

## Legislation and Jurisdiction

### The Law

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#### What is the relevant legislation?

The relevant legislation is Decree 15/PMO (4/2/2004) on Trade Competition (the “Decree”). However, the Decree has not been implemented.

#### To whom does it apply?

The Decree applies to the sale of goods and services in business activities by business persons. A “business person” is defined by Article 2 of the Decree as “a person who sells goods, buys goods for further processing and sale or buys goods for resale or is a service provider”. The Decree does not make a distinction between national and foreign business persons.

#### Which practices does it cover?

The Decree prohibits specific restrictive business practices leading to monopolisation, namely: mergers and acquisitions leading to monopolisation, elimination of other business entities, collusion and arrangements and cartels with foreign business persons.

#### Are there proposals for reform?

There are plans to reform the Decree and adopt a comprehensive law on competition that will be passed by the National Assembly Conference in 2015. The Division on Consumer Protection and Competition under the Ministry of Industry and Commerce has been set up.

## The Authorities

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#### Who is the enforcement authority?

Article 5 of the Decree provides for the establishment of a Trade Competition Commission (TCC) within the Ministry of Industry and Commerce, which shall be chaired by the Minister of Industry and Commerce. The TCC has not been established yet.

#### Are there any sector-specific regulatory authorities (RAs) with competition enforcement powers?

Sector-specific authorities have powers to regulate their respective sector and issue (or request the Prime Minister to issue) notices to address disruptive behaviours. These might include, though there is no precedent in this respect, anti-competitive behaviours.

Informal guidance can be requested at the authority concerned:

the Ministry of Industry and Commerce:  
 [www.moic.gov.la](http://www.moic.gov.la)  +856 21 412015;

the Ministry of Posts and Telecommunications:  
 [www.mpt.gov.la](http://www.mpt.gov.la)  +856 21 219858;

the Ministry of Public Works and Transport:  
 [www.mpwt.gov.la](http://www.mpwt.gov.la)  +856 21 412255;

the Ministry of Energy and Mining:  
 [www.mem.gov.la](http://www.mem.gov.la)  +856 21 413000;

the Ministry of Information, Culture and Tourism:  
 [www.kplnet.net](http://www.kplnet.net)  +85621 212412;

the Ministry of Public Health:  
 [www.moh.gov.la](http://www.moh.gov.la)  +856 21 214000;

the Ministry of Science and Technology:  
 +85621 213470.

## Anticompetitive practices

### Agreements

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#### Which agreements are prohibited?

Article 11 of the Decree prohibits collusion and arrangements to engage in unfair trade practices in any form, such as:

- Price fixing, and fixing the sale and purchase price of goods and services;
- Stocking goods, limiting, reducing the quantity or limiting the production, purchase, sale, distribution or import of goods and services;
- Colluding in tenders for purchase, sale and supply of goods and services;
- Fixing conditions that, directly or indirectly, force their customers to reduce production, purchase or sale of goods or the supply of services;
- Limiting the customer's choice to purchase, sell goods and receive services;
- Prohibiting their suppliers or retailers from purchasing or selling goods to other business entities;
- Entering into allocation arrangements of markets, customers or suppliers restricting competition;
- Appointing, or giving authority to an individual for the sole right to sell goods or supply services in one market;
- Arrangements to fix conditions or the manner of purchase and sale of goods or services to restrict other business entities;
- Other acts that are contrary to the trade competition regulations prescribed by the TCC.

Article 12 of the Decree prohibits cartels with foreign business persons, i.e., "to establish and operate a business in Lao PDR that has business relations with a foreign business entity either by contract, share holding or other form to act to limit the opportunity of local businesses to choose to purchase from or sell goods or provide services directly to, a foreign business entity".

#### Which agreements may be exempted?

According to Article 13 of the Decree, the TCC may exempt any of the above acts for some specific sector or business for socio-economic or security reasons. No exemption has been adopted as yet.

#### Is there any formal notification requirement and to which authority should a notification be made?

Procedural implementing rules for exemptions have not been adopted yet.

### Monopoly, dominant position and other unilateral conducts

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#### Is monopoly or dominant position regulated?

The Decree does not specifically regulate a monopoly or a dominant position. Instead Article 8 prohibits a business person from engaging in a merger, eliminating a competitor, engaging in collusive activities "so as to monopolize any market of goods and services."

#### What is a dominant or a monopoly position?

Article 2 of the Decree defines a **monopoly** as "the dominance of the market individually or in collusion with other businesses" and **market dominance** as a situation where the "sales volume or market share of an goods or services of one or more business entities is above that prescribed by the TCC."

**When are monopoly and dominant positions prohibited?**

Conduct which leads to a monopoly (including dominance) is prohibited. Article 8 of the Decree prohibits any business person to perform mergers and acquisitions, exclusionary abuses, collusion and arrangements and cartels (i.e., any act stipulated in Articles 9, 10, 11 and 12 of the Decree), “so as to monopolize any market of goods and services”. Article 10 of the Decree prohibits any business entity “to act or behave so as to cause losses directly or indirectly, by such conduct as dumping, limiting or intervening with intent to eliminate other business entities”.

**Can abuses of dominant or monopoly position be exempted?**

According to Article 13 of the Decree, any of the above acts may be exempted “for some specific sector or business for socio-economic or security reasons”. To this purpose, the Article establishes that the TCC is assigned to consider and provide exemptions from time to time. No exemption has been adopted as yet.

**Merger control**

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**What is a merger?**

Article 2 of the Decree defines a merger as “two or more business entities coming together and forming into one business entity with the result the individual business entity will cease to exist”.

**Are foreign-to-foreign mergers included?**

The Decree does not make any difference between national and foreign business persons.

**Do mergers need to be notified?**

The Decree does not provide for an obligation to notify a proposed merger.

**Which mergers are prohibited?**

Under Article 9 of the Decree, “it is prohibited for a business person to monopolize the market in the form of a merger or acquisition that destroys competitors or substantially reduces or limits competition”.

**What happens if prohibited mergers are implemented?**

The Decree does not establish specific sanctions for implementing prohibited mergers. The general sanctions under Article 14 of the Decree apply (see below).

**Can mergers be exempted/authorised?**

Under Article 13 of the Decree, mergers and acquisitions may be exempted by the TCC for specific sectors or businesses for socio-economic or security reasons.

**How to apply for an exemption?**

Implementing rules have not been adopted yet.

## Procedure

### Investigations

Implementing procedural rules have not been adopted yet by the Ministry of Industry and Commerce and the TCC.

### Adjudication

#### What are the final decisions?

Under the Decree, it is for the TCC to decide the case and apply the sanctions where it finds a violation of the Decree. Implementing rules have not been adopted yet by the Ministry of Industry and Commerce.

#### What are the sanctions?

Sanctions for violation of any of the offence under the Article 14 of the Decree are the following:

- Notice to change and rectify the behaviour;
- Temporary suspension of the activity until the behaviour is rectified and changed;
- Indefinite close down of the activity and possible punishment according to the law;
- Compensation for a business entity that has incurred losses as a result of the offences.

### Judicial review

#### Can the enforcement authorities' decisions be appealed?

There are no provisions in this respect in the Decree.

### Private enforcement

#### Are private actions for damages available?

There are no specific provisions in the Decree related to private actions for damages from anti-competitive behaviours.

## Exclusions

#### Is there any exclusion from the application of the Decree?

No exclusion is provided for by the Decree.