

Mongolia

**[Please introduce here the name of
your country]**

COMPETITION FRAMEWORK

Competition Law	<p>Law of Mongolia on Competition. No. 66 (June 10, 2010).</p> <p>Procedures For Establishing a Legitimate Monopoly and Dominant Business Owner, Reg. No. 298 (November 17, 2010).</p> <p>The Procedure For Making A Decision On The Merger Or Merger Of A Dominant Legal Entity With Other Legal Entities And The Purchase Of Competitor's Shares. Reg. No. 118, April 28, 2012.</p> <p><i>[Please Introduce the name of the laws constituting the National Competition Law Regime. Include the year of enactment and the corresponding amendments as well]</i></p>
Competition Authority	<p>Authority for Fair Competition and Consumer Protection (AFCCP) was established in 2012 following the 2010 passage of the Law of Mongolia on Competition as the successor to the Department for Review and Regulation of Unfair Competition (itself established in 2004). https://afccp.gov.mn/</p> <p><i>[Please introduce here the name of the competition authorities that are part of the enforcement process of the laws mentioned in the previous question. In that regard, please specify the norms that established those agencies, the year in which they started operation, and their website. Include tribunals only if they have a role in the process of founding guilt and imposing sanctions. This point specifically excludes judicial authorities that only have judicial review powers]</i></p>

POLICY-MAKING AGENTS

-DIVERSIFICATION-

How many agencies are responsible for competition enforcement?	<p>One, the AFCCP. The AFCCP and its inspectors are only permitted to issue administrative sanctions but may refer criminal anticompetitive activity to the General State Prosecutor for prosecution. Law No. 66 § 24.1.A</p> <p><i>[Please mention how many authorities have a general mandate to enforce competition in your jurisdiction. Include a brief reference on their duties e.g.: if they impose criminal, civil or administrative liability. The purpose is that readers can quickly understand, which are the agencies charged with competition enforcement in the jurisdiction, the difference between them, and if they have concurrent, overlapping, or exclusionary authority. Include the relevant provisions on which their powers are based. Exclude in this point sector regulators or enforcers]</i></p>
Do sector regulators have a competition policy enforcement mandate?	<p>No</p> <p><i>[Please introduce the name agencies that have powers to enforce any aspect of competition law, including merger control, in specific sectors. Introduce the relevant provisions on which their powers are based]</i></p>
Have the Competition Authority and other agencies signed protocols or memoranda of understanding with sector regulators?	<p>No</p> <p><i>[Please mention here any provision or interinstitutional agreement that allows the competition authorities to coordinate behavior to effectively enforce competition law]</i></p>

DISAGGREGATED FUNCTIONS— PROSECUTORIAL MODEL

Are there different authorities or agencies that make the decision to investigate and the final ruling in the cases?	<p>No</p> <p><i>[Answer: Yes or No]</i></p>	<p><i>[If the answer is yes, please explain briefly the enforcement process, and include the relevant provisions. The purpose of this question is to understand the enforcement model of the jurisdiction and establish how many independent authorities are involved in the enforcement process and what are their functions]</i></p>
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Are disputes presented for decision to judiciary authorities?	No [Answer: Yes or No]	[If the answer to your question is "yes", please introduce the name of the judiciary authorities that are involved and their role until the final decision in the process is achieved; exclude from this question judiciary authorities whose role in the process is the judicial review of administrative decisions]
Do private rights of action to challenge competition law infringements exist in your jurisdiction	No [Answer: Yes or No]	[If the answer is "yes", please explain briefly the process and who are the persons entitled to exercise those rights; mention the relevant provisions]

*** Please fill the next sections for each of the authorities mentioned in the prior sections excluding sector regulators**

AUTHORITY FOR FAIR COMPETITION AND CONSUMER PROTECTION

STATUS OF THE COMPETITION AUTHORITY

Accountability	Please, answer "Yes" in the boxes of this line if any of the duties on the right column apply to the authority, and "No" if they do not.	Answer with X/√ as it applies		Please, in the boxes of this line mention the relevant provisions in which the obligations are based.
Does the Competition Authority have obligations before the executive?	Yes	X	Obligations to report to the executive on on-going investigations upon request.	[Introduce the relevant provisions]
		X	The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch. m	[Introduce the relevant provisions]
		√	The executive has to report on an annual basis to the executive.	Law On Competition, § 14.7. [Introduce the relevant provisions]
Does the Competition Authority have obligations before the legislature?	Yes	X	Obligation to publish an annual report on its activities.	[Introduce the relevant provisions]
		√	Obligation to stand before parliament and to respond to congressmen on an annual basis.	Law on Competition § 19.1.2. [Introduce the relevant provisions]
		X	Its activities are monitored by an independent auditor or by oversight committees.	[Introduce the relevant provisions]
Does the Competition Authority have obligations before the judiciary or independent agencies?	Yes	√	Decisions of the Competition Authority are subject to judicial review.	Law on Competition § 26.2.A. [Aside from the relevant provisions please mention the judicial authority charged with the review]
		X	Decisions of the Competition Authority are subject to review or control of an independent authority different than the judiciary?	[Aside from the relevant provisions, please mention the authority charged with the review]

		<p>Other obligations/comments: Please introduce any other obligation or comment that you consider relevant.</p> <p><i>[Introduce any comment that you consider relevant regarding the status of accountability of accountability of the competition authority]</i></p>
Independence	Please, answer “Yes” or “No”	
Are the criteria for appointment and removal of the head/board members clear and transparent?	Yes	<p>Law on Competition, Art. 17.</p> <p><i>[Please introduce the relevant provisions, and if the answer to this question is “no”, explain briefly why in your opinion the criteria are not clear or transparent]</i></p>
Does the executive have powers to decide on specific cases based on public interest?	No	<p><i>[Please introduce the relevant provisions, and if the answer to the question is “yes”, explain in which cases the executive can decide on public interest bases]</i></p>
Does the executive retain decision-making powers over the Competition Authority?	Yes	<p>The executive branch retains the authority to approve certain guidelines of the AFCCP on topics such as a merger control. Law on Competition § 8.3. Additionally, the executive branch retains original regulatory authority on issues such as defining monopolistic or dominant positions. The Law on Competition § 15.1.6.</p>
Is the Competition Authority obliged to publish reasoned decisions to ensure transparency?	Yes	<p>Law on Competition, § 15.1.9.</p> <p><i>[Please introduce the relevant provisions]</i></p>
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	Yes	<p>“Expense[s] of the Authority for Fair Competition and Consumer Protection shall be financed from the State budget. [The] state shall ensure economic guarantee of its activity.” Law on Competition § 14.8.</p> <p>The AFCCP budget cannot be less than that of the prior year. Law on Competition § 14.9.</p> <p><i>[Please introduce the relevant provisions and the budget assigned to the authority for the current year and the next if it is already approved]</i></p>
Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	Yes	<p><i>[Please introduce the relevant provisions and mention the means by which the authority can be financed on its own]</i></p>
GOVERNANCE OF THE COMPETITION AUTHORITY		
Is the Competition Authority governed by a single chairman or by a collegiate body?	Collegiate Body. The AFCCP is comprised of a Chairperson, 2 full time members, and 6 part time members. The Law on Competition § 17.1.	<p><i>[Answer “single chairman” if the directive organ of the authority is composed of one person. Answer “collegiate body” if the authority’s directive organ is composed of two or more members, regardless if this organ is directed or presided by a chairman or president. Also mention how many board members or directors are part of the Direction Body]</i></p>
How are the members of the Authority’s directive organ chosen?	The Chairperson (who also serves as the General State Inspector), the 2 full time members, and 3 of the part time members are nominated by the Prime Minister of Mongolia. The Chamber of Commerce and Trade, the Confederation of Trade Unions, and “an NGO on customer’s rights protection” nominate one part-time member each. These candidates are appointed and dismissed by the government. The Law on Competition, § 17.2.	<p><i>[Please describe the electing process for choosing the members of the directive organ. Include relevant provisions; mention the branch government involved in this process]</i></p>
Is there a fixed period during which removal is prohibited?	No	<p>No. However, dismissal of a AFCCP member can only be for statutorily enumerated reasons. The Law on Competition § 21.1.1.</p> <p><i>[If your answer is “yes”, please introduce the duration of the tenure and the relevant provisions. If the answer is no, please refer if there are specific and restricted grounds under which the members of the Directive body can be removed; mention if they are elected for a term and introduce the relevant provisions]</i></p>
Is the tenure of the heads renewable?	Yes	<p>The term of the Chairperson and other members is 4 years and is renewable once. The Law on Competition, § 18.1.</p> <p><i>[Please, introduce the relevant provisions]</i></p>

Are the heads required by law to have certain minimum qualifications (degree in law or economics, age, experience)?	Yes	The Chairperson is required to be specialized in either economics or legislation who has been a professional in their field for at least 5 years, including 3 in government service. The Law on Competition § 17.4. Non-chair members must also be specialized in economics and legislation and have been professionals in their field for at least 3 years including 1 in government service. The Law on Competition § 17.5. <i>[If your answer is "yes", please make reference to the qualifications required by law and the relevant provisions]</i>	
ARCHITECTURE			
Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a ministry?	Stand-alone	The Law on Competition § 14.3 <i>[If your answer is "part of a bigger entity", please explain briefly how the bigger entity is organized]</i>	
POLICY DUTIES			
Does the Competition Authority have an exclusive mandate on competition or multiple mandates?	Multiple	✓	Concurrent consumer protection mandate.
		✗	Concurrent IP mandate.
		Other mandates: Include any other mandates entrusted to the Competition Authority	
PORTFOLIO INSTRUMENTS			
Law Enforcement			
Does the Competition Authority have powers to investigate cartels?	Yes	Yes. Article 11 of the Law on Competition addresses the prohibition of cartel activity including price setting, territory allocation, production limitations, bid rigging, and joint refusal to deal. Cartel activity is only punishable by administrative action – including orders and fines – from the AFCCP. <i>[If the answer is "yes", please mention the type of liability that the actions of the agency seek: civil, criminal, administrative. Introduce the relevant provisions; briefly explain if the powers of the authority are limited to certain types of cartels and what kind of sanctions can be imposed]</i>	
Does the Competition Authority have powers to investigate unilateral Conduct?	Yes	Yes. Article 7 of the Law on Competition addresses illegal use of dominance and Article 12 addresses anticompetitive activities such as exclusivity conditions in contracts. The AFCCP has the authority to pursue administrative actions such as orders and fines. Additionally, AFCC may refer unilateral conduct violations for criminal prosecution by the state. Criminal penalties include substantial community service, travel limitations, and nominal criminal fines. Mongolian Criminal Code Art. 18.1. <i>[If the answer is "yes", please mention briefly if the competition authority is invested with the power to pursue exploitative and exclusionary effects, also make reference to relevant provisions, the type of liability that the actions of the authority seek, and what kind of sanctions can be imposed]</i>	
Does the Competition Authority have the powers to conduct <i>ex-ante</i> merger review?	Yes	The AFCCP is allowed to block mergers where they restrict competition. The AFCCP reviews mergers and issues a determination within 30 days (extendable by an additional 30 days in cases where an extended review is required) of receiving the notification. Parties required to notify must submit materials to the AFCCP state office including the activities of each entity, the state registration information, decisions and agreements regarding the merger or acquisition, audited financial statements for each entity of the past two years, and economic data regarding the market(s) in which the entities operate. The AFCCP state office then considers whether the merger would prevent entry into the market or has anticompetitive effects. A decision is rendered which is appealable to the central AFCCP and then to the judiciary. The Law on Competition, Art. 8; Res. No. 118/2012.	

		<i>[If the answer is "yes", please explain briefly the process and which are the remedies that authority can seek or impose and mention the relevant provisions]</i>
Is the notification of merger transactions mandatory?	Yes	Merging parties must notify the AFCCP of a merger if the dominant entity purchases more than 20% of the common shares or 15% of the preferred shares or a competing company that sells similar products, or in any case of a merger between related (meaning operating in the same market or vertical mergers). The Law on Competition § 8.1; Res. No. 118/2012 Art. 1. <i>[If the answer is "yes", please explain whether all the transactions shall be notified or if there is a threshold; mention relevant provisions]</i>
Can the parties close the transaction before the final decision of the Authority (suspensory effect of merger notification)?	No	The Law on Competition, Art. 8. <i>[Please mention the relevant provisions and add any explanation that you deem necessary]</i>
Does the Competition Authority have the power to carry out <i>ex-post</i> merger investigations?	No	<i>[Please mention relevant provisions]</i>
Does the Competition Authority have the power to impose remedies on <i>ex-post</i> merger investigations?	No	<i>[If the answer is yes, please mention the remedies that the Authority can impose; mention relevant provisions]</i>
Does the Competition Authority have powers to conduct dawn raids at premises?	Yes	AFCCP inspectors are empowered to conduct unplanned inspections and confiscate materials pursuant to an investigation of a competition law violation. The Law on State Inspection does not place limitation on a time of day for such inspections or require a court order. The Law on Competition, Art. 20. <i>[If the answer is "yes", please mention whether the dawn raids shall be authorized by a judge, and mention the relevant provisions]</i>
Can the Competition Authority investigate <i>ex officio</i> cases?	Yes	Inspections relating to implementation of the competition laws may be carried out on the initiative of AFCCP. The Law on Competition § 22.1.3. <i>[Please, mention the relevant provisions]</i>
Does the Competition Authority have powers to accept leniency applications?	No	The AFCCP formerly had the authority to commute administrative penalties, but this authority was removed by amendment to the Law on Competition in May 2017. <i>[If the answer is "yes", please mention if there is any limitation for the applicants, what are the benefits, and mention the relevant provisions. Include any commentary that you consider relevant about the leniency program]</i>
Does the Competition Authority have powers to accept seek criminal punishment?	No	Where criminal sanctions apply (illegal use of monopoly and dominant position in the market) the AFCCP may transfer investigative documents to the state prosecutorial service. However, the AFCCP does not make the final decision regarding whether the state prosecutor pursues criminal charges. The Law on Competition § 24.1.3. <i>[If the answer is "yes", please mention the different kinds of sanctions that the agency can impose]</i>
Advocacy		
Can the Competition Authority issue opinions on draft legislation?	Yes	The AFCCP shall "develop proposals on upgrading/improving legislation on competition for approval/[resolution]" § 15.1.3. <i>[if the answer is yes, please specify if there is any kind of limitation to the agency's authority to issue opinions, include relevant provisions]</i>

Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition?	No	<i>[if the answer is yes, include relevant provisions]</i>	
Rulemaking			
Can the Competition Authority issue guidelines?	Non-Binding	X	Guidelines on the calculation of fines.
		√	Guidelines on merger control.
		X	Guidelines on the economic analysis of abuse of dominance cases.
Can the Competition Authority issue binding regulation on competition?	No	The power to make binding regulations remains with the government. AFCCP can only issue guidance. <i>[Please, explain which kind of regulation and mention the relevant provision on which the powers are based]</i>	
Research & Reporting			
Can the Competition Authority carry out market studies?	Yes	The Law on Competition § 15.1.8. <i>[If the answer is "yes", include relevant provisions]</i>	
Can the Competition Authority report to the legislature on the results of market studies?	Yes	Such studies can be made public. The Law on Competition § 15.1.8. <i>[If the answer is "yes", include relevant provisions]</i>	
DECISION-MAKING FUNCTIONS			
Aggregated Functions			
Does the Competition Authority make the decision to investigate and make guilty findings?	Yes	The Law on Competition Arts. 22, 24. <i>[If the answer is "yes", include relevant provisions]</i>	
Does the Competition Authority impose punishments?	Yes	Yes. The AFCCP can impose only administrative penalties which are limited to orders and fines. While illegal monopoly and abuse of dominance are criminal in Mongolia, the AFCCP is not responsible for criminal prosecution. <i>[If the answer is "yes", please mention the different kinds of sanctions that the agency can impose]</i>	
Is there a single body that carries out the investigation and the guilty findings within the Competition Authority?	No	Investigations regarding violations of competition law are carried out by the AFCCP's provincial offices and findings of guilt are made by that provincial office. The AFCCP central office serves as both supervisor to the provincial offices (appoints and dismisses state inspectors) as well as the first level of appeal. <i>[Regardless of the answer please explain briefly the enforcement process until the final decision is issued, include relevant provisions, and if the answer is "No" mention how the head of the body that carries out the investigation is elected and removed. The main idea of this last point is to establish whether the investigation authority is, in fact, independent from the decision-making body]</i>	
Can the Competition Authority's decisions be appealed to a court?	Yes	Decisions made by the AFCCP state inspectors are immediately reviewable by the AFCCP central office. Central office decisions are themselves appealable to the Mongolian court of first instance. The Law on Competition Art. 26. <i>[Please, mention the judicial authority who is charged with the review, make reference to the relevant provisions, and if there is any requirement to exercise the right of the judicial review]</i>	
Please add commentaries or information that you consider relevant and were not covered in any of the previous sections and questions.			