



KINGDOM OF CAMBODIA
NATIONAL RELIGION KING

ROYAL GOVERNMENT OF CAMBODIA

Nº. 60 ANKR.BK

Sub-Decree

on

Requirements and Procedures for Business Combinations

The Royal Government

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen Preah Reach Kret No. NS/RKT/0918/925 dated 6 September 2018 on the Appointment of the Royal Government of the Kingdom of Cambodia;
- Having seen Preah Reach Kret No. NS/RKT/0320/421 dated 30 March 2020 on the Appointment and the Amendment of Roles of the Royal Government of the Kingdom of Cambodia;
- Having seen the Preah Reach Kram No. NS/RKM/0618/012 dated 28 June 2018 on the promulgation the Law on Organizing and Functioning of the Council of Ministers;
- Having seen the Preah Reach Kram No. NS/RKM/0196/16 dated 24 January 1996 on the promulgation the Law on the establishment of Ministry of Commerce;
- Having seen the Preah Reach Kram No. NS/RKM//1021/013/ dated 5 October 2021 on the promulgation the Law on Competition;
- Having seen the Sub-Decree No. 38 ANKR.BK dated 16 March 2020 on the Organization and Functioning of the Ministry of Commerce;
- Having seen the Sub-Decree No. 37 ANKR.BK dated 17 February 2022 on the Organisation and Functioning of The Cambodia Competition Commission;
- Referring to the proposal of the Minister of Commerce.

HEREBY DECIDES

Chapter 1

General Provisions

Article 1.- Purpose

This Sub-Decree sets out the requirements and procedures for Business Combinations in the purpose of reviewing, monitoring and evaluating the impact on competition.

Article 2.- Scope

This Sub-Decree applies to any Business Combination which, directly or indirectly, has or may have the object or effect of significantly preventing, restricting, or distorting competition in a Market in the Kingdom of Cambodia, regardless of whether the Business Combination takes place inside or outside the territory of the Kingdom of Cambodia, except for Business Combination in certain industries that have been regulated by applicable laws and regulations.

Article 3.- Definitions

Key terms used in this Sub-Decree shall be defined as following:

1. **Pre-Notification** means a mandatory notification of any party who proposes a Business Combination to the CCC before substantive completion of the Business Combination as stipulated under Chapter 2 of this Sub-Decree.
2. **Post-Notification** means a mandatory notification of any party to a Business Combination to the CCC after substantive completion of the Business Combination as stipulated under Article 13 of Chapter 3 of this Sub-Decree.
3. **Primary Review** means the review and appraisal of the proposed Business Combination conducted in accordance with Article 5(3) of this Sub-Decree.
4. **Secondary Review** means the review and appraisal of the proposed Business Combination conducted in accordance with Article 5(5) of this Sub-Decree.
5. **Horizontal Business Combinations** means a proposed Business Combination between Persons who operate, or are likely to operate, at the same level in the production or distribution chain.
6. **Vertical Business Combinations** means a proposed Business Combination between Persons that operate at different levels in the production or distribution chain.

7. **Conglomerate Business Combinations** means a proposed Business Combination between persons with different economic activities in unrelated competitive markets.
8. **Group** means the existence between Persons under common Rights of Control or between two Persons where one Person has Rights of Control over the other Person.
9. **Notifying Party** means each Person proposes to engage in or has notified after a completion of a Business Combination and may include any other Person whom is subject to the notified Business Combination.
10. **Investigating Officers** mean the officers of CCF Directorate-General who were appointed as the Investigating Officer under the Law on Competition.
11. **Issuance of an Advance Ruling Certificate** means the issuance of a certificate by the CCC as stipulated under Article 14 of this Sub-Decree.
12. **HHI** means the Herfindahl-Hirschman Index which is determined by summing the squares of the market share of each firm competing in the relevant Market in order to identify the concentration market power of a person intending to combine or has combined.
13. **Rights of Control** means rights to control a Person or line of business of a Person and is determined by the satisfaction of one of the following:
 - a. One Person obtains ownership of more than 50 (fifty) percent of the shares, interests of, or voting rights of another Person.
 - b. One Person obtains ownership of or the right to use the assets of, or one or more of lines of business of, another Person more than 50 (fifty) percent.
 - c. One Person has one of the following rights:
 - To directly or indirectly decide the appointment, removal or dismissal of a majority or all of the members of the board of directors or senior executives of another Person;
 - To decide on the amendment of the constating documents of another Person;
 - To make important decisions on the business activities of another Person including, but not limited to, selection of its legal form and organization, its lines of business operations, its geographic area of activities, raising, allocating and use of capital, dealing with specific customers or suppliers and other key business decisions.
14. **Notice** means the provision of information in written notice or through other means from the CCC or the CCF Directorate-General to the Notifying Parties and relevant Parties.
15. **CCF Directorate-General** means the Consumer Protection Competition and Fraud Repression Directorate-General.

Chapter 2

Pre-Completion Business Combination Notification

Article 4.- Obligation to Notify

Parties proposing to undertake a Business Combination, where any of the thresholds for the Business Combination determined by the decision of the CCC is satisfied, shall be obligated to notify the CCC prior to the completion of the proposed Business Combination in accordance with Chapter 2 of this Sub-Decree.

Any Business Combination subject to Pre-Notification under the paragraph 1 above shall be prohibited from completion unless permitted in accordance with Article 6 of this Sub-Decree.

The CCC shall issue a decision on the Pre-Notification thresholds for the Business Combination by taking into account the following conditions:

- a. Total assets in the Kingdom of Cambodia of any Party or its related Group in the financial year immediately preceding the year of notification of the proposed Business Combination;
- b. Total sales or input purchase turnover in the Kingdom of Cambodia of any Party or its related Group in the financial year immediately preceding the year of notification of the proposed Business Combination;
- c. The transaction value of the proposed Business Combination.

The CCC shall issue a separate decision on the Pre-Notification thresholds for the Business Combination, where any of the Parties of the Business Combination is a Banking and Financial Institution, Insurer, or Securities Business, in accordance with the conditions as set forth in paragraph 3 above.

The CCC shall have the right to adjust the thresholds in accordance with the actual circumstances.

The CCC may accept notification of a Business Combination regardless of the notification is not made by all the parties, if such notification has attached with a written explanation of why not all Parties are fulfilling the obligations in accordance with the paragraph 1 above.

Article 5.- Primary and Secondary Reviews

Parties proposing to undertake a Business Combination, whom is required to provide a Pre-Notification in accordance with Article 4(1) of this Sub-Decree shall provide all relevant documents and information to the CCC as set out in Article 7 of this Sub-Decree.

Once the notification of business combination is received, the CCC shall have 7 (seven) working days to issue a notice to the Notifying Parties of the completeness or incompleteness related to the documents and information provided to the CCC; and shall apply the process as follows:

- a. If the CCC does not issue a written notice to the Parties within the period as set out above, the notification shall be deemed complete and valid.
- b. The Notifying Parties shall provide any documents and information as required by the CCC to complete the notification conditions within 30 (thirty) working days after the issuance of the CCC's notice. If the Notifying Parties fail to fulfil the conditions as required by the CCC, the notification will be deemed void. In this event, the Notifying Parties shall submit a new notification to the CCC with respect to the process in accordance with Chapter 2 of this Sub-Decree.

After receiving the complete notification, the CCC shall have 30 (thirty) working days to issue a notice to the Notifying Parties of the results of its Primary Review of the proposed Business Combination by indicating any of the following decisions:

- a. The Business Combination may be completed.
- b. The Business Combination is subject to Secondary Review.

If the CCC does not issue the notice to the Notifying Parties referred to in the Paragraph 3 above within the stipulated time period, the Business Combination can be completed.

If the CCC issues a notice in accordance with Article 5(3)(b) above, the Notice shall be indicated the additional documents and information required in order to conduct its Secondary Review and submission deadline to the CCC. If the Notifying Parties fail to provide the additional documents and information by the deadline set by the CCC, the Notifying Parties shall specify a reasonable ground to the CCC. The CCC shall have 60(sixty) working days to complete its Secondary Review starting from the date of the Notifying Parties has fulfilled the documents and information as requested by the CCC. During the course of Secondary Review, the CCC shall have the following rights:

- a. The CCC may extend the secondary review period by up to 30 (thirty) working days each up to 2 (two) times by providing a notice to the Notifying Parties.
- b. During the course of Secondary Review, the CCC may request additional documents and information from the Notifying Parties through the notice to provide the supplementary documents and information. The period for completion of the Secondary Review shall be suspended from date this supplementary documents and information request is issued until the Notifying Parties have fulfilled the CCC's request.

- c. The CCC shall have the right to make additional requests for documents and information from the Notifying Parties and relevant Parties through the exercise of its duties and functions in accordance with the provisions of the Law on Competition and other applicable regulations.

By the expiry of the time period referred to in the Paragraph 5 above including any extensions or suspensions, the CCC shall issue the notice to the Notifying Parties of the results of its Secondary Review by indicating any of the following decision:

- a. The Business Combination may be completed.
- b. The Business Combination may be completed subject to conditions.
- c. The Business Combination be prohibited in accordance with Article 11 of the Law on Competition.

If the CCC does not issue the notice referred to in Paragraph 6 above within the stipulated time period, the proposed Business Combination may be completed.

Article 6.- Prohibition and Completion of Business Combination

A Business Combination subject to Pre-Notification in accordance with Article 4(1) of this Sub-Decree shall not be completed, unless:

1. The CCC issues a notice to Notifying Parties indicating the proposed Business Combination may be completed in accordance with Article 5(3)(a) of this Sub-Decree.
2. The CCC fails to issue a notice to Notifying Parties within the 30 (thirty) working days after the CCC received the complete notification in accordance with Article 5(4) of this Sub-Decree.
3. The CCC issues a notice to Notifying Parties indicating that the proposed Business Combination is subject to the Secondary Review in accordance with Article 5(3)(b) of this Sub-Decree, but subsequently:
 - a. The CCC fails to issue a notice to Notifying Parties within the stated time period in accordance with Article 5(6) of this Sub-Decree.
 - b. The CCC issues a notice to Notifying Parties indicating that the proposed Business Combination may be completed in accordance with Article 5(6)(a) of this Sub-Decree.
 - c. The CCC issues a notice to Notifying Parties indicating the proposed Business Combination may be completed with conditions in accordance with Article 5(6)(b) or prohibited in accordance with Article 5(6)(c) of this Sub-Decree and

- The CCC makes a confirmation to the Notifying Parties on the sufficient compliance with the necessary conditions set before completing the proposed Business Combination.
 - The CCC or the competent court, through a complaint in accordance with Article 31 of the Law on Competition, decides that the proposed Business Combination can be completed.
4. The CCC issues a notice to the Notifying Parties in accordance with Article 10(3)(a) of this Sub-Decree.
 5. The circumstances in accordance with Article 10(7) of this Sub-Decree may be applied.
 6. The CCC issues an Advance Ruling Certificate in accordance with Article 14(1) of this Sub-Decree.

Article 7.- Contents of Notification

Unless otherwise determined by the CCC, Notifying Parties to a Business Combination in accordance with Article 4(1) of this Sub-Decree shall provide the documents and information as following:

- a. The notification form issued by the CCC;
- b. The description of the key terms of the relevant(s) agreements in relation the proposed Business Combination as well as a current draft or executed copy of the agreement or memorandum of understanding with respect to the proposed Business Combination;
- c. Documents and Information for each Party including:
 - Contact persons' name, email and phone number;
 - Jurisdiction of incorporation and legal registration number;
 - Constatting documents of each Party;
 - Registered address;
 - List of major shareholders of each Notifying Party, including ultimate parent company if applicable;
 - List of any affiliates or members of the same Group that may potentially be relevant to a review of the Business Combination.
- d. Financial statements of each Notifying Party for the year immediately preceding the year of notification as well as any more recent quarterly accounts of such Party;
- e. Identification of each type of good or service in which each Notifying Party (including Persons in the same Group as a Party) directly or indirectly involved in the Business Combination is conducting business or the revenues of each Party for the two (2) years

immediately preceding the year of notification and the year of notification in the relevant Market.

The documents and information listed in Paragraph 1 above is required to be provided in Khmer language except:

- a. Any legal names of Persons or locations;
- b. Any information expressed numerically;
- c. Any final or draft legal documents, but the description of key terms must be provided in Khmer language;
- d. Constatng documents must be provided in English or Khmer language; and
- e. Financial statements may be provided in either English or Khmer language.

Article 8.- Criteria for Secondary Review

A Horizontal Business Combination will not be subject to Secondary Review where any of the following requirements is satisfied:

- a. The aggregate market share of the Notifying Parties (and, where applicable, the relevant Groups) is less than 30(thirty) percent in each relevant Market;
- b. The aggregate market share of the Notifying Parties (and, where applicable, the relevant Groups) is equal to or greater than 30 (thirty) percent in any relevant Market and the HHI in such relevant Market is less than 1,800 (one thousand eight hundred);
- c. The aggregate market share of the Parties (and, where applicable, the relevant Groups) is equal to or greater than 30 (thirty) percent in any relevant Market and the HHI in such relevant Market is greater than 1,800 (one thousand eight hundred) and the increase in HHI in such relevant Market after completion of the proposed Business Combination is less than 150 (one hundred fifty).

A Vertical Business Combination or Conglomerate Business Combination shall not be subject to Secondary Review if the market share of any Notifying Party (and, where applicable, the relevant Groups) is less than 30 (thirty) percent in each relevant Market.

Despite the satisfaction of the requirements identified in Paragraph 1 and Paragraph 2, the CCC may issue a decision requiring the proposed Business Combination subject to Secondary Review where the CCC finds a reasonable concern that the proposed Business Combination will, or is likely to, have the object or effect of significantly preventing, restricting, or distorting competition in a relevant Market. In this circumstance, the CCC shall issue a notice to Notifying Parties in accordance with Article 5(3)(b) of this Sub-Decree by stating the reasonable grounds.

Despite the unsatisfaction of the requirements identified in Paragraph 1 and Paragraph 2, the CCC may issue a decision allowing the proposed Business Combination to be completed without recourse to Secondary Review where the CCC finds a reasonable concern that a proposed Business Combination will not, or is unlikely to, have the object or effect of significantly

preventing, restricting, or distorting competition in a relevant Market. In this circumstance, the CCC shall issue a notice to Notifying Parties in accordance with Article 5(3)(a) of this Sub-Decree by stating the reasonable grounds.

Article 9.- Special Conditions of Secondary Review

A Business Combination shall not be subject to Secondary Review where any of the following conditions exist:

- a. A Party being acquired has failed or is likely to fail;
- b. An acquisition of voting shares or of an interest in a joint venture is solely for the purpose of underwriting the shares or the interest;
- c. An acquisition of voting shares, an interest in a combination or assets that would result from a statutory succession or testamentary succession;
- d. An acquisition of collateral or receivables, or an acquisition resulting from a foreclosure or default or forming part of a debt work-out, made by a creditor in or pursuant to a credit transaction entered into in good faith in the ordinary course of business;

Notifying Parties to Business Combination, whom are satisfied with any of the conditions listed in the Paragraph 1 above, shall provide relevant documents and information to the CCC evidencing the applicability of the relevant conditions.

Regardless of the application of any of the conditions set out in accordance with the Paragraph 1 above, the CCC retains the right to conduct the Secondary Review. In this event, the CCC shall provide a notice to the Notifying Parties to the proposed Business Combination by indicating the reasonable grounds to which the CCC decides to conduct the Secondary Review.

Article 10.- Simplified Notification and Review

Where the proposed Business Combination satisfied with the obligations set forth in Paragraph 2 below and subject to Pre-Notification under Article 4(1), the Review Process under Article 5 and Contents of Notification under Article 7 of this Sub-Decree shall not apply. The Pre-Notification for Business Combination shall be attached with documents and information to the CCC as follows:

- a. The simplified notification form issued by the CCC;
- b. Information for each Party including:
 - contact person's name, email and phone number;
 - jurisdiction of incorporation and legal registration number;
 - registered address;
 - financial statements of each Party for the year immediately preceding the year of notification as well as any more recent quarterly accounts.

- c. Documents and Information evidencing the existence of the circumstances described in Paragraph 2 below.

The obligations set forth in the Paragraph 1 above shall apply where:

- a. All Parties in a proposed Business Combination are in the same Group.
- b. The proposed Business Combination has been approved from the Royal Government and shall be notified to the CCC within 30(thirty) working days after the receipt of approval;
- c. Other classes of transactions as may be prescribed by the CCC.

After receipt of a notification in accordance with Article 10(1) above, the CCC shall issue a notice to the Notifying Parties within 7(seven) working days confirming:

- a. The proposed Business Combination fulfils the obligations described in the Paragraph 2 above and that the notification is valid and complete;
- b. The provided documents and information related to the Notification of Business Combination is not sufficient to determine whether the Proposed Business Combination fulfills the obligations described in the Paragraph 2 above ;
- c. The proposed Business Combination does not fulfil the obligations described in the Paragraph 2 above.

If the CCC issues a notice on the incompleteness of documents and information, the Notifying Parties shall have 7 (seven) working days in which to provide sufficient documents and information in order to enable the CCC to issue a notice confirming the notification is valid and complete in accordance with Article 10(3)(a) of this Sub-Decree. If no additional document and information is provided within the deadline, the CCC shall issue a notice to the Notifying Parties indicating the proposed Business Combinations does not fulfil the obligations described in Article 10(3)(c) of this Sub-Decree.

The CCC shall issue a notice within 7(seven) working days in accordance with Article 10(3)(a) or 10(3)(c) of this Sub-Decree to the Notifying Parties after the receipt of any additional document and information by applying the procedure set forth in paragraph 4 above.

If the CCC issues a notice to the Notifying Parties indicating the proposed Business Combination does not fulfil the obligations described in Article 10(3)(c) above, the notification of the proposed Business Combination shall be applied to the procedures under Article 5 and Article 7 of this Sub-Decree.

If the CCC does not issue a notice in accordance with Article 10(3) or Article 10(5) above, then the notification of the proposed Business Combination shall be deemed valid and complete.

Article 11.- Exemptions

Parties seeking an exemption in accordance with Article 12 of the Law on Competition shall provide documents and information at the time of notification in accordance with Article 5 of this Sub-Decree, or at the time of application for an Advance Ruling Certificate in accordance with Article 14 of this Sub-Decree, or at any time during the review process, to evidence the CCC that the proposed Business Combination complies with the conditions set forth in Article 12 of the Law on Competition.

The CCC shall consider on the efficiency gains that can be demonstrated to be expected from the proposed Business Combination including allocative efficiency, productive efficiency and dynamic efficiency in consideration of the identifiable technological, economic or social benefits and such benefits would not exist without those agreements or activities in accordance with Article 12(1)(2) of the Law on Competition,

The CCC shall focus on the benefits identified as arising from the proposed Business Combination and the effects on competition in consideration of Article 12(3)(4) of the Law on Competition in a Market in the Kingdom of Cambodia during the evaluation on the exemption under the Article 12 of the Law on Competition.

Article 12.- Obligation to Register on Substantive Completion of a Business Combination

At least one of the Notifying Parties, who had been permitted by the CCC in accordance with Article 6 and Article 10 of this Sub-Decree, shall report on the status of the Business Combination and register the Business Combination within 30 (thirty) working days of its substantive completion attaching with a certificate of tax compliance from the General Department of Taxation of Ministry of Economic and Finance.

The requirements and procedures for registration of the Pre-Notification for Business Combination shall be determined by the Prakas of the Minister of Commerce.

Chapter 3

Post-Completion Business Combination Notification

Article 13.- Obligation of Post-Completion Business Combination

At least one of the Notifying Parties to a Business Combination that is not subject to an obligation to notify pursuant to Article 4 of this Sub-Decree shall notify the Business Combination to the CCC after the substantive completion of Business Combination.

The procedures of the Post-Notification for Business Combination shall be determined by the Prakas of the Minister of Commerce.

Chapter 4

Issuance of an Advance Ruling Certificate

Article 14.- Issuance of an Advance Ruling Certificate

The Notifying Parties to the Business Combination may request the Advance Ruling Certificate issued by the CCC.

Where the CCC has no grounds to challenge or commence a proceeding to prohibit a Business Combination in accordance with Article 11 of the Law on Competition, the CCC may issue an Advance Ruling Certificate.

Where the CCC has issued a certificate in accordance with the paragraph 1 above, the Business Combination subject to the Issuance of an Advance Ruling Certificate may be substantively completed. Within 1 (one) year from the date of the certificate was issued, the CCC shall not reject or prohibit the Business Combination in accordance with Article 11 of the Law on Competition solely on the basis of information and documents that is the same, which was the basis on which the certificate was issued.

The Issuance of an Advance Ruling Certificate in accordance with the paragraph 1 above shall be deemed satisfaction of any obligation to notify a Business Combination in accordance with Article 4 of this Sub-Decree. Registration obligation in accordance with Article 12 of this Sub-Decree shall apply despite the Advance Ruling Certificate has been issued.

The requirements and the procedures for the Advance Ruling Certificate shall be determined by the decision of the CCC.

Chapter 5

Fees and Decisions

Article 15.- Fees

Fees with respect to notifications in accordance with Article 4, Article 10, or Article 13 of this Sub-Decree and the Issuance of an Advance Ruling Certificate shall be determined by the Joint Prakas of the Minister of Commerce and the Minister of Economy and Finance.

Article 16.- Decisions

Any decision issued by the CCC on a Business Combination, regardless of with conditional, prohibition a Business Combination, or issuance of an Advance Ruling Certificate shall be a decision pursuant to Chapter 5 of the Law on Competition.

Chapter 6

Sanctions

Article 17.- Sanctions

Parties of a Businesses Combination violating any provisions of this Sub-Decree shall be subject to administrative sanctions and/or other sanctions in accordance with the Law on Competition and other applicable regulations.

Chapter 7

Final Provisions

Article 18.- Enforcement Period

Within 6 (six) months after the entry into force of this Sub-Decree, Parties to a Business Combination shall comply with the provisions of this Sub-Decree.

Article 19.- Abrogation

Any provision contrary to this Sub-Decree shall be considered null and void.

Article 20.- Implementation

The Minister of the Council of Ministers, the Minister of Economy and Finance, the Minister of Commerce, and Ministers of all relevant ministries and institutions shall implement this Sub-Decree from the signature date onwards.

Buddhist Date
Done in Phnom Penh, 6th March 2023

Prime Minister

[Seal and Signature]

Samdech Akka Moha Sena Padei Techo Hun Sen

Having informed **Samdech Akka Moha Sena Padei Techo the Prime Minister**

For Signature

Minister of Commerce

[Signature]

PAN SORASAK

Recipients:

- Ministry of the Royal Palace
- General Secretariat of the Constitutional Council
- General Secretariat of the National Assembly
- General Secretariat of the Senate
- Cabinet of Samdech Akka Moha Sena Padei Techo Prime Minister
- Cabinet of Samdech, His Excellency and Her Excellency the Deputy Prime Ministers
- As stated in Article 20
- Royal Gazette
- Documentation and archive