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A WEEKLY INDEPENDENT, NONPARTISAN, ANALYTICAL NEWSPAPER COVERING THE POLITICS  
AND ECONOMICS OF MONGOLIA-IN ENGLISH, JAPANESE, RUSSIAN AND MONGOLIAN

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**JARGALSAIKHAN** DambadarjaaFor weekly articles,  
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# COUNTERFEIT GASOLINE?

Mongolia had squandered one fifth of its export profit on petroleum products in 2017, as usual. 94.5 percent of the petroleum products have been imported from Russia, 3.4 percent from South Korea, 1.8 percent from China and 0.3 percent from other countries. Out of the 1.5 million tonnes of petroleum products used; 56 percent is diesel, 24 percent is 90+ octane gas, 4 percent is 90- octane gas, 2 percent is aviation fuel and the remaining is oil, mazut, and bitumen.

In the past 10 years since 2007, Mongolia's petroleum product consumption has increased 2.3 times; where diesel had increased 2.6 times, aviation fuel 1.5 times, 90+ octane gas 3.3 times and the rest 10 times, yet 90- octane gas was reduced by 60 percent. Diesel consumption has skyrocketed due to the mining industry, whereas the change in car choice has resulted in higher octane gas.

Because we purchase petroleum products at the global market price, domestic retail prices

fluctuate accordingly. In order to stabilize petrol retail prices, the government has been adjusting fuel taxes since 2018. When the market price is high, taxes go down, even to 0 percent, and goes back up when the price goes down.

Since 1994, petroleum and fuel products have been subject to VAT. The original goal of the tax was to allocate income petroleum products to the state budget, not to regulate prices. The tax money was theoretically supposed to be spent on social benefits and improving the quality of public services through the state budget.

If we look at the attempt to regulate fuel prices by VAT over the past 10 years, not only did it fail to keep the price constant, but also it encouraged the government to become over-involved in the economy and caused a loss in tax revenue, encapsulated by the proverb penny-wise and pound-foolish.

## WHAT DOES FAKE PETROL MEAN?

Differentiated tariffs are imposed for imported petroleum and diesel per tonne, based on the octane amount. As the import price fluctuated, fuel taxes have followed up over the past decade, and the Government has approved many new resolutions on the fuel tax percentage.

In addition, the previous Government attempted to

carry out the so called "price stabilization program" which ended up as "mission impossible", and had lent money to fuel importers pegged in foreign currency. As a result of the program, an abnormal standard was set, importers kept the prices as they were, even when the market prices were low, but they then raised the price if the market price went up.



- ▶ Another “merit” was to encourage businesses that import raw materials such as Naphtha, Alkylate, MTBE that are VAT exempt and produce end-products (petrol and diesel) to sell at a cheaper price. Like any business in a free market, all importers are sought the same way for profit and made way for a new competition.

○ *Almost all importers are selling petrol made in Mongolia through their own gas stations. Certain large companies are doing research on building production facilities, finding a reliable supplier and producing petroleum.*

At the same time, the media is raging with news, with headlines such as “Petrol made in Mongolia that is so counterfeit it is foul, quickly burning, evaporating, and harmful for the engine is being sold”. Claims circulate such

as fake petrol is being sold at 400-500 gas stations and even large mining corporations, such as Oyu tolgoi, Tavan tolgoi, MAK, Usukh Zoos and Khishig-Arvin are purchasing from them. Are these companies really using fake fuel and gas? Yet, they test their expensive machinery in the laboratories. So far, none of them have reported any issues due to fake petrol.

A senior investigator at the General Agency for Specialized Investigation, T. Munkhbold, has investigated these fuel and gas allegations and never found anything, based on laboratory results. “In terms of the term, fake petrol is incorrect”, he stated in an interview.

Nevertheless, the Ministry of Mining and Heavy Industry has requested the parliament to only include petrol ingredients to the fuel tax law.

## HOW TO MANAGE PETROL PRICES?

Petrol price depends on market price, as well as MNT exchange rates. Therefore, it is suitable to set the fuel tax percentage in accordance with the changes in exchange rates. For example, when 1 USD equals 2500 MNT, fuel tax can be set to 250 thousand MNT per tonne, and if 1 USD equals 3000 MNT, a 20 percent increase, fuel tax can go down by 20 percent to 200 thousand MNT per tonne. It would make planning easier and more transparent for both sides. Prices will go down if MNT rates go up.

○ *Alternatively, we can set a specific tariff. Because if the price is set as the market price, it is beneficial to customers in the long run as it is predictable and decreases the expectation of price inflation. Only the real market price will give accurate information and when customers know what the price consists of, they can plan their actions in the short term and in the long term. It can be clearly seen that corruption manifests itself and the price plummets when the government has set prices over the course of the last 30 years.*

If not for every product, we should at least let the market determine prices for petroleum products, in order to create competition between petrol importing companies

and encourage them to save costs and keep petrol prices constant.

And if there is any conspiracy, there should be an administrative order that such companies be fined with monthly or yearly income, or to suspend their license.

If VAT is imposed on a regular basis, and the income of VAT is to be spent on local road construction and maintenance, then VAT serves its purpose.

2018.10.24 ■



**ARTICLE**

**Chris Melville**

Founding Partner at Melville Erdenedalai  
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# STEPPE ON THE GAS?



Recent announcements and developments regarding construction of a gas pipeline between Russia and China, transiting Mongolia, have been gathering steam and if the project moves forward would be a major boon for the Mongolian economy with a number of potential side benefits. These developments have built on the concept of an “economic corridor” between China and Russia routing through Mongolia.

In late August, according to media reports, a cooperation agreement was signed between various private and state-owned players relating to the potential construction of a pipeline and this has coincided with government level discussions at both the Shanghai Cooperation Organization summit this summer and again at the Eastern Economic Forum in Vladivostok in September, with support from Russian President Putin and Mongolian President Battulga.

There has been considerable discussion about the routes for gas pipelines following the eye-watering US\$ 400 billion agreements for supply of gas signed by Gazprom and CNPC in May 2014, including a potential route through the Altai region. At this stage, it seems that there has not been any publicly announced consensus on the best route, and Mongolia has been pushing for a transit route for a number of years, which indeed would be more direct and route gas to China’s eastern regions.

While this project remains at a very early stage, and subject to detailed feasibility studies (as mentioned by the Russian President himself) it does represent a major opportunity for Mongolia in terms of energy development. What the project would look like is an entirely different question.



- ▶ Mongolia would need to participate in a long-term gas supply contract between Russia and China, presumably looking to take a margin on the pricing of the contract for transit costs. Construction would likely be primarily undertaken by the Chinese side. What Mongolia must ensure is that it has rights of offtake to a domestic delivery point to develop and stimulate a domestic natural gas sector. This would involve the construction of domestic pipelines and transit infrastructure, and adequate storage facilities, each large project in its own right. Given the lack of expertise of Mongolia in the natural gas sector it is likely that this type of infrastructure would require foreign construction and foreign operation and maintenance in the initial stages.

Construction of domestic gas supply infrastructure could be a challenge given the levels of financing and expertise that it would require. Another interesting question is the creation of a robust gas regulatory regime and the entity that would be responsible for overall supervision, implementation and domestic transit and storage. Effectively, Mongolia would need to develop this framework from scratch, but this may be an advantage enabling it to do so based on experiences in similar situations internationally.

Another key benefit will be for projects and companies currently looking to develop natural gas from coal sources. Coal sourced energy continues to be roundly attacked from all sides, not least because of the recent Intergovernmental Panel on Climate Change report published on 6 October demanding the complete phase-out of all coal-based energy generation by 2050 (between 0 and 2 per cent). In the international context of this huge pressure on coal, regardless of one's views on climate change, development of coal bed methane as an alternative source of coal-based energy is critical from a national credibility perspective.

In short, it is difficult to overestimate the potential impact that a transit pipeline might have on the Mongolian economy and the broad range of knock-on benefits for Ulaanbaatar in particular. This is an exciting potential development, but given the inherent risks for Gazprom in a transit pipeline, would need to be carefully managed and negotiated if it moves forward.

October 2018 ■

*Crucially, this development would enable a strong long-term solution to the air quality and pollution issues that seriously impact on Ulaanbaatar and its citizens over the winter months. Not only would this improve quality of life for hundreds of thousands of Mongolians, but it would also generate important political support. Construction of this infrastructure would create a significant number of jobs and improve the economy from numerous angles.*



## ARTICLE

Dr. Uyanga Delger, attorney-at-law

# What's in a Name?

Since liberalisation in the 1990s, unfair business practices have become a complicated, and at times confusing, issue for both entrepreneurs and consumers in Mongolia. Specifically, for this article, we will look at how businesses have been able to mislead the public thanks to inconsistently enforced competition laws.

## Notorious cases

One well-known example of a deceptive commercial practice is the newspaper Zasgiin Gazriin Medee ("Government News"). The name suggests a state-run media outlet. But a joint [report](#) by the Press institute of Mongolia and Reporters Without Borders points out that Zasgiin Gazriin Medee was started in 2014 and owned by the decidedly private Trade and Development Bank (TDB) ever since.

Another example involves Mongoliin Undesnii Ikh Surguul, a large private university, and Mongol Ulsiin Ikh Surguul, the country's oldest public university, established in 1942. If these names look similar, that's no accident. Even the Mongolian acronyms of both universities are nearly identical (МУИС and МУИС). It's also confusing in English, with the private school translating itself as "Mongolian National University" and the public school as the "National University of Mongolia". It has been claimed that the private Mongolian National University has leveraged its similar-sounding name in the countryside in an effort to dupe less-informed secondary school applicants of its pedigree.

## There are laws but...

The Mongolian Trademark Law provides for registration-based protection. The Law on

Competition may, however, be applied in the case of the newspaper. Article 12.1.10 of the Law on Competition could serve here as basis for a legal action.

In the case of the two universities, the [Competition Authority](#) of Mongolia prohibited in 2013 the use of the name "The National University of Mongolia" in English by the private university. The Competition Authority stated that the name of the private university in Mongolian language was registered by State Registration Authority in breach of the relevant provisions of the Law on State Registration.

Despite the actions of the Competition Authority in October 2013, the private university still maintains its name in Mongolian language to this day. Moreover, the Intellectual Property Authority registered a logo of the private university as a trademark (TM Reg. No. 40-0012492) in December 2013, only two months after the Competition Authority's cease and desist order.

*Today, the Government of Mongolia and the National University of Mongolia could both still initiate legal action and public awareness campaigns against the newspaper and private university respectively based on the Law on Competition.*

Additionally, some provisions of the Civil Code may be helpful, as was the case in France and Germany in the early 19th century, during which unfair and misleading commercial practices were uncharted territory for both lawyers and entrepreneurs.

## Ownership

The awkward question here is why the Government of Mongolia is not taking actions against the Zasgiin ►►

► Gazriin Medee. TDB is not the government, and it shouldn't seem to speak on its behalf. Yet the Reporters without Borders report contends that TDB "is owned by highly influential people with a lot of political affiliations". Over 65% of TDB's shares are owned by Globull Investment and Development SCA, a company registered in Luxembourg. In Mongolia, TDB owns [Bloomberg TV](#) and Forbes Mongolia Magazine, and the company was involved in the ["mysterious" sale of Erdenet mine](#).

Similarly, questions arise in the case of the university names: Who owns the private university? And how is their misleading name allowed to persist?

### Procedure

The Mongolian law enforcement system is complicated and costly. The law enforcement powers are shared between many government agencies. The university name dispute shows that at least three authorities were involved, and each authority issued different, even contradictory decisions. In these cases, the courts' powers are limited, and complicated administrative complaint proceedings hinder the access to justice. For example, a trademark infringement case needs to be dealt with by administrative and civil courts separately, provided they reached the stage of a court dispute at all. At

the end of the court proceeding, there is an additional complication with the enforcement of the court decisions by the [General Executive Agency](#) for Court Decisions, a government agency.

### Light at the end of the tunnel?

Both cases are typical examples of the challenges of law enforcement in Mongolia. Mysterious ownership structures allow a private bank to operate a newspaper under the name of the Mongolian Government. But in cases of trademark and unfair competition infringements, a less complicated law enforcement is possible if, for example, civil courts dealt with these cases based on Civil Code and Civil Procedural Code without any interference from government agencies.

Unfortunately, the new intellectual property law [reform proposals](#) suggest that our "hidden owners" do not want a less-complicated and efficient system. And until they do, unsuspecting Mongolians will continue to get their "Government News" from the "National University of Mongolia".

October 2018 ■





### GOVERNMENT INVOLVEMENT IN BUSINESS

Reports have emerged of public figures acquiring loans from the Small and Medium Enterprise (SME) fund for their own companies. Although this has come to light recently, these practices have a long history in Mongolia. The Minister of Transport and Development, Mr. Sodbaatar, received 1.2 billion tugriks for his wife's company, while the Minister of Food, Agriculture and Light Industry, Mr. Batzorig was granted 1.4 billion tugriks in an analogous manner. These self-serving grants are not only distributed to Ministers as Member of Parliament, Mr. Bolorchuluun received 950 million tugriks for his company.

The SME fund was created in 1993 the proceeds from the US Food Assistance program was directed towards an SME fund. Like most countries, small and medium enterprises are the backbone of the Mongolian economy. Since then, the government has set out a funds for SME loans in every budget with last year's appropriation reaching 65 billion tugriks (26 million USD) in 2018. While the concept behind SME loans are noble, the practice of politicians receiving significant amounts of these funds for their own companies is questionable.

The program involves 5-year loans with 3% interest rates as opposed to 20% - 24% a year from commercial banks. SME funds distribute up to 2 billion tugriks to businesses exclusively in tugriks with 12-month payment periods. While it is unacceptable that politicians use their positions to acquire loans on these favorable terms the practice has always existed. As is the norm the in Mongolian media, there are only sporadic fleeting remarks on the issue. With the majority of the SME funds being distributed to politicians, the ability of legitimate small and medium enterprises to receive those loans is severely hindered.

Given that both the People's Party and the

Democratic party misuse and misappropriate our land, property and funds, a healthy dose of skepticism towards whether the loans will be paid back is in order. Issues such as these are only brought up only when it serves the interest of one of the parties. For example, we are still unaware of the amount of the 1.5 billion USD Chinggis Khaan bond that were directed towards the interest of the politicians.

It would be unreasonable given the current state of the affairs, to expect politicians to accept responsibility for their wrongdoing. Moreover, once the SME funds are distributed we will most likely have to wait for their repayments as it is difficult to revoke those loans. An increased public scrutiny will allow us to determine whether the loans are being repaid in a timely manner.

○ *The judiciary has remained largely silent on the issue due to the absence of court cases brought forward on the misappropriation of the SME funds. It would take someone bringing a case to court for the judiciary to get involved and render a ruling.*

One question that arises is the extent to which the government is involved in business. Misappropriation of funds is always present wherever there is state involvement in business. An awareness raising campaign designed to pressure the government has failed to deliver any concrete results. This leads to an illusion of free market in Mongolia while the state wields a significant influence over some of the largest companies. Most of these state-owned companies operate at a loss which is paid from the state budget, diverting funds from areas such as social services.

Mongolia is failing to implement the main principles of a free market. One of those principles is that the state's role in the economy should be limited to



protecting our property and rights. The Mongolian government is however taking on multiple operations that can be handled by the private sector. Power plants, Mongolian airlines and Mongolian railroads should all be privatized and made available in the stock exchange with the public owning 60% of those companies. A consequence of state involvement in business is that the private sector becomes stagnant as they are unable to compete with companies whose losses are simply replenished by the state.

The loss of job opportunities caused by this phenomenon leads Mongolians to pursue gainful employment abroad. All the while, the government plunges into more and more foreign debt, giving the illusion of paying off their debts by borrowing more money on less favorable terms. This in turn causes

the devaluation of the tugrik among other negative factors.

- *We should not put aside the possibility that those billion tugrik loans to ministers were a repayment of previous donations to the party. This leads to an uncompetitive business environment with the Mongolian economy gradually becoming dormant. There is no doubt that the multitude of other funds that exist are also being misappropriated. Ideally, all those funds should have annual independent audits the findings of which should be accessible to the public through their website. However, this is but a distant pipedream in the current Mongolian environment.*

## INTERFERENCE IN CIVIC SOCIETY'S VOICE

The draft law on NGO's was submitted to the parliament by the Ministries of Justice and Internal Affairs. It alleges that NGO's have lost sight of their purpose through involvement in business, politics and religion. This is the fourth or fifth attempt to amend the 1994 legislation regarding NGO's. Previous attempts have been unsuccessful as legislators possess the largest number of non-political organizations. They pursue their own agendas through those NGO's and the media.

- *There are about 20,000 NGO's in Mongolia about half of which are inactive. 8,000 NGO's are proactive but not all of them disclose their financial statements. Also, there are a number of religious organizations that are classified as NGO's. The drafters of the document allege that there are NGO's that operate in Mongolia which promote violence, extremism and terrorism. It is imprudent however, to severely hinder the operations of all NGO's in the name of combating the few that promote intolerance.*

Given that the legislation advocates government financing of truly apolitical NGO's there is a potential for corruption and other adverse effects if we mismanage the situation. The Democratic Party has a Youth Union, Women's Union and a Student Union and the People's party also has similar organizations. These unions operate as political parties but are classified as NGO's. The draft legislation suggests stripping the NGO classification of such organizations.

An understanding of the general concept of NGO's and their operations is vital in Mongolia right now. In Germany for example, NGO's can only take the form of an association or a foundation. The operations of an association are driven by the interests of their members. The sources of their funding should be readily accessible, and those funds can only be used for non-political, non-profit purposes.

In Mongolia, there are numerous NGO's ran by political parties and politicians. A clear example of this would be Sports Associations. Every form of sport has two competing associations financed by the political parties or influential politicians. We should tread

carefully however, as the draft legislation has the potential to affect thousands of jobs. Depoliticizing Mongolian NGO's should therefore be a process not a single act.

- *The status of an NGO offers several privileges and responsibilities such as protection under the law, the requirement to declare their financial details and the right to carry out transactions through their bank account. If the organizations affiliated with the parties lose their status of NGO, they would no longer be considered a legal entity. It is a measure*

- *to make organizations more transparent and ensure that they are serving society in a better way.*

Religious 'NGO's' which we have touched on before have the potential to gradually cement their influence on policymaking. This would be highly unwelcome as Mongolia is above all, a secular society. We should therefore learn how NGO's are set up and operate in mature democracies and attempt to follow suit. There is however, little hope that the legislation will pass as it will effectively render the politicians unemployed following the end of their political careers.

## WHO WILL FAVOR AMENDMENTS TO THE GENERAL ADMINISTRATIVE LAW

The General Administration Law was adopted in 2000 and one of its byproducts was the Administration court. This court provided an outlet for individuals to file lawsuits against the government and its agencies at every level. Wrongful termination lawsuits comprised approximately 90% of the court's caseload. This is partly due to the very high turnaround of civil servants in Mongolia. It is not unheard of for entire ministries to change their composition following a change in government.

In some cases, the Administration court awarded the wrongful termination suit and the plaintiff returns to his previous position with backpay since his termination. Billions of tugriks are being diverted from the budget as a result of these decisions. This has an adverse impact on not only the budget but also the ordinary people who pay taxes. There are also occasions where the court ruled against the interests of political parties and figures.

This has led to an attempt to overturn the General Administrative Law and its court. Mongolian jurisprudence is a combination of common and civic law with it being loosely based on the Germanic system. An administrative court exists in countries such as Germany and Austria where those procedures take place.

- *The draft legislation would effectively transfer the jurisdiction of the Administrative court to the Constitutional Court. This would have a devastating effect on the process as the President, Parliament and Court System each appoint three of the nine judges of the Constitutional Court. Moreover, the leading figures in the Mongolian judiciary are appointed by the President essentially guaranteeing him the prerogative to appoint six of the nine justices.*

Even if the court sides with the plaintiff, their only course of action is to determine that a given government action violated the constitution of Mongolia and to dissolve the government, adding more instability to an already hectic system. Since the 1990 revolution, we have witnessed 19 shifts in power living the average lifetime of a government at 18-months. This leads to an absence of long-term, stable policies as the incumbent government simply nullifies the policies of the previous one. It is therefore encouraging to see that the prospects of this legislation passing is limited.

*This review has been edited here for space and clarity. You can watch the full 30-minute review on the Defacto website [\[HERE\]](#).*



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