

LAW OF MONGOLIA

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Ulaanbaatar

ON PROHIBITING UNFAIR COMPETITION

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CHAPTER ONE

General Provisions

Article 1. Purpose of the law

1.1. The purpose of this law is to regulate relations regarding the creation of conditions for fair competition in the market for entities conducting business activities, the identification and implementation of a legal and organizational basis for the prohibition, restriction and prevention of any activities impeding competition.

Article 2. Legislation on prohibition of unfair competition

2.1. The legislation on prohibition of unfair competition consists of the Constitution, this Law and other legislation adopted in conformity with these laws.

2.2. If an international treaty to which Mongolia is a party provides differently from this Law, then the provisions of the international treaty shall take precedence.

Article 3. Scope of the Law

3.1. This Law shall be equally applicable to legal entities participating in market competition as well as government and local administrative organizations.

3.2. Unless otherwise provided by law, this Law shall apply if securities, financial market and advertisement activities are to have or are likely to have a negative impact on competition.

3.1. Activities undertaken under the legislation protecting intellectual property and resulting circumstances shall not be considered as impeding competition.

Article 4. Definitions of the Law

4.1. The following terminology used in this Law shall have the following meaning:

4.1.1 "product" shall mean all kinds of things supplied to the market such as goods, means of payment, services and transferable rights;

4.1.2 "market" shall mean the territory on which the actual supply of a certain product occurs;

4.1.3 "financial organization" shall mean a credit or insurance organization, or a professional broker in the securities market;

4.1.4 "competitor" shall mean a person supplying certain products to the market.

Article 5. Monopolistic position on the market

5.1. Supply of over one third of the sales of a certain kind of product in the market by a single business entity, either solely or together with others, shall be considered as dominance.

5.1. Illegal use of its dominant position by a business entity to prevent the entry of competitors into that market, or to restrict or hinder competition and consumers shall be considered as monopolistic activity, and an entity conducting such activities shall be considered to be a monopoly.

5.3. Legitimate monopoly exists when a single entity alone accounts for the total supply of particular goods to the market at the lowest minimum social cost.

CHAPTER TWO

Prohibition of impediment to fair competition by dominant entities

Article 6. Use of dominant position harmful to fair competition

- 6.1 A business entity in a dominant position shall be prohibited from conducting the following activities alone:
- 6.1.1. suspending or restricting production or sale of products in order to create an artificial shortage or to raise prices;
 - 6.1.2. using its dominant position to demand from customers additional conditions for sale and selling products at differentiated prices;
 - 6.1.3. selling products at prices lower than the cost of production in order to prevent other business entities from entering that market or to drive them out the market;
 - 6.1.4. refusing to establish business relationships with other business entities without due cause and setting unreasonable criteria [for such relationships] in order to drive them out of the market;
 - 6.1.5. attaching products that are not included in a regular set in selling products;
 - 6.1.6. fixing prices and establishing territories within which the products may be resold;
 - 6.1.7. insisting on the condition of not buying the products of competitors as a condition for the sale of its own products;
 - 6.1.8. insisting that others sell their products at such a low price that it may lead to the reduction of production and sales volumes of those products;
 - 6.1.9. demanding a transfer of consumer's or competitor's financial means, assets, their rights and labor force without due cause
 - 6.1.10. demanding that competitors restructure or liquidate their companies through division and separation;
 - 6.1.11. insisting on including in a contract conditions that are not relevant to the subject of the contract or are disadvantageous to the contracting party.

Article 7. Prohibition of dominant entities entering into accords hindering competition

- 7.1. Business entities that collectively hold a dominant position shall be prohibited from making decisions, entering into accords or agreements in any of the following forms with the purpose of hindering competition:
- 7.1.1. mutually agreeing to fix prices, or limiting production or sales;
 - 7.1.2. dividing markets by location, production, services, sales, name or type of products or consumers;
 - 7.1.3. collectively refusing to enter into agreements or negotiations which have significance for competition;
 - 7.1.4. participating in competitive tender or bid auction having in advance agreed on the price, misleading other competitors as to the real conditions of the above-mentioned activities and exerting harassment and pressure on them; [*\[This subparagraph changed by the Law of July 4, 2002\]*](#)
 - 7.1.5. preventing competitors from joining organizations with the purpose of running their businesses profitably;
 - 7.1.6. restricting sales to, or purchase by, third parties of products.

Article 8. Prohibition of serving on the management of a competitor

- 8.1. Individuals from the management of a dominant business entity shall be prohibited from serving in the management of competing business entities.

Article 9. Prohibition of taking control of a competitor

- 9.1. A dominant business entity is prohibited from acquiring shares of its competitors in order to carry out monopolistic activities in the market.
- 9.2. Article 9.1 of this Law shall not apply if the benefits from increasing competitiveness of products in the leading spheres of the national economy or products that are essentially required by the population are proven to exceed any damage caused to the competition.

Article 10. Activities harmful to competition

- 10.1. A business entity is prohibited from carrying out the following activities harmful to competition:
 - 10.1.1. disseminating false, inaccurate, or misleading information that may diminish the reputation of competitors or their products, or result in losses to competitors;
 - 10.1.2. misinforming or disseminating false or inaccurate information about their own or competitors' enterprises, their location, their methods of manufacturing products, principal specifications and instructions for use of the products;
 - 10.1.3. advertising their own products as identical to those produced by others;
 - 10.1.4. demanding, as a sponsoring entity, from a person being sponsored to carry out activities harmful to competition;
 - 10.1.5. violating the terms and sequence of orders for advertisement of products;
 - 10.1.6. using without proper authorization trademarks, labels, names and quality guarantees of others' products, or copying brand names or packages;
 - 10.1.7. selling, publishing or disseminating scientific, technological, industrial or trade information and secrets without permission of the patent owner or author. This provision shall not apply to the re-engineering of products which are marketed freely without restriction under the patent or copyright laws of Mongolia;
 - 10.1.8. concealing quality deficiencies or the dangerous features of products.

CHAPTER THREE

Article 11. Prohibition of issuing decisions by Government and local administrative organizations aimed at restricting competition

- 11.1. Unless otherwise provided by law, the Government and local administrative organizations shall be prohibited from granting permission rights (licenses) related to any business activities.
- 11.2. Unless otherwise provided by law, the Government and local administrative organizations shall be prohibited from issuing the following decisions:
 - 11.2.1. To prohibit or restrict business entities from engaging in certain types of activity, production or sales of products;
 - 11.2.2. To prohibit or restrict business entities from selling products from one market to another;
 - 11.2.3. To prohibit or restrict entry of competitors into the market in any area of business activities.
- 11.3. Unless otherwise provided by law, the Government and local administrative organizations shall be prohibited from making decisions or entering into negotiations with each other or with any other business entity regarding:
 - 11.3.1. raising, lowering, or maintaining at the same level the price of products;
 - 11.3.2. dividing markets by location, production, amount of sales, name and type of products, sellers or consumers;
 - 11.3.3. preventing any business entity from entering a market, or driving them out of a market;
 - 11.3.4. giving products of a business entity to other organizations as credit.

- 11.4. Loans or assistance from the Government, or organizations authorized by the Government, extended to compensate for losses caused by natural disasters or any other emergencies shall not be deemed as restricting competition.

CHAPTER FOUR

Unfair Competition Supervisory and Regulating Organization

Article 12. Unfair Competition Supervisory and Regulating Authority

- 12.1. The Unfair Competition Supervisory and Regulating Authority (hereinafter referred to as "Supervisory and Regulating Authority") is a regulatory agency of the Government responsible for supervising the implementation of legislation on the prohibition of unfair competition, to prohibit, restrict and curb activities harmful to competition, inspect and issue conclusions on activities of business competitors, determine dominant or natural monopoly positions of business entities and the loss of such positions and to develop and submit proposals for creating conditions for fair competition to relevant organs.
- 12.2. The Supervisory and Regulating Authority shall have a Board:
- 12.2.1. The Board shall consist of a Chairman and 4 members. The Chairman of the Supervisory and Regulating Authority shall be the Chairman of the Board. The members of the Board shall work on a part-time basis;
- 12.2.2. The members of the Board shall be appointed to, or dismissed from, their duties by the Government upon the recommendation of the Chairman of the Supervisory and Regulating Authority;
- 12.2.3. The Board shall issue decisions (resolutions) on issues specified in articles 14.1.1, 14.1.2, 14.1.3, 14.2 and 15.2 of this Law;
- 12.3. The Supervisory and Regulating Authority shall perform its principal duties specified in this Law within the scope of its full powers independently from government and local administrative organizations.
- 12.4. The General State Inspector, Senior State Inspector and State Inspector shall work in the Supervisory and Regulating Authority, and the State Inspector in local areas.
- 12.5. The Chairman of the Supervisory and Regulating Authority shall have the title of the General State Inspector. The Minister of Finance shall appoint, or dismiss, senior state inspectors and state inspectors on the recommendation of the Chairman of the Supervisory and Regulating Authority.
- 12.6. The Government shall approve the strategy and structure of the Supervisory and Regulating Authority and shall finance its activities from the State budget.
- 12.7. The Supervisory and Regulating Authority shall report annually on its activities to the Government.

Article 13. Powers of a state inspector

- 13.1. A state inspector of the Supervisory and Regulating Authority shall exercise the common powers of state inspectors specified in article 21 of the Law on State Supervision¹ and shall be provided with guarantees to exercise the powers prescribed in article 23 of the same Law.

Article 14. Powers of the Supervisory and Regulating Authority

- 14.1. The Supervisory and Regulating Authority shall exercise the following powers in accordance with its obligations:
- 14.1.1. To conduct inspections and issue conclusions concerning the implementation of legislation prohibiting unfair competition by business entities and organizations regardless of their ownership type;

¹ State Supervision Law – published in the No.4 of the "State information" bulletin of 1995

- 14.1.2. To determine, register and examine a business entity's dominant or natural monopoly position or loss of such position and supervise its activities. The Government shall approve procedures on determining dominant or natural monopoly positions of business entities and the loss thereof;
- 14.1.3. To demand from management of business entities illegally using a dominant position to restructure itself through division or separation and, in case of failure to accept the demand, to cease its activities until the violation has been corrected;
- 14.1.4. To curb, prohibit and restrict the illegal activities of, and impose administrative penalties on, business entities conducting activities harmful to fair competition;
- 14.1.5. To require from government and local administrative organizations, their officials and business entities, information and documents that are significant to creating a competitive environment, to process and analyze such data and issue relevant conclusions;
- 14.1.6. To submit proposals to relevant organizations or their officials of higher instance to overrule decisions of government and local administrative organizations issued in violation of legislation prohibiting unfair competition;
- 14.1.7. To develop and submit to the Government proposals on creating conditions for competition and its protection;
- 14.1.8. To inform the general public about its decisions related to creating conditions for competition;
- 14.1.9. To involve inspectors from inspection bodies and other related organizations in the supervision and inspection and issue of conclusions.
- 14.2. If necessary, the Board shall review a penalty notice issued by a state inspector.

Article 15. Control over restructuring (merger, amalgamation) of business entities

- 15.1. It shall be prohibited for dominant entities to merge or amalgamate with competing business entities.
- 15.2. Restructuring of business entities through merger or amalgamation shall be registered at the national register based upon the conclusion issued by the Supervisory and Regulating Authority. The Supervisory and Regulating Authority shall issue its conclusion in writing within 14 days of the receipt of relevant materials. If necessary, the Supervisory and Regulating Authority may extend the term for 14 days.
- 15.3. The Supervisory and Regulating Authority may reject the restructuring of business entities if it considers that after such restructuring of business entities through merger, or amalgamation, or privatization, the entity shall possess dominant position in the market, which constitutes competition-restricting circumstances.
- 15.4. Conclusions on such rejection shall serve as grounds for denying registration of the entity in the national register.

CHAPTER FIVE

State Regulation of the Natural Monopoly

Article 16. Regulation of activities of natural monopoly

- 16.1. The Supervisory and Regulating Authority shall regulate the activities of natural monopolies as follows:
 - 16.1.1. By granting permission for changes in the amount and size of products supplied to the market in connection with its capacity;
 - 16.1.2. Upon considering the actual costs, by controlling and granting permission to change the selling price to consumers of particular products;

- 16.1.3. By submitting to relevant bodies for resolution a request on creating competition if conditions for introducing competition or decreasing the products of a natural monopoly have occurred.

CHAPTER SIX

Miscellaneous

Article 17. Filing complaints

- 17.1. Should a person consider a decision by the Supervisory and Regulating Authority unlawful he/she may file a complaint to Court.
- 17.2. In case of failure by a entity to comply with penalties imposed upon it according to article 18.2 of this Law, it shall be subject to enforced implementation under court decision implementation procedures.

Article 18. Penalties imposed for breaching the Law

- 18.1. A person liable for causing material damage to others which results from a breach of the law prohibiting unfair competition shall compensate them in accordance with law.
- 18.2. If a breach of the legislation on prohibition of unfair competition does not constitute a criminal offence, the following administrative penalties shall be imposed by a state inspector of the Supervisory and Regulating Authority:
- 18.2.1. Business entities in breach of articles 6, 7, 10 and 9.1 shall be fined 100,000 to 2,500,000 togrogs and all proceeds and assets illegally earned will be confiscated and its activities suspended until the violation is corrected and proposals have been submitted for a resolution to relevant authorities that have granted permission to annul the rights of the permission if that was used to violate the legislation;
- 18.2.2. Officials in breach of articles 8 and 15.1 of this Law shall be fined 30,000 to 60,000 togrogs and the situation that existed before such breach shall be restored;
- 18.2.3. Officials in breach of articles 11.1, 11.2, and 11.3 of this Law shall be fined 30,000 to 60,000 togrogs.

CHAIRMAN OF THE
STATE IKH KHURAL OF MONGOLIA

P.GONCHIGDORJ