

Kazakhstan

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Aequitas

Description of domestic natural gas sector

- 1 In general terms, describe the domestic natural gas sector, including the natural gas production, liquefied natural gas (LNG) storage, pipeline transportation, distribution, commodity sales and trading segments.

The Republic of Kazakhstan (the RK) is ranked 15th in the world and fourth in the CIS with respect to recoverable reserves of gas estimated at 3.3 billion cubic metres.

The former Soviet Union used Central Asia as a single production centre wherefrom it was necessary to supply mainly Turkmenian and Uzbek gas to the north-west (European Russia, the Ukraine, and the trans-Caucasus region). For this purpose main pipelines running through west region of Kazakhstan from south to north were constructed; however, no east to west pipelines linking gas supplies to the other markets within Kazakhstan were ever constructed. The unified gas transport system was managed from the union centre; and the relevant state agency (Kazglavgas) managed the gas sector of Kazakhstan.

The break-up of the Soviet Union left Kazakhstan with ownership of sections of three major pipeline systems: (i) the Central Asia – Center; (ii) Bukhara to Ural; (iii) the small line from Uzbekistan to Kazakhstan of the Bukhara-Tashkent-Bishkek-Almaty system (even this pipeline designed to serve local markets is clearly not optimally designed for Kazakhstan's interests since it transits (and only partially) the southern region. In general, the gas sector is characterised by a large potential natural gas reserves located a long distance away from the country's major population centers with no linking gas pipelines. In fact, only eight out of 14 *oblasts* of Kazakhstan are served by the existing pipeline grid, which badly needs further development and extensive replacement. With acquiring of independence, the national state structure Kazakhgas (varying by form) managed the gas transport system.

During the period 1990 through 2000, unified control over the local gas supply grid was lost. Lately however, in order to restore state regulation of the gas sector, National Company KazTransGas CJSC (KazTranGas) was established.

In February 2002 National Company KazMunaiGas CJSC (the KMG), wholly owned by the state, was established. Considerable (up to 100 per cent) participatory interests in most natural gas producing companies or operators of the Kazakhstan gas transport system were assigned to it. This vertically integrated company controls, through its gas transport company KazTransGas, the system of main gas pipelines, and is a sole transport company and wholesale gas supplier. The KMG also controls the Kazakhstan gas distribution grid

through its company Regional Gas Transport System CJSC.

Along with the KMG there are major independent producers of gas, such as TengizChevroil, Karachaganak Integrated Organisation.

The KMG's participation in the marketing of gas to domestic consumers (distribution) is not significant and is mainly limited by gas supplies to large industrial consumers and wholesalers.

The sector of liquefied petroleum gas (LPG), as distinct from natural gas sector, is basically a free market; the sector of liquefied natural gas (LNG) is not developed.

Please also see questions 21 to 23, and 39.

Policy and legal framework

- 2 What is the statutory framework for the domestic natural gas sector?

At present, Kazakhstan does not have a special gas law. A number of legislative acts of various legal effect, including certain international treaties (about 100 of them are of significance), regulate the gas sector. These acts were adopted at various periods to deal with specific issues, and they provide only fragmentary rather than full and clear regulation of the natural gas sector. The basic acts are the 1996 Subsoil Law and the 1995 Petroleum Law, which establish the procedure for granting the right to the performance of prospecting and production of hydrocarbons (oil), including natural gas. The Petroleum Law also addresses the issues of the construction, ownership and operation of gas pipelines and gas storage and transportation, etc. These laws were considerably amended in 1999, in December 2004 (twice) and in October 2005 further significant amendments were introduced. The RK government has adopted several decrees, also amended from time to time, pursuant to the above Laws. In July 2005, the Production Sharing Agreements Law (the PSA Law) entered into force regulating the performance of petroleum operations under the production sharing agreements in the Kazakh sector of the Caspian and Aral seas.

On 11 June 2003 the government approved the Rules for Supply, Transportation and Marketing of Natural Gas and the Rules for Supply, Transportation and Use of Liquefied Hydrocarbon Gases (these were amended on 28 August 2005). Presently, only these two current normative acts, more or less systematically, regulate the issues of sales and transportation of gas in Kazakhstan, including from main pipelines to consumers.

The issues of storage, transportation of gas or gas condensate via main pipelines and distribution pipelines, and the

operation of gas distribution facilities and gas distribution pipelines connected with them, belong to the sphere of natural monopolies and are largely regulated by quite extensive legislation on monopolies.

Additionally, as basic provisions there shall be accounted for general regulative provisions on market relations (including the principles, protection of the rights, obligations, and agreements) contained in the RK Civil Code.

3 Broadly speaking, what is the governmental policy for the domestic natural gas sector and which governmental bodies set it?

Development of the oil and gas sector has become the priority for the Kazakhstan economy during the last three years, which is evidenced by the adoption by the government in 2002 of the Concept of the Full Development of the RK Gas Sector by 2015 and the approval of the Program of the Development of the Gas Sector of the RK for 2004 to 2010.

The main points of the state policy regarding the domestic natural gas sector consist of the following priority directions:

- ensuring the energy independence of Kazakhstan;
- development of gas processing facilities, expansion of export possibilities, development of domestic natural and liquefied gas market; and
- compliance with environmental requirements in the production, processing and transportation of gas, and improvement of the ecological situation in the Republic with increased use of natural gas.

Please also see questions 28 to 31.

Regulation of natural gas production and importation

4 What percentage of the country's energy needs are met directly or indirectly with natural gas and LNG? What percentage of the country's natural gas needs are met through domestic production?

The share of natural gas in the energy sector of Kazakhstan is about 13 per cent in the fuel balance of primary energy carriers. Approximately 18 to 20 per cent of demand is met by domestic production of natural gas.

5 What is the ownership and organisational structure for production and importation of natural gas (other than LNG)?

All oil (which according to the legislation also includes gas condensate and natural gas) naturally occurring in the subsoil of Kazakhstan is in the Republic's exclusive ownership. Contract determines the owner of oil extracted to the surface, most often the owner is a contractor and sometimes the state. The right of disposal of oil extracted to the surface belongs to the owner, unless otherwise provided by the contract.

The main suppliers of imported natural gas are Turkmenistan, Uzbekistan, and Russia. KazTransGas is the main gas importer in Kazakhstan.

See also question 1.

6 What governmental or administrative authorisations are required to carry out natural gas exploration and production? Does the government allow the lease of mineral rights; are there laws or regulations governing when, where or how much natural gas may be produced; for drilling on public land, is there a governmental authority that authorises and/or monitors such activities?

Production of gas may be carried out only on the basis of a duly concluded contract for the performance of petroleum operations (the contract). Parties to the contract are a contractor (entity to whom the relevant right for the performance of petroleum operations is granted) and the state as represented by the competent agency, currently, the RK Ministry of Energy and Mineral Resources (the MEMR).

Contract

Contracts are executed upon the results of tenders held on the basis of the principle of the equal rights of participants, except for national companies to whom the right to the performance of petroleum operations may be granted on the basis of direct negotiations. A draft contract prior to its execution shall be subject to a number of obligatory state expert examinations and coordination.

Environmental permits

For carrying out subsoil use operations, the contractor shall obtain an environmental permit, which is issued based upon the results of the state environmental expert's examination of the project.

Licences

If, while carrying out the exploration and production of natural gas, the contractor engages in activities subject to licensing (eg, transportation of dangerous goods, production and operation of industrial explosive, fire hazardous and mining facilities, etc), the contractor shall obtain the relevant licences using the established procedure.

Under Kazakh law, it is possible to execute various contracts, including concession contracts (not excluding lease agreements) and contract services agreements (including the PSA). By types of subsoil use operations, there are executed contracts for exploration, production or combined contracts.

The Petroleum Law establishes the maximum effective period for contracts for production as up to 25 years. With respect to fields with recoverable reserves over 100 million tons of crude oil and/or over 100 billion cubic metres of natural gas, the production contract may be concluded for a period up to 45 years. The effective period of contracts may be extended. According to the PSA Law, the term of production sharing agreements may not exceed 35 years for combined exploration and production, 25 years for production and 45 years for unique reserves.

A contractor shall be obliged to conduct the production in accordance with work programme (which is a part of the contract) that determines the quantity of gas to be produced by years. The legislation does not establish either minimum or maximum limits for annual production; these are determined in the contract execution.

Contracts are concluded with respect to a certain territory within the boundaries of which the contractor may carry out the production (the contract territory).

The list of agencies that issue permission or carry out supervision over drilling operations does not depend on what

land (public or private) such operations would be carried out. The execution of the contract is an unconditional basis for granting the right to land to the contractor by local executive body.

7 Generally, how does the government derive value from natural gas production?

Kazakhstan has two subsoil user taxation models fixed in the contract: general regime or PSA.

The government may be compensated for natural gas production through taxation of the subsoil users and by obtaining its share of gas under PSAs.

In addition to generally established taxes for all business entities (including income tax) the subsoil user producing natural gas shall also pay so-called special subsoil user payments.

Regulation of natural gas pipeline transportation and storage

8 What is the ownership and organisational structure for the pipeline transportation and storage of natural gas?

Main pipelines (including gas pipelines) as well as gas storages may be both in state and private ownership. At the present time the main gas pipelines are objects of state property. KMG, being a company wholly owned by the state, controls, through its gas transport company KazTransGas, main gas pipelines and facilities for gas storage. KMG also controls Kazakhstan gas distribution grid through its company Regional Gas Transport System CJSC.

Please also see question 1.

9 What governmental or administrative authorisations are required to construct and operate natural gas transportation pipelines and storage facilities?

The Petroleum Law refers the construction and operation of onshore and offshore gas pipelines and also the contraction and operation of underground storages and oil tanks to petroleum operations which must be carried out on the basis of relevant contracts.

In addition, under the Law On Licensing for the performance of activities on the design, construction, and operation of gas pipelines and gas storages it is required that licenses be obtained: (i) for the design and construction of a gas pipeline, gas storage; (ii) for operation of a gas pipeline, gas storage. The Construction Committee of the RK Ministry of Industry and Trade and MEMR issue these licences, respectively. In accordance with legislative innovations of 2004, the activities on the construction, operation of gas pipelines and gas storages require mandatory state licensing to be carried out by the Ministry of Environment Protection (MEP). Furthermore, in order to perform the above activity, a number of technical authorisations with relevant authorized bodies are required. In December 2005, the Law on Compulsory Environmental Insurance was adopted, according to which the activities associated with the operation of gas pipelines are subject to compulsory insurance as environmentally dangerous types of business activities.

10 In general, how does a company obtain the land rights to construct a natural gas transportation or storage facility?

The land fund is subdivided into several categories, depending on their purposeful designation (lands of agricultural, industrial designation, settlements, etc). Only lands of industrial designation may be used under their direct designation for the construction of gas transportation facilities and gas storages without the right to transfer them to another category.

The rights to land may be obtained on the basis of the execution of a relevant contract with the land owner. Land plots and the right to lease land plots, which are in state ownership, may be the objects of sales at an auction. If required, the relevant land plot may be withdrawn from the land user.

Under a general rule, in the case of construction of industrial objects, the land surveying project is agreed (in the form of a conclusion) accordingly with land users from which the withdrawal of the land plot is planned, with local architecture and town-planning bodies, ecology and biological resources bodies, and other organisations whose interests are affected by the intended land allotment. In the construction of an oil and gas transportation infrastructure facility, the land surveying project is also agreed with the MEMR.

11 How is access to the natural gas transportation system and to storage facilities organised?

In accordance with the Petroleum Law and other normative legal acts, a transport company (KMG) shall provide non-discriminatory access of suppliers to the gas transportation system at any time, and execute a contract for gas transportation subject to:

- availability of surplus capacity for transportation of declared volume of gas in the gas transport system from the point of connection to the place of gas extraction during the entire period of its supply; and
- conformity of quality of the supplied gas to the standards and specifications accepted in the Republic, unless otherwise is established by international treaties.

In times of limited volumes of gas transportation the decision on applications for gas transportation is accepted by a gas transport company depending on the priority of consumers and terms of payment. The consumers are subdivided into the following categories, based on the priority in gas supply:

- population that use gas for household needs;
- objects of municipal-domestic designation;
- consumers that use gas as a raw material or fuel for the output of production with continuous cycle of technological process;
- electric power plants and industrial enterprises whose gas supply during spring-winter period must be regulated by their partial or full transfer to reserve types of fuel in a statutory procedure; and
- other consumers.

In the case of partial or full refusal of a transport company to provide access to the gas transport system, a supplier may apply to the authorised body which decision may be objected in a court.

Gas pipelines designated for internal use only (ie, gathering lines) are exempt from the third-party access requirements.

The relations between operators of gas storages and

owners of natural gas are regulated by contracts executed between them.

- 12** To what degree are pipeline systems interconnected with one another and by what means is cooperation between such systems established?

Following the breakdown of the USSR, Kazakhstan owns parts of major pipelines, running only in the western and the extreme western region from the south to the north, which do not interconnect in the territory of the Republic. This does not allow using gas pipelines for pumping-over of gas between the regions for the purpose of redistribution of excessive volumes of gas, for example, cheap gas produced in the western region to the southern and northern regions of the country. Thus, the country lacks more or less a developed gas transport system for servicing domestic markets. Presently, the RK government has set a task to develop the relevant gas transport system for the expansion of domestic and export gas markets.

- 13** Can customers, other natural gas suppliers or an authority require a pipeline or storage facilities operator to expand its facilities in order to accommodate new customers? If so, who bears the costs of interconnection or expansion?

Customers, suppliers of natural gas and the authorised agency do not have a right to require from operators of a gas pipeline or storage facilities to expand their capacities. All expenses related to the connection of the new gas pipelines to the gas transport system will be borne by the initiator of such connection, unless otherwise determined by an agreement with the transport company.

- 14** Describe any regulation of the prices or terms of service for pipeline or storage services.

The activities of natural monopoly entities (NMEs) are regulated by the state through the RK Agency for Natural Monopolies Regulation (the AMA). The regulation is carried out by the approval of gas storage and transportation tariffs, setting prices for the gas sold to the end-user; approval of tariff estimates of the gas transportation companies, setting, if necessary, an interim lowering (compensation) coefficient for prices and tariffs, as well as applying a special procedure for assessing costs in establishing prices and tariffs for the services of the NMEs.

When providing services, gas transportation companies shall meet requirements obligatory for NMEs, in particular, to enforce decisions of the authorised agency not contrary to law; to provide a qualitative overall service to the customers subject to the tariffs set by the authorised agency; to service the customers on equal basis; to purchase material, financial resources and services in a statutory procedure; to prevent the violation of the customer's rights while entering into service agreements, etc.

- 15** Describe any statutory and regulatory requirements applicable to the processing of natural gas to extract liquids and to prepare it for pipeline transportation.

Processing of natural gas, which is one of industrial hazardous productions, requires the obtaining of a licence from the MEMR.

- 16** Describe the contractual regime in relation to transportation and storage.

The terms and conditions of gas transportation and storage agreements shall comply with the standard agreements as approved by the RK government. Such agreements shall, in addition to the general terms and conditions of civil law, contain the rules regulating, in particular: the technical conditions and characteristics of the gas transportation services provided; the indication on a 24-hour provision of services; the volumes of natural gas transportation; month-by-month schedule of transportation; and the receiving terminal and the transfer terminal.

One of the most specific conditions of a standard natural gas storage agreement is that the parties to the agreement shall provide for the terms and conditions of storage and the monthly natural gas recording.

Please see also 14 above.

Regulation of natural gas distribution

- 17** What is the ownership and organisational structure for the local distribution of natural gas (transportation from pipeline to consumer)?

Part of the gas distribution pipelines are in the state ownership, while the other part is owned privately. Until recently, there were two main regional gas distribution companies, Kazakhgas in the west and Alaugas in the southeast, which operated as regional distributors of natural gas. In 2003 these companies, however, were recognised bankrupt in a statutory procedure. Regional Gas Transport System CJSC, which enters into the structure of KMG companies, partly replaced them. In addition, there are a number of smaller gas distribution companies within each Oblast (Obligases) which buy gas from larger companies and distribute them to end-users.

- 18** What governmental or administrative authorisations are required to operate a distribution network? To what extent are gas distribution utilities subject to public service obligations?

A licence issued by the MEMR is required for operation of a gas distribution system.

Kazakhstan legislation does not contain explicit requirements that gas distribution companies be subject to public service obligations. However, considering that the gas distribution enterprises are directly or indirectly controlled by the state, supplying gas to meet the need of utilities is inevitable.

- 19** How is access to the natural gas distribution grid organised?

Access to the gas distribution grid is carried out in accordance with the requirements established for the entire gas transport system provided that the consumer has permission to operate of gas equipment, documents confirming the working order of gas consuming facilities and equipment. Providing the consumers with gas is carried out subject to proper technical conditions of the gas distribution grids, compliance by the consumers with safety rules in the operation of objects of the unified gas grid, devices, and equipment.

Please also see question 11.

- 20** Describe any regulation of the prices for distribution services
Under what circumstances can a rate or term of service be changed?

The AMA approves tariffs on the transportation of natural gas via gas distribution gas pipelines.

The tariffs on the transportation of gas via distribution pipelines (as in the transportation via main pipelines) may change not more frequently than once every two quarters when establishing or reorganising the NME, upon expiration of the effective period for prices approved for the limited period, as well as in any other cases, if required.

- 21** Can the regulator require a distributor to expand its system in order to accommodate new customers? Can the regulator require the distributor to limit service to existing customers so that new customers can be served?

The legislation does not provide for a right of the regulator to require an expansion of the volumes and capacities of the gas distribution system, or require a distributor to limit service to existing customers so that new customers can be served, if the capacities of gas distribution system cannot provide servicing to new customers.

Please also see question 13.

- 22** Describe the contractual regime in relation to natural gas distribution

The contract regime of distribution of natural gas is similar to the contract regime of transportation of natural gas. Please see 14 and 16 above.

Regulation of natural gas sales and trading

- 23** What is the ownership and organisational structure for the supply and trading of natural gas?

The Rules for Supply, Transportation, and Marketing of Natural Gas currently regulate the relations between suppliers and buyers of natural gas. The gas is supplied on the basis of a contract for gas supply executed between the supplier and the consumer in accordance with the rules of the Civil Code, and other normative legal acts which establish a priority procedure for gas buyers (See also question 11.)

- 24** To what extent are natural gas supply and trading activities subject to governmental oversight?

Natural gas suppliers do not need any permission for the gas supply. Gas consumers must have permissions to operate of gas equipment, and also documents confirming the working order of gas-consuming facilities and equipment

- 25** Must wholesale and retail buyers of natural gas purchase a bundled product (the natural gas commodity and transmission/distribution) from a single provider? If not, describe the range of services and products that customers can procure from competing providers.

Kazakhstan does not have legislative requirements for wholesale and retail buyers to purchase a bundled product from a single provider. In practice, KMG sells gas on the bundled basis and gas is supplied to such major end consumers as energy producing enterprises or to regional distribution companies which resell gas in the market.

Other producers are entitled to sell their share of produced gas on the market without any restrictions. They may sell gas either by the construction of own gas pipelines or by entering into a contract for excess capacity in the KMG system, subsequently selling a bundled product on the market.

Regulation of liquefied natural gas (LNG)

- 26** What is the ownership and organisational structure for LNG, including liquefaction and export facilities and receiving and regasification facilities?

The sector of liquefied natural gas is not developed in Kazakhstan; therefore, there is no organisational structure for it.

- 27** What governmental or administrative authorisations are required to build and operate LNG facilities and which are the responsible authorities to grant such approvals?

If required, for the construction and operation of LNG facilities, a construction licence of the Construction Committee of the Ministry of Industry and Trade and a licence for the operation issued by the MEMR will evidently be needed, and possibly a licence of the MEP.

- 28** Describe any regulation of the prices and terms of service in the LNG sector.

Currently, Kazakhstan has no statutory regulation of prices and terms of service in the LNG sector.

Regulators

- 29** Which governmental or administrative authorities determine regulatory policies governing the production, transmission, distribution and supply of natural gas?

A number of organs of the state, such as the parliament and the president, determine within their respective competences the general policy of the state in different spheres. The RK government and the MEMR, the Committee for Protection of Competition of the Ministry of Industry and Trade (the Committee for Protection of Competition), the AMA, the MEP, as the part thereof, and to some extent KMG, undertake the special regulation of production, transportation, distribution and natural gas matters.

- 30** What is the scope of each regulator's authority?

The following can be referred to the authorities of the government related to the determination of the regulatory policy in the gas sector: development of the main directions of the state socio-economic policy, strategic and tactical measures for its implementation; development of plans for the implementation of state programs; organisation of state property management; development and implementation of measures to ensure a rational use and conservation of natural resources and environment protection.

The MEMR acts as the main direct regulator in the area of production, transportation, distribution, and supply of natural gas in the RK. The MEMR not only participates in the determination of the regulatory policy in this sector, but implements it as well.

KMG participates in the development and implementation of the unified state policy in the oil and gas sector, ensuring the effective and rational development of oil and gas resources, as well as the development of the strategy for the use, reproduction, and further increase of oil and gas resources. The MEMR may engage KMG for the implementation of monitoring of production, transportation, and processing of raw hydrocarbons and other functions in the gas sector.

Authorities of the Committee for Protection of Competition and the AMA are connected with the implementation of control in the sphere of production, transportation, distribution and supply of natural gas.

The MEP carries out the state licensing of ecologically hazardous types of activities, including the performance of petroleum operations linked with environment pollution.

31 How is each regulator established? To what extent, if any, is that regulator considered to be independent of the regulated business and of government?

The president of the Republic of Kazakhstan forms the government pursuant to a proposal of the prime minister. In respect to all of its activities, the government is accountable to the president; it is also subordinated to the parliament.

The MEMR and MEP are a part of the RK government, and the ministers are accordingly members of the RK government. The ministers make independent decisions within their competence and are personally accountable to the prime minister for the work of subordinated departments.

KMG was created by the Presidential Edict, dated 20 February 2002. As a working body of the MEMR, KMG is obliged to implement its instructions; KMG is also accountable for its activities to the government.

The Committee for Protection of Competition is a department of the Ministry of Industry and Trade, and the AMA is a central executive body not entering into the composition of the government.

32 To what extent can decisions of the regulator be challenged or appealed, and to whom? What are the grounds and procedures for appeal?

The RK law gives each citizen or legal entity the right to go to the law with an appeal on recognition of any normative legal act or a decision of a state body or an official (except the laws of the parliament) as conflicting with the law completely or to some extent, if they believe that the given normative act violates their legal interests or interests protected by the law.

In addition, the president may revoke decrees of the government. The president and the government may cancel resolutions of the prime minister (the head of the government). The RK government may, in full or in part, suspend or revoke acts of the ministries.

Mergers and competition

33 Which governmental body has the authority to prevent or punish anti-competitive practices in the natural gas sector?

The AMA is a body that is authorised to implement state policy in the area of regulation of NME activities, and the Committee for Protection of Competition performs warning, limitation, and suppression of monopolistic activity, protection of competition and consumer rights, control over the

observance of the anti-monopoly legislation in any commodity market, including the gas sector.

34 What substantive standards does that governmental body apply to determine whether conduct is anti-competitive?

The following laws generally applicable in the RK regulate anti-competitive actions in the gas sector of the economy:

- Law on Competition and Limitation of Monopolistic Activity, dated 2001 (Law on Competition);
- Law on Natural Monopolies, dated 1998; and
- Law on Unfair Competition of 1998.

Rules in accordance with which specific actions are classified as unfair and restrictive of competition include the following:

- adoption by the state bodies of acts or performance of actions that limit economic activity, create discriminating or otherwise favourable conditions for the activities of specific market entities if such acts or actions result or may result in the limitation of the competition;
- attainment in any form of agreements (performance of agreed actions) of competing market entities (potential competitors) who have (or may have) an aggregate share of more than 35 percent in the market of a specific product if such agreements (agreed actions) result or may result in the limitation of the competition;
- achievement in any form of agreements (performance of agreed actions) of a state body with another state body or a market entity that result or may result in the limitation of the competition; and
- abuse of dominant position in the market.

The legislation contains the general prohibition of unfair competition.

35 What authority does the governmental body have to preclude or remedy anti-competitive practices?

If the Committee for Protection of Competition makes a decision that an entity has violated the provisions of the anti-monopoly legislation, then it may undertake one or a number of the following actions: (i) demand reimbursement of caused damage; (ii) transfer to the budget of the monopolistic income received as the result of the violation of the anti-monopoly legislation; (iii) cessation of the violation of the anti-monopoly legislation and/or elimination of its consequences; (iv) reestablishment of the situation existing before the violation was committed; (v) cancellation of an agreement or its amending; (vi) execution of an agreement with another market entity; (vii) implementation of a reorganisation in the form of a division or separation in compliance with the established conditions and deadlines; and (viii) imposition of a fine.

A number of transactions concluded by the market entities between themselves, as well as concluded between the state bodies and the market subjects that violate the anti-monopoly legislation can be recognised as invalid by appealing to the court under a claim of the Committee for Protection of Competition that may demand the liquidation or forced division (separation).

Update and trends

The main tendencies, directions and priorities in the gas sector's development are defined in the Concept of Gas Sector Development up to the Year of 2015 approved by the government in 2002. Within the framework of this Concept, the issues of adoption of an independent law on gas that would systematically regulate the main aspects of the activities in the gas sector are being actively discussed.

There is also a tendency towards maintaining and strengthening of the state control and regulation of the

entire sector starting from gas production to its delivery to end user. However, we believe that such situation may change in the future for allowing more competitiveness in the sector.

The governmental decree of June 2004 approved the Programme for Development of Gas Sector for 2004 to 2010 which purpose is the creation of conditions for the increase of volumes of international transit and rational use of domestic resources of gas for fuller meeting the demands of domestic market and attainment of energy independence of the country.

- 36** Does any governmental body have authority to approve/disapprove mergers or other changes in control over businesses in the sector or acquisition of production, transportation or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

The answer to question 36 describes the authorities of the AMA regarding the control over certain transactions of NMEs. For agreeing of these transactions with the AMA a natural monopolist submits an application to the authorised body which takes a decision on it within a 30-day period. The refusal of the AMA to agree on the transactions may be appealed at the higher authorised body or a court.

The Law on Competition regulates mergers and other changes in control over the activities of entities in the competitive sector of gas industry. This Law requires prior written agreement of the Committee for Protection of Competition or its notification in cases and in the procedure established by law.

- 37** In the purchase of a regulated gas utility, are there any restrictions on the inclusion of the purchase cost in the price of services?

The consideration of costs in the calculation of tariffs for the services of natural monopolists, including gas distribution grids, is regulated by the Rules approved by the AMA on 30 July 2003 (as amended), which provide an exhaustive list of costs which a natural monopolist may include in the assessing of prices (tariffs) for its services (goods, work). We believe that certain part of the cost of purchase of a regulated gas utility in accordance with the Rules is subject to compensation by including them into tariffs for gas transportation.

See also question 34.

- 38** Are there any restrictions on the acquisition of shares in gas utilities? Are there any corporate governance regulations or rules regarding the transfer of assets that apply to gas utilities?

In accordance with the Law on Natural Monopolies, the alienation and equally any transactions with the assets of gas transport and gas distribution companies, which are NMEs, are performed by agreement with the AMA.

The acquisition by the indicated companies of shares (interest) and other forms of their participation in commercial organisations; reorganisation or liquidation of gas transport and gas distribution companies are also carried out by agreement with the AMA. Entities that acquire over 10 per cent of voting shares (interest) in the charter capital of the indicated companies are obliged to inform the AMA about this in advance.

Legal entities with various corporate structures should also comply with a number of corporate procedures that depend on the structure of the operator of gas distribution systems.

International

- 39** Are there any special requirements or limitations on acquisitions of interests in the natural gas sector by foreign companies?

The legislation does not contain any specific requirements or restrictions concerning acquisition of interest in the natural gas sector by foreign companies.

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40 To what extent is regulatory policy affected by treaties or other multinational agreements?

Kazakhstan is a party to a number of international treaties related to the gas sector, including the European Energy Charter of 1994 and the Agreement to it.

In accordance with the Constitution, international treaties ratified by Kazakhstan have priority over its laws.

41 What rules, if any, apply to cross-border sales or deliveries of natural gas?

The rules applied to cross-border sales of any types of products are also applicable to cross-border sales of natural gas. This also means the application of the rules of the customs and currency regulations.

Importation of gas to Kazakhstan from neighboring countries is usually carried under regulation at the interstate level. With regard to 'private' sales, their specific terms are determined on the contractual basis.

A Kazakhstan transport company and a foreign transport operator agree between themselves the tariffs on entry to the gas transport system and tariffs on transportation.

Transactions between affiliates

42 What, if any, restrictions exist on transactions between a natural gas utility and its affiliates?

The gas sector does not have any specific restrictions on transactions between affiliates. However, in some cases such transactions may fall under restrictions and/or requirements of a general corporate legislation.

43 Who enforces the affiliate restrictions and what are the sanctions for non-compliance?

A transaction, in the performance of which the interest exists, that was concluded in violation of the requirements to the procedure of its execution established by law is recognized as invalid through legal proceeding under a claim of a person whose rights and/or interest have been violated as a result of its execution.