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COMPETITION POLICY IN COUNTRIES  
IN TRANSITION—LEGAL BASIS AND  
PRACTICAL EXPERIENCE

by

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## **Executive summary**

Over the past decade, competition policy—an essential element of economic reforms—has been introduced by most countries of the Commonwealth of Independent States (CIS). CIS Governments have undertaken significant steps with a view to demonopolizing State enterprises and breaking up the highly concentrated economic powers by promoting competition. Over a short period of time (since the 1990s) almost all CIS countries have adopted antimonopoly legislation and established enforcement competition agencies.

In this paper, the author investigates the legal aspects and practical measures undertaken by the CIS countries in the framework of competition law and policy and assesses the experience gained so far in the process of implementation and enforcement of competition laws and related legislation. In particular, she focuses on the efforts of CIS competition authorities to prohibit restrictive business practices of enterprises and anticompetitive actions of government agencies.

The paper contains four chapters. Chapter I looks at issues related to the cooperation process among CIS competition authorities and shows the results achieved over the last decade. Chapter II is devoted to the main provisions of CIS national competition laws and provides examples of prevention and elimination of restrictive business practices. Chapter III looks at the legal basis and practical activities of CIS antimonopoly authorities to prevent anticompetitive behaviour by government agencies. Chapter IV discusses the related areas of regulation: unfair competition, demonopolization and liberalization of trade and investment regimes. In light of the above, the author offers some conclusions and recommendations for future work in the area of competition in CIS countries, emphasizing the importance of transparency of competition regulation in those countries as well as the need for technical assistance programmes and related activities to assist them in creating a homogeneous competitive environment and their integration into the world economy.

# INTRODUCTION

Competition policy nowadays is playing an important role in economic developments in CIS countries. Within a short period of time (beginning in the early 1990s) all CIS countries have adopted antimonopoly laws and established corresponding regulatory bodies. During the past decade competition policy has been conducted in the majority of CIS countries within the framework of broad economic reforms, together with privatization and demonopolization policy, protection of intellectual property rights, consumer rights protection, and liberalization of foreign trade and investment regimes. This broad approach ensures fair competition not only between domestic companies but also between domestic and foreign firms, thus promoting effective production and distribution and safeguarding the interests of consumers.

During the past decade the Governments of CIS countries have taken significant steps to enhance the role of the private sector in economic activity and to promote competition. The abolition of administrative regimes has led to the disengagement of the State from the production and distribution processes. The new economic conditions required the establishment of the institutions and legal basis appropriate to the functioning of a market economy.

These processes are especially important for CIS countries, given the highly monopolized nature of the Soviet economy and the major role of central planning in economic development at that time. Since the beginning of the 1990s, the transitional countries have been undertaking radical economic reforms, with competition and private initiative considered essential elements of successful economic policy. Today, in the context of global integration among CIS countries, competition policy is playing an extremely important role. The removal of barriers to the free movement of goods and services, and the creation of a homogeneous competitive environment, are considered a basis for further integration among these countries, aimed at the growth of regional trade and investments.

Competition laws adopted in CIS countries have much in common. They determine the organizational and legal foundations for the prevention

and elimination of monopolistic activity and unfair competition. All of them contain universal competition principles and rules, including control over restrictive business practices and anticompetitive behaviour of government agencies. The high degree of similarity among the antimonopoly laws in CIS countries may be explained by the similarity of initial economic conditions in these countries and close cooperation activities among their Governments in the field of antimonopoly regulation.

The competition policy conducted by CIS Governments is directed at ensuring conditions for effective functioning of markets and promoting private initiative. The appropriate regulatory bodies created in CIS countries exercise State antimonopoly control and promote the development of market relations on the basis of effective competition and entrepreneurship.

In the 1990s CIS countries started actively to develop international cooperation in the field of competition. They participated in events organized by international organizations (including UNCTAD, OECD and the World Bank) and concluded a number of bilateral agreements on competition. International cooperation is now viewed by these countries not only as an important component of competition policy but also as an effective instrument of improving this policy in accordance with international principles, enabling their more rapid integration into the world economy.

# **I. Cooperation processes among CIS countries n the field of competition policy**

## **A. *Legal basis***

The main principles of coordination and cooperation among CIS countries in the competition sphere are outlined in the Intergovernmental Treaty on the Implementation of a Coordinated Competition Policy, signed on 24 December 1993 in Ashkhabad (Turkmenistan).

This treaty was signed by the prime ministers of twelve CIS countries: Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, the Russian Federation, Tajikistan, Turkmenistan, Uzbekistan and Ukraine.

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 of the creation of a free trade area, 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 conducted in these countries and 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 among companies in the common CIS economic area.

The treaty provides for close cooperation among CIS antimonopoly authorities, with the following goals:

- Coordination of joint activities;
- Rapprochement of the antimonopoly laws of the Parties to the extent needed for the implementation of the Treaty;

- Creation of favourable conditions for the development of competition, effective functioning of the goods markets and consumer rights protection;
- Elaboration of common procedures for the investigation and evaluation of monopolistic activities of economic entities and executive/governing bodies; and
- Creation of a mechanism for cooperation.

The treaty contains the general rules of the competition policy, based on universally applied principles, *inter alia*, those contained in the UNCTAD Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.

The treaty provides the most important definitions and general competition rules regarding:

- Abuse of a dominant position;
- Mergers between economic entities;
- Restrictive agreements; and
- Unfair competition.

The Treaty prohibits the *abuse of a dominant position* by one or several economic entities in the whole or a part of the common market or if such activities lead to the restriction of competition or to the impairment of the interests of other economic entities or consumers.

*Amalgamations of economic entities, agreements between them or other types of coordinated activity* which may restrict competition on the common market are also prohibited by the treaty. But these activities may be permitted if the economic entities prove that they promote technical or economic progress, satiation of goods markets, improvement of the quality of goods or an increase in their competitiveness.

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