



The term 'Mongol' was first recorded in the 10th century. At that time, the *Uighurs*, Turkish people, were dominating Mongolia, which the Kyrgyz later defeated in 840 AD. By the 15th century, the area that is modern-day Mongolia had been broken into number of states, and it came under the influence of the new Manchu dynasty in China.

On November 26, 1924, the establishment of the Mongolian People's Republic was declared. The large landlocked country situated in the Northern plateau of Central Asia became the second largest communist country in the world.

Mongolia's early legal traditions are not clear, though from the 12th century, the country followed the Customary Law traditions.

Economy

Mongolia's economic activity has traditionally been based on agriculture and the breeding of livestock. Mongolia also has extensive mineral deposits; copper, coal, molybdenum, tin, tungsten; with gold accounting for a large part of industrial production. Soviet assistance, which was as high as one-third of GDP, disappeared almost overnight in 1990-91, together with the dismantlement of the USSR. Mongolia was driven into deep recession, which was prolonged by the Mongolian People's Revolutionary Party's (MPRP) reluctance to undertake serious economic reform.

The Government led by the Democratic Union Coalition (DUC), however, has embraced free-market economics; tried to ease price controls; liberalised domestic and international trade; and attempted to restructure the banking system and the energy sector. Major domestic privatisation programmes were undertaken, as well as the fostering of foreign investment through international sale of an oil distribution company, a leading cashmere wool company, and banks in the country. Reform was held back by the ex-

PROFILE	
Population:	2.5 million***
GDP (Current US\$):	1.2 billion**
Per Capita Income: (Current US\$)	480 (Atlas method)*** 1,710 (at PPP)**
Surface Area:	1.6 million sq. km
Life Expectancy:	63.7 years**
Literacy (%):	97.8 (of ages 15 and above)**
HDI Rank:	117***
Sources:	
- World Development Indicators Database, World Bank, 2004	
- Human Development Report Statistics, UNDP, 2004	
(**) For the year 2002	
(***) For the year 2003	

Communist MPRP opposition and by the political instability brought about through four successive governments under the DUC.

Economic growth picked up in 1997-99, after stalling in 1996 due to a series of natural disasters and decline in world prices of copper and cashmere wool. In August-September 1999, the economy suffered from a temporary Russian ban on exports of oil and oil products. Mongolia, therefore, remains vulnerable in this sector.

Mongolia joined the WTO in 1997. The international donor community pledged over US\$300mn per year at their Consultative Group Meeting, held in Ulaanbaatar in June 1999. The MPRP Government, elected in July 2000, was anxious to improve the investment climate. It also had to deal with a heavy burden of external debt. Falling prices for Mongolia's mainly primary sector exports, widespread opposition to privatisation, and adverse effects of weather on agriculture in early 2000 and 2001 have been restraining real GDP growth in the country. However, despite drought problems in 2002, GDP rose by four percent, followed by a solid five percent increase in 2003.

* Original paper done by Udai S Mehta of CUTS in March 2005. Revised in March 2006

Competition Evolution and Environment¹

Whilst the legal framework for commercial activities are being gradually built, and competitive principles are taking root, the bureaucracy still retains many Communist-era officials, who do not yet understand their role in a free-market system. As such, entrepreneurs are sometimes dogged by informal bureaucratic interference in commercial operations.

Despite some obstacles, in the capital, Ulaanbaatar, and other cities, entrepreneurs have set up numerous hotels, small shops, restaurants, and bars. Urban citizens have access to commercial legislations, although such access is more difficult across the vast rural expanses. The commercial provisions appear to be applied fairly. Regulation and licensing requirements seem reasonably straightforward, neither imposing significant costs nor creating significant barriers to entry and hampering competition.

A *Law on Prohibition of Unfair Competition* was passed in 1993, which:

- prohibits the Government from restricting economic competition;
- prohibits monopolies and other restraints on fair competition;
- establishes guidelines for Government intervention to ensure fair competition and to regulate natural monopolies; and
- establishes the role of the courts in determining an entity to be a monopoly and handing down legal remedies.

There is no evidence that insider dealing is a significant hindrance to open competition. Government procurement policies, however, remain complex and opaque. A programme sponsored by the IMF is trying to promote transparency and accountability in procurement by assisting in the drafting and upgrading of regulations and procedures for procurement of goods, civil works and related services, and infrastructure projects.

Competition Law and Anticompetitive Business Practices

The first law against unfair competition practices, as mentioned above, was passed in 1993. In 2000, a new, expanded law was approved. As the Mongolian population is so small, and so is the size of the market, dominance becomes a way of life, with large companies such as Erdenet Copper mine, Gobi Cashmere, beverages producer APU frequently enjoying a competitive edge in the market. Fortunately, due to liberal trade policies, they have to face foreign competition, primarily from China, which partly reduces the chance of abusive and collusive behaviour.

The main objectives of the competition law in Mongolia include:

- Creation of such a mechanism that would challenge the arbitrary acts of the Government, or State-controlled business enterprises, which act as a hindrance to healthy competition in the market. The main targets of the competition law are the state policies that restrict entry, curb imports, and prefer State-owned firms. The competition law could operate to outweigh the Government policies and adopt new statutes, rules and policies for promotion of competition in the market.
- Decreasing the role of the Government as the central planner of economic activity in the market to a narrower role of an arbiter and rule maker. Competition law enforcement envisages such a role for the Government, but in exceptional cases, the Government would be justified to correct market failures.

The fear of Government intervention is visible in the drafting of the Mongolian competition law. The evidence of this lies in Article 1 of the law, which states:

‘The purpose of the Law is to prohibit and restrict state control over the competition of economic entities in the market, regulate monopoly and other activities impeding fair competition’.

Thus, the main essence of the competition law of Mongolia is to reduce the Government intervention and keep it as minimal as possible.

Article nine suggests two ways to curb Government intervention. The first way is to forbid the Government and local administration to adopt the following decisions unless it is given in the legislation:

- Decisions prohibiting or restricting entities to engage in a certain type of activity, production or sale of goods;
- Decisions prohibiting or restricting entities to sell goods from one market to another; and
- Decisions giving priority or preferential treatment to any economic entity or discriminating against it.

The second way is to forbid the Government and local administrative organisations from coming together to negotiate, amongst themselves, decisions to set price levels, divide markets, restrict market entry by an economic entity, or to compel the exit of an economic entity, unless such is stipulated by an act authorised by the Mongolian Parliament.

Under the Law on Prohibiting Unfair Competition, the Government and local administrations are, in theory, not allowed to prohibit or restrict economic activity, or give preferential treatment to, or discriminate against, any business entity. Neither can they attempt to affect prices, divide the market, restrict any business entity from entering the market, or force any entity out of the market.

¹ www.freedomhouse.org/nit98/mongolia.html

Business entities, which, alone or acting together with other entities, account for over 50 percent of a particular market, may not use this dominant position to:

- Create artificial shortages;
- Use contract conditions to give themselves an unfair advantage;
- Sell below cost or fix retail prices;
- Make sales conditional on the purchase of other items, or on not buying from competitors;
- Refuse to deal with other entities in order to drive them out of the market; or
- Demand that a competitor dissolve or shift itself.

Neither can they enter into agreements with other dominant entities to hinder competition, buy up the shares of competitors, or jointly create a new entity to carry out monopolistic activities. Some exemptions can be made when the benefits of this to the leading spheres of the national economy, or to the society at large, or from making certain goods more competitive on foreign markets, exceed the damage caused to competition. Who is to make decision on such exemptions is not specified.

There is no special supervisory body set up to administer this law though. Complaints about its breach must be made to Mongolia's National Parliament (Ikh Khural) or to the Government, depending on which part of the law is in question. The law, however, gives substantial powers to Mongolian courts to take actions against violations of unfair competition. Article 12 gives the courts the power to decide whether an economic entity is a monopoly, natural monopoly or whether it enjoys a dominant position in the market or it has lost its position, based on the documents provided to the courts by the Government and local authorities.

Article 12 clearly states that the national ministries and the Department of National Development (DND) do not have absolute adjudicative powers to take actions against economic entities. If they desire to do so they have to refer to the Courts of Mongolia. Thus, the competition law places all adjudicative authority in the hands of the Courts of Mongolia.

Sectoral Regulation

Telecommunications Sector

There is a common understanding in any market structure that competition is the best way for any sector for attracting firms to offer consumers more variety at reasonable and competitive prices and at better quality. This presumption favouring competition is strong but not absolute. In some situations, it is accepted that certain exceptions to the above-mentioned presumption are necessary in public interest. One such exception is the natural monopoly. Natural monopolies exist where a single firm or group can produce the amount demanded at the lowest cost.

The Mongolian Telecommunications Corporation (MTC) is the sole provider for the switched voice communication services in Mongolia. The MTC's responsibility is to provide local services, intercity communications, and international connections. They also undertake the responsibility to operate the radio, television network and postal services.

The MTC's main goal is to replace the outdated equipment, and better the quality of existing services, and to further expand their area of work, i.e. introduce new services. In the process of improvement, MTC's recent investment has been in the setting up of a digital switch in Ulaanbaatar, in cooperation with Alcatel. The Central Government had purchased the equipment from Alcatel, and is requiring MTC to repay its cost, plus 15 percent interest. However, in order to raise funds in order to repay the loans, MTC is not allowed to increase tariffs, which hampers the generation of revenue.

Despite the fact that the MTC enjoys monopoly status in the switched voice communication services, there are a number of possibilities for competition to exist and survive. The MTC officials are ready to welcome competition in the market of switched voice communication services, and also in the market of other value-added services, such as data transmission and video.

Wool Industry

In Mongolia, there are four main producers of Spun wool, the Ulaanbaatar Wool Spinning Factory (WSF) and the wool spinning departments of Mongolia's three carpet factories. However, WSF is the biggest producer of spun wool (76 percent of Mongolia's total output) and the only company that sells its output in the market.

One finds the same situation in the market of washed wool. There are three wool-washing factories in Mongolia: The Ulaanbaatar wool-washing factory (UWF), Bayan Olgii and Dornod. UWF produces about 65 percent of the Mongolia's output of washed wool. Recently, the UWF share in the market has increased because Bayan Olgii factory has started to export all its washed wool, and the result of this is that the carpet factory's spinning departments have become more dependent on the UWF.

In recent years, the supply of raw wool has decreased due to a decline in the difference between the export price for raw wool and the price paid by the domestic players. On an average, the export price is often three to four times the domestic price.

The second major problem, which leads to the decrease in supply of raw/untreated wool, is the difficulty in adjusting to the new supply system. In the old system of selling and purchasing raw wool, the wool washing enterprises would send their counterparts or representatives to establish

contacts with the collective farms for the buying of raw wool. However, in the present system, the collective farms have broken up and each has to be approached to negotiate the buying of raw wool.

The third problem is the lack of contract enforceability in the procurement of raw wool. Thus, there are frequent breaches of contracts, because better offers are obtained for exports of the raw wool.

The wool industry has been partially privatised, with the government having no share in it. However, one finds, due to several reasons, that there is lack of competition in the wool spinning industry. Interference in domestic pricing, allocation and restrictions on exports by the Government are examples of artificial barriers to competition. On the other hand, with the industry being very capital-intensive, large investments need to be made in order to gain entry into the markets, constituting a natural barrier to competition.

Despite the above-mentioned problems, competition could emerge in the industry if allegations of collusions were investigated and parties colluding would be subjected to some fines. Moreover, if the restrictions on exports and imports were relaxed; and if prices were allowed to increase for a brief period of time, that would result in the opening of the industry to other players in the market.

Consumer Protection Law²

The *Consumer Protection Law* of Mongolia came into force on June 24, 1991. The Mongolian competition law also contains certain important sections on consumer protection. The main difference between the Mongolian competition law and Consumer Protection Law is that the latter applies to dominant and non-dominant economic entities, alike. The Consumer Protection Law of Mongolia condemns:

- Dissemination of false, inaccurate or misleading information that causes losses to competitors or diminish their reputation;
- Misleading customers by disseminating false or inaccurate information about own or competitor's enterprises, their locations; also about how goods are produced, about main consumption values and quality of goods;
- Advertising own goods in a way that misleads consumers to believe that they are identical to the ones produced by others;
- Using at own discretion, others' trademarks, labels or firm name and good's quality guarantees, copying brand name or packaging of others; and
- Concealing product quality defects or dangerous characteristics of the product.

This Law gives consumer the right to use quality products and services that comply with established standards. Producers must label goods or packaging with the quality, price, date of manufacture, and warranty period. There are no exceptions, even for goods that are sold without any label or packaging as is the case with bread or vegetables. Products that may be harmful to health, or the environment, need a certificate of quality and warning labels, and need to comply with storage, transportation and consumption requirements.

If a seller is in breach of the Law, the purchaser may be compensated by monetary damages for loss, or have the price reduced or the goods replaced. There is no provision under the Consumer Protection Law for compensation to be paid to a person who suffers damages, but who was not the purchaser (although a claim could presumably still be brought under the provisions on tort found in the Civil Code which, in general terms, require a person who causes damage to the life or health of another to pay compensation). There are, however, provisions under which a purchaser could be awarded what appear to be punitive damages, and the defendant could be required to pay certain penalties to the State.

Concluding Observations and Future Scenario³

Firstly, the most important lacunae in the Unfair Competition Law is that it fails to specify whether each Ministry and the DND is to proceed together for the enforcement of the Law, or whether these two different entities are to be directed by the Parliament in collaborating on a mechanism for the implementation of the same. Secondly, the Law is silent on the availability of resources required for the enforcement of the statute. To add to the above point, since the success of enforcement of the statute is not certain, public confidence would be lost.

The first and foremost step to be taken by the Mongolian Government for the successful implementation of the statute is to put resources into the same. The second step would be to start the groundwork on building institutions essential for the enforcement of the statute. A new enforcement centre has to be built, with capable, trained staff; and judges who are going to be assigned anti-trust cases, must be given basic education in legal and economic principles of competition law. The enforcement centre would comprise of members of the Anti-trust Law Drafting Group.

Thirdly, workshops could be organised and conducted by external advisors educating on competition law for the members of the new enforcement centre, and also the judges, who will be adjudicating disputes under the statute.

2 http://www.adb.org/Documents/Papers/Mongolia_Legal_Framework/fair_marketplace.asp?p=lawdev

3 <http://www.itu.int/ITU-D/treg/Events/Seminars/2003/Mongolia/08-Rappt-Overview%20Regu%20Challenge.pdf>

Fourthly, raising public awareness of the statute, by way of education and publicity functions, needs to be organised. Through media, literature, newsletters, etc, the enforcement centre could inform businesses, government officials, judges, and citizens about the new statute.

The fifth step would be to raise the awareness of the stakeholders emphasising on the lessening of government

intervention. The main targets would be to attack the regulatory control and policies that restrict entry, and favour dominant firms in the market. In addition, and of fundamental importance, would be to start initiating cases against establishments involved in violations of the provision of the statutes. The possible targets of such action would be large, formerly SoEs whose activities are being managed by the state.