

OVERVIEW: COMPETITION LAW OF MONGOLIA

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GRATA
INTERNATIONAL

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BACKGROUND

MONGOLIA ADOPTED ITS FIRST DEMOCRATIC CONSTITUTION IN 1992, TRANSITIONING TO A MARKET ECONOMY SYSTEM.

Under Article 5 of the Constitution, it is stated that “Mongolia shall have an economy based on different forms of property consistent with universal trends of world economic development and its own country's specifics.”, “The State recognizes all forms of public and private property and shall protect the owners’ rights by law.”, and “The State shall regulate the economy to ensure the nation's economic security, the development of all forms of property, and the social development of the population.”, respectively.



Within the above framework, the Competition Legislation was enacted in 1993 as an independent legal institute aimed at regulating competition, promoting fair practices, and protecting market participants from unfair competition[1]. These include the Law on Prohibition of Unfair Competition, the 2000 Law on Prohibition of Unfair Competition, and the 2010 Law on Competition.

[1] “Relationship between competition law and other laws”, Munkh-Erdene. Te

LAW ON COMPETITION

The Law on Competition (2010), which is currently in force, governs the relations in connection with creating conditions for the fair competition of business entities in the market, prevention, prohibition, and restriction of domination in the market and anti-competitive activities, defining the legal basis of the regulatory body, and relations arising out of or in connection with them.

Business entity in natural monopoly

A business entity operating in a market where average social expenditure can be the lowest when there is only one entity supplying certain goods and products.

Business entity in dominant position

A business entity, alone or jointly with others, or Affiliates accounting for one-third or more percent of manufacturing, sales, or purchases in the market of certain goods and products.

Despite not reaching the above percentage, a business entity may be considered to be in a dominant position if it is capable of causing hindrance to other entities from entering a market or forcing others out of the market, based on its product range, market geographic boundaries, market concentration, and market power.

Procedure for Determination as an Entity in Natural Monopoly and Dominant Position

Factors relevant to establishing a natural monopoly

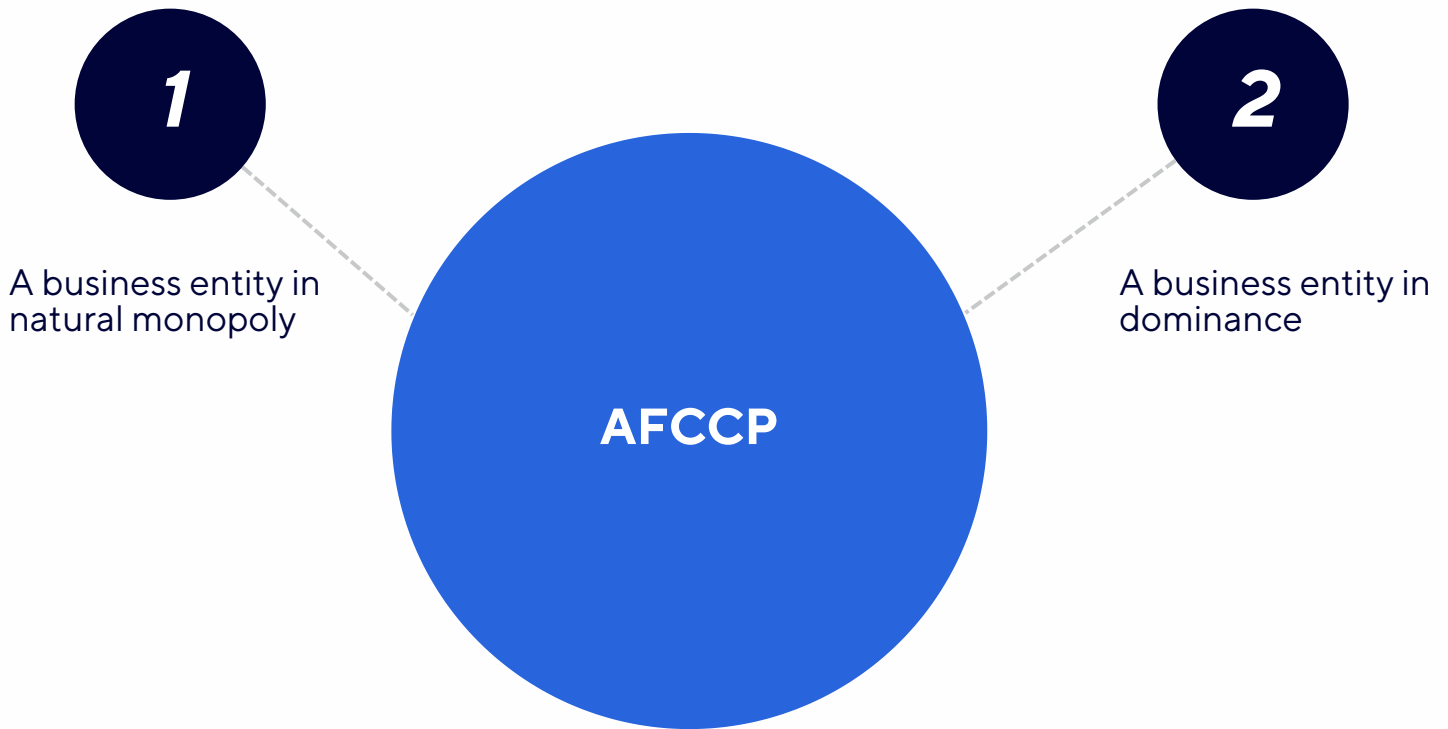
Replaceability of the product due to the characteristics of the network, infrastructure, and technology of transmission and distribution of the product to consumers

Whether there are limited economic and legal opportunities for a new business entity to enter the market of certain products

Other

The steps for determining dominance

	Factors	Steps
1. Determine the product range	<ul style="list-style-type: none"> • International standard classification of economic activity, standards, codes and other related information of the goods; • market research; • surveys from consumers and expert opinions, if necessary; • other factors that can determine the mutual substitutability of goods. 	<ul style="list-style-type: none"> • classification of the goods by consumption and purpose based on the international standard classification of economic activities, the standards and codes of the goods, and other relevant information; • determination the range of substitute products by studying whether there are substitute products for the selected category of products from the point of view of consumption and supply.
2. Determine the market geographic boundaries	<ul style="list-style-type: none"> • location of competitors, customers, buyers, and territory where the product is sold; • study of conditions and status of goods transportation; • information on average shipping costs and key factors affecting total costs; • other factors that indicate that the possibility of purchasing the product from another market or supplying it to another market is economically limited. 	<ul style="list-style-type: none"> • locating competitors' factories, warehouses, and sales offices; • locating consumers or buyers; • determination of sales and distribution channels for products; • comparison and analysis of the above information and division of the studied territory into special geographical boundaries.
3. Calculate the market concentration	<ul style="list-style-type: none"> • market share of the business entity; • the number of business entities in the market 	<p>The market share of a business entity is determined by one of the following 3 methods:</p> <ul style="list-style-type: none"> • the volume of production, sale and purchase of goods; • balance; • market demand or supply.
4. Determine the market power	<ul style="list-style-type: none"> • the capacity of the business entity to produce or sell the product; • the share of the business entity in that market and in other markets; • technology, investment and financial status of the business entity; • market entry barriers and market balancing capability and impact; • other characteristics of the market. 	



Within the 1st quarter of each year, the certified financial report of the previous year, its own research, and proposals on the market situation shall be submitted to the AFCCP by the above entities.

Prohibited activities for business entities in natural monopoly and dominant position

- artificially creating a shortage of the product, stopping the production and sale of the product, limiting the quantity;
- setting unreasonably high prices for goods;
- insisting on additional terms of sale from the business entity, selling the same type of goods at different prices in the market, and refusing to sell without good reasons. This does not apply to product price changes based on actual transportation costs due to regional location, or to incentives provided by manufacturers and suppliers to wholesale and retail customers;
- selling goods at a price lower than the actual cost in order to prevent other business entities from entering the market and to forcing them out of the market;
- refusing to establish business relationships with others without economic or technical justification, setting criteria without justification;
- establishing the resale price and territory of the product;
- imposing a condition not to buy a competitor's goods when selling one's own goods;
- insisting others to sell the product to them under conditions that may lead to a reduction in the production and sale of the product;
- unjustifiably insisting on the transfer of financial instruments, assets, related rights, and labor force from the business entity;
- insisting on mergers, acquisitions, splits, and separations from one's competitors;
- insisting on the inclusion of conditions that do not apply to the subject of the contract on certain goods and products, imposing different conditions on other participants;
- accompanying goods that are not included in the set when selling goods.

Adjusting the quantity, size, and price of goods and products by business entities in natural monopoly

Business entities in natural monopoly can adjust the quantity, size, and price of its goods and products according to the following procedure:

01

Filing a complaint to AFCCP

02

AFCCP reviews the documentation /5 business days/

03

If necessary, the applicant submits additional documentation /up to 30 days/

04

AFCCP issues a permit /30 days/

Reorganization of business entities in dominant positions through M&A and purchase of shares of other companies

The following procedure shall be followed in the event of reorganization of a business entity in a dominant position through M&A; or the purchase of 20 or more percent of common shares or 15 or more percent of preferred shares of its competitor that sells the same type of goods and products; or M&A with its affiliates:

Filing a complaint to the AFCCP



AFCCP reviews and issues an opinion /30 days+30/

“

AFCCP shall issue a refusal opinion if it deems that anti-competitive conditions may arise.

Exception. Approval may be granted if it can be shown that the economic benefit outweighs the negative impact on competition.

”

Agreements and deals to limit competition /Cartel/

Business entities are prohibited from establishing the following types of agreements and deals to limit competition:

- negotiating the price of goods and products;
- distribution of the market by territory, production, service, sales, product name, type, and buyer;
- limiting the production, supply, sale, shipment and transportation of goods and products, market penetration, investment, technical and technological innovation;
- participating with affiliates, or entering into contracts and agreements with other participants to limit competition, or prenegotiating prices and other conditions and criteria in tenders, auctions, procurement of goods, works, and services with state or local property, or in its package or part thereof.

The following agreements and deals (cartels) concluded between business entities are prohibited if they create conditions contrary to public interest or limit competition:

- refuse to establish business relations without economic or technological reasons;
- restrict the sale or purchase of goods to third parties;
- collectively reject deals and agreements of significant importance to competition;
- prevent competitors from joining any organization for the purpose of profitable business.

State Inspection

Inspection of the implementation of competition laws shall be conducted on the following grounds:

01

applications and complaints submitted by business entities, organizations and citizens;

02

information from the press and media

03

at its own initiative

04

other grounds specified under laws

The inspection will be conducted within 60 days (can be extended by up to 30 days), and if there is an infringement, the punishment specified in the Law on Infringement will be imposed, and if it is a crime, it will be transferred to the investigative body.

Law on Infringement	Criminal Code
<ul style="list-style-type: none">• confiscation of ill-gotten wealth, income and goods;• fine /depends on the type of infringement/<ul style="list-style-type: none">◦ MNT 500,000 – 40,000,000◦ an amount up to 3%, 4% or 6 percent of the previous year's sales revenue of the product.	<p>Illegal use of monopoly and dominance in the market:</p> <p>For individuals:</p> <ul style="list-style-type: none">• a fine of MNT 450,000 – 5,400,000, or• 240 – 720 hours of community service, or• 1 month to 1 year of restriction of the right to travel <p>For legal entities:</p> <ul style="list-style-type: none">• A fine of MNT 10,000,000 – 80,000,000

Dispute resolution

**Filing a complaint to
AFCCP /30 days/**

**Filing a complaint to a
court /30 days/**

Suppose the decision by the state inspector is considered unlawful. In that case, the corresponding person may file a complaint to the Authority for Fair Competition and Consumer Protection /"AFCCP"/ within 30 days of acceptance of the relevant decision or from when it is known. Suppose the decision by the AFCCP is considered unlawful. In that case, the corresponding person may file a complaint to the respective court within 30 days from the acceptance of the relevant decision or from when it is known.



For further information, please contact V. Bolormaa, GRATA International Law Firm Partner at bvolodya@gratanet.com, and Associate T.Buyanjargal at btungalag@gratanet.com or +976 70155031.

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Key Industry Sectors:

- Banking & Finance
- Construction & Infrastructure
- Industry & Trade
- Mining
- Oil & Gas
- Pharmaceuticals & Healthcare
- Technology, Media & Telecommunications
- Transport



> 21

countries of presence



> 32

years of experience



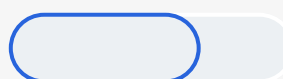
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professionals



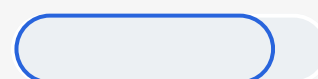
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practice areas



14 600+

clients



37 800+

projects

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