

Cambodia-Laos-Vietnam

David Fruitman, Sar Vathana, Aristotle
David and Nguyen Huong Giang

INTRODUCTION

While antitrust laws in Cambodia, Laos and Vietnam are evolving differently, they share a number of common features. Each of these countries is still in transition towards a market economy and each is still in the process of implementing the necessary legislative framework to support such change. Further, the three countries face significant legal, economic and social challenges which absorb substantial legislative and regulatory resources. Finally, with competition law not being a regulatory priority, each country faces the additional challenge of a business environment that is largely unaware of its implications.

As such, while Vietnam has clearly taken the lead, all three countries are still in a relatively early stage of developing efficient antitrust regulation. However, there has been significant progress over the past year, including the distribution of an English language draft competition law in Cambodia and a significant competition decision by the Vietnam Competition Council (the “VCC”).

CAMBODIA

Legislative Developments

The Kingdom of Cambodia does not currently have antitrust legislation per se. However, the Constitution of Cambodia contains various provisions relating to antitrust law and supports the enactment of such legislation.¹ In addition, the Law on Marks, Trade Names and Acts of Unfair Competition regulates certain unfair competitive practices.²

As part of its accession to the World Trade Organization, Cambodia committed itself to various reforms, including

the enactment of a competition law which was scheduled to enter into force on January 1, 2006. At the time of writing, a draft is still being reviewed by the Ministry of Commerce with technical assistance from UNCTAD and other international parties. A Ministry official indicated that the draft law is now expected to be finalized and submitted to the National Assembly in mid-2010.

The 2009 English language draft, which has had limited public circulation, addresses economic concentrations, abuses of dominance and various forms of coordinated behavior. In its current form, the draft raises a number of concerns including the exclusion of significant industries from the application of antitrust regulation (e.g. telecommunications, banking, agriculture) the inclusion of non-competition related matters (e.g. mandatory invoicing of all commercial transactions); substantive issues regarding the enforcement of certain antitrust infringements (e.g. dominance appears to be imprecisely defined as an undertaking having “more customers than others in the market”); and the fact that the regulator is intended to combine both investigative and adjudicative powers.

It is hoped that the many areas of the Law which require clarification will be addressed in future drafts.

LAOS

Legislative Developments

In Laos People’s Democratic Republic, the Decree on Trade Competition was issued on February 4, 2004 and became effective on August 1, 2004.³ The Decree is to be implemented by the Ministry of Industry and Commerce and the Trade Competition Commission. However, the latter has not yet been set up and the Ministry has

1 Constitution (1993) (Cambodia), as amended March 4, 1999, available at <http://www.cambodia.gov.kh/unisql1/egov/english/organ.constitution.html>. See Article 56: “The Kingdom of Cambodia shall adopt market economy system. The preparation and process of this economic system shall be determined by law”.

2 See Articles 22 and 23 of Royal Decree No. NS/RKM/0202/06, February 7, 2002, available at <http://www.globalcompetitionforum.org/regions/asia/Cambodia/02lw-TrademarCompet1.pdf>

3 Royal Decree No. 15/PMO (Laos), February 4, 2004, http://www.google.com/url?sa=t&source=web&ct=res&cd=1&ved=0CacQFjAA&url=http%3A%2F%2Fsitesources.worldbank.org%2FINTCOMPLEGALDB%2FEastAsiaandPacific%2F20962860%2FLaoCompetitionLaw.pdf&rct=j&q=lao+decree+trade+competition+2004&ei=SVt6S7m9KtWgkQX_46T6Cg&usg=AFQjCNFVZTz-TEl9z3r8Q-8wqHn2sZTFdQ

confirmed that there have been no cases since the Decree was issued.

The Ministry has indicated that it is expecting a decree on consumer protection to be issued in mid-2010.

VIETNAM

Legislative Developments

The antitrust legislation in force in the Socialist Republic of Vietnam is the Competition Law (the “Law”) which took effect on July 1, 2005.⁴ The Law is fairly comprehensive and addresses economic concentrations and unfair practices, as well as restrictive practices.

In addition to the Law itself, detailed implementation guidelines have been produced dealing with issues relating to the VCC and the Competition Administration Department (the “VCAD”), while also providing further details on the provisions of the Law. In broad terms, the Law establishes the VCC, which is responsible for deciding on competition law complaints, whereas the VCAD is the investigatory branch with the power to review economic concentrations and exemption applications and to sanction anticompetitive conduct.

A primary focus of the VCAD continues to be on improving resources, together with advocacy and consultancy activities designed to increase competition law awareness. The perception is that there is significantly more work required in these areas. The VCAD has participated in numerous local and international competition-related conferences, workshops and seminars over the past year involving businesses, academics, lawyers and government officials. The VCAD has also continued its involvement with antitrust regulators in other jurisdictions both with respect to cooperation and receiving support. It has also been active in promoting the antitrust agenda through the Association of Southeast Asian Nations (“ASEAN”) and has set up a competition training center for its staff.

Pursuant to its stated desire to increase awareness, the VCAD launched a newsletter and has regularly updated its website this year.⁵ However, it has remained difficult to

obtain information on investigations and cases, so that much of the information below has been obtained from public sources.

Cartels and other Anticompetitive Practices

Over the past year, the VCAD has announced its intention to focus on multi-level marketing and appears to have opened investigations with respect to a number of high-profile matters, including publicly announced industry-wide pricing agreements.

Perhaps most significantly, on April 14, 2009, the VCC, after holding its first hearing in a competition infringement matter, found that the Vietnam Air Petrol Company (“Vinapco”) had abused its monopoly position. In addition to imposing a fine of approximately VND3.37 billion (approximately US\$180,000), the VCC appeared to approve the recommendations of Jetstar Pacific Airlines (“Jetstar”) that Vinapco be split off from its parent company, Vietnam Airlines, that regulators pay careful attention to its operations and that other firms be allowed to sell jet fuel, thereby eliminating Vinapco’s monopoly.

Vinapco was formed in 1993 to supply jet fuel to Vietnam Airlines and has maintained a monopoly position in the supply of jet fuel to all airlines operating in Vietnam since then. On December 31, 2007, Vinapco and a predecessor of Jetstar signed a contract for the supply of jet fuel for 2008. The pumping fee for one ton of fuel was set at VND593,000 (approximately US\$32) per ton. On March 20, 2008, Vinapco unilaterally attempted to increase the pumping fee to VND750,000 (approximately US\$40) per ton, arguing that this was necessary due to global price fluctuations. When Pacific refused to accept the increase, Vinapco cut off its supplies. Vinapco’s actions allegedly delayed some 30 flights and affected more than 5,000 passengers and Vinapco was quickly ordered by the Minister of Transport to resume supplying Pacific despite the price dispute.

Within a few days of the incident, on its own initiative, the VCAD opened a preliminary investigation and sought information from Vinapco, Pacific and other relevant

⁴ Order No. 27/2004/QH11, December 3, 2004, available at http://www.adb.org/documents/others/ogc-toolkits/competition-law/documents/vn_order_23_2004.pdf

⁵ Available at <http://www.vcad.gov.vn/Web/Default.aspx?lang=en-US>

parties. Having found sufficient cause for an official investigation, the matter was eventually submitted to the VCC. In its decision, the VCC determined that Vinapco's actions violated Clauses 2 and 3 of Article 14 of the Competition Law which deals with abuse of monopoly position.

The maximum fine under these provisions is 10% of Vinapco's revenue from the financial year immediately preceding the year the conduct occurred. A VCC official was quoted as saying that this would have been approximately VND70 billion (approximately

US\$3,750,000), significantly higher than the fine actually imposed, and therefore the relatively small fine should be interpreted as a warning to Vinapco.

On appeal, the VCC upheld the fine as imposed, but ruled against separating Vinapco from Vietnam Airlines. However, recognizing the need for greater competition, the VCC suggested that the government work to ensure that an approved competitor, an affiliate of state run Petrolimex, be quickly established.

DFDL Mekong

www.dfdlmekong.com

33, Street 294 (Corner Street 29), Sangkat Tonlebasac

Khan Chamkamon (PO Box 7) Phnom Penh - Cambodia

+855 (0) 23 210 400

+855 (0) 23 214 053

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