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EXEMPTIONS FOR ANTI-COMPETITIVE PRACTICES: Conditions and Procedures

Cambodia has introduced a new regulation to refine its approach to anti-competitive practices. The regulation provides a framework for granting exemptions under the Law on Competition, carefully balancing the need to maintain a competitive market with the potential for specific practices to offer significant economic and societal benefits to the country.

24 May 2024

EXEMPTIONS FOR ANTI-COMPETITIVE PRACTICES: CONDITIONS AND PROCEDURES

A Decision issued on 2 April 2024 (the “**Decision**”) by the Cambodia Competition Commission (“**CCC**”), introduces guidelines for exemptions to anti-competitive practices under the Law on Competition. These guidelines aim to balance the need for a competitive market with the potential for specific practices to yield substantial societal and economic advantages for Cambodia.

For context, Cambodia's 2021 Law on Competition generally prohibits agreements or activities deemed anti-competitive. However, exemptions may be granted for specific practices under Articles 7 (horizontal agreements), 8 (vertical agreements), 9 (abuse of market dominant position), and 11 (business combinations) if the following conditions are met:

1. There are significant identifiable technological, economic or social benefits;
2. Such benefits would not exist without those agreements or activities;
3. Those benefits significantly outweigh the effects caused by any determined prevention, restriction, and distortion of competition; and
4. They do not eliminate competition in any important aspects of goods or services.

However, the conditions for these exemptions outlined in the 2021 Law on Competition are quite broad, with limited guidance on their practical application. Article 13 mandates an application with supporting evidence but lacks clear procedures. The recent Decision addresses these gaps, providing detailed guidance on applying and meeting the exemption requirements, as well as clarifying the application process, conditions for exemptions, and their renewal procedures. More details on these aspects follow.

A. What are the Purpose and Scope of the Decision

The new regulation aims to provide clarity on the procedures for requesting exemptions from the CCC for agreements or activities that may prevent, restrict, or distort competition in the Cambodian market. These exemptions apply to activities conducted both within and outside the country, provided they meet the requirements set forth under Article 12 of the Law on Competition.

B. Who is Eligible for Exemptions?

Any individual or entity anticipating that their agreements or activities might contravene Articles 7, 8, 9, and 11 of the Law on Competition can apply for an exemption. The application must be submitted to the CCC through the Consumer Protection Competition and Fraud Repression Directorate-General (CCF) of the Ministry of Commerce, which acts as the Implementing Body and Secretariat of the CCC.

C. What are the Key Requirements?

To be eligible for an exemption, applicants must demonstrate that their proposed agreements or activities fulfill the following four conditions:

1. **Benefits:** The agreements or activities must provide significant and identifiable technological, social, or economic benefits resulting from the any proposed agreement or activity. These benefits refer to economic efficiencies, specifically cost-related efficiencies (economics of scale) and qualitative efficiencies (improvement in quality, range or service, or the initiations of new technologies, technical advancements, or environmental and sustainable benefits).
2. **Materialization of the benefits:** The identified benefits will not materialize in the absence of the proposed agreement or activity. To fulfill this condition, the applicant must demonstrate that the prevention, restriction, or distortion of the competition resulting from the proposed agreement or activity is reasonable and essential for realizing the identified benefits. In this case, the applicant is obligated to justify that no alternative methods or means exist to attain the same benefits without imposing competition constraints.
3. **Superiority of the benefits:** The identified benefits must significantly outweigh the effects caused by the prevention, restriction, or distortion of competition, and must be highly likely to materialize within a time period of up to 1 (one) year. In this case, the applicant shall also demonstrate that the consumers will receive a fair share of the identified benefits resulting from the proposed agreement or activity. These benefits shall at least compensate consumers for any actual or possible negative impact caused to consumers by the prevention, restriction, or distortion of competition.
4. **Preservation of Competition:** There shall be no elimination of competition in any important aspect of goods or services.

D. What are Procedures to be followed for Exemption Requests?

Applicants are encouraged to seek a consultation meeting with the CCF Directorate-General before submitting their applications. This preliminary step helps in understanding the likelihood of exemption approval and ensures that all requirements are met. This preliminary step will be without prejudice to any final decision of the CCC and subject to payment of determined fees.

Upon submission, the CCC reviews the application for completeness within 15 working days and may request additional documentation if necessary. Upon confirmation of the completed application, documents and information, the CCF Directorate-General will request approval from the CCC to publish a summary of the exemption request on its official website, social media channels or other means determined by the CCC, specifying a deadline for third parties

interested in providing additional comments. The CCC may also engage in public consultations, gathering feedback from competitors, customers, and other stakeholders.

A preliminary decision is issued if the CCC intends to reject the application, allowing the applicant to respond and present further arguments before a final decision is made within 30 working days after completing the preliminary decision procedures.

E. What are the Conditions and Renewals for the Exemption?

Exemptions are granted with specific conditions, including the duration of the exemption and reporting obligations to monitor ongoing compliance and benefits. Authorized persons may apply for renewal of their exemptions no later than 30 working days before the expiration of the current exemption. The CCC must then decide on the renewal within 30 working days, extendable by 15 working days if needed.

F. Can an Exemption be Modified or Revoked?

The CCC reserves the right to modify or revoke exemptions if the conditions are violated, or false, incorrect, or misleading documents and information have been provided. Enforcement measures may include requiring the cessation of non-compliant activities and other legal actions as outlined in Article 37 of the Law on Competition.

G. Is there any obligation to ensure Confidentiality of the Process and Documents Submitted?

In this procedure, the applicant will submit information, documents, and evidence to the CCC in order to prove that the transaction fulfils all required conditions. In this regard, the CCC ensures the confidentiality of sensitive information, only disclosing it in compliance with legal provisions.

H. Conclusion

The Decision marks a significant step towards transparent and fair competition regulation in Cambodia, balancing the need for economic development with the imperative to maintain competitive markets. The structured process for exemptions ensures that only beneficial activities that cannot be otherwise achieved without distorting the competition are permitted, thereby protecting consumer interests and promoting a healthy market environment.

Nothing in this material constitutes or is intended to constitute legal advice which shall be relied on. The material is for general informational purposes only.

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