



Situated at the crossroads of East and West – the South Caucasus region, bordered with Turkey, the Republic of Azerbaijan¹ regained its independence in 1991. As the other former socialist countries, Azerbaijan is facing a number of problems in transformation of their national economy.

Azerbaijan is the largest of the three South Caucasus states, bounded by Russia, Georgia, Armenia, Iran and the Caspian Sea.

In September 1988, Azerbaijan became the first Soviet Republic, outside the Baltics, to declare its national sovereignty. This was recognised by Moscow in 1991, following the collapse of the former Soviet Union, of which it had been established part since 1922.

After independence, the country faced a period of long political and economic turmoil, in large, as a consequence of the war with Armenia for the control of the Ngorno Kharabakh region. The political scene was normalised when Heydar Aliyev became President of the country in 1993. In 1995, Azerbaijan started a stabilisation programme in cooperation with the IMF, which succeeded in reducing the main macroeconomic imbalances and in stabilising the economy.

The admission to the Council of Europe in January 2001 marked an important benchmark in the transition to democracy and committed Azerbaijan and to the implementation of a wide range of reforms.

Economy

It is increasingly recognised that regionalisation and globalisation trends occurring in the world economy have considerable impacts on development of national economies. Striving to be an active member of the world community, Azerbaijan exerts all efforts to make its contribution to these processes. Azerbaijan is a member of more than 20 international economic organisations and

PROFILE	
Population:	8.2 million***
GDP (Current US\$):	7.1 billion***
Per Capita Income: (Current US\$)	810 (Atlas method)*** 3,210 (at PPP.)**
Surface Area:	86.6 thousand sq. km
Life Expectancy:	72.1 years**
Literacy (%):	97 (of ages 15 and above)**
HDI Rank:	91***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

has observer status at the WTO. Azerbaijan is striving to become a full-fledged member of the WTO and is convinced that this membership, under the favourable conditions, will give a strong impetus to efficient integration of the country into the global economy and will further promote its economic growth.

For development of the national economy, Azerbaijan has a strong focus on liberalising all economic activities, demonopolising and developing the private sector. As a result of reforms since 1996, economic decline has been halted, and an upward trend of GDP growth is currently under way.

During the last eight years, annual average GDP growth of Azerbaijan was 10-11 percent. The country's rate of inflation and national currency has been reasonably stable (except for the most recent rise of inflation that is being tackled by the Government). GDP per capita equalled approximately US\$1000 in 2004, and the share of private sector in GDP has considerably increased and reached 77 percent. Almost all other major economic indicators demonstrate similar growth patterns.

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¹ Comments received from Elmar Mammadov, Department of Economic Cooperation and Development

It is also necessary to highlight that Azerbaijan is the leading Foreign Direct Investment (FDI) destination in the region. In the last decade, the total FDI stock in Azerbaijan exceeded US\$20bn. The country has continued to be one of the most successful FDI cases in the former Soviet Union. These figures suggest the good economic performance of a country with a relatively small population of 8.5 million.

Competition Evolution and Environment

Azerbaijan is a member of the Commonwealth of Independent States (CIS), like all other former Soviet republics. The main principles of coordination and cooperation among CIS countries, *vis-à-vis* competition issues, are outlined in the Inter-governmental Treaty on the Implementation of a Coordinated Competition Policy² (hereinafter referred to as ‘the Treaty’), signed on December 24, 1993, in Ashkhabad (Turkmenistan).

Azerbaijan is one signatory to the Treaty. The provisions and tasks of the treaty correspond to the general tasks of economic integration among CIS countries, as stipulated in the major economic inter-State agreements. Accordingly, one of the most important CIS treaties – the Treaty on the Creation of the Economic Union of CIS Countries – mandates the tasks for the creation of a free trade area (FTA); formation of a customs union; and creation of a common market of goods, services, capital and labour.

It is quite obvious that these tasks can be achieved only if an effective competition policy is implemented in these countries, and if the common competition principles are observed. The main purpose of the Treaty on the Implementation of a Coordinated Competition Policy is to create a legal basis for the prevention, limitation and elimination of monopolistic activities and unfair competition amongst companies in the common CIS economic area.

Competition Law, Institutions and Anticompetitive Business Practices

Competition issues in Azerbaijan are primarily regulated by four main laws:

- The Law No. 526 About Antimonopoly Activities, passed in 1993, subsequently amended in 1997, 2001, and 2002;
- The Law on Protection of Consumer Rights, passed in 1995;
- The Law No. 1049 on Unfair Competition, passed in 1995 and amended in 2003; and
- The Law No. 590 on Natural Monopolies, passed in 1998 and amended in 2001.

Like other transition countries, there are many problems regarding economic competition, protection of consumer rights, and regulation of the activities of natural monopolies

in Azerbaijan. In most of the economy, including the service and agriculture sectors, a few players control large shares of the markets. Private and public anticompetitive practices, like collusion, violations of consumer rights, and the abuse of dominant positions are also widespread in the Azeri economy.

Progress in structural reform has been mixed. Marked headway has been made in some areas, such as enhancing transparency and the accountability of public finance management, and making implicit energy subsidies explicit. However, progress has been limited in other areas, including privatisation of State-owned enterprises (SoEs), enhancement of competition and de-monopolisation of the economy.

All of these issues are widely discussed by the society and are under government consideration. In recent years, the Government has passed several laws, decrees and orders, which directly or indirectly aim at solving these problems. Following his election victory in October 2003, President Ilham Aliyev issued decrees calling for the acceleration of structural reform. In February 2004, he approved the State Programme on Socio-Economic Development of the Regions for 2004-2008, which envisaged a broad range of policy measures and investment projects aimed at achieving a balanced regional development.

The responsibility for enforcing all competition policy/laws was placed with the Department of Antimonopoly Policy (DAP) within the Ministry of Economic Development (MED). The DAP is at its initial stage of development and its goal is to become a modern regulatory body following modern standards for competition and related policies.

The main functions of the DAP include the implementation of measures to promote competition; the prevention of both unfair competition and abuse by firms with dominant market positions; and protection of consumer rights.

One of the primary instruments, through which the DAP regulates competition, is its Register of Monopoly Enterprises. Azeri enterprises that are deemed dominant – defined as having a market share of at least 35 percent – are listed on this register and must declare their prices and profits to the DAP for approval.

However, the DAP has a very small staff, and a limited record of interventions to enforce the competition laws. A few investigations have taken place, following the simple rules set out in law, but the findings have not included recommendation of cases for prosecution. Thus, there has been no real enforcement of competition law in Azerbaijan. Besides, the DAP has insufficient independence, administrative and technical skills; human and financial resources, and analytical capabilities, to cope with the

2 See footnote 2 on page no. 97.

daunting task of applying competition rules to contribute to effectively helping a transition economy become a modern market economy.

Several factors and institutional limitations have prevented the effective implementation of legislation. Consolidation of monopolies and oligopolies has been fostered by indirect forms of protectionism. Azerbaijan's overall policy is fairly liberal, but poorly implemented with huge margins for discretion often exploited by vested interests, creating fertile grounds for corruption.

Incomplete and inconsistent legislation and regulation are also an issue. For instance, the DAP cannot initiate investigations on its own; it must act solely upon the request of an entity whose legitimate interests are being damaged. Further, the authorities do not have the power to ensure firms adopt their decisions and have not yet developed a clear approach to dealing with mergers, etc.

The DAP's administrative capacity is inadequate and it lacks basic information on market structures and the behaviour of firms. For Azerbaijan, which is still transforming and opening its economy to foreign competition, the optimal firm size is still unknown. Furthermore, institutional capabilities and statistical information have to be developed further before market structure can be analysed properly. Due to these constraints, the DAP has not yet devoted significant time or resources to promoting awareness of the benefits of competition in Azerbaijan.

This lack of understanding regarding competition issues impacts the framing of other laws and regulations, and on decisions relating to public policy actions. This has resulted in inconsistencies between policies and the needs of the economy, affecting issues, such as market entry conditions, exit policies, trade measures, for example tariff and non-tariff barriers (NTBs), and the definition and regulation of natural monopolies.

The DAP has different plans and programmes for the prevention, limitation and elimination of monopolistic activities and unfair competition. One of them is the improvement of the legal framework, via the drafting of a new Competition Code, which will replace the Law on Antimonopoly Activities of 1993 and the Law on Unfair Competition of 1995.

This Competition Code will be the first of its kind, not only in Azerbaijan, but also in the whole of Eastern Europe and CIS countries. For almost two years, a group of people (including experts from World Bank) has worked on the draft. The laws and the experiences of the EU members and other countries were taken under consideration during the preparation of the Code. It is expected that draft of the Competition Code will be accepted by the Parliament (Milli Mejlis) in 2006.

The efficiency and the future prospects of the Azeri economy will be significantly affected by the willingness and ability of authorities overseeing competition to establish a sound governance environment, and to enforce effective competition policies. The MED intends to reorganise and strengthen the DAP, and the required political will seems to be in place to start modernising and strengthening the Azeri competition policy framework.

Sectoral Regulation

According to the Presidential decrees on the Measures for the Acceleration of the Socio-Economic Development of Regions of the Azerbaijani Republic (November 24, 2003), the Strengthening of the Struggle Against Corruption in the Azerbaijani Republic (May 08, 2005); Strengthening of the Measures on Anti-inflation in the Azerbaijani Republic (May 31, 2005); State programmes on the Reduction of Poverty and for Stable Development (for 2003-2005; 2006-2015); State programme on Fighting Corruption; the Law of the Azerbaijani Republic on Fighting Corruption (January 01, 2005); the Government of Azerbaijan has implemented many projects to create fair competition and a free trade environment.

These laws address all sectors, including financial services. Additionally, two other laws deal specifically with competition issues within the financial sector: the Law on Financial Industrial Groups, adopted in 1996, and a Commercial Banking Law that is about to be approved and contains a provision to deal with anti-trust activities and ownership concentration. The new Law prohibits banks from entering into agreements and carrying out concerted operations to monopolise banking services and limiting competition in the banking industry.

Compliance with regulations against the monopolisation of banking activities will be controlled by the Central Bank, which will mean a second, separate competition agency for the banking sector.

Electricity Sector³

The electricity sector of Azerbaijan is, at present, under State ownership, which serves the whole country. Electricity production increased by 1.8 percent during the first quarter of 1998, compared to the previous year. Preceding years had recorded an average annual decline of 6.6 percent. Since independence, there has been no new investment in this sector. Difficult economic conditions, high taxes and non-payment by customers have complicated the development of this sector. As a result, there were postponements and suspensions in the electricity supply.

The electricity sector is now in need of serious restructuring, in order to correct the years of under-investment, which have led to a very substantial backlog

3 msp.gov.az/html/eng/Docs/0.doc

of maintenance in both generation, and transmission and distribution.

Telecommunications Sector⁴

The telecommunications infrastructure in Azerbaijan is extremely poor. Despite the high level of demand, progress in improving it has been limited. This is partly due to the dominance of the Ministry of Telecommunications. A 1998 deal created the Caspian American Telecommunications (CAT) joint venture, an alternative fixed-line operator that should boost competition as well as network modernisation and expansion in the coming months and years.

In addition to the insufficiency of the infrastructure, demand has been boosted by inflows of FDI in the oil and gas sectors over the past four to five years. This has fuelled economic transitions and created a niche demand for high-usage broadband business services. Sectors particularly susceptible to growth are cellular mobile, very small aperture terminal (VSAT) and fixed wireless, due to the country's topography and the need for fast rollouts.

The Ministry of Telecommunications (MT) is the regulator for the whole industry. Its role is that of a policy-maker as well as a dominant market player. The MT's hold on network operations is supposedly set to be reduced through the privatisation of some of its operating sections. So far, it has kept tight control over the sector, by means of a rule that at least 50 percent of any telecom venture must be owned by the MT.

Consumer Protection

The only NGO in Azerbaijan working in the field of consumer protection is the Independent Consumers' Union (ICU), established on January 31, 1997. It works to defend consumers' rights; to increase their awareness; identify and promote the proper interests of consumers and the means of their protection; and provide a medium for consumer opinion and representation.

The purpose is to create conditions, which promote the interests of consumers by improving the standards of goods and services of all kinds, and to ensure that those who make decisions affecting consumers have a balanced and authoritative view of their users' interests before them.

Protection of consumer rights is one of the important problems of the transition countries, including Azerbaijan, but one that the Government has indeed attempted to solve. Specific legislation in this field, such as on food standards

and safety, has to be improved. Additionally, some changes in the Administrative Code of Azerbaijan offer other opportunities for the protection of consumer rights.

The DAP pays special attention to consumer protection, among others, in its daily activities. The DAP has different programmes and plans for the advocacy of the protection of consumer rights, at both the horizontal and vertical levels.

The DAP tries to improve and change policy-making and the general situation in regard to consumer protection. It attempts to promote competition and consumer rights issues in the society, as much as it can, with its limited resources. In only the last six months, the Department has created its website, established international relations, activated contacts with non-government organisations (NGOs) and media, and organised different seminars and conferences (international and domestic). There are projects for staff and structural development, as well as the promotion of the competition and consumer rights issues.

Concluding Observations and Future Scenario

A well-designed policy framework and an effective competition authority will be instrumental in fostering an environment conducive to economic efficiency, consumer welfare, and investment and business activities in Azerbaijan. In particular, and in line with the Government's intent, special attention will be paid to the regulation of natural monopolies and to the prevention of cartels.

Considerable development of Azerbaijan's competition framework is needed before it will become an effective instrument to enhance market access for new competitors, protect markets from restrictive business practices, and foster economic efficiency and consumer welfare. The determination and implementation of competition policy in Azerbaijan still depends heavily on individuals rather than on institutions.

The DAP does not yet have the autonomy, skills, culture, and resources to achieve its objectives, and is still struggling to define its role *vis-à-vis* the Azeri business community, civil society and government institutions. The overall current institutional framework should be assessed to determine whether competition issues should be addressed at the sector level or economy wide, and whether DAP's present set-up as a department within the MED allows it to function properly.

4 banners.noticiasdot.com/.../boletines/docs/telcos/world_telecommunications/2000/wto_azerbaijan-11092000.pdf

[†] *Eyub Mahmud Huseynov is Director of the Independent Consumers Union (ICU) of Azerbaijan. Since 1997, he has significantly contributed in the implementation of consumer rights protection policy in Azerbaijan, conducted advocacy with parliament and state structures. Before joining ICU he was a Director of Small Enterprise 'FUAD' as well as a lecturer in higher Mathematics at the College of Commerce in Baku.*