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Competition/Antitrust Introductory Guide

Cambodian Competition Law: Promoting Fair and Competitive Markets

This guide offers a concise overview of Cambodian Competition Law, highlighting its historical development, structure, key provisions, and enforcement mechanisms. It covers the role of the Cambodia Competition Commission (CCC), prohibited practices, regulations on business combinations, and the processes for exemptions and leniency. The guide also outlines investigation and enforcement procedures, including negotiated settlements and penalties for violations, serving as a valuable resource for businesses and legal professionals to ensure compliance and maintain a fair market environment in Cambodia.

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CAMBODIAN COMPETITION LAW: PROMOTING FAIR AND COMPETITIVE MARKETS

INTRODUCTION

In the rapidly evolving market landscape of Cambodia, ensuring fair competition is essential for fostering innovation, protecting consumer interests, and promoting economic efficiency. The Cambodian Competition Law, promulgated to address these concerns, is a critical regulatory framework aimed at preventing anti-competitive practices and maintaining a level playing field for all market participants. This guide provides an in-depth overview of the historical development of the Cambodian Competition Law and its key elements, highlighting the roles and responsibilities of the Cambodia Competition Commission (CCC), prohibited practices, business combinations, exemptions, leniency policies, enforcement procedures, and pecuniary penalties.

HISTORICAL DEVELOPMENT OF COMPETITION LAW IN CAMBODIA

The development of competition law in Cambodia has been a gradual process, reflecting the country's evolving economic landscape and its integration into both regional and global markets. Efforts to establish a comprehensive competition law began in the early 2000s, driven by Cambodia's aspirations to align its legal framework with international standards and to foster a competitive market environment. The initial drafts of the Law on Competition, circulated over the years, focused on addressing fundamental anti-competitive practices such as price-fixing and market monopolization. These drafts underwent multiple revisions, incorporating feedback from various stakeholders, including international organizations, businesses, and legal experts, to refine the scope and enforcement mechanisms.

A significant influence on the evolution of Cambodia's competition law was its commitments under the ASEAN Economic Community (AEC) and the Regional Comprehensive Economic Partnership (RCEP) framework. These regional agreements underscored the importance of fair competition as a cornerstone of economic integration and development. The RCEP emphasized the need for member states to adopt and enforce competition laws that would prevent anti-competitive practices, thereby promoting a level playing field across the region. This prompted further revisions to Cambodia's draft competition law, leading to the inclusion of detailed provisions on enforcement, the role of the Cambodia Competition Commission (CCC), and the integration of leniency and exemption policies. The final version of the Law on Competition, promulgated in 2021, represents a culmination of these efforts, establishing a robust legal framework designed to support Cambodia's commitments under both the AEC and RCEP, and to foster a competitive and fair market environment in the country.

STRUCTURE OF CAMBODIAN COMPETITION LAW

Key Legislation

The foundation of Cambodian Competition Law is the Law on Competition, supported by a series of Sub-Decrees, Prakas and Decisions issued respectively by the Prime Minister, Ministry of Commerce and the CCC. These legal instruments collectively govern competition in Cambodia, setting the rules for business conduct and the enforcement mechanisms to ensure compliance. These include specific rules on investigation procedures, penalties, and the roles of different governmental bodies involved in enforcing competition law. Key implementing regulations are listed in the following:

Sub-Decrees

- Sub-Decree No. 37 ANKR.BK on the Organization and Functioning of the Cambodia Competition Commission (2022)
- Sub-Decree No. 60 ANKR.BK on the Requirements and Procedures for Business Combinations (2023)

Prakas (Ministerial Regulations)

- Prakas No. 226 on the Formalities and Procedures of Inspection and Investigation under the Law on Competition (2023)
- Prakas No. 79 on the Formalities and Procedures for the Issuance of Interim Measures and/or Decisions of the Competition Commission of Cambodia (2023)
- Inter-Ministerial Prakas No. 41 on the Procedures for Imposition of Pecuniary Penalties on Violations under Law on Competition (2023)
- Prakas No. 84 on the Formalities and Procedures for Calculation of Pecuniary Penalties on Violations under Law on Competition (2023)
- Prakas No. 177 on the Requirements and Procedures of Registration of Completion of Business Combinations subject to Pre-Notification (2023)

Decisions

- Decision No. 095 on Pre-Notification Thresholds for Business Combinations under the Law on Competition (2023)
- Decision No. 179 on the Requirements and Procedures for Issuance of Advance Ruling Certificates for Business Combinations (2023)
- Decision No. 084 on the Formalities and Procedures for Calculation of Pecuniary Penalties on Violations under Law on Competition (2023)
- Decision No. 087 on the Requirements and Procedures for Applying for Exemptions under the Law on Competition (2024)
- Decision No. 107 on the Requirements and Procedures for Granting Leniency under the Law on Competition (2024)

Cambodia Competition Commission (CCC)

The CCC is the key enforcement body responsible for implementing the Competition Law. It plays a crucial role in investigating anti-competitive practices, issuing decisions, imposing sanctions, and guiding businesses on compliance matters.

- **Composition of the CCC:** The CCC is chaired by the Minister of Commerce and includes representatives and experts from various government sectors, including the Ministry of Economy and Finance, Ministry of Justice, and the National Bank of Cambodia. The CCC composition includes five independent commissioners: one former judge, two economic experts and two legal experts.
- **Functions and Duties:** The CCC's primary functions include policy formulation, regulatory review, enforcement of competition law, and handling complaints. It is also responsible for issuing guidelines and conducting public consultations to ensure transparency and due process.

The CCC operates under a mandate to maintain a competitive environment by ensuring that businesses adhere to fair practices. The organizational structure of the CCC is detailed in Sub-Decree No. 37 ANKR.BK, which outlines the roles, responsibilities, and working procedures of the commission.

PROHIBITED ANTI-COMPETITIVE PRACTICES

Horizontal Agreements

Horizontal agreements are collaborations between competitors at the same level of the market structure. These agreements can include practices such as price-fixing, market sharing, and bid-rigging, all of which are strictly prohibited under Cambodian law. Article 7 of the Law on Competition explicitly prohibits horizontal agreements that directly or indirectly affects competition related to the following:

- Agreement on fixing, controlling or maintaining the price of goods or services;
- Agreement on preventing, restricting or limiting:
 - The quantity of goods or services which are made available for sale;
 - The type of goods or services which are made available for sale;
 - The development of new goods or services;
- Agreement on allocating geographic areas between competitors;
- Agreement on allocating customers between competitors; or
- Favoring one bidder in bids for a contract in private procurement.

Any horizontal agreement that falls within the prohibited categories is automatically void. Businesses involved in such practices are subject to investigations, fines, and other penalties. Companies must ensure that their collaborations with competitors do not include elements that could be interpreted as anti-competitive under this provision.

Vertical Agreements

Vertical agreements involve arrangements between businesses at different levels of the supply chain, such as between a manufacturer and a distributor. While such agreements can be beneficial, they are prohibited if they result in anti-competitive effects. Article 8 of the Law on Competition addresses vertical agreements, particularly those that impose minimum resale prices or territorial restrictions. Under this Article, persons are prohibited from making and implementing a vertical agreement which directly or indirectly requires a purchaser to resell purchased goods or services at a minimum price set by the seller or to accept any conditions of this nature set by the seller.

Article 8 also prohibits persons from making and implementing a vertical agreement which has or may have the object or effect of significantly preventing, restricting or distorting competition in a market by:

- Requiring a purchaser to resell purchased goods or services only within a defined geographic area;
- Requiring a purchaser to resell purchased goods or services only to specified customers or specified categories of customers;
- Requiring a purchaser to purchase all or nearly all of its requirements for particular goods or services exclusively from the seller;
- Preventing a seller from selling goods or services to another purchaser; or
- Requiring a purchaser to purchase unrelated goods or services in addition to the goods and services that the purchaser wants to purchase.

The CCC assesses the impact of vertical agreements on a case-by-case basis, considering factors such as market share and potential consumer harm. Businesses are advised to seek legal counsel when drafting agreements with suppliers or distributors to ensure compliance with competition law.

Abuse of Dominant Market Position

Entities in a dominant market position are prohibited from abusing their power in ways that harm competition. Such abuses include unfair pricing, exclusive dealing, and refusal to supply, which can lead to significant market distortions. Articles 9 and 10 of the Law on Competition outline what constitutes abuse of a dominant position and the conditions under which certain activities might be considered lawful. Dominant firms must not engage in practices that exclude competitors or exploit customers. The CCC evaluates dominance based on market share, barriers to entry, and other economic factors. Firms must document legitimate business justifications for actions that might otherwise be seen as abusive.

BUSINESS COMBINATIONS

Overview

Business combinations, including mergers, acquisitions, and joint ventures, are subject to scrutiny under Cambodian competition law. Such combinations are prohibited if they significantly prevent, restrict, or distort competition in the market. Article 11 of the Law on Competition regulates business combinations and requires that certain transactions be notified to the CCC before they are completed. Businesses must pre-notify the CCC if their transactions meet specific thresholds related to total assets, sales, or transaction value. This pre-notification allows the CCC to assess whether the proposed combination could harm competition.

Notification Process

The notification process is divided into two stages: primary review and secondary review.

- **Primary Review:** Upon receiving a complete notification, the CCC has 30 working days to decide whether the business combination can proceed or if it requires further scrutiny.
- **Secondary Review:** If the combination requires a secondary review, the CCC has an additional 60 working days (with possible extensions) to complete its assessment.

Advance Ruling Certificates

Businesses may request an Advance Ruling Certificate from the CCC to gain certainty before proceeding with a business combination. This certificate, valid for one year, confirms that the CCC has no grounds to challenge the proposed combination based on the provided information.

Sanctions for Non-Compliance

Failure to comply with the notification and registration requirements can lead to administrative and legal sanctions. The CCC is authorized to impose fines and other penalties on parties that violate these provisions.

EXEMPTIONS AND LENIENCY POLICIES

Exemptions

Exemptions under Cambodian competition law allow businesses to engage in activities that might otherwise be prohibited, provided they demonstrate significant benefits that outweigh the anti-competitive effects.

- **Eligibility for Exemption:** Businesses must show that their activities provide substantial technological, social, or economic benefits. These benefits should include cost efficiencies, improvements in product quality or range, and the introduction of new technologies.

- No Elimination of Competition: The agreement or activity should not eliminate competition in any significant part of the market.

Leniency Policies

Leniency policies offer reductions in fines and sanctions for businesses and individuals who admit to participating in unlawful agreements and provide substantial evidence to assist in the investigation.

- Types of Leniencies:
 - o Immunity: Full exemption from fines and sanctions for the first applicant who provides sufficient evidence to initiate or advance an investigation.
 - o Reduction: Mitigation of fines and sanctions for subsequent applicants who provide significant additional evidence.
- Conditions for Leniency: Applicants must submit their request before the CCC issues a decision on the preliminary examination and must provide complete and truthful evidence.

INVESTIGATION AND ENFORCEMENT

Complaint and Investigation Procedures

The CCC is empowered to investigate suspected anti-competitive practices, whether initiated by complaints or on its own motion. The investigation process includes several stages: complaint submission, preliminary examination, formal investigation, and enforcement of decisions.

- Complaint Submission: Any person or entity can file a complaint regarding suspected anti-competitive practices. The complaint must include specific details about the suspected activities.
- Formal Investigation: If warranted, a formal investigation is launched, involving the collection of evidence, interviews, and possible site inspections.
- Interim Measures: The CCC can issue interim measures to prevent serious and irreparable damage during the investigation.

Enforcement of Decisions

At the conclusion of an investigation, the CCC issues decisions specifying obligations and deadlines for compliance. Parties that disagree with these decisions can appeal to a competent court.

Negotiated Settlement Procedures

Negotiated settlements provide an alternative mechanism for resolving competition law offenses. These procedures encourage quick resolutions, reducing the burden of lengthy investigations and ensuring compliance with the law.

- Application for Settlement: The person under investigation can request a negotiated settlement before the formal investigation report is submitted.
- Incentives for Settlement: The CCC may offer financial penalty reductions to encourage cooperation and settlement.

PECUNIARY PENALTIES

Calculation of Pecuniary Penalties

Penalties for violations of competition law are calculated based on the severity of the violation, the total turnover of the business, and the duration of the violation.

- Statutory Penalty: Calculated as a percentage of the violator's turnover, multiplied by the number of years the violation occurred.
- Adjustments for Circumstances: Penalties may be adjusted based on aggravating or mitigating factors, such as the degree of organization or cooperation during the investigation.

Imposition and Enforcement

The CCC is responsible for imposing and enforcing pecuniary penalties. Businesses that fail to pay penalties may face further legal action, including court enforcement.

CONCLUSION

Cambodia's competition legal framework is integral to the development of a healthy and competitive market environment. By adhering to the Law on Competition, businesses in Cambodia contribute to a market that is fair, innovative, and efficient, benefiting both consumers and the economy as a whole. The Cambodia Competition Commission plays a critical role in maintaining this environment through its enforcement activities, ensuring that all market participants operate on a level playing field. Businesses are encouraged to familiarize themselves with competition law and seek legal advice to ensure full compliance.

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

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