

Competition Regulation in Mongolia

The competition law regulates matters related to the creation of conditions for fair competition in the market for business entities, identification and implementation of legal and organisational grounds for prohibition, restriction and prevention of any activities impeding competition.

This law is effective in the territory of Mongolia and other countries, if the entity engages in illegal activities outside of Mongolia, and its effect on the market is proven.

Natural monopolies means a single entity that alone accounts for the total supply of particular goods to the market at the lowest minimum social cost.

Dominant position of an entity means a position when a single entity acting alone or in a group of business entities or related parties acting together, account for over one third of the manufactures, sales and purchases of certain kind of products in the market. In addition, a position when a single entity acting alone or in a group of business entities or related parties acting together, account for over one third of the manufactures, sales and purchases of certain kind of products in the market shall also be considered as dominance.

An entity in a dominant position shall be prohibited to engage in the following dominating activities:

1. Halting or restricting production or sale of goods in order to create an artificial shortage;
2. Fixing excessive price unreasonably;
3. Requiring additional condition of products from enterpriser, selling similar kind of products by differential price in market, refusing to sell unreasonably. It shall not be referred to changing price of products which concerned location of region and calculated realization cost of transportation and to promotion which giving to wholesale and retail purchaser from manufacturer or supplier;
4. Selling goods and products at lower than cost prices in order to prevent other enterpriser from entering that market or to drive them out from the market;
5. Refusing to establish other relation of business entity without tangible grounds of economic and technical.
6. Fixing price and establishing territories within which resell goods;
7. Insisting on condition not to buy goods and products of his/her competitors as a condition for sale of its goods and products
8. Insisting for others to sell their goods and products to him/her by condition which might lead to the reduction of production and sales of those goods and products;
9. Demanding without due cause from enterpriser to transfer his/her financial means, assets, their rights and labor force to him/her
10. Demanding from competitors to restructure their companies through a consolidation, merger, division and separation;
11. Insisting on including conditions that are not relevant to the subject in a contract of certain kind of products of the contract or disadvantageous to the contracting party. Stipulating differential condition from other participant
12. Attaching goods that are not included in a set in selling goods and products.

The dominant business entity shall submit an application to the Authority for Fair Competition and Consumer Protection (hereinafter – the 'AFCCP') in the case of restructuring through consolidation and merger, purchasing more than 20 percent of common stock and more than 15

percent of preferred stock from competitive company, which sales similar kind of products or consolidating and merging with related party.

The following documents shall be enclosed to the application:

- a) summary on business activities of a restricting entity;
- b) state registration certificate of each applicant, reference letter on governing and executive management from the state registering authority;
- c) resolution of the state authority and executed agreement;
- d) audited financial statements for the last two years;
- e) information on direction of operation/activities, market scope, income, name, type of manufacturing and service and other economic indicators for the last two years.

Hard-core cartels (when firms agree not to compete with one another) are the most serious violations of the competition law. They injure customers by raising prices and restricting supply, thereby making goods and services completely unavailable to some purchasers and unnecessarily expensive for the others.

The categories of conduct most often defined as hard-core cartels are:

- price fixing
- output restrictions
- market allocation
- bid rigging (the submission of collusive tenders)

Cartels are very difficult to detect. They can involve many firms in the industry and customers are rarely in a position to detect the existence of a cartel. Antitrust authorities shall be helped in their ability to detect cartels by various means and instruments, the most effective being leniency programs. These programs provide for immunity or reduction in sanctions for cartel members that co-operate (or 'whistleblow') with competition authorities. Leniency programs were adopted by most OECD countries including Mongolia and were instrumental in increasing the success rate of cartels detection.

The AFCCP shall make permitted or refused conclusion within 30 days after receipt of the application. This period can be extended, and, if necessary, additional information can be submitted.

The AFCCP shall review an application and make refused conclusion, if they establish a competition restricting condition takes place.

A refused conclusion of the AFCCP shall serve as a ground for not registering a business entity.

The AFCCP shall exercise following full powers in accordance with its obligations:

- a) examining illegal action, which is not related with its charge and revealed during inspection by competent authority, Transferring related documents to proper authority;
- b) determining legitimate monopolistic and dominant position entity, and checking its activity. Government shall establish the procedure for determining legitimate monopolistic and dominant position entity;
- c) submitting proposals for resolution to the higher authorities, their officials and administrative court regarding overruling of decisions of public administration, local self-government and local administrative agencies issued in violation of legislation on competition, etc.

Inspection shall be conducted on the following ground with respect to the activities that are in breach of the competition laws:

- a) application and complaint by an entity, organisation or citizen;
- b) information reported by media;
- c) on its own initiative;
- d) other grounds provided by law.

State inspector shall conduct inspection within 60 days. If it is impossible to finish the inspection within 60 days, this term shall be extended by the AFCCP Chairman for the next 30 days.

In accordance with Law on Violence, any action or omission for restricting competition or being a part of action for restricting competition, illegally earned income, assets or property shall be confiscated and subject to the fine of up to 6% of previous year's annual income.

A person considering decision of the AFCCP as unlawful may file his/her complaint with the court within 30 days after receipt and recognition of the decision.

Case Studies - Cartel investigation on price fixing between Magnai Trade LLC and Just Oil LLC: The relevant decision was resulted from the investigation launched in response to the AFCCP investigator's decision, in order to determine whether Magnai Trade LLC and Just Oil LLC violated Article 11.1.1 of the Competition Law of Mongolia. Under Article 11.1, hard-core cartels are prohibited.

According to the case file, on 27 September 2013, Magnai Trade LLC and Just Oil LLC increased their retail prices for all kinds of petrol by 50 tugrugs (3.5 US cents at 2013 currency rate) per litre.

During the investigation, the working group detected that Magnai Trade LLC bought Just Oil LLC's shares and then they appointed its president's son for a position of executive director of Just Oil LLC.

The second claim of the file is that directors of these two companies made a decision to increase retail prices for all kinds of petrol by 50 tugrugs for per litre at the same day.

It was thus considered that this decision broke Article 11.1.1 of the Competition Law of Mongolia, "mutually agreeing to fix prices is prohibited". It was decided to impose an administrative fines of 2,368,047,972 tugrugs (USD1,691,463 at 2013 currency rate) and 941,932,927 tugrugs (USD 672,809) on Magnai Trade LLC and Just Oil LLC, respectively, for a total of 3.3 billion tugrugs (USD 2,364,272), at 1% of its gross annual revenue generated as of the end of the previous year.

First Instance Court: Magnai Trade LLC appealed against the investigator's decision and filed a petition with a first instance court. The first instance court refused the petition. The Supreme Court upheld the first instance court 's decision.¹

If you need more information or have any inquiry, please feel free to contact V. Bolormaa, Partner and Advocate of Absolute Advocates Law Firm (Associated office of GRATA International in Mongolia) by bvolodya@gratanet.com or 976 99085031.

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¹ <http://www.oecd.org/daf/competition/OECD-KPC-Asia-Pacific-Comp-News-October2017.pdf>