



Belarus ❖

After seven decades as a constituent republic of the Union of Soviet Socialist Republics (USSR), Belarus¹ attained its independence in 1991. Belarus, officially the Republic of Belarus, is a landlocked country in Eastern Europe bordered by Russia to the North-east, Ukraine to the South, Poland to the West, and Lithuania and Latvia to the North-west. It has retained closer political and economic ties to Russia than any of the other former Soviet republics. Belarus and Russia signed a treaty on a two-state union on December 08, 1999, envisioning greater political and economic integration. Although Belarus agreed to a framework to carry out the accord, serious implementation is yet to take place.

Economy

In late 2006, Russia began a process of rolling back its subsidies on oil and gas to Belarus. Tensions over Russian energy reached a peak in 2010, when Russia stopped the export of all subsidised oil to Belarus. In December 2010, Russia and Belarus reached a deal to restart the export of discounted oil to Belarus. In November 2011, Belarus and Russia reached an agreement to reduce the price of natural gas drastically in exchange for selling to Russia the remaining share of Beltransgaz, the Belarusian natural gas pipeline operator.

In 2011, a financial crisis began, triggered by government directed salary hikes unsupported by commensurate productivity increases. The crisis was compounded by an increased cost in Russian energy inputs and an overvalued Belarusian ruble, and eventually, led to a near three-fold devaluation of the Belarusian ruble in 2011. The situation has stabilised short-term due to a US\$3bn loan from the Russian-dominated Eurasian Economic Community Bail-out Fund, a US\$1bn loan from the Russian state-owned bank Sberbank, and the US\$2.5bn sale of Beltransgaz to Russian state-owned Gazprom.

Competition Evolution and Environment

The Ministry of Entrepreneurship and Investments is responsible for anti-monopoly regulation², and there is a Department for Anti-monopoly Regulation and

PROFILE	
Population:	9.464 million***
GDP (Current US\$):	63.27 billion***
Per Capita Income: (Current US\$)	6,530 (Atlas method)*** 13,385 (at PPP)**
Surface Area:	207.6 thousand sq. km
Life Expectancy:	71 years**
Literacy (%):	99.7 (of ages 15 and above)**
HDI Rank:	50**
Sources:	
- World Development Indicators Database, World Bank, 2012	
- Human Development Report Statistics, UNDP, 2011	
(**) For the year 2011	
(***) For the year 2012	

Development of Competition. It also controls advertising, as per the Law of the Republic of Belarus 'On Advertising', which specifies major conditions, general and special requirements to advertising in the territory of the Republic of Belarus, rights, obligations and responsibility of those engaged in the advertising business, as well as a system of state control over the advertising business.

One of the main directions of activity of the Ministry, in the field of anti-monopoly control and regulation, is the demonopolisation of the economy. The State demonopolisation policy is strategically aimed at the enhancement of economic efficiency through the inclusion of competition of economic entities into the system of stimuli, and economic levers for production development.

Demonopolisation is targeted at the monopolised markets occupied by the economic entities with State and non-state ownership, their unions, associations, other integrated bodies, which dominate in the commodity and service markets of the Republic. Demonopolisation covers all economic spheres: industry, marketing of goods and services, and the financial market.

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Demonopolisation of the economy is a necessary condition for the implementation of economic freedom, guaranteed by the Constitution. This notion includes:

- 1) breaking of monopolised bodies into smaller units;
- 2) establishment of small and medium-scale business entities engaged in similar activity; and
- 3) liberalisation of trade policy.

Demonopolisation is carried out in relation to monopolised markets of the Republic: trade, public catering, construction (mainly, specialty organisations), a number of products in the engineering industry (e.g. refrigerators), chemical, dairy and meat industry (excluding natural monopolies), and in relation to oligopolistic markets, as in wall-paper, fish, TV sets, etc.

Positive changes have been achieved in those commodity markets, which are characterised by the existence of trusts, concerns and other associations. Demonopolisation of these markets has been carried out together with privatisation and converting into joint stock companies. As a result, majority of associations have been transformed into voluntary business unions.

The Law No. 2034-XII of the Republic of Belarus on Fighting Monopoly Activity and Competition Development adopted already on December 10, 1992, sets a very vague framework for State monopoly practice. Yet, the framework pays a special attention to it: the Article 3 of Section 1 lists the government agencies and officials that are direct subjects of the Law; Article 7 of Section 2 bans the acts and agreements of government agencies that could limit competition, as well as prohibits creation of monopoly management structures.

Coming from fundamental obligations of governmental authorities, the efforts of the Ministry focus on elaboration and implementation of programmes and measures in the field of anti-monopoly policy. Currently, the third Programme for Demonopolisation of the Economy and Development of Market Competition for 1998-1999 has been approved and is in the process of implementation in the Republic of Belarus.

This Programme determines the tasks, priorities and measures aimed at demonopolisation of the economy and development of competition, as well as general requirements regarding the implementation of programme steps.

The Programme specifies priorities for 1998-1999, having regard both to the state of business within the field and general economic factors influencing the anti-monopoly policy: reduction of investments into the economy; decrease in the inflation rate; business development; active transformation of the State-owned property into another pattern, privatisation, etc.

The implementation of measures approved by the Programme for demonopolisation of the economy and development of market competition for 1998-1999, resulted in the demonopolisation of large trade organisations (food-products and commodity trade) and restaurant and canteen-trusts in the field of public catering.

As a result of the reorganisation carried out in 1996-1999, the number of large trade enterprises dominant in the local commodity markets decreased from 55 in 1996 to 11 in January 1999. It confirms the fact that certain changes have taken place in the development of a competitive environment in the field of trade and public catering. The share of non-state trade in the total volume of retail turnover amounted to 74.5 percent in January-March 1999, and increased by 1.17 percent as compared to a similar period in 1996.

The Ministry of Business and Investments carries out its oversight role over establishment, merger, amalgamation, re-organisation of different economic entities, including associations, financial and industrial groups and other unions of enterprises; commercialisation and privatisation of enterprises. All these measures aim at preventing monopolistic bodies from emerging and strengthening dominance of the existing monopolistic bodies in various commodity and service markets.

The aim is to provide equal and favourable conditions to all economic entities, the Ministry investigates and stop the abuse of dominance by economic entities, which are dominant in the commodity markets of the Republic of Belarus, in particular, in the field of pricing and agreements (agreed actions) of monopolistic enterprises in relation to any kind of abuse.

Commodity markets and, primarily, food markets and markets of consumers' and household goods are monitored on a permanent basis with the aim to analyse the market and elaborate offers for the generation and maintenance of competitive conditions.

One of the most important measures directed at the formation of a competitive market, is the creation and development of new economic structures. State support to small and medium-scale enterprises plays a special role in this process.

The activity of the Ministry is directed towards the creation of favourable conditions for new firms (including foreign) so as to provide for entry into the monopolistic markets through the removal of organisational and economic (tax, custom, etc.) barriers, which may prevent the penetration into markets of the Republic.

Competition Law and Policy

The Competition Law of 1992 was found inadequate, therefore, a new Law was adopted in 2000. As such the present Law, which is Law No. 364-3 'On Counteractions of Monopolistic Activities and Promotion of Competition' of January 10, 2000, establishes an organisational and legal framework to prevent, restrict and suppress monopolistic activity, and provide conditions for the development of fair competition, efficient commodity markets and the protection of consumers' rights.

Institutions, Competencies and Anti-competitive Business Practices

Thus far there is no independent and separate Anti-monopoly authority in the Republic of Belarus. The functions of Anti-monopoly authorities are vested on the special division of the Ministry of Economy – Department of Pricing Policy (DPP).

Main competencies of the DPP are:

- monitoring of competition on various products' markets;
- overseeing behaviour of dominant entities, precluding abuse of market power and dominant market position;
- revealing and voiding prohibited competition-restrictive agreements and arrangements; and
- exercising state control over economic consolidation, creation of associations and unions of legal entities.

DPP is entitled to issue binding orders requiring stopping competition-restrictive practices.

In addition, Belarus is a party to the Agreement on Uniform Principles and Rules of Competition. This Agreement reached on December 09, 2010 between Belarus, Russia and Kazakhstan and envisages closer cooperation of the contracting parties' national competition authorities and grants supra-national competition control competence to the Commission of the Customs Union.

Article 5 of the Competition Law specifies the major part of functions to realise State-governed measures on the provision of conditions for setting, and effective performance of, commodity markets; promotion and development of fair competition; protection of consumers' rights; including prevention, restriction or suppressing of monopolistic activity or taking other measures to ensure implementation of Anti-monopoly Laws; including formation and maintaining the State register of economic entities dominant in commodity markets, shall be performed by the authorised republican body of state control (hereinafter Anti-monopoly body), unless otherwise established by law.

Furthermore, the Law lays down articles related to activities, such as Abuse of Dominant Position in a Commodity Market (the right to establish the fact of dominance is granted exclusively to the Anti-monopoly

authorities, without indicating the market share of a company in the Law); Agreements and Actions of Economic Entities Obstructing Competition; Standard Terms of Transactions, etc.

Article 18 sets down the consequences of the violation of Competition Law and the extent of penalties, it says:

Penalties for the violation of Anti-monopoly Legislation; Appealing Against Decisions of the Anti-monopoly Body; and of the Court on Imposing of Administrative Penalties

Box 1: Discriminatory Rates Struck Down

In 2001, the Ministry of Entrepreneurship and Investments found Belpochta's (Belarusian Post) process of setting rates for services and periodical press publications to be illegal.

The decision concerning Belpochta was supported by the Belarusian Association for Journalists (BAJ), together with a number of newspapers. A statement said Belpochta set very high rates for distributing independent press editions to subscribers, compared with the same rates for State editions.

In 2000, the tariffs for distribution of the State-sponsored newspapers were nearly five times less than those for the non-State press. This policy raises the subscription price, contributing to the deterioration of competitive strength of the non-State press.

A complaint signed by BAJ and others, asked the Ministry to recognise the activity as illegal, noting it violated the Anti-monopoly law, and to put a stop to Belpochta's activities. In the complaint, it also relied upon Article 13 in the Constitution of the Republic of Belarus, which sets forth the equal rights to all to carry out economic and other activities.

Source: <http://www.e-belarus.org/news/200106071.html>, <http://baj.ru/Zajav/z170401e.htm>

1. Refusal to execute, or untimely execution of, lawful decisions (orders) given by the Anti-monopoly Body; by decision of the Court, the guilty economic entities shall incur a penalty to the amount of 10 percent of annual income preceding infringement of the Law;
2. State bodies, economic entities, and their official representatives shall be liable for violation of the present Law and other acts of legislation in compliance with the legislation;
3. Appealing against decisions (orders, opinions) of the Anti-monopoly Body shall be executed in a legal form and through procedure stipulated by legislation; and

4. Full or partial appeal against decisions (orders) of the Anti-monopoly Body, or decision in legal form regarding penalties, shall suspend their execution during appeal until a final decision of the Court is effected.

Relationship with Russia and Other Neighbours

The cooperation in Anti-monopoly policy and the development of competition is especially loose between the Ministry of Business and Investments of the Republic of Belarus and the Ministry of Anti-monopoly Policy and Business Support of the Russian Federation.

Within the Programme for Economic Cooperation of the Republic of Belarus and the Russian Federation, a plan of arrangements was developed, approved and put into effect, aimed at the implementation of a harmonised Anti-monopoly policy in the period 1999-2000. The major directions of activity of the both Anti-monopoly bodies are the following:

- harmonisation of Anti-monopoly Law;
- unification of a normative base in the field of Anti-monopoly policy;
- generation of an integrated databank in the field of anti-monopoly policing and unfair competition;
- control over the establishment and activity of financial-and-industrial groups, with the participation of economic entities in Belarus and Russia; and
- interchange of data on suppression of monopolistic activity and unfair competition in the territory of Belarus and Russia.

According to the agreement between the respective Anti-monopoly bodies of Belarus and Georgia in Vienna, a decision was made to conclude a treaty on cooperation between the Ministry of Business and Investments of the Republic of Belarus, and State Anti-monopoly Service of Georgia.

Under a 10-year Programme of long-term economic cooperation between Ukraine and the Republic of Belarus, an integral part of this includes a section dedicated to cooperation in the field of competition policy. The Ministry of Business and Investments of the Republic of Belarus considered, approved and put into effect 'The Programme of Joint Actions of the Anti-monopoly Committee of Ukraine and the Ministry of Business and Investments of the Republic of Belarus'.

According to this approved programme, data interchange between these two bodies has been established, on legislative, normative and methodological bases in the field of competition policy; seminars and consultations have been held on the issues of Anti-monopoly legislation in the territories of both the countries.

Concluding inter-governmental agreements and tight cooperation, in the field of Anti-monopoly and competition policy, the Ministry of Business and Investments of the

Republic of Belarus has adopted a strategy to broaden and extend its international ties with the Anti-monopoly bodies of other countries; to acquire experience in realising Anti-monopoly policy and the development of competition; as well as to study legislative, normative and methodological base.

Sectoral Regulation

Considering the importance of regulatory structure in the country's economic growth, the Belarusian Government is working earnestly to solve the problems associated with the development of an efficient regulatory framework of the country and expansion of international cooperation.

The regulatory framework of the Republic covers today almost all sectors of the economy; at present it is actively developing and upgrading. The most significant developments are made in the machine-engineering, construction, electrical, chemical and petrochemical, energy conservation, agricultural and other sectors. Priority in these works is given to harmonisation of national requirements with international and regional standards.

Telecommunications Sector

The Law of Belarus 'On Telecommunications' enacted in the year 2003 governs the telecommunications market. On October, 10, 2008, Belarusian Parliamentarians adopted amendments to the telecommunications Law. The new version of the Law clarifies issues of telecommunications' tariff regulation in a way that minimises financial losses of national communications operator and further also defines procedures of establishing networks interconnection and interaction.

The Ministry of Communications and Informatisation of the Republic of Belarus (hereinafter referred to as "Minsvyazi"), the regulatory body responsible for the overall supervision of the telecom sector, is pushing hard to develop the country's telecommunication networks and their integration in the world telecommunication space.

The Republican Unitary Telecommunication Enterprise (RUE), Beltelecom (Republican Association before August 01, 2004), was founded on July 03, 1995. Beltelecom is the national telecommunications operator of the Republic of Belarus. Over the past few years, the enterprise has installed an expanded telecommunication network covering the territory of the country, a fibre optic backbone network providing connectivity to neighbouring countries. Beltelecom is currently developing radically new telecommunication services.

Although, the sector has been reformed in recent years, restructuring has not resulted in the privatisation of the incumbent Beltelecom, which has invested substantially in infrastructure and technologies, assets which the government is keen to control despite having considered auctioning off the enterprise in late 2010.

Box 2: Major Changes to the Competition Legislation in 2004

- Empowerment of the Office to directly apply Articles 101 and 102 of the TFEU (81 and 82 of the EC Treaty), and the introduction of procedural rules governing their application;
- Abolishment of the notification system, that allowed undertakings to apply for individual exemption from prohibition of agreements; and the introduction of direct applicability of the relevant provisions, for exemptions from the prohibition of agreements, provided for by Article 3(4) of the Act;
- Increase of the market share thresholds for the so called *de minimis* rule to 10 percent for horizontal agreements, and 15 percent for vertical agreements (with the exception of agreements dividing markets, consumers and resources, and setting prices for the final consumers);
- Abolishment of a so-called negative clearance procedure, for agreements and abuses of dominance;
- Introduction of the possibility for the Office to issue a decision that would make binding any commitments offered by the parties, in order to remedy any alleged anti-competitive agreement or abuse of dominance, without the need to decide on the existence of the infringement itself;
- More precise definition of the abuse of dominant position in relation to the essential amenities;
- New merger notification thresholds ensuring an adequate local nexus of notified mergers to the Czech jurisdiction;
- Introduction of a new substantive test for the assessment of concentrations of undertakings, under which the concentration may not be approved if it significantly impedes effective competition (called the 'SLC test'), especially as a result of the creation or strengthening of a dominant position in the market; and
- Introduction of time limits for the submission of proposed remedies by merging parties and provisions on the extension of deadlines, for issuing a decision by the Office, in case remedies are offered.

Energy Sector³

Belarus is dependent on energy imports in order to satisfy its domestic energy needs. Just as during Soviet times, Belarus today is heavily reliant on Russian oil and natural gas. As such, it has benefited by receiving cheaper energy supplies from its Eastern neighbour, but making Belarus even more dependent on Russia.

The specialised law for the energy sector, the "Law of the Republic of Belarus on Power Saving" was adopted in 1998. It was last amended in 2006 which sets out the obligations on the Government and other state bodies (including the State Committee for Standardisation) relating to the promotion of energy efficiency as a matter of national priority.

Further, the Law of the Republic of Belarus dated December 27, 2010 No. 204-Z, "On renewable energy sources," which has recently been adopted and come into effect creates a legal base for renewable energy sources development.

Three national "Republic programmes for energy savings" were adopted for the periods 1996-2000, 2001-2005 and 2006-2010. These programmes were successfully implemented. In December 2010 it adopted a new National Programme for Energy savings for 2011-2015 (approved by the Council of Ministers of the Republic of Belarus of December 24, 2010¹ 1882).

The main goal of these programmes consists in reduction of energy intensity and improvement of energy efficiency in the supply and demand sides.

Consumer Protection

On November 19, 1993, the Supreme Council of the Republic of Belarus enacted the Law of the Republic of Belarus 'On Protection of Consumers' Rights,' which came into force on January 01, 1994. According to this Law, every consumer has the following rights:

- Protection of his interests by the State;
- Appropriate quality of goods;
- Safety of goods;
- Full and truthful information on goods;
- Full compensation for damages caused by goods of poor quality;
- Resort to Courts, and other authorised bodies for the protection of the rights and interests protected by the Law; and
- Establish voluntary consumers' associations.

The State Policy in the field of consumers' rights protection in Belarus was approved by the Resolution of the Cabinet of Ministers No 430 of July 01, 1996. The major principles of this Resolution included the establishment and constant improvement of a legal and normative basis; the creation of an organisational structure for consumers' rights protection; permanent improvement of a mechanism for interrelations between the governmental bodies in the field of consumers' rights protection; and the creation of necessary conditions for the development of voluntary movements in consumers' rights protection.

The Ministry of Business and Investments acts as a co-ordinating body. The Ministry has the responsibility to organise consumers' rights protection. Locally, the territorial committees (regional and the committee for the city of Minsk) must organise this work. Being a central

body, the Ministry coordinates the interaction between both its territorial bodies and between all governmental bodies. The activities of the Council are carried out on the basis of its Statute approved by the Cabinet of Ministers of the Republic of Belarus.

The Ministry has taken up certain measures aimed at the implementation of the provisions. Thus, the Council of Ministers of the Republic of Belarus passed the Enactment No 1745 of 13 November 1998: 'On the Measures on Defence of Consumers' Rights', which was elaborated upon by the Ministry of Business and Investments. This Law created the consumers' protection divisions (inspectors) into the structure of Regional Executive Committees, Minsk city Executive Committee, as well as in district authorities and local executive committees. According to this Law, regulations for such divisions (inspectors) were developed and approved by Order No.126 of December 30, 1998.

The Resolution of the Council of Ministers of the Republic of Belarus No. 1377 of September 03, 1999 covers wider rights to the Ministry to supervise the legislation on the Protection of Consumers' Rights. In May 2000, Resolution No. 674 was ratified on the basic directions in cooperation with other CIS states on the Protection of Consumers' Rights. It was signed in Moscow, on January 25, 2000. At this time, a draft Law of the Republic of Belarus 'On Amendments of and Additions to the Law of the Republic of Belarus On Protection of Consumers' Rights', was adopted by the House of Representatives of the National Assembly of Belarus.

Concluding Observations and Future Scenario

Competition regulations have not yet reached a high degree of development in Belarus. Though the Competition Law

came into existence in 1992 and a revised one in 2000, very little or nothing has been applied to date. It is still just on the statute books of the Republic of Belarus.

DPP is to ensure observance of the Anti-monopoly regulations in Belarus. To achieve this DPP periodically conducts monitoring of competition at various product markets, reveals dominant entities and competition-restrictive practices and implements control over transactions that may result in monopolistic concentration.

In the recent years DPP succeeded in limiting market powers of the dominant entities through various instruments (mainly control over transactions in respect of such entities and their price-formation policies), although merger control regime remains underdeveloped.

In spite of all the fanfare of entering into cooperation agreements with neighbouring countries on enhancing competition in the region, the future of Competition Law is uncertain. There appears to be little political will to implement the Law and it is quite unclear what will happen in the future. Given the arbitrary nature of the current Government in power, which has dictatorial tendencies, the climate for improved competition is somewhat bleak.

Thus, the most awaited development of the coming years is the creation of a separate and independent competition authority (as noted above DPP is now a part of the Ministry of Economy) with wider competence and powers as well as a boost in inter-state cooperation with other CIS countries' competition authorities, specifically, within the framework of the United Economic Area and harmonisation of anti-monopoly regulations.

Endnotes

- 1 <http://cia.gov/cia/publications/factbook/geos/bo.html>
- 2 <http://www.belart.nm.ru/expo/eng/310e01 and 330e01.htm>
- 3 <http://www.inogate.org/html/resource/belarus.pdf>