

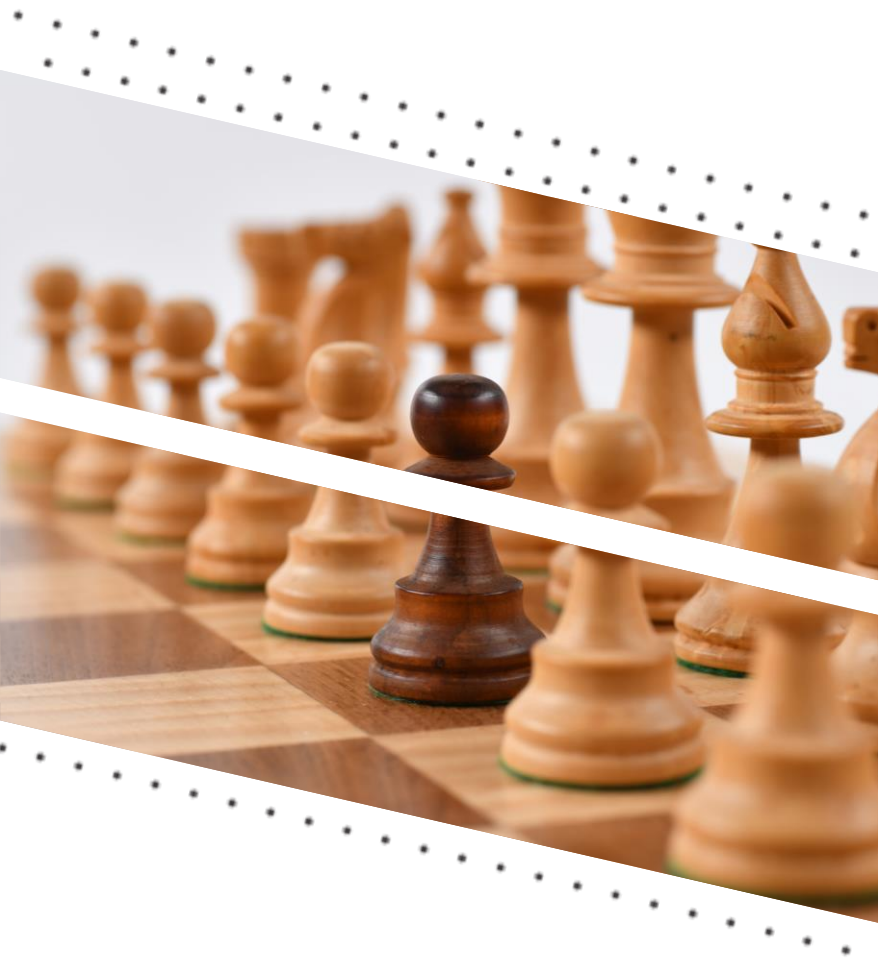


GRATA
INTERNATIONAL

ABUSE OF A DOMINANT POSITION IN MONGOLIA

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GENERAL

□ The Constitution of Mongolia

§5.1 – Market economy

§5.4 – Regulation of economy with a view to ensure the nation's economic security, the development of all modes of production and social development of the population

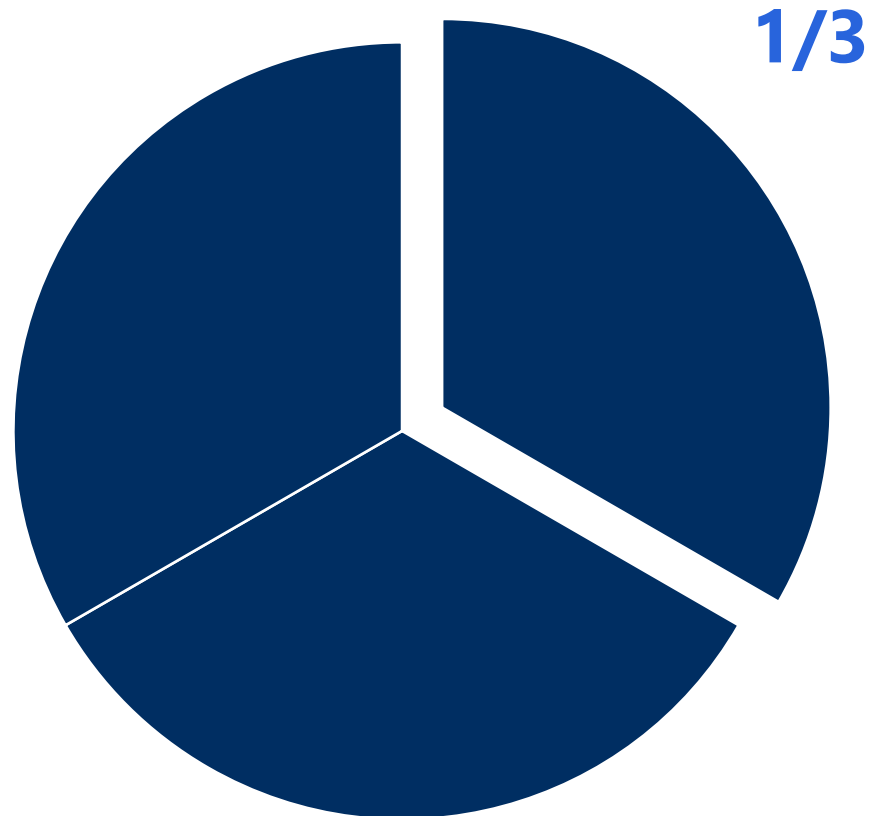
□ The Competition Law of Mongolia (2010)

- Creation of conditions for fair competition
- Prevention from/prohibition or restriction of **any market domination** or anti-competitive activities
- Determination of legal basis of the competition regulatory authority
- Regulation of relevant matters.



DOMINANT POSITION

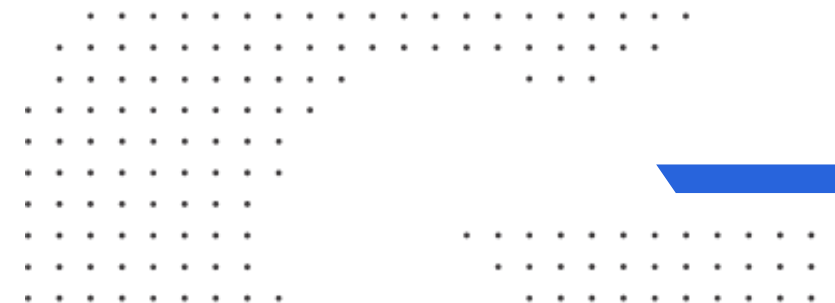
- Manufactures;
 - Sales; or
 - Purchases
- of
- Particular goods;
 - and
 - Products
- in the market



An entity:

- Alone**
- Collectively with other entities**

Related entity



DOMINANT POSITION

Mongolian Authority for Fair Competition and Consumer Protection (the AFCCP) - Determination of a dominant position

Product range

Group of interchangeable goods

Geographic market boundary

An area with economically limited access to goods from other markets

Market concentration

The proportion of goods and products sold by business entities alone or collectively with other entities, or by related entity in the market

Market strength

The ability of a business entity to influence the market of certain goods and products

DOMINANT ACTIVITIES

Actual restriction of competition and constraint on consumers' choice by abusing one's dominant market position limiting the amount, size, and price of goods and products in order to hinder other entities from entering the market and drive them out of the market.



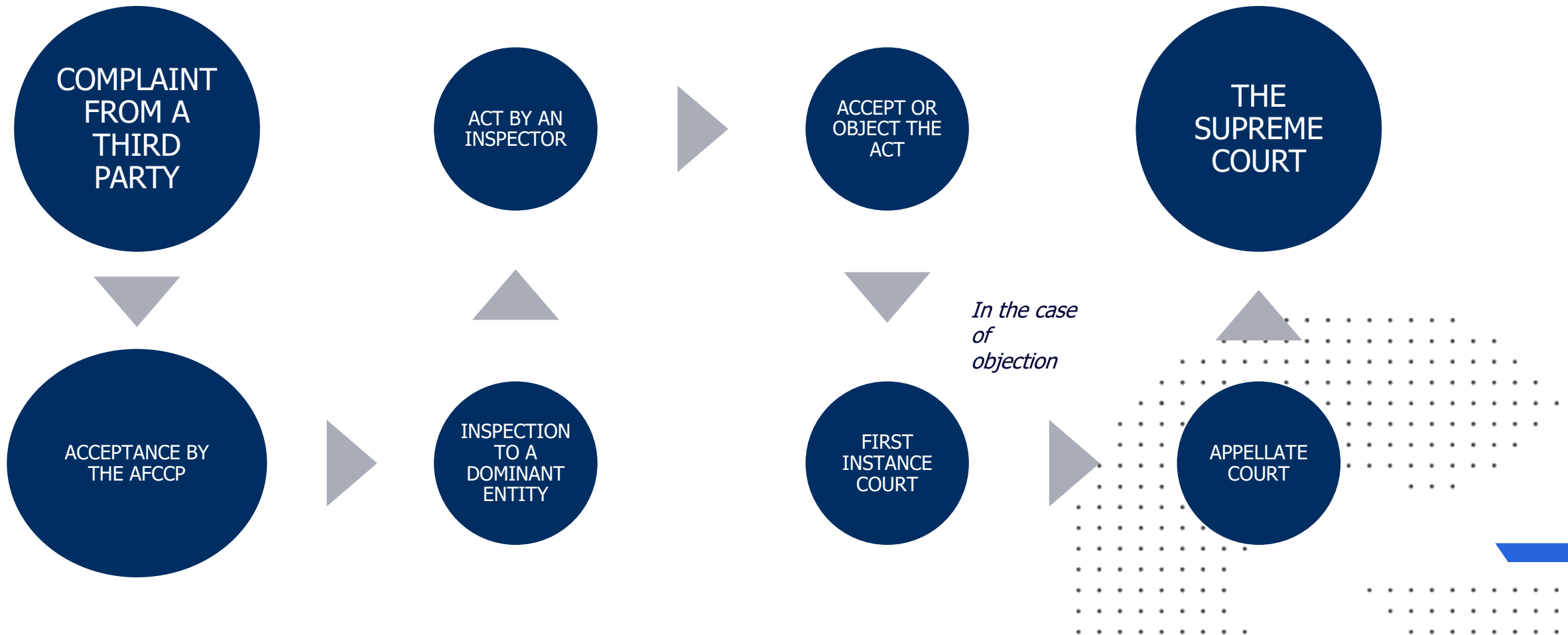
TYPES OF ABUSE OF A DOMINANT POSITION

- ❑ Creating an artificial scarcity, halting or restricting production or sale of goods and products;
- ❑ Setting unreasonably high price for goods and products;
- ❑ Selling similar goods and products at different prices in the market;
- ❑ Sale of goods and products at a lower price than their actual costs;
- ❑ Refusing to establish business relationships without any economic and technical justifications, and setting criteria without any justifications;
- ❑ Setting the price and allocation of territory of resale of goods and products;

TYPES OF ABUSE OF A DOMINANT POSITION

- ❑ Imposing a condition not to buy goods from its competitors as a condition for sale of its own goods;
- ❑ Demanding others to sell their goods to itself on conditions that may lead to a reduction of production and sales of those goods;
- ❑ Demanding unreasonably from business entities to transfer their financial instruments, properties and related rights, and their labor force to itself;
- ❑ Insisting on reorganization through merger, consolidation, division, or separation of its competitors with itself;
- ❑ Accompanying goods and products that are not included in the set of goods and products.

PROCESS OF RESOLVING ABUSE OF A DOMINANT POSITION



SANCTIONS FOR ABUSE OF A DOMINANT POSITION

COLLECT COMPENSATION FROM THE DOMINANT ENTITY



IMPOSE A FINE AT THE RATE OF 4% OF ANNUAL SALES REVENUE OF THE RELEVANT GOODS IN THE PREVIOUS YEAR

*§10.7.9, the Law of Mongolia
on Infringement*

CASE



□ **Complainant**

□ A trade center that runs a food market, as well as rents food stalls in Ulaanbaatar

□ **Respondent**

□ Inspector of the Authority for Fair Competition and Consumer Protection

CASE

□ Summary of the fact

- The trade center changed its price policy and charged different fees for the stalls depending on their location in the food market e.g. charging more from those located in the midst of crowd.
- The AFCCP conducted an inspection upon a complaint from tenants about sudden rent increase by the trade center. As a result of the inspection, the trade center was found to have **violated the article on the prohibition of selling similar goods and products at different prices in the market**, therefore, an inspector from the AFCCP issued an act demanding the elimination of their violation.
- However, the trade center refused to comply with the requirement based on the tenants' words that they did not agree with the same amount of rental fee.
- Consequently, the inspector imposed a fine on the basis of violation of the article on the prohibition of selling similar goods and products at different prices in the market.
- The trade center filed a claim to the Court objecting the inspector's act.
- The participants do not argue over the complainant's dominant position in the market.

CASE



□ Court decision

□ Dominant activity=activities conducted in order to hinder other entities from entering the market and to drive them out of the market

□ **Thus, the change of price policy is not a dominant activity**

□ Stalls are not similar products

Thus, invalidated the inspector's act

CASE

□ **Special opinion on the case by a head of administrative chamber**

- Dominant activities do not just intend for hindering or driving out the competitors, but also it may intend to constrain consumers. The trade center's action constrains consumers.
- Stalls are similar goods* according to competition theory.

*interchangeable goods for common purpose

CONCLUSION



- ❑ **The Competition law of Mongolia not only prevents from unfair competition but also aims at protecting consumers' interest by restriction or prohibition of market domination.**
- ❑ **Entities in a dominant position should consider consumers' interest while conducting its business.**

THANK YOU!

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QUESTIONS?
