

LAW OF MONGOLIA
ON PROHIBITING
UNFAIR COMPETITION

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Ulaanbaatar

CHAPTER ONE

General Provisions

Article 1. Purpose of the law

1.1. The purpose of this law is to regulate relations regarding creation of conditions for fair competition in the market for entities conducting business activities, identification and implementation of legal and organizational basis for 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 part provided differently than specified in this Law, then provisions of an international treaty shall be observed.

Article 3. Scope of the Law

3.1. This Law shall be equally applicable to legal entities participating in market competition and 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 likely to have negative impacts on competition.

3.2. Activities conducted within the scope of legislation protecting intellectual property and resulted conditions shall not be considered to have impeded competition.

Article 4. Definitions of the Law

4.2. Following terminology used in this Law shall be understood as following:

4.1.1 "product" means all kinds of things supplied to the market, payment means, services and transferable rights;

4.1.2 "market" means territory on which real supply of certain product is conducted;

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

4.1.4 "competitor" means person supplying certain products to the market.

Article 5. Monopolistic position on the market

5.1. Dominance exists when a single business entity acting alone, or a group of business entities acting together, account for over one third of the sales of certain kind of products in the market.

- 5.2. Monopolistic activities exists when a business entity illegally uses its dominant position, prevents the entry of competitors into that market, or restricts or hinders competition and consumers, 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 is prohibited to conduct the following activities alone:
 - 6.1.1. halting or restricting production or sale of goods 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 for differentiated prices;
 - 6.1.3. selling goods and products at lower than cost prices in order to prevent other business entities from entering that market or to drive them from the market;
 - 6.1.4. refusing to establish business relationships with other business entities without due cause and setting unreasonable criteria in order to drive them out of the market;
 - 6.1.5. attaching goods that are not included in a set in selling goods and products;
 - 6.1.6. fixing price and establishing territories within which the consumer may resell goods;
 - 6.1.7. insisting on condition not to buy goods and products of his/her competitors as a condition for sale of its goods and products
 - 6.1.8. insisting from others to sell their goods and products to him/her at a low price which might lead to the reduction of production and sales of those goods and products;
 - 6.1.9. demanding without due cause from consumer or competitor to transfer his/her financial means, assets, their rights and labor force to him/her
 - 6.1.10. demanding from competitors to 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 disadvantageous to the contracting party.

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

- 7.1. Business entities that collectively hold a dominant position are prohibited from making decisions, entering into accords or agreements in any of following forms with a purpose to hinder 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 and type of goods and 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 agreed in advance the price, deluding other competitors from real conditions of above mentioned activities and exerting harassment and pressure on them;
- 7.1.5. preventing competitors from joining organizations with a purpose to run their businesses profitably;
- 7.1.6. restricting sales to or purchase by third parties of goods.

Article 8. Prohibition of interlocking directorates for competing business entities

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

Article 9. Prohibition of taking control over competitors

- 9.1. A dominant business entity is prohibited to acquire shares of its competitors in order to carry out monopolistic activities in the market.
- 9.2. Para. 1, article 9 of this Law shall not apply if the benefits from increasing competitiveness of goods in the leading spheres of the national economy or goods that are essentially required by the population are proven to exceed any damage caused to competition.

Article 10. Activities harmful to competition

- 10.1. An entity conducting business activities are prohibited to carry out following activities harmful to competition:
 - 10.1.1. disseminating false, inaccurate, or misleading information that may diminish reputation of competitors or his/her goods and products, or result to cause 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 goods, principal specifications and instructions for use of the goods;
 - 10.1.3. advertising their own goods as identical to those produced by others;
 - 10.1.4. demanding by sponsoring entity to carry out activities harmful to competition from a person being sponsored;
 - 10.1.5. violating terms and sequence of orders for advertisement of goods and products;
 - 10.1.6. using arbitrarily trademarks, labels, names and quality guarantees of others' goods, 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 goods which are marketed freely without restriction under the patent and copyright laws of Mongolia;
 - 10.1.8. concealing quality deficiencies or the dangerous features of goods.

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 to grant permission rights (licenses) related to any business activities.
- 11.2. Unless otherwise provided by law, the Government and local administrative organizations shall be prohibited to issue following decisions:
 - 11.2.1. To prohibit or restrict entities conducting business activities from engaging in certain types of activity, production or sales of goods;
 - 11.2.2. To prohibit or restrict entities conducting business activities from selling goods 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 to make decisions or entering into negotiations with each other or with any business entity regarding:
 - 11.3.1. raising, lowering, or maintaining at the same level the price of goods and products;
 - 11.3.2. dividing markets by location, production, amount of sales, name and type of goods, sellers or consumers;
 - 11.3.3. preventing any entity conducting business activity from entering a market, or driving them out of a market;
 - 11.3.4. giving in credit goods and products of business entities to another organizations, business entities, and persons conducting business activities.
- 11.4. Loan or assistance by the Government or by organizations authorized by the Government extended to compensate for losses caused by natural disasters and any other emergencies shall not be considered to be restricting competition.

CHAPTER FOUR

Unfair Competition Supervisory and Regulating Organization

Article 12. Unfair Competition Supervisory and Regulating Authority

- 12.1. Unfair Competition Supervisory and Regulating Authority (hereinafter Supervisory and Regulating Authority) is the Regulatory Agency of the Government responsible for supervision of implementation of legislation on the prohibition of unfair competition, for prohibition, restriction and curbing of activities harmful for competition, for inspection and issuing conclusions on activities of entities participating in competition and conducting business activities, for determining dominant or natural monopoly position of business entities and loss of such positions and for developing proposals on creating conditions for fair competition and submit the proposals to relevant organs.
- 12.2. Supervisory and Regulating Authority shall have a Board:
 - 12.2.1. The Board shall consist of the 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 part time basis;

- 12.2.2. The members of the Board shall be appointed to or released of their duties by the Government upon proposal of the Chairman of 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. General State Inspector, Senior State Inspector, State Inspector shall work in the Supervisory and Regulating Authority and 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 release Senior State Inspectors and State Inspectors based on proposal by 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. Supervisory and Regulating Authority shall report annually on its activities to the Government.

Article 13. Full power of State Inspector

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

Article 14. Full power of the Supervisory and Regulating Authority

- 14.1. The Supervisory and Regulating Authority shall exercise following full powers in accordance with its obligations:
 - 14.1.1. To conduct inspections and issue conclusions regarding implementation of legislation prohibiting unfair competition in the business entities and organizations regardless of their ownership;
 - 14.1.2. To determine, register and study a business entity's dominant or natural monopoly position or loss of such position on it and supervise its activities. The Government shall approve Procedures on determining dominant or natural monopoly positions of business entities and the loss of these positions;
 - 14.1.3. To demand from management of business entities illegally using its dominant position to restructure the entity through division or separation and in case of refusal to accept the demand to cease its activities until the violation has been corrected;
 - 14.1.4. To curb, prohibit, restrict 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, news, information and documents with significance for creating conditions for competition, to process and analyze and issue conclusion;
 - 14.1.6. To submit proposals for resolution to relevant organizations of higher instance and their officials regarding overruling of decisions of government and local administrative organizations issued in violation of legislation prohibiting unfair competition;

- 14.1.7. To develop a proposal on creating conditions for competition and its protection and submit it for resolution;
 - 14.1.8. To inform the general public about its decision related to creating conditions for competition;
 - 14.1.9. To involve employees of professional Supervisory and inspecting organs and other related organizations into the supervision and inspection works and issuing of conclusions
- 14.2. If necessary the Board will review a penalty notice issued by State Inspector and make decisions on it.

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

- 15.1. It shall be prohibited for entities possessing dominant position 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 conclusion issued by the Supervisory and Regulating Authority. The Supervisory and Regulating Authority shall issue its conclusion in written within 14 days after receiving relevant materials. If necessary the Supervisory and Regulating Authority may extend the term for 14 days.
- 15.3. The Supervisory and Regulating Authority may refuse to restructuring of business entities, if it considers that after restructuring of business entities through merger or amalgamation, the entity will possess dominant position in the market, which will constitute a condition restricting competition.
- 15.4. Conclusion on refusal will serve as grounds for not registering the entity in the national register.

CHAPTER FIVE

State Regulation of the Natural Monopoly

Article 16. Regulation of activities of natural monopoly

- 16.1. Supervisory and Regulating Authority shall regulate activities of natural monopoly in following way:
 - 16.1.1. granting permission for changes of amount and size of goods and products supplied to the market in connection with its capacity;
 - 16.1.2. upon considering the real expenditure on it controlling and granting permission on changes of sales price to consumers of particular goods and products, t;
 - 16.1.3. Submit to relevant organs for resolution a request on creating competition, if conditions for promoting competition or decrease of goods and products of natural monopoly have occurred.

CHAPTER SIX

Miscellaneous

Article 17. Filing complains

- 17.1. A person considering decision of the Supervisory and Regulating Authority unlawful may file his/her complain to Court.
- 17.2. In case of non abidance to penalties imposed on faulty entity according to article 18.2 of this Law, he/she will be subject to coercion under court decision implementation procedures.

Article 18. Penalties imposed on person violated the Law

- 18.1. A person responsible for causing material damage to others which results from a breach of the law prohibiting unfair competition must compensate them in accordance with law
- 18.2. If a breach of the legislation on prohibition 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. for business entities breaching articles 6, 7, 10 and 9.1 – fine of 100000-2500000 and confiscation of all income and property illegally earned, halting its activities until the violation is corrected and submission of proposals for resolution to relevant authoritative organs which have granted permission to entities to annul the rights for special permission if that was used to violate the legislation;
 - 18.2.2. for officials breaching articles 8, and 15.1 of this Law – fine of 30000-60000 and restoration of the situation existed before violation of the law;
 - 18.2.3. for officials breaching articles 11.1, 11.2, and 11.3 of this Law – fine of 30000-60000.

Chairman of the State Ikh Hural

P.Gonchigdorj

(Footnotes)

¹ State Supervision Law

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