



# Kyrgyzstan ❖

A Central Asian country of incredible natural beauty and proud nomadic traditions, Kyrgyzstan<sup>1</sup> was annexed by Russia in 1864. It achieved independence from the Soviet Union in 1991.

Being a landlocked country, Kyrgyzstan is bordered by Uzbekistan, Tajikistan, Kazakstan and China. It is the first and one of the only countries in the region to be admitted as a WTO member (many others are still in the process of becoming so). It is also a signatory to the Commonwealth of Independent States (CIS) Treaty on the Implementation of a Coordinated Competition Policy.

Current concerns include: privatisation of SoEs, expansion of democracy and political freedoms, endemic corruption, interethnic relations, and combating terrorism.

## Economy

Kyrgyzstan is a poor, mountainous country with a predominantly agricultural economy. Cotton, tobacco, wool, and meat are the main agricultural products, although only tobacco and cotton are exported in considerable quantity. Industrial exports include gold, mercury, uranium, and natural gas and electricity.

Kyrgyzstan has been fairly progressive in carrying out market reforms, such as improving the regulatory system and undertaking land reform. Kyrgyzstan was the first CIS country to be accepted into the WTO. The country has adopted relatively liberal economic policies. The Government has made steady strides in controlling its substantial fiscal deficit. Together with the international financial institutions, it has been engaged in a comprehensive medium-term poverty reduction and economic growth strategy. Further, restructuring of domestic industry, and success in attracting foreign investment, are keys to future growth.

The overthrow of President Bakiev in April 2010 and subsequent ethnic clashes left hundreds dead and damaged infrastructure. Shrinking trade and agricultural production, as well as political instability, caused GDP to contract 0.5

PROFILE	
Population:	5.51 million***
GDP (Current US\$):	5.92 billion***
Per Capita Income: (Current US\$)	880 (Atlas method)*** 2,036 (at PPP)***
Surface Area:	199.9 thousand sq. km
Life Expectancy:	69 years**
Literacy (%):	99.9 (of ages 15 and above)**
HDI Rank:	126**
<i>Sources:</i>	
- World Development Indicators Database, World Bank, 2011	
- Human Development Report Statistics, UNDP, 2010	
(**) For the year 2010	
(***) For the year 2011	

percent in 2010. The fiscal deficit widened to 11 percent of GDP, reflecting significant increases in crisis-related spending, including both rehabilitation of damaged infrastructure and bank recapitalisation.

The economy grew 5.7 percent in 2011, but slowed to around 1 percent in 2012, primarily because of decreased production from Kumtor; the budget deficit has been reduced to under 8 percent of GDP. Progress in reconstruction, fighting corruption, restructuring domestic industry, and attracting foreign aid and investment are key to future growth.

## Competition Evolution and Environment

17 years ago, the Kyrgyz Republic, as well as the other CIS transition economies, began to recognise the market economy as the most effective way to attain social and economic wellbeing. The transition to a market economy necessitated fundamental and large-scale reforms in all spheres of life, which would enhance recovery from recession, and gradual development of the national economy.

❖ Original paper written (2006-07) & updated in March 2013 internally by CUTS International.

The transition of the administrative economy of the Kyrgyz Republic to a market one, was under the conditions of a highly monopolised economy, underdeveloped market institutions and infrastructure, as well as deeply rooted traditions of State intervention.

The first Anti-monopoly Law of the Kyrgyz Republic was adopted on April 15, 1994, to restrain monopolistic activities; and to promote and protect competition.

The adoption of the Law was an important point in realising reforms aiming to develop competition in the Republic. The Law determines the organisational and legal bases for the development of competition; and actions to prevent, restrain, and suppress monopoly activity and unfair competition, providing an environment for the creation and effective function of the national commodity markets.

The Law is implemented by the State Committee on Antimonopoly Policy under the Government of Kyrgyz Republic (or the “Antimonopoly Agency”), which, along with this basic law, also implements other regulatory and legal acts, such as the law ‘*On Protection of Consumers’ Rights*’, ‘*On Natural and Allowed Monopolies in the Kyrgyz Republic*’ and ‘*On Advertisement*’. Furthermore, the Kyrgyz Government has developed and approved the following regulations:

- Procedure for investigations of Anti-monopoly law infringement;
- Provision on downsizing and sharing of large business entities;
- Methodical recommendations for determining the dominant position of a business entity in a commodity market;
- Methodical recommendations for analysing and assessing the state of the competitive environment in the commodity markets; and
- Methodical recommendations for suppressing unfair rivalry.

There are certain economic areas in which market pricing is not optimal. Such spheres include, first, natural monopolies, i.e. those market segments in which the development of competition is technologically impossible or economically inefficient. On natural monopolies, the major aim of the Government is not suppression of monopolistic activity, but rather the creation of conditions to regulate those particular businesses.

For this purpose, the Kyrgyz Republic has adopted the *Law on Natural and Allowed Monopolies in the Kyrgyz Republic* (October 08, 1999) that, today, is the principal legal instrument regulating competition or lack of competition inherent in the sphere of natural and allowed monopolies.

The regulation of the activities of natural monopoly entities occurs in the following sectors:

- Gas pipeline transportation;
- Transmission of electric and thermal power;
- Rail transportation;
- Airport and airport terminal services; and
- Electric power, postal services and other public services.

Today, the major regulatory bodies according to this Law are the Antimonopoly Agency; and other branch control bodies, such as the State Energy Agency and the State Communications Agency.

### **Competition Policy and Law**

The law “On competition”, enacted on July 22, 2011, has replaced the former law “On limitation of monopolistic activity, development and protection of competition”, thus, establishing a new legal environment for many businesses operating in the Kyrgyz Republic.

The new law is oriented towards prevention, limitation, suppression of monopolistic activity and unfair competition as well as towards provision of conditions for creation and effective functioning of markets in Kyrgyzstan. Although the objective seems to be quite similar to the one which was provided in the former legislative act, the new competition law offers new legal concepts, mechanisms and methods for achieving free, fair and competitive market conditions for business.

A notable difference in the new law is the significant increase in the number of restricted unfair competition forms. Apart from those practices which were already prohibited by the former law, the new law forbids copying, recreating and selling a product if such action violates patent and licensing rights of another business entity, thus, providing additional protection to intellectual property rights of a competing enterprise.

The new law provides additional security to consumers as well, since its provisions ban certain practices, such as: providing a product with an irrelevant label (with the purpose to confuse customers) or to sell a certain product intentionally in massive quantities in order to manipulate market prices. Arrangements, including concerted actions, which limit the competition, now also specifically fall under the category of unfair competition.

### **Institution & its Competencies**

The Antimonopoly Agency is a government agency pursuing the unified government antimonopoly and price regulation policy which consists of the central and the regional bodies established in six regions of the Kyrgyz Republic. It should be noted that the functions of the Antimonopoly Agency in the telecommunications and energy sectors are performed by other special authorities who act as the regulators of their respective sectors.

The main tasks of the Antimonopoly Agency:

- development and protection of competition for the efficient functioning of markets of goods, works and services;
- state enforcement of antimonopoly and pricing legislation;
- protection of legal rights of consumers against monopoly and unfair competition; and
- state enforcement of the legislation on advertising.

## Sectoral Regulation

### *Telecommunication Sector<sup>2</sup>*

Kyrgyzstan's telecom market has been striving had to reach its full potential. The telecom sector has been part of the final phase of a large scale privatisation program that has been steadily progressing in the country since 1992. The start of market reforms in 1991 saw the state telecommunications agency, Kyrgyztelecom, begin to expand and upgrade its legacy telecom network, which at the time was outdated and poorly distributed.

Kyrgyzstan's open market policy provides ongoing boost for telecom sector. The telecommunications sector in Kyrgyzstan is characterised by an open market that has welcomed both foreign and domestic investors. This has been effectively done in accordance with the requirements set down by the WTO. Under the terms of the country's accession to the WTO (which took place in 1998), full liberalisation of the telecoms market had been expected to be achieved by end-2006. According to the ITU, Kyrgyzstan had implemented full competition across all segments of its telecoms sector by 2007. Nevertheless, despite the market being 'fully competitive' there remains more to be done on the regulatory front to take full advantage of the reforms now in place.

At the same time, a new regulatory authority – the National Communications Agency which later became The National Agency for Information Resources, Technologies and Communication – was set up to oversee the sector. The Agency is financed by fixed-percentage contributions from operators, and therefore it is not dependent on the state budget. The Agency regulates and supervises postal and electronic communication companies, issues licenses, monitors the Internet, and settles disputes among operators. The Ministry for Transport and Communications is the policymaking body in the communications sector, responsible for formulating the sector development policy, including designing privatisation programmes, enhancing competition, and exercising monitoring functions.

Although the functions of NCA and the ministry are legislatively separate, the two entities often enter into disputes with regard to their authority to regulate some activities, in particular licensing, radio frequencies, telephone number capacity, and tariffs. The process is quite political and there are frequent disagreements concerning

the development of communications regulatory programmes and regulations. Since 2008, the legal framework has been under revision as a working group is debating new amendments to the 1998 Law on Electronic and Postal Communications.

Two operators: Katel (D-AMPS) and Bitel (GSM), provide mobile telephony services in Kyrgyzstan. The mobile market is still in its infancy, with services covering less than three percent of the population at end of 2003. Annual growth, however, is running in excess of 100 percent.

Kyrgyzstan has the largest number of Internet users per capita of any country in Central Asia. This sector of the market has been helped, to some extent, by an Asian Development Bank (ADB) loan for education and computers. Access to the Internet in Kyrgyzstan, as with other telecom services, is strongly biased towards the urban consumer.

The State monopoly prevents mobile providers like Areopag and Katel from offering services via fixed lines, and Internet providers EICat and AsiaInfo from handling long distance and international calls via the Internet. Even after the privatisation, Internet providers and private telecom operators may still be barred from providing long distance and international services for less archaic reasons.

To ensure that a US\$500mn loan from the World Bank to build Kyrgyzstan's telecom infrastructure is repaid, a decree was issued granting the buyer of Kyrgyz Telecom exclusive rights to long distance and international services until 2008.

### **Anticompetitive Business Practices**

The arrangements limiting competition are specified and defined in a much more detailed way compared to the former law. Before the new law was enacted, such arrangements were prohibited only if one or both of the agreeing parties took a dominant position on a market. However, anticompetitive arrangements are now prohibited irrespective of such criteria.

The provisions of the competition law widen the scope of anticompetitive practices by including in this category the arrangements between competing parties which set the aim: (i) to increase, decrease or maintain prices on one level within a market; (ii) to coordinate the volumes of production with the aim to change artificially the volume of supply; (iii) to establish price discrimination; (iv) to decrease or stop unreasonably the supply of goods; (v) to set up provisions in a contract which put consumers in a disadvantaged position; and (vi) to provide to certain business entities the opportunity to purchase a significant part of products when the conditions of limited supply exist.

To exercise Governmental control over business entities holding a monopoly position in the markets, a State Register of Monopolistic Business Entities was created to include any business entities, regardless of the form of their ownership and Governmental intervention, in the following cases:

- An entity is a natural monopoly, if its share on the respective commodity market is over 35 percent; and
- Its activity or non-activity infringes the Anti-monopoly Law and consumers' rights.

At present, the aim is to change the Register from being a tool determining infringements of a mainly administrative or pricing character, into an instrument for control over business entities which are dominant in the commodity markets, by way of expanding the range of methods to regulate monopolies.

It should be noted that the effectiveness of the Anti-monopoly laws depends significantly on the coordination of actions by administrative authorities among themselves, regarding *inter alia* investment, customs-tariffs, structure, financial policies and many other issues.

The work implemented to create a sound competitive environment largely depends on the effectiveness of the Governmental control over observance of the Anti-monopoly Law; procedure for price and tariff setting; and protection of producers' and consumers' rights.

### **Consumer Protection**

Once every year, the State Commission, involving Ministries, departments, and governmental organisations, holds a Consumers' Rights Protection Conference to discuss consumer related issues. It discusses the shortcomings in the administration; outlining the ways for further improvement of the mechanisms to implement the Kyrgyz Law on Consumers' Rights Protection, and to strengthen the interaction between governmental and NGOs to solve the resulting problems.

The State Commission has initiated the establishment of inspectorates, operating to reinforce consumers' rights protection. At present, this line of work is performed according to the coordinated plan of measures to implement the Law 'On Consumers' Rights Protection' of the Kyrgyz Republic.

### **Concluding Observations and Future Scenario**

It should be noted that the updated legal framework in the form of the new competition law is a big step forward which provides additional protection for fair business in Kyrgyzstan. Moreover, these legal novelties which have appeared in 2011 clearly set up a new juridical approach directed towards construction of a free and competitive Kyrgyz market.

In order to fulfil the objectives of the competition law, the State Antimonopoly Commission requires better coordination of activities by other ministries and departments, to resolve issues regarding the growing competitiveness of domestic enterprises; and awareness generation among the business enterprises.

A higher level of professionalism of the staff in the Anti-monopoly body plays an important role. Secondly, the all round growth of efficiency in work is needed to prevent unfair competition and suppress manifestation of monopolistic abuses. Thirdly, improvement of Kyrgyz interaction with competition agencies in other countries, for exchange of professional experience and harmonisation and strengthening of competition laws, is fundamental.

In Telecommunication sector, while the Kyrgyz government has shown determination in opening up the market to competition and abolishing measures leading to state-controlled access, much remains to be done in order to establish stable mechanisms guaranteeing media freedom and freedom of information.

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### **Endnotes**

- 1 <http://cia.gov/cia/publications/factbook/geos/kg.html>
- 2 <http://www.marketresearch.com>, January 20, 2013