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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Global Forum on Competition

**ROUNDTABLE ON CROSS-BORDER MERGER CONTROL:
CHALLENGES FOR DEVELOPING AND EMERGING ECONOMIES**

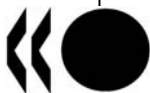
Contribution from Mongolia

-- Session I --

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MERGER AND ACQUISITION CONTROL IN MONGOLIA

-- Mongolia --

1. Unlike contractual restraints of competition where the participating enterprises remain legally independent, concentrations or mergers between enterprises are characterized by the fact that, through the acquisition of shares or assets, formerly independent firms are either merged into one single enterprise or at least capital links are created.
2. The restraints of competition that are associated with mergers are particularly obvious and by no means hypothetical when all competitors in a particular market merge and thereby obtain a monopoly position. Thus concentration may restrain competition as much as cartelization. Therefore, the most recent proposals for changes in large economies have focussed more on merger control issues. Smaller economies, like Mongolia, do not engage in significant merger control.
3. The Law of Mongolia on Competition, which was approved by Parliament on July 2010, aims at protecting competition in the commodity markets of Mongolia and requires business entities which want to merge or acquire a significant part of another competitor to notify their intention.
4. According to the Article 8 of the law, dominant entities shall submit an application to the Authority for Fair Competition and Consumer Protection of Mongolia (AFCCP) if they intend to restructure through a merger and acquisition, to purchase more than 20 percent of common shares or more than fifteen percent of preferred shares of a competitor.
5. The AFCCP shall review the application and issue of an assessment within 30 days from receiving it. This period could be extended up to 30 days. The AFCCP can reject authorisation where it considers that there are circumstances which restrict competition. The Government of Mongolia shall adopt a detailed regulation on the AFCCP assessment when a dominant business specified in Article 8 of the Law on Competition reorganizes through a merger and acquisition with other legal entities, purchases the shares of competitors selling the same type of goods and products or merges with other entities.
6. Recently, the AFCCP has drafted this regulation and sent it to other government bodies for comments. According to this draft regulation, the application shall classify and review the forms of the reorganization through merger and the purchase of shares and shall assign them to 3 merger types:
 1. The horizontal merger and purchase of shares;
 2. The vertical merger;
 3. The conglomerate merger;

7. The types of reorganization through a merger of legal entities and the purchase of shares shall be determined as follows:

- The type where the legal entity dominant on the market purchases more than twenty percent of common shares or more than fifteen percent of preferred shares of a competitor selling the same goods and products shall be an horizontal merger;
- The type where the dominant legal entity reorganizes through a merger with other entities or merges with related entities shall be determined on the basis of the review of the application and documents submitted from the legal entity.
- There shall be an inquiry on whether the applicant legal entities have previously breached the Law on Competition. The repeated breach of such law by any one of the applicant legal entities shall be grounds for refusing the reorganization through a merger with other entities and the purchase of shares.
- Where the dominant legal entity reorganizes through a merger with other entities and purchases shares, the Agency for Fair Competition and Consumer Protection shall investigate whether competition will be restricted in the relevant market and shall issue a decision:
 - Issuing a relevant assessment by determining the market share of the relevant legal entities, market concentration and market capacity as specified in the regulation on determining natural monopolies and dominant business entities reorganizing through a merger with other entities;
 - Determining whether the merger of the dominant legal entity with other entities aims at pushing other competing business entities out of the market and has the potential of impeding new entry to the market;
 - Determining whether there is a potential of engaging in the monopolizing activity by illegally using the dominant position on the market as specified in Article 7.1 of the Law on Competition;
 - Determining whether there is a potential for engaging in activities that restrict the economic interests of other competing business entities and those of consumers;
 - Determining whether the benefit to the national economy exceeds the damage caused to competition.

8. In addition, exemptions could apply if it is determined that the benefit to the national economy exceeds the damage to be caused to competition.

9. A prohibition decision shall be the ground to refuse the state registration of the legal entity at the General State Registration Agency and to trade at the “Mongolian Stock Exchange” (JSC).

10. The main change in merger control is that the AFCCP will regulate only dominant business entities through merger and acquisition. (AFCCP had to regulate all business entities).