised of recommendations on obligations and powers of anti-monopoly authorities in case of economic concentration (merger of enterprises).

There is no secretariat of ICN, it operates through Coordination Committee (CC), where the relevant authorities of 15 member countries are represented. CC members are elected every two years. Network carries out projects through working groups. Currently Network has 150 members. ICN is a very prominent institution and have very close collaboration with lawyers specialized in competition law from WTO, OECD, UNCTAD.

The national competition authority of Azerbaijan- SSAPCRP is also a member of the Network. But, no information can be found on its active participation in ICN either in local or in international sources. Based on the information about its members on official website¹⁸ of the Network, it can be concluded that, the collaboration of the Service with the Network is inadequate. The data on Azerbaijan only available up to 2009. Instead of SSAPCRP, the website mentions Azerbaijan Antimonopoly State Service, and Samir Dadashov is shown as its chairman. Overall, all data, including address and phone numbers are incorrect¹⁹.

Global Competition Review (GCR) is the most prominent annual ranking intended to evaluate the efficiency of competition agencies implementing antimonopoly regulation worldwide. In other words,

¹⁸<http://www.internationalcompetitionnetwork.org/members/member-directory.aspx>

¹⁹

this is the only universally recognized accredited ranking in the world assessing the competition authorities. The ranking is based on the evaluations of activities of antimonopoly authorities in the implementation of competition rights by international legal and business community following the specific criteria (the compliance of national competition legislation with international practice, the implementation of competition rights and so on) developed by the GCR. Authorities are rated on a five star scale (including half stars) and are classified into four groups according to their rating: elite, excellent, good, satisfactory.

Azerbaijan has not been included in the ranking so far. Among post-USSR countries, Latvia, Lithuania and Russia have been included in this ranking. Latvia and Lithuania usually demonstrate better results. The performance of the Russian antimonopoly authority was included in the ranking in 2006. Then, Russia ranked 36th among 38 countries. Russia achieved the highest rank-17th in 2012. Kazakhstan is undergoing preparations to be included in the ranking. The Competition Authority of Turkey is also included in evaluations, and according to the ranking of 2015, ranked 32th and is among “good” institutions.

Table 2. Global Competition Review on National Competition Authorities – star ranking in 2015

	Authorities	Star ranking
ELITE		
1	French Competition Authority	★★★★★
2	Federal Cartel Office of Germany	★★★★★
3	Justice Department of USA	★★★★★
4	Federal Trade Commission of USA	★★★★★
EXCELLENT		
5	European Commission - Directorate General for Competition	★★★★½

5	European Commission - Directorate General for Competition	★★★★★
6	Commission for Fair Trade of Japan	★★★★★
7	Commission for Fair Trade of South Korea	★★★★★
8	Australian Competition and Consumer Commission	★★★★★
9	Administrative Council for Economic Defense of Brazil	★★★★★
10	The Spanish National Markets and Competition Commission	★★★★★
11	Competition and Markets Authority of United Kingdom	★★★★★
GOOD		
12	Competition Bureau of Canada	★★★★★
13	Competition Commission of Greece	★★★★★
14	Competition Authority of Italy	★★★★★
15	Competition Authority of the Netherlands	★★★★★
16	Competition Authority of Norway	★★★★★
17	Federal Competition Authority of Austria	★★★★★
18	Chile: National Economic Prosecutor's Office	★★★★★
19	Competition and Consumer Authority of Finland	★★★★★
20	Competition Authority of Hungary	★★★★★
21	Competition Authority of Israel	★★★★★
22	Competition Authority of Latvia	★★★★★

23	Competition Authority of Lithuania	★ ★ ★
24	Trade Commission of New Zealand	★ ★ ★
25	Federal Commission for Competition of Mexico	★ ★ ★
26	Office of Competition and Consumer Protection of Poland	★ ★ ★
27	Competition Authority of Portugal	★ ★ ★
28	Federal Antimonopoly Service of Russia	★ ★ ★
29	Competition Authority South Africa	★ ★ ★
30	Competition Authority of Sweden	★ ★ ★
31	Competition Commission of Switzerland	★ ★ ★
32	Competition Authority of Turkey	★ ★ ★
SATISFACTORY		
33	Competition Authority of Belgium	★ ★ ★
34	Competition Authority of Czech Republic	★ ★ ★
35	Competition Authority of Denmark	★ ★ ★
36	Consumer Protection and Competition Commission of Ireland	★ ★ ★

4.5. The protection of monopolistic companies by high-ranking government officials

The presence of monopolistic companies in Azerbaijan has recurrently confirmed by independent researchers and international organizations²⁰ analyzing markets, prices, advertising policy, interna-

²⁰Research by Support for Economic Initiatives Public Union on credit market. <http://www.bizimyoil.info/news/3371.html>, Research by CESD on membership to the WTO http://edf.az/ts_general/download/Vugar_%20Bayramov_14_07_10.pdf, <http://www.qafqazinfo.az/iqtisadiyyat-4/azerbaycanda-siqaret-dumaninda-gizlenen-kimlerdir-arasdirma-176480>, <https://www.youtube.com/watch?list=PLaSmZ-zpoLC6byM50HqKu6h81uUGTgKh-e&v=tvDhoZjOGXE>

tional trade. This fact has also been acknowledged even at the highest level - by the President. The decree²¹ of the President “On strengthening anti-inflationary measures in the Republic of Azerbaijan” states: “The higher-than-expected level of inflation is mainly a result of the rise in prices of imports due to the effect of an increasing price of crude oil on production costs, growth of money supply in circulation and underdevelopment of financial facilitation mechanism, imperfect structure of investments directed to the economy, **the insufficient fight against monopolies in production, trade, import-export transactions** etc.”

The same decree ordered the MoE **to improve its performance in formation of competitive environment and fight against monopolies, to apply strict measures to ones violating legislation in this area, to conduct monitoring across each goods market, in order to prevent monopolies, restriction of competition, division of market, application of agreed prices (cartel agreements), which lead to higher prices in consumer markets, to** quarterly report to the President of the Republic of Azerbaijan.

But, unfortunately, the tasks of the President were not been executed, therefore, the scope of a division of market, an application of agreed prices, import monopolism expanded. Especially, the situation in the imports market became disastrous. Only following the slump in oil price in January, 2016 stipulated new economic conditions, which significantly reduced import monopolies. Yet, monopolies in production, trade and service markets still remain.

4.6. The lack public control on the operations of SSAPCRP and lack of transparency and accountability in its operations.

The State Service does not disclose any information about its operations, only one section in the reports of the MoE is related to the

²¹Decree of the President dated May 31, 2005, No 242

operation of the Service. The analysis of the website of the State Service and annual reports by MoE reveal that, the disclosed information on the antimonopoly operations by the Service are very limited. The analysis of annual reports by MoE between 2009 and 2016 shows that, the report on the Service was more comprehensive in previous years. For instance, the 2009 report is much more comprehensive than the latest one published in 2015. Since the State Service for Antimonopoly Policy was not consolidated with the Department for Consumer Rights Protection back in 2009, antimonopoly policy operations are covered extensively under a separate section. There is detailed information on each application on and the results of investigations about mergers and acquisitions of shares²². Moreover, the report also details which operations were based on which articles of action plan of the Service.

There is no detailed information on antimonopoly measures in the 2010 report of MoE, only general statistics: “Investigations have been undertaken in 57 economic subjects, with charges of copying trademark of other entities, leading to unfair competition through producing food products that do not comply with the requirements of normative documents and deluding consumers, cases of discrimination in market entry and creation of artificial barriers, manipulating prices to gain extra advantage in the market. Following the results of investigations, criminal cases have been raised against 57 economic subjects for violating the requirements of antimonopoly legislation of the Republic of Azerbaijan. 46 economic subjects received Orders requiring elimination of violations of legislation. Investigations on 11 cases continue”.

According to the reports, 1837 investigations in 2011 and 2461 investigations in 2012 were conducted for the purpose of preventing, restricting and suppressing the monopoly activity and unfair competition, protecting competition, consumer rights and their legitimate interests in goods and services market, imposing state control

²²The report on operations of the Ministry of Economic Development in 2009

over observance of the legislation on antimonopoly (competition), advertising and over compliance with the regulations (trade, catering, domestic and other services) in consumer market.

In 2013, the State Service compiled a single information registry of commercial activity inspections to conduct investigations in 3273 economic entities. 94 criminal cases were raised against economic subjects for violating antimonopoly legislation in 2014. 70 cases out of 93 were raised during the implementation of controlling measures, the rest were revealed as a result of investigations undertaken by the State Service on the basis of applications and information published on media. During 2014, the investigation of 95 cases has been completed. While 87 of them were raised in the same period, the rest were the cases of previous year. The number of completed cases increased by 16 or 20,3%. Financial sanction equal to 2735,6 thousand manats were imposed on 73 economic subjects, alongside relevant mandatory orders on completed cases. During the reporting period, financial sanction of 2700,1 thousand manats were imposed on 68 economic subjects, and 35,5 thousand manats were imposed on 5 economic subjects - ongoing cases of the previous year.

In 2015, controlling measures were implemented in 15 subjects in total, and a case of violation of legislation was found in 6 subjects during supervision on compliance with antimonopoly legislation, as well as, prevention, restriction and suppression of unfair competition. During the reporting period, cases of violation of legislation have been raised in 24 economic entities. 6 cases were raised during the implementation of controlling measures, 18 were revealed as a result of investigations undertaken by the State Service on the basis of applications and information published on media.

As can be observed, the published information in reports during recent years concerning the compliance with competition and antimonopoly legislation, is not detailed, and are rather generalized. Considering this, an official enquiry has been addressed to the SS-APCRP. The enquiry asked for more detailed information on cases of violation of antimonopoly and competition legislation; which re-

quirements of respective legislation are mostly violated; and the undertaken measures to improve legislation.

The one-sentence-reply of the State Service is as following: “detailed information on operations of the State Service can be found in the annual reports on the website (www.economy.az) of the Ministry of Economy of the Republic of Azerbaijan”²³.

According to the report, the establishment of relevant councils or cooperation networks to improve the quality of cooperation between government authorities delivering services to population and civil society institutions is planned. Moreover, report indicates that, the Ministry have established close ties with National Non-Governmental Organizations Forum and several NGOs to ensure implementation of tasks related to involvement of civil society institutions, and plans to establish Public-Cooperation Council to improve collaboration with non-governmental organizations and to implement joint projects that are essential for the operations of the Ministry. Also, Ministry the ministry has prepared the initial regulations of the Council, decree for its establishment and formal announcement regarding selection of its members²⁴. The participation of civil society in policy decision making process of the MoE, as well as, the SSAPCRP is limited, like most central executive bodies. The Ministry included the same text for 3 (2013, 2014, 2015) consecutive years in the reports on the execution of “National Action Plan for promoting Open Government during 2012-2015”, excluding the minor changes to the article 3.2 (*The establishment of relevant councils and cooperation networks by government authorities delivering services to population, to improve the collaboration with civil society institutions*). But, no document (order, regulation, announcement) on the establishment and operations of public council can be found on the website of the Ministry as for January 31, 2017.

²³Letter by SSAPCRP dated 16.12.2106, reply No AHMDX -05/01-5/5044

²⁴http://economy.gov.az/index.php?option=com_content&view=article&id=403&Itemid=125&lang=az

5. WAYS TO INCREASE THE EFFICIENCY OF ANTIMONOPOLY POLICY

The recommendations on increasing the efficiency of antimonopoly policy, designed in this paper are based on an analysis of relevant legislative acts, investigation of activities of state antimonopoly agency responsible for ensuring competition and review of its reports, comparison of implementation of national normative-legal acts with foremost international practices in the field of restriction and suppression of monopolies and free and sound competition, a study of best practices on state regulation of antimonopoly policy. The periodic discussions on proposals about potential ways to increase efficiency of antimonopoly policy that are held in parliament and government create some hopes about their approval and implementation.

Recommendations on increasing efficiency of state antimonopoly policy include the followings:

- *To adopt the Competition Code;*
- *To establish an independent Competition Agency, instead of SS-APCRP under the MoE responsible for an implementation of antimonopoly policy;*
- *To ensure a permanent operational basis of the Commission investigating the specific cases of violations of antimonopoly legislation, dividing the powers between the Competition agency and the Commission;*
- *To ensure bilateral interstate contracts for the purpose of regulating competitive environment and to ensure an active participation in the working groups of the International Competition Network (ICN) and other similar platforms, to carry out the necessary preparatory work for participation in the Global Competition Review (GCR) rankings;*
- *To ensure the compliance with transparency and accountability in the activities of Competition Agency, to establish a public council under the Agency, which is the most advanced form of public control.*

5.1. The adoption of Competition Code

The adoption of Competition Code would enable the state to overcome the challenges to the implementation of efficient state anti-monopoly policy. The advantages of adopting the Competition Code include the following:

- *Contributing to a formation of favorable entrepreneurship environment in the country*
- *Upgrading the legislation on competition and antimonopoly policy in accordance with foremost international practice and the requirements of new economic policy;*
- *Defining the powers of an independent Competition Agency and the permanent Commission;*
- *Code would be more flexible and efficient compared with various laws and a number of normative legal acts regulating competition and antimonopoly policy in the country, which are frequently subject to amendments and additions (the number of amendments to the law "On antimonopoly activity" exceed 30);*

5.2. Establishing an independent Competition Agency, instead of SSAPCRP under the MoE responsible for an implementation of antimonopoly policy

Based on the leading international practice, the body implementing antimonopoly policy has the following authorities:

- 1) *Controlling economic concentration (control on merger, absorption and associations);*
- 2) *Preventing the misuse of dominating position*
- 3) *Preventing anti-competitive agreements and other similar deals (fighting against cartels and other horizontal agreement schemes)*
- 4) *Preventing unfair competition*

International practice shows that, rarely the competition agency performs the following functions:

- 1) *Protection of consumer rights*

- 2) *Varying level of control on services provided by natural monopolies.*
- 3) The European Commission (and a few other national competition bodies) oversees the state support (giving preferences to domestic producers) in the member countries of the European Union.

Competition agency rarely possess the following functions:

- 1) *Control on public procurement;*
- 2) *Control on advertising;*
- 3) *Control on foreign investments in strategic areas.*

In several countries (Australia, Belgium, Denmark) sectoral bodies do not have authority in the implementation of antimonopoly policy, yet in other countries (Brazil, Mexico, Canada, Finland) several central executive bodies simultaneously regulate antimonopoly policy. For example, in Mexico, Federal Commission of Telecommunications implements antimonopoly policy in telecommunications, while the Central Bank in Brazil performs the same function in the financial markets. These functions depend on the level of development and independence of economic sectors, judicial system, antimonopoly agency.

But, in recent years, there has been observed a worldwide tendency to grant special status of independence to the authority responsible for antimonopoly policy in ensuring free and sound competition. According to the established discourse, the regulating body should not depend on the government in conducting its daily activities. This is essential for ensuring stable regulation. The appointment of a chairman and deputies of antimonopoly body, as well as, the heads of structural units should be based on the following principles:

For ensuring political independence

- Either the parliament should approve the appointment of the leaders (chairman and deputies) of an authority or executive and legislative powers of government should oversee the sub-

- mission and approval process of candidates;
- The authority should be accountable only to parliament;
- The appointment (election) of leaders of antimonopoly body for a specific period (4 or 6) protects them against the threat of losing their positions as a result of short-term political interests;
- Conflict of interests should be taken into account;
- In order to attract and maintain highly qualified specialists, high wages should be ensured;
- Leaders should be banned from holding positions in regulated areas several years after they have left the authority.

In order to ensure financial independence, financing should be realized by the means of state budget on the basis of the following principles:

- Budget of the authority should be based mainly on its proposals.
- The antimonopoly authority should be free to decide the budget funds within its powers and the requirements of legislation;
- The amount of a budget should not change depending on performance indicators of antimonopoly authority.

5.3. Ensuring a permanent operational basis of the Commission investigating the specific cases of violations of antimonopoly legislation, division of power between the Competition agency and the Commission

Permanent operational basis of the Commission investigating the specific cases of violations of competition and antimonopoly legislation and its independence from the body conducting investigations in terms of authorizations are main factors stipulating objectivity and impartiality of decisions made by the Commission. The chairman and the members of the Commission (or Council) must be determined by the President or parliament.

5.4. Ensuring participation in international working groups (including, the working groups of ICN) and other respective similar platforms, to carry out the necessary preparatory work for participation in the Global Competition Review (GCR) rankings;

The realization of this proposal is important not only in terms of improving competition legislation, but also suppressing monopolies in import-export relations, preventing artificial price increase, and ensuring free trade in line with the principles of the WTO. For instance, international working groups, established to ensure competition with the initiate of the Russian FAS in pharmaceutical market (Italy, Russia, Finland, Serbia, Portugal, China) and roaming market (Turkey, Azerbaijan, Mongolia, Czech Republic, Belarus, Latvia, Moldova, USA, Ukraine and so on), are among best examples of this kind of cooperation. Ensuring participation in international working groups (including, the working groups of ICN) and other respective similar platforms, carrying out the necessary preparatory work for participation in the Global Competition Review (GCR) rankings and improvement of legislative base should be considered as opportunities to overcome barriers to WTO membership.

5.5. Ensuring a compliance with transparency and accountability in the activities of Competition Agency, to establish a public council under the Agency, which is the most advanced form of public control.

The accountability and transparency principles of the Competition agency must be identified in the Competition Code. Presently, there are no requirements about publishing and disclosing publicly open information regarding SSAPCRP in antimonopoly legislation. The Competition agency should disclose all its decisions and the results of investigations and monitoring in accordance with the requirements of legislation, excluding commercial (tax) and state secrets.

This may encourage the compliance of market entities with antimonopoly legislation, alongside increasing transparency of the agency.

Using online resources while interpreting legislation and answering questions is one of the factors ensuring transparency. The websites²⁵ of relevant agencies of Russia and Turkey can be used as examples.

Although the establishment of public councils in central and local executive bodies has been among the main provisions in National Action Plan (NAP) concerning the development of public participation, unfortunately, its implementation has been delayed. Involving all forms of public participation, as well as, public council would only positively affect the reputation of Competition authority.

6. ANTICIPATED CHALLENGES AND HOW TO OVERCOME THEM

6.1 The adoption of Competition Code

The Competition Code was presented to the Parliament by the President 10 years ago, in 2007 and even passed two hearings. Despite the attempts to present and approve the Code in the third hearing, it has not been achieved yet. It can be concluded that, the interest groups opposing the approval of the Code are considerably powerful. According to the opinions of independent experts and several MPs, the adoption of the Code is prevented by government officials in a strong position.

Discussion of the Code are back on the agenda of the Parliament. In addition to aforementioned challenges, positive developments are observed concerning the acceleration of the adoption of the Code. In the Strategic Roadmap of the Republic of Azerbaijan on national economy outlook, it is stated: "...competition code will be adopted based on international experience". At the same time, under the fourth sub-direction (which is called "Increasing transparency and accountability in private sector") of Article 9 of "NAP on promoting Open Government in 2016-2018"²⁶, the acceleration of adoption

process of competition code is intended. The document also identifies specific period of execution of this activity: in 2016-2017.

One of the main stakeholders concerning the adoption of Competition Code is the Confederation of Entrepreneurs (Employers). Recently, the Confederation has actively engaged in economic processes, especially in formulation of public policy on entrepreneurship, which is considered a positive factor. But, it should be noted that, in Azerbaijan, parliament is weak as a branch of a government, its independence is limited, and lobbying groups of entrepreneurs are lacking. It would be naive to assume that, the adoption of the Competition Code depends on parliament, it mainly depends on political will of the whole government.

6.2. Establishing an independent Competition Authority and ensuring a permanent operational basis of the Commission, defining the borderline of authority between these two bodies

The realization potential of these two recommendations will be analyzed together, as these issues are closely interrelated. It is anticipated that, a large interest group with considerable financial and governing potential will oppose to the establishment of an independent Competition Authority. Because, the economy is characterized with a high level of monopolization and the persons behind these groups still have great political influence. Due to incompetent organization of entrepreneurs, their associations and unions, as well as, deliberate attempts to prevent such activities by certain groups, it can be concluded that, an establishment of an independent Competition Authority is likely to be the most resisted reform among the recommendations on increasing antimonopoly regulation in this paper.

Weak development of an independent media and civil society limits advocacy opportunities in this respect. Moreover, the lack of public-private dialogue, the absence and inactivity of a special platform for dialogue also make the realization of this proposal unlikely.

On the other hand, “Strategic Roadmap of the Republic of Azerbaijan” mentions the importance of distinguishing between the functions of the commission and the Competition Authority and states and intention to establish an independent competition agency based on international practice (USA, Austria, Latvia, Lithuania, Hungary, Czech Republic). This can be considered the first positive development in this respect.

6.3. Ensuring participation in international working groups (including, the working groups of ICN) and other respective similar platforms, to carry out the necessary preparatory work for participation in the Global Competition Review (GCR) rankings;

The realization of this proposal depends on the shift of the official view on antimonopoly policy and selection of more advanced approaches in the implementation of this policy. Advocacy campaigns by media and NGOs can trigger the process.

6.4. Ensuring a compliance with transparency and accountability in the activities of Competition Authority, to establish a public council under the Authority, which is the most advanced form of public control.

Ensuring transparency in the activities of the Competition Authority firstly depends on defining requirements and including them into legislative acts, and on the efforts of civil society to involve various forms of public participation. Since public participation, transparency, accountability are one of the main requirements of Open Government, the major work should be undertaken by independent NGOs and experts who were actively involved in the execution of the first NAP. Reports by the MoE present the approval by the President of a list of executive power bodies to be publicly controlled as one of the reasons for an establishment of a public council under the ministry.

It should be noted that, the task of “designing recommendations on central executive bodies to be publicly controlled and presenting them to the President of the Republic of Azerbaijan” based on the Presidential Decree under the law “On public participation”, which was assigned to the Cabinet of Ministries, has not yet been executed. The execution period of this task was identified as 3 months in the decree. That is why, it is important to take into account this fact while engaging in advocacy campaigns concerning the establishment of a public council.

**WAYS TO INCREASE THE EFFICIENCY
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Galib Toghrul

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