

General Corporate Commercial

## Cambodia's First Law on Competition

### Introduction

The Law on Competition was promulgated by virtue of the Royal Kram No. NS/RKM/1021/013 dated 5 October 2021 ("**Law on Competition**"). It came into force on 6 October 2021.

Prior to the promulgation of the Law on Competition, issues of competition were addressed broadly in various regulations such as the Law Concerning Marks, Trade Names and Acts of Unfair Competition, Sarachor (Circular) on Preventing Measures Against Unfair Competition in Telecommunication Sector, Order of Council of Ministers on Free Competition and Measures Against the Interconnection Barrier between the Telecommunication Operators, Law on Telecommunications, and Law on Trade Remedies. These laws and regulations, however, are not comprehensive and do not adequately address the core issues that affect market competition.

With the Law on Competition in place, the law now covers all persons, natural or juristic, conducting business activities, or supporting business activities that significantly prevent, restrict and distort competition in Cambodia's market, regardless of whether the activities are conducted in or outside of Cambodia.

### Key Features

We set out below the key features of the Law on Competition.

#### Key Prohibitions

The Law on Competition expressly bars activities which prevent, restrict or distort competition in the Cambodian market. Essentially, the Law on Competition addresses three key prohibitions, being (1) anti-competitive agreements (horizontal or vertical agreements), (2) abuses of a dominant position, and (3) anti-competitive business combinations.

#### 1. *Anti-competitive Agreements*

**Horizontal Agreements:** Prohibited Horizontal Agreements refer to the agreements that are entered into by the operators of businesses or for the operations at the same production level (i.e. between sellers) for the purpose of (i) fixing, controlling or maintaining the price; (ii) preventing, restricting or limiting the quantity, type and development of goods or services; (iii) allocating geographical areas and consumers between competitors; or (iv) favouring one bidder exclusively in a private procurement.

**Vertical Agreements:** Prohibited Vertical Agreements refer to the agreements that are entered into by the operators of businesses or for the operations at the different production levels (i.e. between seller and purchaser) for the purpose of:

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- (i) requiring purchaser to:
  - resell goods or services in the minimum price or in a specified geographical area or to a specified consumer or a specified type of consumer;
  - accept any or all conditions for the exclusive purchase of particular goods or services from a seller; or
  - purchase unrelated goods or services in addition to the intended purchased goods or services, or
- (ii) restricting the seller from selling goods or services to other purchasers.

**2. Abuse of a Dominant Position**

Activities being carried out by a person having a dominant position in the market and have as their object or effect to significantly prevent, restrict or distort competition in the Cambodian market are prohibited. These activities include (i) requiring or inducing a supplier or consumer not to deal with a competitor or denying the supply of goods or services to a competitor, (ii) selling goods or services to a purchaser on condition that the latter agree to purchase unrelated goods or services, or (iii) selling goods or services below the cost of production or refusing access of any competitor to an essential facility.

The above-described activities may be permitted by the Competition Commission of Cambodia ("**CCC**") if reasonable grounds can be provided to justify that the conduct of such activities is for legitimate business interest or that such activities do not prevent, restrict or distort competition in the market. CCC is the regulatory body that oversees the implementation and enforcement of the Law on Competition. (*See further discussion on CCC below.*)

**3. Anti-competitive Business Combinations**

Any business combinations that have or may have the object or effect of significantly preventing, restricting or distorting competition in the market are prohibited. A business combination refers to (i) the acquisition or purchase of controlling right or voting right through the purchase of shares or assets by a person from another person; or (ii) the merger of two or more persons to become the joint owners of the surviving or new legal entity.

The conditions and procedures in relation to business combinations will be determined by an implementing regulation, i.e. sub-decree, to be issued in due course.

**Exemptions**

Any anti-competitive agreements or abuse of a dominant position activities that satisfy the following conditions are exempted from the prohibition:

- Agreements or activities provide direct significant technological, social or economic benefits;
- Such benefits would not exist without those prohibited agreements/activities;

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- Such benefits significantly outweigh the effect of the agreements or activities which prevent, restrict or distort competition in the Cambodian market; and
- The agreements or activities do not eliminate competition in any important aspect of goods or services.

Any individual or collective exemptions shall be subject to prior approval from CCC. Approval procedures for such exemptions shall be determined by CCC.

### **Leniency Policy**

A person may be granted with leniency from pecuniary fines related to anti-competitive horizontal agreements if such person provides evidence or important information related to such agreement. Such leniency policy shall be determined by CCC.

### **CCC as the Regulatory Authority**

CCC is spearheaded by the Minister for Commerce, together with the relevant ministries and institutions, with the Consumer Protection Competition and Fraud Repression Directorate-General of the Ministry of Commerce ("**CCF**") acting as its Secretariat. CCC shall perform duties related to competition issues as provided for by the Law on Competition. The organisation and function of CCC will be determined in a separate implementing regulation, i.e. sub-decree.

In terms of the composition of the governing body of CCC, CCC shall be managed by a chairman, deputy director(s) and members who will be selected from other ministries and relevant institutions. In addition, CCC shall have independent members comprising the following:

- one former judge;
- two persons who have legal-related knowledge and experience; and
- two persons who have economic-related knowledge and experience.

### **Filing of Complaints; Appeals for Re-consideration**

The Law on Competition provides for the procedure for filing of complaints, issuance of interim measures and decisions, as well as the procedure for filing an appeal against an interim measure or decision.

### ***Filing of Complaints; Investigation***

CCC is authorised to initiate an investigation on its own or by a complaint from any competent regulator or any other person. The investigating officers, who are selected from CCF and appointed by virtue of a Prakas (Declaration) issued by the Ministry of Commerce, have the authority to investigate, search, collect data and inquire into and require any concerned person to provide information, documents or objects for the assessment of competitive conduct in the market. They are also authorised to investigate any conduct that violates the Law on Competition, and implement interim measures. The investigating officers shall comply with the Code of Criminal Procedure in the discharge of their duties.

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The investigating officers may seek assistance from other competent authorities while fulfilling their duties.

The Law on Competition also provides for the protection of whistleblowers who report anti-competitive activities to CCC.

### ***Interim Measures and Decisions of CCC***

CCC may implement interim measures where necessary to urgently prevent serious and/or irreparable damage to the economy or to any person **OR** to protect public interest in case of emergency.

An interim measure may require a person to:

- suspend the effect of an agreement or activity that is suspected of violating the provisions of the Law on Competition; or
- perform or refrain from performing any activities, but not to make any payment.

CCC may lift any interim measure at any time with reasonable ground.

CCC will issue a decision upon completion of its investigation over an anti-competitive activity. The formalities and procedure for the issuance of the interim measures and decisions will be determined by a Prakas to be issued by the Ministry of Commerce.

### ***Appeals for Re-consideration***

An appeal for re-consideration with respect to any interim measure and/or decision of CCC may be filed with CCC. If CCC refuses to re-consider the interim measure and/or decision, the aggrieved person may file an appeal with a competent court within 30 days following the date of the notice of such refusal.

### **Penalties**

The penalties provided under the Law on Competition include written warning, suspension, revocation or withdrawal of business registration certificates, business licenses, or business permits, monetary fine, pecuniary penalty and imprisonment.

Persons who violate the key prohibitions under the Law on Competition shall face the following penalties:

No.	Key Prohibitions	Fines and/or Penalties for Natural Persons	Fines and/or Penalties for Legal Entities
1.	Horizontal Agreement	a term of imprisonment from one month to two years, and a fine from KHR5,000,000 to KHR100,000,000 (approximately US\$1,250-25,000)*  *US\$1=approximately KHR4,000	a fine from KHR100,000,000 to KHR2,000,000,000 (approximately US\$25,000-500,000)*  *US\$1=approximately KHR4,000

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2.	Vertical Agreement	a written warning and a fine of 3% to 10% of the total turnover up to three years of the years of the infringement.	a written warning and a fine of 3% to 10% of the total turnover up to three years of the years of the infringement.
3.	Abuse of a Dominant Position		
4.	Business Combinations	Repeated violations after these penalties have been imposed may lead to a revocation or withdrawal of business registration certificates or permits, or business licenses.	Repeated violations after these penalties have been imposed may lead to a revocation or withdrawal of business registration certificates or permits, or business licenses.

CCC may also issue additional measures to bar activities that prevent, restrict or distort competition in the market.

If you have any queries on the above, please feel free to contact our team members below who will be happy to assist.

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