

KINGDOM OF CAMBODIA

Nation - Religion - King



Draft Law on Competition

(Updated: 07-June-2021, from the Agreed texts between **MoC, MoJ and CoM**)

CHAPTER I

GENERAL PROVISIONS

Article 1._

This law governs any activities that prevent, restrict or distort competition, and establishes and determines the authority of the Cambodia Competition Commission in order to encourage fair and honest business relations, increase economic efficiency, encourage new businesses, and help consumers access to high-quality, low-cost, diverse and versatile products and services.

Article 2._

This law applies to all Persons conducting business activities, or any actions supporting business activities, which significantly prevent, restrict or distort competition in a Market in the Kingdom of Cambodia regardless of whether the activities take place inside or outside the territory of the Kingdom of Cambodia.

Article 3._

As used in this law, the following terms shall have the meaning as defined hereunder:

1. **Competition** means any act carried out by Persons in the market to get a greater number of customers to use their goods and services, market share and market dominance.
2. **Agreement** means any form of contract, agreement, arrangement or understanding between Persons, regardless of whether it is written, verbal or implied, and can include direct or indirect coordination where that coordination has the object or effect of:
 - a. influencing the conduct of one or more Persons in a Market; or
 - b. disclosing a course of conduct which a Person has decided to adopt or is contemplating adopting in a Market.
3. **Business Combination** means:
 - the acquisition of the right of control or voting rights through the purchase of shares or assets by one Person from any other Persons or;
 - the combination of two or more Persons to acquire joint ownership of an existing legal Person or a new legal Person.
4. **Conflict of Interest** means an interest in the form of a financial, family or personal interest, which may influence any person's performance of his or her official duties.
5. **Directorate** means the Directorate General in charge of competition.
6. **Dominant Position** means a situation in which a Person has the power to act in a Market significantly without any effective constraint from other competitors.
7. **Essential Facility** means infrastructure or resources which cannot be duplicated and, without access to which, Competitors cannot reasonably provide goods or services to their customers.
8. **Horizontal Agreement** means an Agreement between Persons who operate, or are likely to operate, at the same level in the production or distribution chain.
9. **Vertical Agreement** means an Agreement between Persons who operate, or are likely to operate, at different levels in the production or distribution chain.
10. **Market** means a market for any competing goods or services.
11. **Persons** mean natural persons or legal persons carrying on business activities regardless of whether for profit or non-profit, registered or unregistered.
12. **Informant** means a Person who is willing to provide information to the CCC regarding activities which may violate this law regardless of whether such activities have occurred, are occurring or will occur in the future.
13. **Competitor** means any Person who is in competition with any other Person in a Market or who

has the potential to enter into competition with any other Person in a Market.

14. Significantly prevent, restrict or distort means the extent or degree of impact on competition for goods or services as determined by the CCC through economic analysis or any other means of analysis.

15. Business means the carrying on of activities:

- a. which involve goods or services which have been acquired or supplied or real rights to immovable property which have been acquired or over which control has been acquired; or
- b. which are done in an organized and specific manner;
- c. where the Persons who performed these activities intended to make a profit regardless of whether that activity is the main activity, or a secondary or occasional activity

16. Competent regulator means any ministry or institution that has functions and roles related to competition under their responsibility.

CHAPTER II COMPETENT INSTITUTION

Article 4.

The Cambodia Competition Commission (hereinafter “CCC”) shall be established and led by the Minister of Commerce, with the involvement of relevant ministries and institutions, and with the Directorate General in charge of competition (hereinafter “Directorate”) as its implementing body to perform duties and functions in relation to competition issues in accordance with the provisions of this law.

The organization and functioning of the CCC shall be determined by Sub-Decree.

Article 5.

The CCC shall be led by the Minister of Commerce as Chairman with Vice-Chairmen and other representative members from relevant ministries/institutions, as necessary.

The CCC shall have independent members with a 5-year term and shall consist of:

- A former Judge 01 member
- Individuals with legal knowledge and experience 02 members
- Individuals with economic knowledge and experience 02 members.

The selection procedures of the former judge, individuals with legal knowledge and experience, and individuals with economic knowledge and experience shall be determined by Prakas of the Minister of Commerce.

The composition of CCC shall be determined by the Decision of the Royal Government.

Article 6.

The CCC shall perform the following principal functions and duties:

1. Establish policies and plans regarding to competition.
2. Advise on draft legislation and regulations regarding to competition.
3. Request the Government to revise or amend any national and international legislation, regulations or Agreements which affect competition.
4. Issue decisions, orders and interim measures and impose fines.
5. Prepare the Formalities and Procedures related to calculating fines.
6. Prepare rules regarding Conflicts of Interest for members of the CCC.
7. Prepare the requirements and procedures of Business Combinations.
8. Prepare the Requirements and Procedures that individually permit any Agreements or activities related to competition.
9. Prepare the Requirements and Procedures that collectively permit any Agreements or activities related to competition.
10. Prepare the Requirements and Procedures on the leniency policy on pecuniary fine.
11. Cooperate with national ministries, institutions, or regulators, foreign states, and international

- agencies related to competition.
12. Receive complaints.
 13. Establish other regulations and rules that are under the authority of the CCC related to competitions.

CHAPTER III UNLAWFUL ACTIVITIES WHICH RESTRAIN, RESTRICT OR DISTORT COMPETITION

Section 1: Agreements which restrain, restrict or distort competition

Article 7._

Persons are prohibited from making and implementing a Horizontal Agreement that directly or indirectly affects competition related to the following:

1. Agreement on fixing, controlling or maintaining the price of goods or services;
2. 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;
3. Agreement on allocating geographic areas between Competitors;
4. Agreement on allocating customers between Competitors; or
5. Favoring one bidder in bids for a contract in private procurement.

Article 8._

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.

Persons are prohibited from making and implementing a Vertical Agreement which has or could have the object or effect of significantly preventing, restricting or distorting competition in a Market by:

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

Section 2: Unlawful activities on the Abuse of Dominant Market Position

Article 9._

The activities listed below shall be prohibited if undertaken by a Person with a Dominant Market Position, where such activities have the object or effect of significantly preventing, restricting or distorting competition in a Market as follows:

1. Requiring or inducing a supplier or customer not to deal with a Competitor;
2. Refusing to supply goods or services to a Competitor;
3. Selling goods or services on the condition that the purchaser needs to purchase other goods or services separately, which are unrelated to the object of the contract;
4. Selling goods or services below the cost of production; or
5. Refusing to give a Competitor access to an Essential Facility.

Article 10.

A Person with a Dominant Market Position may lawfully perform the activities as determined in Article 9 of this law if the CCC determines that the Person has fulfilled the following 2 (two) conditions:

1. The Person establishes a reasonable reason to legally perform those activities for the benefits of its business.
2. Those activities do not significantly prevent, restrict or distort competition in a Market.

Section 3: Business Combinations

Article 11.

Any Business Combination which has or may have the effect of significantly preventing, restricting or distorting competition in a Market shall be prohibited.

Business Combinations shall be subject to examination, inspection and evaluation of their effect on competition as stipulated in the above paragraph by the CCC.

The Requirements and Procedures for Business Combinations shall be determined by Sub-Decree.

Section 4: Exemptions on Horizontal Agreements, Vertical Agreements, the Abuse of Dominant Market Position and Business Combinations

Article 12.

Any prohibited Agreement or activity referred to in Articles 7, 8, 9 and 11 of this law may be granted an exemption from such prohibition, if those Agreements or activities fulfil the four following requirements:

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 preventing, restricting, and distorting of competition.
4. They do not eliminate competition in any important aspects of goods or services.

Article 13.

Any Person considering that an Agreement or activity may violate Articles 7, 8, 9, and 11 of this law may apply to the CCC for the exemption prior to entry into the Agreement or performance of the activity. The CCC shall grant the exemption if the Agreement or activity does not violate Articles 7, 8, 9, and 11 of this law.

Any Person seeking an exemption in accordance with Article 12 of this law shall apply to the CCC by providing evidence to establish that the requirements of Article 12 of this law have been satisfied. The CCC will grant the exemption if the Agreement or activity meets all the requirements of Article 12 of this law. At the time of granting the exemption, the CCC shall determine any expiry date of the exemption.

The requirements and procedures which apply to an application for exemption shall be determined by the CCC.

A fee shall be charged for the application for an exemption in accordance with the Joint Prakas of the Minister of Commerce and the Minister of Economy and Finance.

Article 14.

If, in the view of the CCC, certain categories of Agreements or activities in relation to particular goods or services fulfil the requirements of Article 12 of this law, the CCC may grant a collective exemption for such Agreements or activities. At the time of granting a collective exemption, the CCC shall determine the expiry date of the exemption.

The Requirements and Procedures which apply to an application for a collective exemption for certain categories of Agreements or activities shall be determined by the CCC.

Section 5: Leniency Policy

Article 15.

Any Person participating or assisting in a Horizontal Agreements may be granted leniency from the pecuniary fine as determined by the CCC where the Person gives evidence or important information related to an unlawful Horizontal Agreement. Any granted leniency shall be applied even if there is a complaint filed against the CCC decision to grant it.

The Requirements and Procedures on the determination of leniency shall be determined by the CCC.

CHAPTER IV COMPLAINT AND INVESTIGATION PROCEDURE

Article 16.

The CCC has the authority to receive complaints on the following grounds:

1. its own initiative; or
2. receipt of a complaint from any competent regulator; or
3. receipt of a complaint from any person other than the competent regulators.

Article 17.

Investigating Officers shall be nominated from the Directorate-General in charge of competition by Prakas of the Minister of Commerce to investigate, search, collect evidence, and inquire any individuals concerned to provide information, documents, or objects for the assessment of the competition activities in the market and conduct searches related to any violation of this law as well as apply interim measures issued by the CCC on Agreements or activities that prevent, restrict or distort competition.

In necessary cases, the CCC can request cooperation from institutions or competent regulators to perform the above duties, and the institutions or competent regulators shall provide the cooperation as requested.

Article 18.

Investigating officers legally entitled to status as judicial police officials shall examine the offences stated in this law in accordance with the provisions of the Code of Criminal Procedure.

The Formalities and Procedures on the appointment of investigating officers shall be set out in the Joint Prakas between Minister of Justice and Minister of Commerce.

Article 19.

Investigating officers shall have the rights to search, collect objects, summon individuals concerned and implement other procedures in accordance with the provisions of the Code of Criminal Procedure.

Investigating officers shall have the right to seek assistance from local authorities, the armed forces or other competent authorities to jointly suppress offences stipulated in this law.

Investigating officers shall not perform a search before 6:00 and after 18:00 unless it is due part of request cooperation with competition authorities of another country, thus the investigating officers need to report and consult with the prosecutor to conduct the search.

Article 20.

Investigating officers shall question any witness if he/she considers that the testimony of the witness may benefit an investigation.

Where any witness refuses to testify without legitimate reason and such refusal is likely to have an adverse impact on the investigation, the Investigating officers shall request the prosecutors to summon the witnesses to appear and give testimony.

Article 21.

A legitimate Informant shall be entitled to:

1. protection of his or her personal information as set out in Article 22 of this law;
2. personal security protection (if necessary); and
3. immunity from civil, criminal, or professional disciplinary action if that action arises from providing or disclosing confidential information to the CCC.

A legitimate Informant remains entitled to the above protections even if the information reported by the Informant could not lead to a finding of any violation of this law.

If an Informant leaks confidential information or provides false information, the Informant shall not be entitled to the protections referred to above unless otherwise determined by the CCC.

Article 22.

Information of a confidential nature includes confidential information which relates to a Person's business, the identity of an Informant or the identity of a Person under investigation, information which was collected during the course of an investigation and any other information as determined by the CCC.

Confidential information which relates to a Person's business refers to information that could cause serious damage to a Person's business if that information was disclosed, such as:

- Technical or financial information relating to the Person;
- Methods of assessing costs;
- Secrets of production processes;
- Supply sources;
- Quantities produced and sold;
- Market shares;
- Customer and distributor lists;
- Marketing plans;
- Other information related to cost, price or sales strategies.

Confidential information which relates to the identity of an Informant includes:

- The name, address, place of birth and social network accounts of the Informant;
- The name, address, place of birth and the social network accounts of the Informant's spouse, father, mother, children or siblings;
- The image or voice of the Informant;
- The image of the Informant's spouse, father, mother, children or siblings;

Any conduct disclosing any confidential information is prohibited, except in accordance with the provisions of Article 23 of this law.

Article 23.

During an investigation, the Investigating officers may disclose information of a confidential nature in where:

1. It is necessary to enable the Investigating officer to carry out his/her duties or functions pursuant to this law;
2. It is permitted by another law;
3. It will enable another government agency, or foreign government agency to carry out its duties and functions by obtaining a permission from the head of the CCC.
4. It is necessary to exercise the rights to use the evidence for self-defense.

Article 24.

Where the Investigating officer thinks it is necessary to issue an interim measure during the investigation process, he/she shall request the CCC to issue an interim measure requiring any Person:

1. To suspend the effect of, and/or desist from acting on, any Agreement which is suspected of violating Articles 7, 8, 9, and 11 of this law;
2. To desist from engaging in any conduct which is suspected of violating Articles 7, 8, 9, and 11 of this law; or
3. To do, or refrain from doing, any act.

Article 25.

The CCC has the authority to make decisions on negotiated settlements requested by Investigating officers, and the decision shall be made available to the public. The negotiated settlement shall be done in a transparent, accountable and honest manner.

The requirements and procedures of negotiated settlements shall be determined by the Prakas of the Minister of Commerce.

CHAPTER V INTERIM MEASURE AND DECISIONS OF THE CCC

Article 26.

The CCC shall have the power to:

- a. issue interim measures and/or decisions;
- b. issue an administrative sanction and/or;
- c. impose pecuniary fines.

Article 27.

The CCC may issue an interim measure in the following circumstances:

1. At the request of an Investigating officer, where it has reasonable grounds to believe that Articles 7, 8, 9, or 11 of this law have been, or are likely to be, violated, and where the CCC considers it is necessary as a matter of urgency for an interim measure as stipulated in Article 24 to be issued for the purpose of:
 - a. Preventing serious and irreparable damages to economic or any Person; or
 - b. Protecting the public interest in cases of emergency.
2. An interim measure of the CCC stipulated under paragraph 1 above of this article may also require any Person:
 - a. To suspend the effect of, and/or desist from acting on, any Agreements which are suspected of violating Articles 7, 8, 9, or 11 of this law;
 - b. To do, or refrain from doing, any acts but shall not require the payment of money.
3. The CCC may at any time withdraw an interim measure issued under paragraph 1 of this article for an acceptable reason.
4. Any interim measure issued under paragraph 1 of this article shall cease to have effect on the earlier of:
 - a. The interim measure being withdrawn under paragraph 3 of this article; or
 - b. The CCC issuing a Decision in the case; or
 - c. 1 (one) year from the date of the interim measure was issued or reissued for an acceptable reason.

Article 28.

Upon the conclusion of an investigation, the CCC may issue a Decision to any Person about the violation of this law in accordance with the following conditions:

- a. The Decision shall be issued to the relevant Person(s) subject to the Decision only, and the Decision must be made available to the public.
- b. The Decision shall specify:
 - A period of time by which the Person(s) must fulfil the obligations specified in the Decision;
 - An expiration date of the Decision.

The Decision shall specify the following:

- a. A description of the article(s) of this law which have been violated;
- b. The name(s) and address(es) of the Person(s) and/or the legal representatives of the Person(s);
- c. A statement regarding the due date for payment of any fines and details of those fines imposed pursuant to Article 35 of this law;

d. A detailed statement regarding any penalties imposed under Article 37 of this law;

e. The reasons for the CCC deciding to issue the Decision;

The CCC may issue a Decision requiring to take any other measure which the CCC considers necessary to alter the anti-competitive activities.

Article 29.

The Formalities and Procedures on the issuance of interim measures and/or decisions shall be set out in the Prakas of the Minister of Commerce.

Article 30.

Any person dissatisfied with interim measures and/or decisions issued by the CCC may file a petition to the CCC for a review no later than 15 (fifteen) days from the date of receiving the notification of interim measures and/or decision. The CCC may decide not to make a consideration on the petitions with reasonable grounds.

If the CCC refuses to grant the petition to reviewing the interim measures and/or decision issued by the CCC, a person may appeal to a competent court no later than 30 (thirty) days from the date of receiving a refusal notification.

Article 31.

Any interim measures and/or decision issued by the CCC may be subject to an appeal to a competent court no later than 30 (thirty) days from the date of receiving a notification of the interim measures and/or decision.

Article 32.

An interim measure shall be effective immediately notwithstanding any petition or appeal.

A decision shall be effective and not be subject for an appeal if:

a. The period for appeal has expired; or

b. The last competent court has rejected an appeal.

Article 33.

If any person fails to comply with the interim measures and/or decision, the CCC may seek assistance from a competent court to enforce any interim measure and/or decision of the CCC.

CHAPTER VI PENALTIES

Article 34.

Sanctions under this law shall include the written warning, suspension, revocation or withdrawal of business registration certificates, business licenses, or business permits, pecuniary fine, financial penalty and imprisonment.

The written warning and pecuniary fine are under the authority of the CCC.

The CCC may request relevant ministries and institutions to take actions, suspend, revoke or withdraw business registration certificates, business licenses or business permits.

In a case where an offender does not pay the determined pecuniary fine, the CCC shall file a lawsuit before a competent court.

All payment of the fines that are stipulated in this law shall be included/paid into the national budget in accordance with the public finance rules.

The procedure of pecuniary fines as stipulated in this law shall be determined by the Joint Prakas between Minister of Commerce and Minister of Justice.

The procedure of pecuniary fines, management of fine receipt and allocation of fines as stipulated in the provisions of this law shall be set out by Joint Prakas between Minister of Commerce and Minister of Finance.

Article 35.

Any Person determined to have violated Article 8, Article 9, and Article 11 of this law shall be subject to a written warning and a fine of 3% to 10% of its total turnover in the year of the infringement up to 3 (three) years issued by the CCC.

In case of having received a written warning and a fine before, the Person continues committing the violation as stipulated in the first paragraph of this article, there needs to revoke or withdraw business registration certificates or permits, or business licenses.

Article 36.

The provisions of the Single Chapter (General Provisions) of Title 1 (General Provisions) Single Chapter (Physical Punishment) of Book 8 of Criminal Procedure Code shall be implemented in the event that a Decision on fines is entered into force.

Article 37.

The CCC may issue additional measures on any activities that prevent, restrict, or distort the competition as follows:

1. Prohibiting violators from continuing their unlawful actions.
2. Requiring violators to sell shares or some other parts of their businesses to another Person in the market price in order to ensure there is a competition in the market.
3. Requiring violators to share the license or intellectual property rights related to the violation of this law to restore, maintain, and protect competition in a market.
4. Requiring violators who violated this law and caused damage to other Persons to compensate those Persons for the financial harm suffered;
5. Requiring violators to return unlawfully obtained profits to the victims of their unlawful actions where the victims can be identified;
6. Requiring unlawfully obtained profits to be allocated to social organizations representing the interests of victims, in a case the victims cannot be identified, or it cannot be allocated to the individual victims.
7. Requiring violators to file reports demonstrating compliance with the orders of the CCC.
8. Requiring violators to pay fees for appointed experts to advise the CCC.
9. Taking other necessary measures to restore the competition.

Article 38.

Any natural person participating in the Horizontal Agreements as stipulated in Article 7 of this law shall be imposed by a term of imprisonment from one (1) month to two (2) years, and a fine from 5,000,000 (five million) Riels to 100,000,000 (one hundred million).

Any legal person participating in the Horizontal Agreements as stipulated in Article 7 of this law shall be imposed a fine from 100,000,000 (one hundred million) to 2,000,000,000 (two billion) Riels.

Article 39.

The application of the provisions in Chapter 6 of this law (Penalties) shall not restrain any other application of criminal laws in case the violation of any provisions under this law considered as an offence that has also been stipulated in other criminal laws.

CHAPTER VII FINAL PROVISIONS

Article 40.

Any provisions of other laws of the Kingdom of Cambodia contrary to this law are abrogated by this law.

Article 41.

This law shall be promulgated urgently.

Made in the Royal Palace,2021
[Royal Signature and Seal]

NORODOM SIHAKMONI

.....
Having submitted to His Majesty the King for signature
Prime Minister

[Signed]
Samdech Akka Moha Sena Padei Techo HUN SEN

Having informed Samdech Akka Moha Sena Padei Techo the Prime Minister
Minister of Commerce
[Signed]

PAN Sorasak