



April 2022

Competition Law Enacted

Scope of the Competition Law

On 5 October 2021, the Law on Competition was promulgated under Royal Kram No. NS/RKM/1021/013. The Law on Competition covers all persons conducting business activities or supporting business activities, which have a corresponding anticompetitive effect in Cambodian markets, regardless of whether the activity takes place inside or outside Cambodia.

Competition Regulator

The law establishes the Competition Commission of Cambodia (CCC) as the regulator of competition in the country. The Ministry of Commerce will lead the CCC with the involvement of relevant authorities and government institutions (Art. 4). The Law also lists the CCC's functions and duties, including, among others, (1) establishing competition policies and plans, (2) issuing decisions, orders, and interim measures, and (3) imposing fines and receiving complaints (Art. 6).

Prohibited Anti-competitive Practice

Horizontal Agreements

A horizontal agreement is defined as an agreement between those operating "at the same level of production or distribution chain." (Art. 3 (8)). Making or implementing a horizontal agreement affecting the competition is illegal. Horizontal agreements include price-fixing, output-control, market-allocation, and bid-rigging agreements.

Vertical Agreements

A vertical agreement is defined as an agreement between those operating "at different levels in the production or distribution chain." (Art. 3 (9)). Vertical agreements having minimum resale price maintenance (RPM) or setting any condition on buyers are illegal.

It is also unlawful to make or implement other vertical agreements with anticompetitive intent or effect.

Examples of such are set out in Art. 8 as follows:

- requiring a purchaser to resell goods or services only inside a certain geographical area or to a selected consumer or specified type of consumer.
- Requiring a purchaser to purchase all or nearly all of its requirements for particular goods or services exclusively from the seller.
- restricting a seller from selling goods or services to other purchasers.
- requiring a purchaser to purchase unrelated goods or services in addition to the goods or services that the purchaser intends to purchase.

Abuse of Dominant Market Position

Any person with a dominant market position is prohibited from conducting various activities with anti-competitive intent or effect on a market. Those activities include exclusive dealing, refusal to deal, tying arrangements, predatory pricing, and denial of access to essential facilities (Art. 9). However, any of these activities may otherwise be lawful if the CCC determines that there is a reasonable justification to perform the activity for legitimate business interests and the activity does not have an anticompetitive effect on a market (Art. 10).

Business Combinations

A business combination, such as a merger, that has or may have an anti-competitive intent or effect is prohibited. The CCC determines, inspects, and evaluates how a business combination affects competition. The government is to issue a Sub-Decree on the Requirements and Procedures for Business Combinations (Art. 11).

Exemptions from the Law

Any of the above anticompetitive practices may be exempted if four (4) elements are met:

- 1) the activity provides significant identifiable technological, economic, or social benefits;
- 2) those benefits would not otherwise exist;
- 3) those benefits outweigh the activity's anticompetitive effects; and
- 4) the activity does not eliminate competition in any important aspect of goods or services (Art. 12).
However, an application for an exemption must be made to the CCC before an anticompetitive activity is conducted (Art. 13).

Enforcements and Penalties

The CCC is empowered to commence investigations by its own initiative or after receiving a complaint from a competent regulator or any individual (Art. 16).

Violation of the competition law is subject to a range of penalties, including (1) written warnings, (2) suspension, revocation, or withdrawal of registration certificates, business licences, or business permits, (3) pecuniary fines, (4) financial penalties, and (5) imprisonment.

Under the law (Art. 34), the fine may be up to 10% of the total annual turnover for three years (Art. 35), and the maximum financial penalty is 2 billion Cambodian riels (about US\$500,000), while the maximum term of imprisonment is two years (Art. 38). The CCC may also order additional measures, including the forced sale of shares or some parts of the business (Art. 3).

Our comments

Cambodia became the final ASEAN country to adopt a competition law in October 2021, while Indonesia was the first ASEAN member state to adopt the competition law in 1999.

To have an effective implementation of the competition law, Cambodia would most likely take cues from international standards, consultants, and industry players to develop and constantly improve its policies as it proceeds with the implementation.

Recently, the Royal Government of Cambodia issued Sub-Decree No. 37 outlining the organisation and functions of the CCC with an aim to encourage and promote the implementation of competition law and help consumers access high quality, low price, and versatile products and services. Specifically, the CCC will investigate competition-related complaints, review and approve competition-related agreements and applications for business combinations and introduce policies on fines.

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