

The Law of the Republic of Azerbaijan

On natural monopolies

Article 1. Objective of the Law

This Law regulates organization and legal foundations of state control related to natural monopolies in the Azerbaijan Republic and its purpose is to provide balance of the interests of subjects of natural monopolies and the state.

Article 2. Relations regulated by the Law

This Law regulates relations arising in the markets of products, work, services (hereinafter - commodities) in which subjects of natural monopoly, customers, relevant executive power bodies and local self-government take part.

Provisions of this Law do not cover the sphere of activity of subjects of natural monopoly not pertaining to natural monopolies, except as provided in this Law.

Article 3. Legislation on natural monopolies

Legislation on natural monopolies consists of the Constitution of the Azerbaijan Republic, this Law, the Law of the Azerbaijan Republic "On antimonopoly activity" and other normative-regulatory acts.

Article 4. Definitions

Words and expressions used in this Law shall have the following meaning:

- **natural monopoly** - 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;

- **subject of natural monopoly** - economic subject involved in production (sale) of commodity in conditions of natural monopoly;
- **customer** - physical person or legal entity purchasing commodity produced (sold) by the subject of natural monopoly.

Article 5. Spheres of activity of subjects of natural monopolies

1. The following are the spheres of activity of subjects of natural monopoly:

1.1. Transportation of crude oil and oil products through the main pipelines;

1.2. Services on transportation of natural gas through the pipelines, its storage and distribution;

1.3 Services on transmission and distribution of electric and thermal power;

1.4 Services on operation of main and branch railroads, road terminals and structures, traffic control and safety, railroad terminals and passenger stations;

1.5 Airport services, operation of airports, runways and structures, aviation and aero navigation services for aircrafts;

1.6 Operation of roads, tunnels and underground stations, services on traffic control and safety;

1.7 Services to sea-ports, operation of port terminals, cargo transportation and safety;

1.8 Services on electric and post communications in public use, operation and control over transmitters and receivers of radio and TV-stations, HV units;

1.9 Operation of main facilities on water treatment, main pipelines, systems of water pipelines and pressure-regulation stations thereon;

1.10 Aeration, operation of plants of mechanical cleaning, pumping units, main and rainfall run-offs in utility systems, operation of sewage lines;

1.11 Operation of water reservoirs, canals, headers, main pipelines and dams related to irrigation and melioration systems;

1.12 Services on heat-supply.

2. Whenever competitors to existing economic subjects appear in the spheres of activity listed above, in part 1 of this Article, subjects carrying out activity in conditions of competition shall not be regarded the subjects of natural monopoly and their activity is no longer controlled by this Law.

Article 6. State control over the activity of subjects of natural monopolies

1. Control of the activity of subjects of natural monopolies is carried out by relevant executive power bodies (hereinafter - the bodies carrying out control over natural monopolies).

2. The following approaches might be taken for control of activity of subjects of natural monopoly:

2.1. Control of prices (tariffs) for commodities;

2.2. Identification of customers to whom the services must be provided and (or) in cases when subjects of natural monopoly are not able to satisfy in full customers' demand in commodity, identification of required minimum of said commodity;

2.3. Bringing the production (sale) volume of commodity in correspondence with requirements of this Law.

3. Bodies carrying out control over the natural monopolies may use other approaches in compliance with existing legislation.

Article 7. Prerequisites for use of methods of control

Bodies carrying out control over the natural monopolies take decision about the use of methods of control regarding specific subject of natural monopoly accounting for stimulating role of such control in improvement of quality of commodity - produced or sold and satisfaction of demand for such commodity. In such case it must be decided if the costs are justified, taking into account the following:

- costs of production or sale of commodity, including wages, cost of raw materials, overheads;

- taxes and other charges;
- costs of main assets, need in investments for reproduction of main assets and depreciation deductions;
- actual and forecasted revenues;
- correspondence of quality and quantity of produced or sold commodity with the customers' demand;
- state subsidies and other measures of state support.

Article 8. State control over activity of subjects of natural monopolies

1. Relevant bodies carry out control over activity of subjects of natural monopoly in accordance with this Law and other normative-legal acts of the Azerbaijan Republic. Said bodies carrying out control over activity of subjects of natural monopoly in accordance with this Law and other normative-legal acts of the Azerbaijan Republic might take measures to stop or prevent actions which could have negative impact on the customers' interests, or put an obstacle to transition from the state of natural monopoly to free competition which is economically sound.

2. The body carrying out control over natural monopolies controls the following acts of the subjects of natural monopoly:

2.1. Acquisition of right of ownership or use of main assets for production (sale) of commodity which is not under the state control in accordance with this Law (if cost of main assets of the subject of natural monopoly used in total for production of said commodities on the books is 10 percent higher than the sum of partnership capital of this subject according to the last approved financial report);

2.2. Transfer of the right of ownership or use of main assets to another economic subject as a result of sale, lease and other acts with main assets used for production

(sale) of commodity which, in accordance with this Law, is subject to state control (if cost of main assets of the subject of natural monopoly used in total for production of said commodities on the books is 10 percent higher than the sum of partnership capital of this subject according to the last approved financial report);

2.3. Transfer of main assets to the customers based on leasing;

2.4. Allocation of funds (investments) by the subjects of natural monopoly in the spheres of activity not governed by this Law.

3. To obtain permit for activities specified in the 2nd part of this Article the subjects of natural monopoly must apply to the body carrying out control over natural monopolies.

Procedures of investigation and provision of relevant document and information are established by relevant executive power body.

4. When activities specified in the application might have negative consequences for the

customers' interests and if applied party failed to submit required documents, or information contained in these documents is not true then the body carrying out control over the natural monopolies might refuse in such permit.

5. The body carrying out control over the natural monopolies has the right to demand from the applicant submission of additional documents to clarify an issue, and only in such case the term of application might be extended. Such request must be sent to the applicant not later than within 10 days from the date of application.

In all cases the body carrying out control over the natural monopolies must inform an applicant about its decision not later than within 15 days from the date of application or from the date of submission of additional documents.

6. In case of refusal of the body carrying out control over the natural monopolies to issue permit for activities specified in the application or failure to answer on expiration of the term established for investigation, an applicant might appeal to the law court.

7. Person and group of persons (entities) which have obtained over 10 percent of votes corresponding to all shares constituting the partnership capital of the subject of natural monopoly as a result of purchase of shares in the partnership capital of subjects of natural monopoly or other deals (trusts, etc.), and in all cases when a number of votes belonging to them changes, should within 15 days inform the body carrying out control over the natural monopolies.

Article 9. Authority of the bodies carrying out control over the natural monopolies

The bodies carrying out control over the natural monopolies have the following authorities:

- to carry out control over observance of provisions of this Law within the limits of their authority;
- to carry out state registration of subjects of natural monopoly;

- to establish methods of control used for each specific subject of natural monopoly;
- to take decision on use of methods of control obligatory for subjects of natural monopoly;
- to receive information from officials of subjects of natural monopoly required for implementation of authorities envisaged by legislation;
- in accordance with procedures envisaged by legislation to carry out investigations and to take decisions in connection with violation of provisions of this Law, within the limits of their authority;
- to apply fines (financial sanctions) with respect to the subjects of natural monopoly and their officials;
- to issue instructions obligatory for the subjects of natural monopoly as per transfer to the state budget of revenues obtained as a result of violation of the Law, conclusion of agreements with the customers that must be services, introduction of amendments into agreements;
- to apply to relevant executive power body with the purpose of settlement of financial issues of control of activity of subjects of natural monopoly;
- to carry out other authorities envisaged by legislation.

Article 10. Obligations of subjects of natural monopolies

1. The subjects of natural monopoly must fulfill decisions of the bodies carrying out control over natural monopoly within the limits of authority envisaged by this Law.

2. The subjects of natural monopoly must submit reports on their activities, investment projects, other documents and information to the bodies carrying out control over natural monopoly in due time and as specified by legislation.

3. The subjects of natural monopoly which have the right to produce (sell) commodity pertaining to the spheres of natural monopoly have no right to refuse to conclude agreement with the customers on sale of such commodity.

4. In case of violation of provisions of this Law, the subjects of natural monopoly (their officials), in accordance with decisions of the bodies carrying out control over natural monopoly are obliged:

4.1. to eliminate violation of provisions of this Law;

4.2. to restore status quo or implement other instructions contained in said decision;

4.3. to annul or to change deals which contradict to provisions of this Law;

4.4. to conclude an agreement with the customer, services to whom are obligatory, and make relevant amendments in concluded agreement;

4.5. to transfer revenues obtained due to violation of provisions of this Law to the state budget.

Article 10-1. Duty of subjects of natural monopolies to disclose information

Legal entities that establish natural monopolies shall disclose information about terms of supply and prices of products and services, alterations and amendments in such terms and conditions or prices, at least 30 days prior to introduction of changes and amendments in the manner specified by the legislation.

Article 11. Responsibility of subjects of natural monopoly

1. Subjects of natural monopolies are subject to the following penalties (financial sanctions):

1.1. in case of failure to submit documents required by the bodies carrying out control over natural monopolies to implement their functions, or other information - up to AZN 550;

1.2. in case of failure to submit information envisaged by part 7 of Article 8 of this Law -up to AZN 660;

1.3. for presentation of untrue information to the bodies carrying out control over natural monopolies - up to AZN 1,100;

1.4. for change of prices (tariffs) established by relevant executive power body - up to AZN 16,500;

1.5. for violation of decisions taken by the bodies carrying out control over natural monopolies - up to AZN 11,000.

2. Penalties applied in accordance with this Article are transferred to the state budget within 30 days after such decision has been taken. When penalties are not paid in time or in full, 0,5 percent interest will be paid for each day of delay.

Article 12. Responsibility of officials of the subjects of natural monopoly and of bodies carrying out control over natural monopolies

1. According to legislation of the Azerbaijan Republic officials of the subjects of natural

monopoly will be responsible for non-fulfillment of decisions taken in accordance with this Law.

2. When provisions of this Law are violated, officials of the bodies carrying out control over activities of subjects of natural monopoly will be responsible in accordance with legislation of the Azerbaijan Republic.

3. Financial sanctions and penalties applied to the subjects of natural monopoly and their

officials do not release them from implementation of obligations resulting from this Law and decisions taken by the bodies carrying out control over natural monopolies.

Article 13. Reimbursement of losses

Whenever the subjects of natural monopoly or other economic subjects suffer losses as a

result of decisions taken by the bodies carrying out control over activity of subjects of

natural monopoly, with violation of provisions of this Law, including under-justified

decisions on prices, they will have the right to demand reimbursement of such losses in accordance with civil legislation.

President of the Republic of Azerbaijan

Heydar ALIYEV

Baku city, 15 December 1998

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