

DECREE OF THE MAJLIS OLI (PARLIAMENT) OF THE REPUBLIC OF TAJIKISTAN

on Putting into Effect the Law of the Republic of Tajikistan on Natural Monopolies

The Majlis Oli (Parliament) of the Republic of Tajikistan decides:

1. The Law of the Republic of Tajikistan on Natural Monopolies shall be put into effect from the date of its official publication.
2. The Government of the Republic of Tajikistan should bring its Decisions into compliance with this Law.

Chairman of the Majlis Oli
of the Republic of Tajikistan

S. Rajabov

Dushanbe,

13 December 1997, No. 526

LAW OF THE REPUBLIC OF TAJIKISTAN

ON NATURAL MONOPOLIES

**(as amended and supplemented by the Law of the Republic of Tajikistan
of 12 May 2001, No. 5)**

Article 1. Objectives of this Law

This Law shall define the legal framework of the state policy of the Republic of Tajikistan in respect of the natural monopolies in the Republic of Tajikistan and it shall be aimed at maintaining the balance of the interests of the consumers and of the subjects of the natural monopolies that ensures the availability and accessibility to the consumers of the

goods (works, services), which are realized by these natural monopolies, as well as the efficient operation of the subjects of the natural monopolies.

The following definitions of the basic notions shall be used in this Law:

- Natural monopoly means a state of the market of the goods (works, services), in which meeting the demand at this market tends to be more efficient in the absence of competition by virtue of technological peculiarities of the production process, in view of substantial reduction in unit production costs with the increased volume of production;
- Subject of a natural monopoly means an economic entity (a legal person), engaged in production (distribution) of the goods (works, services) under the conditions of a natural monopoly;

Article 2. Scope of application of this Law

This Law shall regulate the relations, which arise at the markets of the goods (works, services) of the Republic of Tajikistan, and in which the subjects of the natural monopolies, consumers and the bodies of the authority and administration are involved.

The regulation of the activities of the subjects of the natural monopolies, provided for by this Law, may not be applied to the sphere of the activities, which are not related to the natural monopolies, with the exception of the cases, established by the laws of the Republic of Tajikistan.

Article 3. Sphere of the activities of the subjects of the natural monopolies

This Law shall regulate the activities of the subjects of natural monopolies in the following spheres:

- Services in the field of production and transmission of electric and heat power;
- Services in the field of purchasing, transportation and supply of natural gas by means of pipelines;
- Transportation by rail and by air;
- Services of the transportation terminals and airports;
- Telecommunications and mail services, which are open to general use;
- Manufacturing of the defense-purpose production.

Article 4. Body, which regulates the activities of the subjects of the natural monopolies

The state body of the Republic, duly authorized by the Government of the Republic of Tajikistan (hereinafter referred to as “body in charge of the regulation of the natural monopolies”) shall carry out the regulation and control of the activities of the subjects of natural monopolies.

Article 5. Methods of the regulation of the activities of the subjects of the natural monopolies

The body in charge of the regulation of the natural monopolies may use the following methods of the regulation of the activities of the subjects of the natural monopolies:

- Price control, exercised by means of fixing the prices, tariffs or their maximum rates;
- Identifying the consumers, which are subject to compulsory service, and establishing a minimum level of their supply in case of impossibility to meet in full their needs of the goods (works, services), which are produced (realized) by a subject of a natural monopoly, with due regard to the protection of the rights and legitimate interests of the citizens;

The body in charge of the regulation of the natural monopolies shall make a decision to apply the methods of the regulation, provided for by this Law, to a specific subject of a natural monopoly on the basis of the analysis of its activities, taking into account their stimulant role in improving the quality of the goods (works, services), which are produced (realized), and in meeting the demand for them; in this case the soundness of the costs shall be assessed, and the following inputs shall be taken into account:

- Costs of production (realization) of the goods (works, services), including the wages, cost of the raw materials and commodities, overhead costs;
- Taxes and other charges;
- Cost of the capital goods, needs of investments, which are required for their reproduction, and depreciation charges;
- Estimated profits from eventual realization of goods at different prices and tariffs;
- Remoteness of the different groups of the consumers from the place of the production of goods;
- Compliance of the quality of the goods (works, services), which are produced (realized), with requirements of the consumers;
- State subsidies and other measures of state support.

While adopting a decision to apply the methods of the regulation to a specific subject of a natural monopoly, the body in charge of the regulation of the natural monopolies should examine the information, provided by the persons concerned, about the activities of a given subject of a natural monopoly.

Article 6. State control in the spheres of the activities of the natural monopolies

With a view of implementing an efficient state policy in the spheres of the activities of the natural monopolies, the body in charge of the regulation of the natural monopolies shall exercise control over the actions, which are taken with the participation or in respect of the natural monopolies and which may result in infringement of the interests of the consumers of the goods (works, services), with respect to which the regulation procedures in accordance with this Law are applied, or in restraint of economically sound transition from the state of a natural monopoly to the state of a competitive market.

The body in charge of the regulation of the natural monopolies shall exercise control over:

- Any transactions, as a result of which a subject of a natural monopoly acquires the right of ownership of capital goods, which are not designed for the production (realization) of the goods (works, services), in respect of which the regulation procedures in accordance with this Law are applied;
- Investments, made by a subject of a natural monopoly into the production (realization) of goods (works, services) in respect of which the regulation procedures in accordance with this Law are not applied;
- Sales, leasing or other transactions, as a result of which an economic entity acquires the right of possession and use of the part of the capital goods of a subject of a natural monopoly, which are designed for the production (realization) of the goods (works, services), in respect of which the regulation procedures in accordance with this Law are applied.

In order to carry out the actions, indicated in the second part of this Law, a subject of a natural monopoly should submit to the body in charge of the regulation of the natural monopolies an application for an authorization to carry out such actions, and provide information, required for decision making.

The body in charge of the regulation of the natural monopolies shall be entitled to refuse to comply with an application, provided that the actions, which are indicated in the application, may lead to the negative consequences, specified in the first part of this Article, as well as in the cases, if an applicant failed to submit all necessary documents, or if in the process of their examination it was found out that the information, which these documents contained and which was of substantial importance for decision making, was not reliable.

The body in charge of the regulation of the natural monopolies shall inform, within a period of 30 days from the date of receipt of an application, an applicant in writing about its decision – either consent or refusal. A refusal should be a well-motivated judgement.

In case, when additional information is required for decision making, the body in charge of the regulation of the natural monopolies shall be entitled to require such information from an applicant and extend the period of the examination of the application for 30 days on condition that such a request, together with the notification of the extension of the period of the examination of the application, was sent to the applicant not later than 15 days from the date of its receipt.

A person or a group of persons, who, as a result of the acquisition of shares in the authorized capital of a subject of a natural monopoly or as a result of other transactions, including contracts of agency, trusteeship agreements and contracts of pledge, have acquired more than 10 per cent of the total number of the voting shares, which constitute the authorized capital of a subject of a natural monopoly, should notify the body in charge of the regulation of the natural monopolies, within a period of three days from the date of the acquisition, of these developments, as well as of all other cases of changing the number of the voting shares, which belong to them. A subject of a natural monopoly, which has acquired in the authorized capital of another economic entity more than 10 per cent of the total number of the voting shares, shall bear the same responsibility.

With a view of exercising control over the observance of the requirements, provided for by the seventh part of this Article, the body in charge of the regulation of the natural monopolies shall be entitled to require from the economic entities and partnerships information about the composition of their participants, disposing of more than 10 per cent of the total number of the voting shares.

Article 7. Functions and powers of the body in charge of the regulation of the natural monopolies

The body in charge of the regulation of the natural monopolies shall perform the following functions:

- Keep the register of the subjects of the natural monopolies, in respect of which the state regulation and control are exercised;
- Define the methods of the regulation, provided for by this Law, in respect of a specific subject of a natural monopoly;
- Exercise control, within its terms of reference, over the observance of the requirements of this Law.

The body in charge of the regulation of the natural monopolies, within its terms of reference, shall:

- Take the decisions with regard to the imposition of a fine upon a subject of a natural monopoly;

- Take the decisions, which are compulsory for the subjects of natural monopolies, on the introduction, changing or termination of the regulation and on the application of the regulation methods, provided for by this Law, including the decisions on fixing the prices and tariffs;
- Send to the subjects of the natural monopolies the instructions, which are subject to compulsory execution:
 - a) on terminating violations of this Law, including the instructions on eliminating their after-effects;
 - b) on concluding agreements with the consumers, which are subject to compulsory service;
 - c) on introducing changes into the agreements concluded;
 - d) on the transfer to the state budget of the Republic of the total amount of the profit (revenue) made, as a result of the actions, which violate this Law, as well as of the penalties for the use of this profit in its turnover from the moment of the profit emerging to the moment of its transfer to the state budget of the Republic.
- Send to the local bodies of the executive authority the instructions that are subject to compulsory execution, on the abrogation and or changing of the instruments, which were adopted by them and which are not in compliance with this Law;
- Exercise other powers, established by the legislation.

Article 8. Right of access to information about the activities of the subjects of the natural monopolies

In pursuance of the functions, placed upon the body in charge of the regulation of the natural monopolies, its officials shall have the right of unimpeded access to the information about the activities of the subjects of the natural monopolies, which is at the disposal of the local bodies of the executive authority, as well as of the subjects of the natural monopolies.

The subjects of the natural monopolies and the local bodies of the executive authority should provide, at the request of the body in charge of the regulation of the natural monopolies, reliable documents, explanations in writing and other information, which is required for the execution by the bodies in charge of the regulation of the natural monopolies of the functions, provided for by this Law.

The data, which constitute a commercial secret and which were obtained by the bodies in charge of the regulation of the natural monopolies by virtue of the provisions of this Article, shall not be subject to disclosure.

Article 9. Informing by the body in charge of the regulation of the natural monopolies about the decisions taken by them

The body in charge of the regulation of the natural monopolies should inform, within the period of 30 days, through the mass media channels, about:

- the decisions taken by it with regard to introducing, changing or terminating the regulation of the activities of the natural monopolies;
- the inclusion of the natural monopolies into the register or the exclusion of them from this register;
- the methods used of the regulation of the activities of the natural monopolies;
- the specific indicators and requirements, which are applied to the subjects of the natural monopolies on the part of the body in charge of the regulation of the natural monopolies;
- all the cases of bringing the persons to responsibility for violation of the provisions of this Law.

Article 10. Duties of the subjects of the natural monopolies

The subjects of the natural monopolies shall not have the right of refusal to conclude with the individual consumers contracts of production (realization) of the goods (works, services), in respect of which the regulation procedures are applied in accordance with this Law, provided that a subject of a natural monopoly is capable of producing (realizing) such goods (works, services).

The subjects of the natural monopolies should submit to the body in charge of the regulation of the natural monopolies their current progress reports and the draft capital investment plans in accordance with the procedure and within periods, established by the body in charge of the regulation of the natural monopolies.

Article 11. Responsibility for the violation of this Law

The subjects of the natural monopolies, their managers, the officials of the local bodies of the executive authority and the officials of the body in charge of the regulation of the natural monopolies shall bear responsibility for the violation of this Law in accordance with the legislation of the Republic of Tajikistan.

Article 12. Grounds for imposing a fine upon the subjects of the natural monopolies for the violation of this Law (as published in the text of the Law of the Republic of Tajikistan of 12 May 2001, No. 5)

The subjects of the natural monopolies shall bear responsibility in the form of a fine for the following violations:

- overcharging prices (tariffs), established by the body in charge of the regulation of the natural monopolies – in the amount of 10,000 minimum wages;
- non-submission to the body in charge of the regulation of the natural monopolies of the notice, provided for by the seventh part of the Article 6 of this Law – in the amount of 600 minimum wages;
- non-execution of a decision (instructions), made by the body in charge of the regulation of the natural monopolies in accordance with the Article 7 of this Law – in the amount of 8,000 minimum wages;
- submission to the body in charge of the regulation of the natural monopolies of unreliable data – in the amount of 700 minimum wages;
- non-submission of other information, which is required for the implementation of its activities – in the amount of 600 minimum wages.

The amount of a fine, imposed upon a subject of a natural monopoly, shall be transferred to the State budget of the Republic of Tajikistan and it shall be paid within a period of 30 days from the date of receipt of the decision on the imposition of a fine.

A penalty shall be imposed for every day of delay in payment at the rate of 1 per cent of the total amount of the fine.

In case of refusal of the subjects of the natural monopolies to pay a fine, it shall be recovered by a decision of the court.

Article 13. Lodging complaints against the decisions and instructions, made by the body in charge of the regulation of the activities of the natural monopolies

The subjects of the natural monopolies, the state bodies and the consumers shall have the right to lodge an application with the court, aimed at nullifying, fully or partially, the decisions or instructions, made by the body in charge of the regulation of the activities of the subjects of the natural monopolies.

In case of lodging an application with the court, the execution of a decision or instructions, made by the body in charge of the regulation of the activities of the subjects of the natural monopolies, shall be suspended until such a decision enters into force.

**President
of the Republic of Tajikistan
Dushanbe,
13 December 1997, No. 525**

E. Rakhmonov