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COMPETITION COMMITTEE****Global Forum on Competition****JUDICIAL PERSPECTIVES ON COMPETITION LAW****Contribution from Mongolia****-- Session II --****7-8 December 2017**

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Judicial Perspectives on Competition Law

-- Mongolia --

Our contribution consists of following several sections.

- Competition organization and judicial system of Mongolia
 - Information of court decisions made on case
 - Cooperation between AFCCP and judicial body and
 - Conclusion
1. The Authority for Fair Competition and Consumer Protection is a Regulatory agency of the Government of Mongolia with a function to create fair and free competitive market environment, to protect consumer rights, to stop illegal advertisements and to ensure the implementation of relevant legislation.
 2. AFFCP enforces following five laws:
 - Law on Competition
 - Law on Consumer Right Protection
 - Law on Advertisement
 - Law on procurement of goods, works and services with state and local funds
 - Law on election
 3. As feature of functions AFCCP operates under Deputy Prime Minister of Mongolia. It is a regulatory agency to enforce above mentioned 5 laws and the state inspector and senior state inspectors of the agency are guided by the Chairman – General State Inspector. **The Session of AFCCP consists of Chairman, two Standing members and six Non standing members.**
 4. *The inspections on violations of the law are made by the state inspector and senior state inspectors of the agency and guided by the General State Inspector using Law on Investigation on Regulatory Infringement as a guidance.*
 5. The process will base on Complaint from public, entities, transmitted cases from other government bodies, revealed its own infringement and make 4 types of decisions such as opening infringement case for inspection, to resolve by a conventional procedure, to dismiss to open a case or to determine the relevance and transmit the case.
 6. Also the inspections are operated under the prosecutor control. Thus, actions like Inspection of accommodation, restrict capital movements; get confidential information, personally examined, limit access to border crossings are made only with a permission from prosecutor.
 7. The decision of the State Inspector will be reviewed and resolved in accordance with the Law on Decision on Settlement of Administrative Cases Court. Court can make decisions to provide the decision of state inspector, to ignore fully or in part, to change and to decide to make a decision.

8. Mongolia has 3 levels of court, divided into territorial district systems, specialized court systems has specialized courts like Court for Administrative cases, Court for Civil cases, Court for Criminal cases.

9. On how the AFCCP is connected with above three courts are; Court for Administrative cases reviews the decision of the competition authority and makes the final decision, Court for civil cases reviews if an entity does not voluntarily commit fines within 15 days, the decision to confirm the request for a forced termination shall be made, Court for Criminal cases reviews enterpriser who have illegally used their dominance are subject to criminal liability.

10. Also it connects with the features of court of administrative cases of Mongolia it consists of Capital city's administrative court of first instance, Court of administrative cases of Supreme Court supervisory instance, Appellate court for administrative cases.

11. Scope of the court of administrative cases includes all administrative bodies "Legal entity that makes a decision that express public interest shall be regarded as an administrative body", as a procedure of administrative activities shall be in the following forms: Administrative act; Administrative agreements and Act of administrative norms. The claim shall be lodged to the Court for Administrative Cases within 30 days.

12. Inspections of AFCCP and case study of administrative court are reviewed from 2009-2016. Thus in 2009 - 23, 2010 - 211, 2011- 550, 2012 - 402, 2013 - 761, 2014 - 1240, 2015 - 946, 2016 - 108 inspections are made. In case of AFCCP related cases at administrative court 2009 - 4, 2010 - 1, 2011 - 18, 2012 - 6, 2013 - 17, 2014 - 14, 2015 - 14, 2016 - 23 cases are solved.

13. Cases inspected by administrative court are overviewed by the content:

- Claim fully provided 41 percent
- Claims are fully ignored 38 percent
- Plaintiff refused from his claim 6 percent
- Plaintiff and defendant conciliated 9 percent and
- The administrative act was suspended until the new Act was issued 3 percent

14. Therefore we prepared to introduce two cases.

15. First case is a case made on NIC LLC, enterpriser of the petroleum oil market, made restriction to cause product insufficiency in 2012. This case took 4 years to resolve.

16. In details, some gas stations of NIC LLC have stopped selling the AI-92 auto gasoline and diesel fuel due to the reason for the supply was not due to schedule. Auto gasoline and diesel fuel are sold only to cardholders of their own company and refused to accept cash. Petroleum Oil department of Ministry of Mining informed that AI-92 auto gasoline has stock of 44 days and diesel fuel -12 days. It was confirmed that NIC LLC have used their dominance illegally to increase the price of petroleum oil by intended insufficiency and restriction of auto gasoline and diesel fuel. Current act violated Article 7.1.1 of Law on Competition "Halting or restricting production or sale of goods in order to create an artificial shortage. State inspector sent official claim to enforce to sell and provide production without restriction and discrimination. The company has been fined with the amount of 4.9 billion tugriks according to the Law on Competition.

17. NIC LLC lodged a complaint to the court regarding the AFCCP decision. Capital city's court of first instance decided that the state inspector did not complete the inspection that the violations have been established without sufficient evidence of the breach and the entire demands of the claim have been resolved.

18. AFCCP complained to appellate court to disagree with court of first instance. The Appellate Court has clarified the circumstances of the case and suspended the AFCCP's punishment until the new Act was issued.

19. Since the Court of Appeals does not violate the rules of competition law applying the Court of Appeal, the likelihood of invalidating the probability of a complaint by the Claimant's Complaint Procedure stipulates the likelihood of the appellate court hearing that does not meet the plaintiff's complaint

20. The second case is about the first communication company of Mongolia-Mobicom. The Mobicom sold at artificially low prices for their services for "Consumers can make calls to their one selected person with smaller than 0 tugrik expenses for every 1 minutes, send unlimited free message and receive calls" by abusing of dominant position.

21. Under framework of the case, "if pre-payment new users buy a new phone number which begin with 94xx by 20 tugrik, they can make free call to their selected one person, send unlimited free messages" was determined by the AFCCP investigators and it violated article 7.1.4 of Mongolian law on Competition "An enterpriser is a dominant position is a dominant position is prohibited to sell goods and products at lower than cost prices in order to prevent other enterpriser from entering that market or to drive them out from the market".

22. In that manner the action of Mobicom company advertised their campaign on the media and press was violated to article 12.1.3 of Mongolian law on Competition "An enterpriser is prohibited to carry out using arbitrarily trademarks, labels, names and quality guarantees of others' goods, or copying brand names or packages aimed to restrict competition". Thus, it was decided in accordance with the provisions of the 2 articles of the competition law on Mongolia, an administrative fine of 2.3 billion tugrik should be imposed on Mobicom Company as determined by the AFCCP.

23. Even though the administrative court of first instance regarded as correct decision of the investigator's ordinance and the last administrative fine, the court exempted from 2,3 billion tugrik by Amnesty law of Mongolia. As a result, the AFCCP appealed against the administrative courts of first instance's decision to the capital city's appellate court for civil cases of Mongolia to examine if their decision was correct or not.

24. The capital city's appellate court for civil cases of Mongolia discussed the first decision of the administrative courts of first instance and regarded that the decision is in frame of jurisprudence. So the first decision of the administrative court of first instance was reserved as same.

25. Analyses on the actions from investigation stages to the final decision of the courts, we developed some following judgments.

26. For investigators:

- They write ordinance and imposed administrative fines without enough evidences.
- When they write ordinance, they make faults on meanings and don't use correct articles of laws(imposed articles are not suit that case)

- However the investigators write about violation of the Consumer right protection and Competition laws of Mongolia on draw conclusion at same time, they don't examine how the delinquent exactly violated of the Consumer right protection law or Competition law. As the administrative fines of the Consumer right protection law is too low, they imposed on the delinquent by the Competition law of Mongolia.
 - The investigators use wrong law articles when they impose on the delinquent on cartel case, they calculate the administrative fines from companies' annual added income instead of sales income.
27. For judges:
- Because of the usage of unclear law articles, same cases are decided differently in courts.
 - The decision making period is lasted long time. (3 courts' decision making period is about 1,5 years)
 - The practice which is imposed on high administrative fines is not formed.
 - The general understanding of the Competition law and policy is unpopular in the life.
28. So, as AFCCP suggested The Judicial General Council of Mongolia created "Memorandum of cooperation" and working through following 3 main objectives.
- To involve judges in foreign and domestic training on competition law for expand their experience
 - To take steps based on result of study the Competition law, acts and judicial practices
 - To organize training for judges of all level through program which were approved by The Judicial general council.

1. We would like to introduce some example of our activities, were already done in those objectives.

29. First, the 10 representatives, the three-level of court judges, were trained in the "Competition Law and Policy Issues of Judicial Organization" program in Tokyo, Japan with the support of jointly implemented project for "Enhancement of the Fair Competition Environment in Mongolia" with JICA.

30. Second, 2 series of "Competition legislation" pamphlets were published in collaboration with the Court of Appeal of the Supreme Court of Mongolia, the Administrative Court of the Capital City and the District Court of Civil Affairs.

31. Although, AFCCP is delivering aforementioned works as part of the cooperation with the General Council of Courts and judicial organizations. It does not imply that all cooperation has reached sufficient level, but proactive implementation requires further support and partnership from international organizations.

2. The conclusions of this contribution

32. To developing skills of AFCCP's supervisors and judges for provide conditions for making professional valid decisions on competition enforcement

33. The case of competition required material evidences which those are based on analysis of economic calculation. Therefor other administrative cases have discussed by articles of conflict is unsatisfactory. So decisions of Competition Commission need to be equal as court of first instance or independence.

34. Put some limitation authorized subjects to check violations and to remove decision making system of supervisor, instead of Establish a system that makes final decisions by joint management principles. For this reason the resolution of the case become optimal then the number of cases to be brought to court is reduced.

2.1. In the end, from (us) attendances of Mongolia/ we are recommending following two mean suggestion.

35. Promote to support from International organizations to young competition agencies which has less-experience through training programs for sharing practices and build procedures.

36. Considering the legal system and economic features, supervisors of competition organizations, with similar level of experienced entertain to build condition for exchanging their agents and training.