

Sectoral Regulations in the Cambodian Free-Market Economy

Economic liberalisation in natural monopoly sectors needs State's regulations. The effectiveness of State's intervention deals with the institutional framework of sectoral regulatory agencies.

Through the liberalisation process starting in 1989, the Cambodian Government has made remarkable economic changes by adopting policies of deregulation, privatisation and trade liberalisation.

In recognising the legal right for all market players to freely compete with each other, the Cambodian Government reserves the right to regulate several sectors where, for a variety of reasons, competitive markets either do not exist or yield undesired results.

This is hardly unique to the Cambodian Government but appears to be common to all countries in the world. Nonetheless, the scope of sector regulation and the effectiveness of regulatory measures may be different from country to country depending on the level of development and the regulatory mechanisms in each country.

Past experiences of the developing world reveal that the effectiveness of the regulatory regime deals closely with the methods of establishment or empowerment of the regulatory agency, which sometimes is a line ministry of the government performing both regulatory and policymaking functions and sometimes an independent regulatory body.

In effectiveness terms, a broad picture of the sectoral regulatory framework in Cambodia would help clarify the current government's sectoral policies and give a comparative aspect between the government's direct intervention in many sectors and the empowerment of the independent regulators in banking and electricity.

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Electricity

At present, electricity appears to be the most developed sector in terms of an institutional regulatory framework. Following the adoption of the Electricity Law in 2001, the policymaking power and regulatory functions are assigned to two different state agencies which are the Ministry of Industry, Mines and Energy (MIME) and the Electricity Authority of Cambodia (EAC).

The electricity in Cambodia is generated by Independent Power Producers (IPPs). The state-owned company, Electricité du Cambodge (EDC) monopolises the generation, distribution and transmission of electricity in

the country with its operations of 22 isolated systems. The IPPs provide generation to EDC and also operate small scale provision of electricity in some rural areas. Despite remarkable improvement in electricity provision in recent years, the EDC has been plagued by financial problems, arising from its inability to pass increases in the cost of power to consumers, and from high arrears in bill payments by government entities.

Water Supply

In the water sector, the regulatory function is currently assigned to the MIME while the idea of establishing an independent regulator is seen initiated

Box 1: Cambodia's Government Policy

In the liberalisation process, industrial privatisation had been used by the Cambodian Government as a principal means to release state monopolies from intervening in trade activities. The privatisation program tends to cover all trading activities of the public sector including activities of a competitive nature, public service or natural monopoly. Nevertheless, reservations have been made in the area of natural monopoly or public service sectors where privatisation needs to be progressively undertaken in line with the establishment of appropriate regulations.

These sectors are generally characterised by the establishment of sectoral regulatory agencies and in many sectors by the presence of state-owned enterprises (SOEs). Most of these regulators have been set up under a traditional form where both regulatory and policymaking powers have been entrusted to each sectoral ministry of the government, whereas in the banking and electricity sectors, specialised regulatory bodies (SRB) have been empowered to regulate their respective sectors independently of the central government and its line ministries.

In general, changes in government policies seem to follow a common three stages of evolution. The process starts from (1) the mixture of the policymaking and regulatory powers together with the function of service operation/provision within each sectoral ministry, through (2) gradually providing autonomy to service provider/operators by means of privatisation or the establishment of SOEs, toward (3) the setting up of an SRB to independently perform regulatory functions.

But each sector has not moved at the same pace of evolution and that is the reason why different forms of regulatory agencies are currently in place. However, the Ministry of Post and Telecommunications (MPTC) had been holding the conflicting roles as policy maker, regulator and service operator in the telecom sector until recently in 2005 while the National Bank of Cambodia has had an independent regulatory power in the banking sector from the central government since the second half of the 1990s.

Source: Compiled by Economic Institute of Cambodia (EIC)

within the national policy of the government. The MIME is also responsible for water provision through its Departments of Provincial Water Supply in urban areas outside of Phnom Penh and through Phnom Penh Water Supply Authority (PPWSA), a state-owned enterprise (SOE), in the capital city.

All water supply systems are monopolies and are operated almost totally by the public sector excluding 16 small systems which are concessions. The water system faces high physical losses due to deterioration of pipes during the war and lack of appropriate maintenance thereafter. Phnom Penh is the only place that can supply water to the majority of residents. Therefore, the key issues in the water sector are judged rather to be a problem of technical development and not yet a matter for competition policy.

Telecommunications

In the telecommunication sector, the policy and regulation function belongs to the Ministry of Posts and Telecommunications (MPTC). In addition, the MPTC had, until recently, operated the fixed wire network through assistance of donor communities and a form of joint-venture with private companies and also engaged in the international telephone gateway and the internet service provision together with its other private competitors.

Since January 2005, all of these trading activities of MPTC have been transferred to Telecom Cambodia which operates as a separate SOE under the administrative supervision of MPTC and financial supervision of the Ministry of Economy and Finance (MEF). Under a current draft telecommunications law, the establishment of an independent regulatory authority is intended.

Despite the presence of SOEs in the telecommunication business, Cambodia has made considerable improvement in the area of telecommunication liberalisation, especially in the mobile phone business where there are four mobile operators competing

with each other.

Transportation

The current transportation system in Cambodia consists of the road network, railways, inland waterways and ports, and air transport. In these areas, both policy and regulatory power is assigned to line ministries of the government. The Ministry of Public Works and Transport (MPWT) is responsible for land and water transport while air

transport is under joint responsibilities of the MPWT for airstrip construction, the Ministry of Land Management, Urbanization and Construction (MLMUC) for terminal buildings, and the State Secretariat of Civil Aviation (SSCA) for air transportation.

In liberalisation terms, the evolution of policy for transportation has followed two important directions: the separation of the transport trading services from the sectoral ministry to be operated by SOEs in some sectors

Box 2: The Establishment of the Electricity Authority of Cambodia: a Case Study

The Electricity Authority of Cambodia (EAC) was established under the Electricity Law adopted in February 2001. The law is mainly aimed at creating favourable conditions for investment and commercial processes within the electric power sector and establishing principles for the protection of the consumers' right to receive reliable and adequate electricity supply at reasonable cost, for the promotion of private ownership of electric power facilities, and for the establishment of competition wherever feasible. To this end, the EAC is granted by the government the right and autonomy to regulate the electricity sector independently of the MIME which acts solely as policymaker.

The Electricity Law defines the duties of the EAC and those of the MIME separately. The Ministry is responsible for setting and administering the government policies, strategies and planning and is empowered to issue technical standards in the electric power sector. The EAC, in turn, is to ensure that the provision of electric services and the use of electricity shall be performed efficiently, be of good quality, sustainably and in a transparent manner.

In organisational terms, the EAC consists of three members, supported by a Secretariat which, in turn, helps manage the administrative and technical tasks through the expertise of other departments. The three members, including the chairman, are to be appointed by the King under proposal and designation of the Prime Minister for a mandate of three years and with only one term renewable.

The membership of this regulatory body is incompatible with that of other state institutions including the legislature and the executive, leader group of any political party, a civil servant, or even an adviser of any government institution. In addition, no outside authority or agency of the government may interfere in the decision-making process of the Authority except as otherwise expressly provided in the framework of the Electricity Law.

Relating to human and financial resources, the EAC on its own may appoint all staff and hire technical experts and advisers and determine remuneration for them based on an autonomous budget coming through licence fees paid by service providers. The EAC determines and submits the licence fees within its annual budget directly to the Government for review and approval.

In relation with electricity service providers, the Electricity Law, through its Article 7, expressly defines all of the EAC's duties which mainly deal with the issuance of licences, the approval of cost and tariff rates, the resolution of disputes over conditions of licences, and other regulations. To ensure a fair and participatory decision-making process, all members or employees of the EAC are prohibited from owning any securities of, or having any economic interest in, or holding any position with any service operator holding a licence or even any applicant for a licence. Moreover, prior to promulgating any general order or regulation, the EAC is required to give reasonable notice of its contents and provide an opportunity to interested persons and the public to give their opinion.

Source: Compiled by Economic Institute of Cambodia (EIC), based on the *Electricity Law*.

and the use of concessions in some others. However, railway transportation is still under the state monopoly and was recently assigned to the Royal Cambodia Railways (RCR), an SOE. There are currently plans for a separate regulatory body and for the introduction of contracts with private companies in some limited areas.

In civil aviation, the Government has granted concessions to private companies to operate the Phnom Penh International Airport and Siem Reap Airport while the SSCA currently operates, manages and maintains seven other domestic airports. The idea of setting up an autonomous regulator is also seen in government policy.

Banking

Cambodia has a two-tier banking system consisting of the central bank and commercial bank. The central bank - the National Bank of Cambodia (NBC) - plays an important role in the field of monetary policy and regulation independent of the Royal Government.

Presently, the NBC is still developing the legal and regulatory system since the legislative framework seems to remain incomplete. However, the banking system is noticeably operational, especially in the areas of lending and deposits and in business services. Competition between commercial banks appears to exist in all of these areas despite the presence of the public banks which are the Foreign Trade Bank (FTB) and Rural Development Bank (RDB).

Weakness of Traditional Regulatory Mechanism

In liberalisation terms, traditional regulatory methods of centralising regulatory power within sectoral ministries seems to present large constraints on the effectiveness of government intervention in managing regulated sectors, given the fact that the same ministry often performs the conflicting roles of a regulator, policymaker and service operator.

Each natural monopoly or public service sector in Cambodia is characterised in many cases by the presence of SOEs and in some others, by concession contracts. In the first case, the relevant ministry in its capacity as administrative supervisor of each SOE more or less gets indirect interest in trading activities of the regulated sector of which it is both regulator and policymaker. Together with the deficiency of a legislative framework, the exercise of these conflicting roles may easily lead to violation of the principle of competitive neutrality, which seeks to ensure equal treatment of both the private sector and SOEs.

A much worse situation is imaginable when there exists no autonomous SOE but the line ministry itself directly engages in sectoral business. That is the reason why much criticism was directed at the Ministry of Post and Telecommunication for its past direct involvement in the ownership of the telecom businesses while the Ministry also set telecom policy and acted as regulator.

In case of public service concessions, the key issues mainly relate to a weak legal framework on concession procedures as rules seem to be framed in an obscure manner without any participation or consultation from stakeholders. This ambiguity of procedure in some sectors leads to conflicts of interest between various state agencies which, as found in recent study of the World Bank and the IMF, tend to compete with each other to enter into concession negotiations with private sector investors.

Apart from the involvement of relevant ministries in sectoral business, a closer look from an administration point of view will help clarify further weakness of incorporating regulatory functions together with policymaking power. In administration terms, state intervention in public services is a legitimate obligation toward ensuring a constant social requirement for the population's daily life. To this end, sectoral regulation should not be profitably incorporated within a policymaking institution

which in some way may be influenced by changes in political trends.

Concluding Remarks

The establishment of independent sectoral regulatory bodies appears to be crucial to reduce current weakness of the traditional regulatory mechanisms, especially relating to the mixture of the conflicting roles of policymaker, regulator and service operator.

In organisational terms, the newly emerged form of the Electricity Authority of Cambodia would be a good example for the reform process although the legal and regulatory framework and law enforcement seem to be subject to further development in this area of authority. Since the government's policy is currently oriented toward this new form of intervention, the key issue thus should be the pace at which the government moves to reach this orientation, through hastening the adoption of appropriate legal instruments, generators of these independent regulators.

However, it should be critically noted that the empowerment of an independent authority to regulate a whole sector may easily lead to abuse of power if the state's judicial mechanism is not strong enough to enforce and limit the autonomous right provided to such an authority. Apart from enhancing the current court system, the idea of recognising and promoting the establishment of what we call "consumers organisation", together with the existing chambers of commerce, appears to be much beneficial in combating the occasional abuse of power and ensuring consumers' and traders' interest.

In this context, the regulatory mechanisms would deal closely with the adoption and the enforcement of other related laws — especially Competition Law, Anti-Corruption Law, Law on Commercial Court and Law on Concession — the result of which depends deeply on the government's commitment and reaction.

Sieng Deline