

## Competition Rules in Cambodia

### Is Competition Among Market Players in Cambodia Fair?

*On the way towards market economy system, Cambodia needs effective and well-adapted competition laws and policies for economic and social welfare.*

Cambodia has opened its markets to the region and the world through its membership in ASEAN and recently in the WTO. Liberalisation of the economy is good for a small country like Cambodia to have access to international markets. Various products from Cambodia, if competitive with other countries' export products, may be exported to other countries. In addition, many Cambodian consumers may benefit from the competition amongst importers to the local markets, which result in cheap prices, good quality and product availability.

Nevertheless, opening the markets is not sufficient to create competitive markets without distortion. In a liberalised market, the behaviour of different market players sometimes is unfair towards their competitors and consumers. There are often cases where traders both in services and goods have abused their market power. For instance, traders collude not to compete with each other or to fix an unfair price that hurts consumer welfare.

A drive for economic and consumer welfare necessarily needs appropriate competition policies and rules to guide the markets. Promotion of competition is a crucial means to promote efficiency of trade, to encourage R&D (research and development) and innovation, and to ensure efficient allocation of resources in an economy, resulting from best choice of quality and lowest prices and adequate sup-

plies to consumers.

Given the importance of the role of competition in the Cambodian economic regime, this paper attempts to provide the current general outlook of competition in Cambodia and make some recommendations, with reference to case studies and a perception survey, to render competition in Cambodia fair and thus allow businessmen and consumers to make use of the liberalisation as much as they can.

#### Barriers to Entry and Competition

In spite of the significant efforts by the government to open up the economy, liberalise all economic activities and develop the private sector in Cambodia, certain existing laws and regulations still place restrictions on entry into markets, or put extra burdens and restraints on the competitive process. Included amongst these policy-induced barriers to entry and competition are, for example; regulations that impose quantitative restrictions on certain commodities like pharmaceutical products, gold and silver, ornaments, ammunition and various cultural and medical materials; regulations that prohibit imports of pork, motor-

bike tyres, right hand drive vehicles, and used footwear.

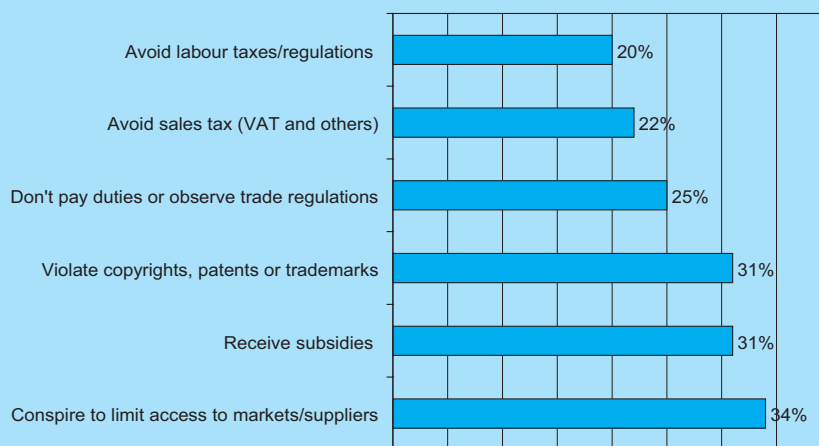
Certain laws and regulations also reserve special rights for the state to monopolise various services provided in Cambodia. The Electricity Law, for example, provides special privileges for the EDC to provide power transmission to the distribution companies and bulk power consumers. Very often the sectoral regulatory frameworks in place seem to be unclear and ambiguous and thus subject to different interpretations and uncertainty. The telecommunications sector, in particular, does not yet have clear provision to guide licensing procedures, and incumbent SOEs play both the roles of regulator and market player.

#### Business Registrations and Licensing Procedures

In Cambodia, business registration has often been marked as a substantial barrier to entry for many enterprises. The business registration process is highly complicated, expensive and time-consuming, acting as a major obstacle for a new business operator to enter the markets, or for existing economic entities to formally

*This article is mostly compiled from a study report on The Competition Scenario in Cambodia under the 7UP2 Project of Consumer Unity and Trust Society (CUTS) International sponsored by the State Secretariat for Economic Affairs, Switzerland (SECO) and the Department for International Development, UK (DFID).*

**Figure 1: Practices of Competitors as Obstacles to Own Firm**



Source: World Bank, Cambodia Seizing the Global Opportunity: Investment Climate Assessment & Reform Strategy, 2004

register themselves (leading to the high incidence of informality amongst enterprises in Cambodia and therefore disorder and mismanagement).

### *Weak Institution and Poor Governance*

The biggest constraint on the competitive process in Cambodia, however, is an apparent and serious lack of transparent and accountable administration. Corruption threatens fairness among players in the markets. The World Bank survey pointed out that the corruption level in Cambodia was double that of Bangladesh, Pakistan, and China. Corruption payments may be up to 5 percent of annual sales revenue, exceeding 6 percent for large firms. Undoubtedly corruption impacts on competition, especially when it comes to government procurement and licensing. The government procurement procedures are not properly constructed and highly uncertain.

In addition, weak institutions and governance also negatively affect fair competition in the markets. The government is still feeble in protecting intellectual property rights of holders against counterfeit goods. While some firms follow government regulations and pay taxes, some others avoid their obligations. Because of weak governance, many products have illegally passed the border checkpoints without paying taxes, to the detriment of the suppliers dealing in legally imported products.

### *Level of Unfair Competitive Practices*

A survey conducted by the World Bank shows that anti-competitive practices in Cambodia are fairly noticeable (Figure 1), posing a moderate problem to enterprises. 34 percent of the survey respondents stated that there were conspiracies with the government to prevent other competitors from entering into the markets. About 31 percent of firms are of the same opinion that the government treatment of all firms is not fair, while certain firms receive government subsidies and their arrears have been tolerated. 31 percent of respondents agreed that

the violation of intellectual property rights has been moderately significant. And between 20 to 25 percent of the interviewed firms declared that, while they pay taxes and abide by regulations, other firms do not.

Even though these practices may distort competition, strictly speaking they are not anticompetitive practices by nature, except for the conspiracies to limit access to markets or suppliers.

### **Competition in Telecommunications Sector: a Case Study**

In the absence of a national competition policy and law, government policies have a very crucial role to play in establishing and developing a competitive environment in the country. It is undeniable that government macro-policies affect competition among various players in markets. The government policies in different specific sectors comprise more specific instruments that impact competition in those sectors. A simple example of this would be a wide range of government sectoral policies linked with the matters of licensing, pricing, ensuring operational standards, etc.

#### *Telecom Regulator and Policy*

In Cambodia, the policymaking and regulatory power in the area of telecommunications services belongs to the Ministry of Posts and Telecommunications of Cambodia (MPTC). The MPTC plays an important role in

issuing licences to various operators that intend to operate communication businesses in Cambodia. Yet, there is not any legal provision governing these licensing procedures.

The draft Law on Telecommunications is being prepared by the MPTC. In general, the main objectives of the MPTC are to make available in Cambodia the most cost-effective telecom services and to make telecom services as widely available as possible in the country. To attain these aims, the MPTC adopted policies to promote open, fair and competitive markets. These policies include: separation of the function and responsibility in policy making, regulation, ownership and share holding, and network operations; establishment of a national telecom state enterprise; introduction of regulations to make it mandatory for telecom service providers to share the use of infrastructure; liberalisation of telecom services and development of human resources; and promotion of telecom services in rural areas.

#### *Licensing and Uncertainty*

In the absence of the law, the decision of the MPTC on whether a licence should be issued, on the basis of the necessity for development of a network, infrastructure, the expected coverage, the customer base and so on, seems to be obscure and discretionary. In particular, the contracts signed between the MPTC and private operators generally form restrictions on market entry. For instance, some years

#### **Box 1: Refusal to Deal in the Telecommunications Market**

At the end of September 2000, there were complaints from users of Mobitel (the 012 line), a big mobile phone service provider that had an 85 percent share of the Cambodia mobile phone service market, that they could not reply to the Short Message Services (SMS) sent to them by users of Camshin (the 011 line), another mobile phone service provider.

It was subsequently found that Mobitel had deliberately blocked customers of Camshin from reaching Mobitel phones. Customers of the 011 line could not successfully dial into the 012 line. The problem was solved later on after the intervention of the MPTC. The interconnection rates between different lines are still high, however. This restriction may be considered as a refusal to deal which is considered as an unfair trade practice.

Source: *The Cambodia Daily*, 18 October 2000

ago, a contract signed between the MPTC and Telstra, an Australian firm, for the establishment of an international gateway stated that no new gateways could be built.

### *Absence of Independent Regulator*

In addition to a role as policy maker and regulator, the MPTC also operates a fixed-line network that has been built with the assistance of the international donor community. The MPTC also enters into various joint ventures with other private operators in the market. In the joint venture with Indosat of Indonesia to operate a fixed line network, MPTC owns shares of 51 percent of the company, which is named Camintel. The MPTC also operates its own business in providing international telephone gateway to Cambodia in competition with another private company. Additionally, MPTC also engages in the provision of Internet services.

There is no independent regulator or policy-making body in the telecommunications sector since the MPTC is at the same time regulator and one of the market operators. Therefore, there is often a conflict of interests in favour of the state sector. For example, the MPTC issued a regulation banning the Voice-over-Internet-Protocol (VoIP) facility that offers oversee calls at very low costs. The reason behind the VoIP prohibition is simply that the VoIP facility would reduce the state revenue from the telecom industry, which contributes as much to the state budget as any other sector.

Nonetheless, the state-owned telecom enterprise appears to be less competitive in the telecom markets compared to other private operators given its weak management system, institutional structure, and human resource constraints. Various recommendations have been made by consultants and international organisation suggesting that the commercial functions of the MPTC should be separated from its regulatory functions, or even that the commercial segment of the MPTC should be privatised.

### **What do People Think about Competition and Competition Legislation in Cambodia?**

In the absence of a competition law, which is currently being prepared by the Ministry of Commerce, restrictive trade practices (RTPs) and unfair trade practices (UTPs) are quite prevalent in the Cambodian markets and eventually damage consumer interests and rights.

A perception survey that involved fifty respondents was conducted by the Economic Institute of Cambodia (EIC). Twenty respondents representing the businesses community, ten representing the policymakers (mostly high-ranking government officials and members of the Parliament), and twenty consumers including lecturers, researchers, university students, NGO staff were interviewed during the course of the survey.

The survey shows that a large proportion of the respondents did not have a clear understanding on several concepts related to competition issues. Nonetheless, they were aware of the 'unfair' practices. A majority of respondents (84 percent) were of the view that anti-competitive practices do prevail in

Cambodia. Raising barriers to entry and collective price-fixing followed by price discrimination, collusive tendering, and tied selling were termed as the most common forms of anti-competitive practices prevalent in the country.

A large number of respondents agreed that sectors with more market participation such as petroleum, telecommunications, public utilities were substantially plagued by anti-competitive practices.

An extensive number of the total respondents (98 percent) opined that a comprehensive law dealing exclusively with anti-competition issues should be enacted in Cambodia. The reason was primarily to check and balance such practices in the interest of consumers and increase the competitiveness of business enterprises in the country.

### *Authority to Enforce the Competition Act*

The survey covers many specific issues of competition legislation even including the scope and coverage of the competition legislation. As the role of the competition authority has been found important for the enforce-

#### **Box 2: Practice of Price-Fixing amongst Boaters to Siem Reap**

To leave for Siem Reap, the most popular tourist attraction in Cambodia, there are three means of transportation: by boat, road and air. Boats were the most popular means, especially for tourists, since the road to Siem Reap was not well developed. Boat transportation services to Siem Reap are provided by eight private companies. The price for one-way travel from Phnom Penh to Siem Reap was about 40,000 riels (or US\$ 10) for Cambodian nationals and around US\$ 25 for foreigners.

Competition between these boat companies, however, has driven the price down below the profitable level (sometimes to well below 20,000 riels) resulting in extensive losses for the boaters. Recently, the companies have decided to sit down together and resolve the problem. Even though no written agreement was recorded, the companies have entered into a tacit agreement to fix their service prices at 40,000 riels for Khmer nationals and US\$ 20-25 for foreigners after months of talk. The eight companies further agreed that they would not compete with each other anymore and would share their departure schedules.

According to their verbal agreement, only one boat may provide boat transportation service in a day by taking turns from one company to another. The bigger companies can have more quotas to provide the services.

**Source:** EIC interviews with Dry Port officials and owner of transportation boat company, April 2005

ment of the competition law in order to bring the desired benefits to the economy and welfare of consumers, one of the important points of the survey focuses on the authority that implements the competition act.

An overwhelming majority of respondents (82 percent) agreed that the authority should be autonomous and independent from any institution or politics so that the authority could have effective control over the powerful state-owned enterprises (SOEs) or foreign firms.

Concerning the regulatory power of the competition authority, irrespective of the structure of the competition authority, about half (52 percent) of the respondents viewed that the authority should have both investigative and adjudicative powers to deal with any case of anti-competitive practice. Another fairly moderate proportion of respondents (36 percent) believed that the authority should be entrusted with investigative power only, whereas adjudicative power should be left to the courts. A smaller proportion of respondents (12 percent) suggested empowering the authority to investigate a competition case, but vesting the power to decide the case to another separate agency. It was impressive that no respondent chose "don't know" for the answer.

Furthermore, an enormous majority of respondents (92 percent) consented to authorise the competition agency to deal with both anti-competitive practices and consumer protection. Nonetheless, respondents shared different views when answering the question of whether there should be intervention of specialised agencies for specific sectors such as water, telecom and so on. In general, they believed that the specialised agencies would be more efficient in tracking down anti-competitive practices in the sectors they worked in than the competition authority.

As a result, about one-fourth of respondents answered that all competition-related issues in some specific sectors should be given to specialised agencies and the competition authority should not be involved. 42 percent of

respondents agreed that specialised agencies were needed, but they needed to share some power with the competition authority. More interestingly, other 28 percent of respondents also concurred with the standpoint to leave all powers to the specialised agencies with leeway for the competition authority to only provide advice on the competitive impacts of the sectoral policies.

Also, the duties of the competition authority should not be limited to either investigation or adjudication, according to the vast majority of respondents. Nearly all respondents (96 percent) opined that the authority should also take part in the affairs of advocacy and publicity, etc. by maintaining interaction with different stakeholder groups such as consumer organisations. Only two respondents said they did not know of and the other two were opposed to the vast majority's idea without specifying their reasons for disagreement. Approximately, three-fourths (70 percent) favoured a consultative committee in order for the competition authority to play a role in advocacy or publicity, while only 36 percent proposed public hearings.

### Conclusion and Recommendations

The Cambodian government has made its decision to open the country's national markets to the region and the world through its integration into ASEAN and WTO. From an optimistic viewpoint, the liberalisation has benefited consumers due to better availability of products and services with better prices, quality and choice.

However, the government's tasks should not end with opening its economy to the outside world. Many anti-competitive practices have prevailed in the Cambodian markets. There is an indispensable need for appropriate policies and legislation to be adopted to guide the markets to ensure economic efficiency and consumer welfare. This will help alleviate poverty, while the fight against poverty in the country seems to be unsuccessful.

However, it is critically important to understand that the existence of competition legislation would

mean nothing if its enforcement is not effective. Effective enforcement of competition law requires concerted efforts by the government to tackle competition offences through its different sectoral policies, the actions of a competent competition authority and an independent judiciary.

Human resources are inevitably needed. Not many people are aware of competition related issues. It is thus important to provide information and education to different groups of stakeholders whose work may relate to competition issues such as: policymakers, judges, prosecutors, lawyers, businessmen, consumers, civil society and academia/media. In addition, given the significant roles of civil society in Cambodia, a consumer protection organisation or association that contributes to protecting Cambodian consumers from abuses and raises awareness among all relevant stakeholders, should be established.

In the absence of competition legislation, other government policies and relevant regulations play a very important role in ensuring that firms are competing fairly in the markets. Some policies, laws and regulations of the government in different sectors have significant impact on competition in the markets, the telecommunications sector for instance. These sectoral policies need to be remodeled to ensure the economic and social welfare of the country.

Good governance and transparent and accountable institutions are other indispensable tools that help guarantee fair competition in the markets. Cambodian institutions are still weak. Bureaucracy and rampant corruption in Cambodia make market competition seem uncertain and prohibitive. In particular, complicated and obscure licensing processes, tax evasion, absence of clear procurement policies and unaccountable procurement procedures have set an unfair environment, prohibiting firms from fairly competing with each other, and raising significant barriers for new firms to enter the markets.

**Nuth Monyrath**