

# LAW OF MONGOLIA ON PROHIBITING UNFAIR COMPETITION

(Unofficial Translation, 19/9/94)

## *Chapter One*

### *General Basis*

#### **Article 1. The Purpose of the Law**

The purpose of the Law is to regulate relations connected with prohibiting and restricting state control over the competition of economic entities in the market, monopoly and other activities impeding fair competition.

#### **Article 2. The Legislation on Prohibiting Unfair Competition**

The legislation on prohibiting unfair competition consists of the Constitution, this Law and other legislation of Mongolia.

#### **Article 3. Dominance, Monopoly and Monopolistic Activities**

1. Dominance exists when a single entity acting alone or a group of economic entities acting together account constantly for over 50 per cent of supply to the market of a certain good or similar goods, products or carried out works and provided services.

2. Monopoly exists when a single entity alone accounts for total supply of a certain good or similar goods to the market.

Natural monopoly exists when the monopolistic economic entity can supply that certain market with one specific good or goods similar to it at the lowest cost and in a way most profitable for the customers.

3. Monopolistic activity exists when an economic entity illegally uses its dominant position to prevent the entry of competitors into that market, to restrict and hinder competition and consumers.

## *Chapter Two*

### *Prohibition of Monopolistic Activities in the Market*

#### **Article 4. Prohibiting Economic Entities to Use Illegally Their Dominant Position.**

Economic entities with dominant position are forbidden to carry out the following activities:

- 1) to halt or to restrict production and sale of goods with the purpose to create artificial shortage and raise prices;
- 2) to insist on including into the contract conditions resulting in unequal position of that certain economic entities to compare with others operating in similar conditions;
- 3) to sell own goods at a price lower than the cost, aiming at impeding other economic entities to enter that market or driving them of the market;
- 4) to refuse without any reason to establish business relations with other economic entities with the purpose to drive them out of the market;
- 5) to condition sale of unwanted or incomplete goods upon the willingness of the buyer to purchase a second, separate good;
- 6) to fix prices at which the buyer can resell the goods, to establish territories within which the buyer can resell the goods;
- 7) to condition the sale of his goods by the demand not to buy goods from his competitors;
- 8) to insist on others to sell him their goods at a low price which might lead to the reduction of the production and sales of this good;
- 9) to demand the competitor to dissolve or to decentralize his company.

#### **Article 5. Forbidding Agreements Hindering the Competition**

It is prohibited for competing economic entities collectively holding a dominant position to collude and conclude agreements in any of following forms with the purpose to hinder the competition:

- 1) to fix and alter prices, to halt or limit the scale of production or sales;
- 2) to divide the market by location, size of production or sale, by products, by customers, by sellers;
- 3) to hinder the competitor to become a member of an organization to run its business efficiently;
- 4) to refuse unreasonably to enter into business relations with other economic entities with the purpose to drive them out of the market; and
- 5) to rig bids or offers.

#### **Article 6. Prohibition of Interlocking Directorates for Competing Economic Entities**

It is forbidden for an individual from the management of a dominant economic entity to serve at the same time in the management of other competing economic entities.

## **Article 7. Prohibition to Take Control Over Competitors**

1. A dominant economic entity is prohibited to buy capital stock or shares of the competitors, to take over their rights and duties, or to create jointly a new entity by joining the competitors' stock with purpose to carry out its monopolistic activities in the market.
2. Provision 1 of this Article does not refer to the cases when the benefits from promoting production in leading spheres of national economy or prime concern for the population, or from raising the competitiveness of certain goods at the foreign market, exceed the damages caused to the competition.

### ***Chapter Three***

#### ***Prohibition of Activities***

##### ***Negative for Fair Competition***

## **Article 8. Activities Forbidden For Economic Entities**

Economic entities are prohibited to carry out the following activities negative for fair competition:

- 1) dissemination of false, inaccurate, or misleading information that causes losses to competitors or diminish their reputation;
- 2) misleading customers by desinforming or disseminating false or inaccurate information about own or competitors' enterprises, their locations also about how goods are produced, about main consumption values and quality of goods;
- 3) advertising own goods in a way that misleads consumers to believe that they are identical to the ones produced by others;
- 4) using at own discretion others' trademarks, labels, or firm name and goods' quality guarantees, copying brand name or packaging of others;
- 5) selling, publishing and disseminating without the consent of the possessor scientific, technological, production and trade information. This provision does not apply to reverse engineering of goods sold without protection under the Patent and Copyright legislation of Mongolia and freely sold at the market;
- 6) conceiving quality deficiency and dangerous patents of the goods' quality.

## **Article 9. Prohibiting Government and Local Administrative Organizations to Adopt Decisions Restricting Competition**

1. Government and local administrative organizations are forbidden to adopt following decisions unless it is stipulated otherwise in the legislation:

1) prohibiting or restricting economic entities to engaged in certain types of activity, production, or sales of goods;

2) prohibiting or restricting economic entities to sell goods from one market to another;

3) giving priority or preferential treatment to any economic entity, or discriminating against it;

4) prohibiting or restricting entry of a new economic entity into the market in any business field.

2. Government and local administrative organization are forbidden to negotiate among themselves or with any economic entity and adopt following decisions, unless it is stipulated otherwise in the legislation:

1) aimed at raising lowering, or keeping at the same level prices for goods;

2) aimed at dividing market by location, by production and sales scale, by goods, by sellers, by customers;

3) aimed at restricting any economic entity from entering into the market, or forcing an economic entity out of the market.

3. All types of Government loans and assistance to compensate for losses caused by natural disasters and any other emergency are not to be restricting competition.

## ***Chapter Four***

### ***Control Over and Regulation of Unfair***

#### ***Competition Restricting Activities***

#### **Article 10. The State Great Hural Activity**

The State Great Hural exercises the following full rights to prohibit unfair competition:

1) defines basis for the state policy promoting fair competition;

2) supervises the compliance of the Government resolutions on ensuring conditions for fair competition of economic entities in the market with the legislation.

The State Great Hural overrules Government (Executive body) decisions if they are found to be prohibiting or restricting fair competition.

#### **Article 11. Government Activity**

1. The Government consults with the State Great Hural when adopts decision on following issues:

- 1) introducing state control and regulating prices if a natural monopoly gains too high profit without reasonable justification;
- 2) defining conditions enabling entry of competitors into the market of the natural monopoly; and
- 3) restricting or halting export or import activities.

2. Ministers of Mongolia and the Chairman of the Department of National Development have following duties and uphold following directions within their competence when prohibit, restrict and control unfair competition:

- 1) to submit to the Government proposals, ideas about supervising the enforcement of the legislation on prohibiting unfair competition and about procedure of improving and enforcing it;
- 2) to submit to the Prime Minister proposals about overruling decisions by aimag, capital city Governors which they find contradicting the legislation about prohibiting unfair competition;
- 3) to require from government and local administrative organizations, economic entities information and documents necessary to identify that an economic entity is a monopoly, natural monopoly, or dominant, or that it has lost any of these positions;
- 4) to demand to dissolve a monopoly, or a dominant which illegally takes advantage of its position; and
- 5) to publish own decisions taken about prohibiting, restricting, regulating unfair competition.

#### **Article 12. Activity of the Court**

1. The Court adopts the following decisions connected with prohibition of unfair competition:

- 1) determining that an economic entity is a monopoly, natural monopoly, or a dominant, or that it has lost any of these positions, based on the documents submitted by the Government or an organization authorized by it.

The Court announces and informs the public about this decision;

- 2) demanding from an economic entity to halt its activity violating the legislation about prohibiting unfair competition, to fulfill the contract as a whole or partially, or repeal it and to restore the situation has been existing before the violation.

2. The Court settles disputes arising from violating the legislation about prohibiting unfair competition.

#### ***Chapter Five***

## ***Other Provisions***

### **Article 13. Complaints Regarding Unfair Competition.**

Economic entities, public and other organizations depending interests of customers and manufactures, and individuals submit to the following organizations the following complaints about unfair competition:

- 1) to the Great Hural - the complaints about the Government violation of provision 1, Article 11 of this Law;
- 2) to the Government and organizations authorized by it - the complaints about economic entities engaged in activities prohibited by other Articles of this Law and about activities of Central Government and local administration organizations.

### **Article 14. Responsibilities Born By Violators of the Legislation**

1. A person guilty in causing to others material damages due to violating the legislation about prohibiting unfair competition are compelled to compensate them according to the legislation.
2. The Court imposes following penalties in the set forth below cases of violating the legislation about prohibiting unfair competition:
  - 1) the owner of an economic entity or a member from its managerial staff infringing Articles 4, 5, 7, 8 of this Law is compelled to pay a penalty in the amount of 25,000 tugrigs, if criminal responsibility is not imposable (on him);
  - 2) if the decision stipulated in paragraph 2, provision 1, Article 12 of this Law has not been fulfilled in time determined by the court or hindrances have created for its fulfillment, all the revenue and material values gained during this period shall be confiscated and a penalty in the amount of 10,000 tugrigs shall be imposed;
  - 3) a penalty in the amount up to 10,000 tugrigs shall be imposed on the owner or manager of an economic entity which fails to submit to the appropriate official person the information and documents indicated in paragraph 3, provision 2 of Article 11 of this Law.

**Chairman of the State Great Hural of Mongolia**

**N.Bagabandi**

**General Secretary of the General office of the State Great Hural of Mongolia**

**N.Rinchindorj**