



Lao People's Democratic Republic (Lao PDR), with an area of 236,800 km, is a small landlocked country situated at the centre of the Indochina peninsula, sharing borders with China, Vietnam, Cambodia, Thailand, and Myanmar. The capital city is Vientiane. 70 percent of the total territory is mountainous, richly forested, and/or covered by rivers. Such geography is conducive for building hydroelectric plants and developing eco-tourism.

Economy

After a comprehensive economic reform programme, commonly known as the New Economic Mechanism (NEM), was initiated in 1986, Lao PDR has maintained moderate but steady growth rates that have averaged seven percent per year between 1992 and 1997. The growth rate, however, slowed to 4.5 percent during 1996-98 because of the financial crisis in Thailand. This is the single most important market for Lao exports. After that the growth rate has recovered to just under the seven percent rate that had been achieved in the early 1990s. Nominal GDP per capita increased from about US\$200 in 1990 to US\$320 in 2003.

Agriculture remains the backbone of the economy, accounting for 57 percent of the total GDP in 1995, and still accounting for around 48 percent in 2003, followed by manufacturing (26 percent) and services (25 percent), then import duties (one percent). The backwardness, as well as the small size, of Lao's industrial sector has resulted in a high level of import-dependence for the economy, especially in consumer goods, which come mainly from Thailand, China and Vietnam. This has resulted in Lao PDR's economy becoming highly susceptible to regional and global turbulence.

Competition Evolution and Environment

Major economic reform in Lao PDR started in 1981, when the politburo of the Lao People's Revolutionary Party

PROFILE	
Population:	5.7 million***
GDP (Current US\$):	2 billion***
Per Capita Income: (Current US\$)	320 (Atlas method)*** 1,730 (at PPP)***
Surface Area:	236.8 thousand sq km
Life Expectancy:	54.5 years**
Literacy (%):	66.4 (of ages 15 and above)**
HDI Rank:	135***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report, UNDP, 2003 (**) For the year 2002 (***) For the year 2003	

(LPRP) issued a decree on the improvement, adjustment and strengthening of economic management. However, it is widely known that economic reform really started in 1986, when the LPRP Fourth Congress adopted a resolution to develop the country through economic reforms until the year 2000, known as the NEM.

NEM was built around three main pillars:

- macro-economic stability and fiscal adjustment;
- private sector encouragement; and
- public sector reorganisation.

The decentralisation process and liberalisation of ownership and management recognised the role of the private sector, setting the framework for its increased participation in the economy.

Though competition is officially pronounced to be a 'major driving force for economic development', Lao's approach in this direction, however, has been rather cautious, and state intervention into various market functions remains

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quite strong as compared to other economies in the region. Under many aspects, Lao PDR remains a centrally planned economy and the LPRP holds tight control over its large public sector.

Nonetheless, some initial cornerstones of an evolving competition policy have been set. The most recent landmark is the Prime Minister's *Decree on Trade Competition* adopted in February 2004, supposed to become effective from August 2004.

Competition Legislation

The Prime Minister's Decree on Trade Competition in Lao PDR was drafted and promulgated as a subordinate legislation to the *Business Law 1994* of Lao PDR, which stipulated: 'All types of operations conducted by enterprises in all economic sectors are inter-related and competing on an equal footing before the Law' (Art.5). This principle is further reflected by the Decree that 'Business activities of all sectors are equal under the Law; they cooperate and compete with each other in a fair manner in compliance with this Decree and concerned laws and regulations' (Art.3 – *Fundamental principle in competition*).

The objective of the Decree is to "define rules and measures to regulate monopolisation and unfair competition in trade of all forms, aiming to promote fair trade competition, protect the rights and legal interests of consumers and to encourage business activities in the Lao PDR to function efficiently in the market economy mechanism as determined by the Government of the Lao PDR" (Art. 1 – Objectives).

The Decree consists of 17 Articles spread over five chapters. It would apply to the sale of goods and services in business activities (Art. 4 – *Scope of application*) by all business entities, which have established and operated a business in the Lao PDR, no matter whether they are State-owned, privately owned or foreign-invested, etc¹. Some specific sectors or businesses, however, may be exempted for socio-economic or security reasons (Art. 13 – *Exemption*).

The Decree, amongst other things, defines the concept of market dominance, monopoly, M&As, and unfair trade practices; and provides for the establishment of a Trade Competition Commission, which will be responsible for the implementation and enforcement of the Decree.

Institutions and its Competencies

The Decree provides for the establishment of a Trade Competition Commission chaired by the Minister of Commerce, consisting of relevant parties of the trade sector and a number of persons with relevant experience

appointed by the Minister of Commerce. The Commission will have its office and its permanent Secretariat set up within the Ministry of Commerce (Art. 5 – *The Trade Competition Commission*). It will have the responsibilities and powers as to:

- Determine rules on activities, rights and duties of the Secretariat, and supervise the functioning of the Secretariat;
- Formulate and stipulate further regulations in enforcing the Decree;
- Establish a sub-commission to implement a specific duty when necessary;
- Consider submissions on exemptions and give approval for any business person as stipulated in Article 13 of the Decree;
- Determine and publish a list of sectors and types of businesses that may enjoy exemptions as stipulated in Article 13 of the Decree;
- Call on concerned persons for consultations, advice or clarification on any matter;
- Monitor and control business activities and order any business entity to solve, change, suspend or stop its behaviour that is unfair;
- Determine the threshold of market share, on the basis of the total sale volume of a business, which can be considered as market dominant;
- Consider complaints from business persons and consumers;
- Coordinate with relevant government agencies to take measures against those who breach the provisions of the Decree;
- Liaise with the media and business entities concerned to publicise various competition-related activities and issues; and
- Implement any other duties and responsibilities as may be assigned by the Government.

Anticompetitive Business Practices

The Decree was initially named as Decree on Anti-monopoly and Competition during the drafting process. Though the name has been changed after promulgation, the ultimate objective of the decree is still to prevent monopolisation. This was reflected in Art. 8 of the Decree – *Anti-monopoly*, "It is prohibited for a business person to perform an act stipulated in Articles 9, 10, 11, and 12 of this Decree so as to monopolise any market of goods and services".

Monopoly, according to the Decree, is constituted when a business dominates the market, individually, or in collusion with other businesses (Art. 2 – *Definitions*). This definition, however, is not in line with the conventional economic concept of 'monopoly' – a situation where there is only a single seller in a market. 'Monopolising' is considered to constitute the intent underlying a trade practice prohibited by the Decree. Those prohibited practices include:

¹ This scope of application has not been clearly defined in the Decree in one article. The scope of application mentioned in the text of the report was on the basis of the authors' overview of the whole Decree.

Merger and Acquisition (M&A)

It is prohibited for a businessperson to monopolise the market in the form of a merger or acquisition that destroys competitors or substantially reduces or limits competition (Art 9 – *Merger and Acquisition*). However, who is considered to be a ‘competitor,’ or when it can be said that competition is substantially reduced or limited, or who can decide that competition has been substantially reduced or limited (the Trade Competition Commission?), is not provided anywhere in the Decree.

Elimination of Other Business Entities

Causing losses directly or indirectly, by such conduct as dumping, limiting or intervening with the intent to eliminate other business entities is also prohibited by the Decree (Art. 10). However, as with other prohibitions, the Decree has failed to clearly define the nature of the conduct, for example, what constitutes ‘dumping’, and failed to clearly prescribe the threshold by which such conduct will violate the regulations. Intent, in this case ‘eliminating other business entities’, is required to be proved in any case of restrictive trade practices.

However, relying completely on ‘intent’ to prove that a conduct is restrictive by nature, and that such conduct violates the competition rules, would provide the leeway for arbitrary decisions or rulings in future competition cases, especially when the Government officials or judges may be tempted by bribes or lobbying activities. Such ambiguity, sadly enough, is quite common throughout the Decree.

Collusive Arrangements Jointly Undertaken by Two or More Business Entities

The Decree prohibits any business entity from colluding or making arrangements to engage in any unfair trade practices that will create a monopoly in any market of goods and services (Art. 11 – *Collusive arrangements*). Those practices include:

- price fixing;
- hoarding of goods, or limiting the production, purchase, sale, distribution or importation of goods and services;
- collusive tendering;
- 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;
- exclusive dealing;
- market sharing in restraint of competition;
- territorial exclusivity in licensing agreements;
- entering into arrangements to fix conditions or the manner of purchase and sale of goods or services to restrict other business entities; and
- any other acts that are contrary to the trade competition regulations prescribed by the Trade Competition Commission.

There is also another type of prohibition, which applies to practices jointly undertaken with a Foreign Business Entity (by contract, shareholding or other form), if such practices result in limiting the opportunity of local businesses to choose to purchase from, sell goods, or provide services directly to that Foreign Business Entity (Art. 12 – *Cartel with foreign business persons*).

Penalties

A business entity that commits offences under the Decree shall be first notified by the Trade Competition Commission to change and rectify its behaviour. If the business entity fails to comply with the Commission’s order, temporary suspension of all its business activities may be applied until the behaviour is changed and rectified. The business entity may even be closed down indefinitely and may be punished in accordance with the Law. The violator would also have to compensate any business entity that has incurred losses as a result of the offences (Art. 14 – *Measures against business entities who commit offences*). Any civil servant or government authority that commits offences under the Decree would also be punished according to relevant laws and regulations (Art. 15 – *Other offences*).

Interestingly, though the Decree provides for the consumers’ right to submit complaints to the Trade Competition Commission for any wrongful anticompetitive behaviour of business entities, it does not provide for any measure to recover the loss or harm done to the consumer as a result of such anticompetitive practices by enterprises. This is a big drawback against the Decree’s objective of ‘protecting the rights and legitimate interests of the consumers...in Lao PDR’.

Though the Decree was supposed to enter into effect in August 2004, until now, its enforcement agency – the Trade Competition Commission – has not been set up; and no further implementation guidelines have been released. To make matters worse, competition awareness, not to mention technical expertise, in Lao PDR is particularly low. This is not only because competition is still a relatively new phenomenon in the country, but also due to the low quality of the education system, as well as the control of the State over information. This necessitates more technical assistance, especially in the form of capacity building activities, if the Decree is to be effectively implemented, in order to truly benefit the society.

Sectoral Regulation

Telecommunications Sector

Lao PDR has made a number of changes to the structure of its telecommunication sector over the last decade. The Ministry of Communication, Transport, Post and Construction (MCTPC) is the government agency responsible for telecommunication policy and regulation. The Department of Posts and Telecommunications is the

Box 19.1: Telecom Price Hike: Whose Fault?

There are more telephone service providers in Lao PDR than ever before, but this competition has not been beneficial for customers who are now paying double the previous year's cost for a fixed line telephone call. The cost of making phone calls from your home phone line has shot up from the previous average of around 30,000 kip per month (approximately US\$3) to a new average of around 60,000 kip per month (approximately US\$6), say disgruntled telephone subscribers.

After the year 2000, the Government allowed more telecom companies to set up business in Lao PDR, aiming to provide quality services and reasonable prices for the people. The logic was simple: greater competition and wider connection would lead to a decrease in the cost of using phones, as businesses competed for customers and cut down on fixed costs. Despite the good intentions, call costs have remained uniform across the industry and have actually risen to about 200 kip (2 US Cents) per minute. From 1995-1997, the price for a local call was only 45 kip per minute and, in 2000, it increased to 100 kip (1 US Cent) per minute. The new cost of 200 kip per minute was implemented last November, but many customers have expressed confusion because nobody has been able to explain the reason behind the price hike.

There are now three main telecommunication service providers in Lao PDR, but it seems that competition has not produced a positive impact as yet. The prices

are the same amongst all the providers. The recent call cost rise was uniform amongst all companies. According to telecom experts, normally, the service price of telephone calls would decrease if the companies have been established for a long period of time and have got more subscribers. Profit margins also increase allowing the prices to come down. In Lao PDR, this theory seems to work the other way round.

A telephone service provider's representative recently said that one reason why the companies have to increase their prices is because of the inflation rate to US dollars (which has risen twice). Another reason is that they need more funding to continue expanding their networks. Despite this, one company reported, last year, that it could earn about 300 billion kip (US\$0.03bn) including a profit of about 120 billion kip (US\$0.012bn). Providers seem to be making quite a profit.

According to one company, they also have a problem with consumer credit. Many clients have not paid for their calls and some people are dishonest. They use their mobile phone to call overseas and then do not pay the bills. The company then cuts the phone but cannot get its money back. This is a difficult problem for the companies to solve. One telecom provider said, every year, it loses about 100 million kip in unpaid bills. The users also have to take responsibility for the state of the telecom industry by paying for the services they use. Customers may be over reacting, as company officials pointed out that call costs in Lao PDR are actually the cheapest in the region.

Source: www.vientianetimes.org.la

functional unit within the MCTPC whose tasks include frequency management; telecom and post policy; long term development strategy; licensing; and regulation. The MCTPC has an annual budget allocated by the Government.

The Lao National Assembly adopted a Telecommunications Act in April 2001. Due to the time-consuming legislative process, the Act is yet to be implemented; and only a draft Sector Policy Statement exists. The Statement and subsidiary legislation, such as decrees and regulations, have not yet been finalised. With the help from different donors, the MCTPC is working to complete the Sector Policy Statement and Decrees, essential to making the telecom law operational, as well as to establish a regulatory authority for the sector.

Guiding principles are to broaden the access to services, and to keep the real cost of service provision as low as possible. In addition, to try to establish and maintain linkages with neighbouring countries, especially the

neighbours in the greater Mekong sub-region. Appropriate technologies will be included in the overall regulatory process, taking into account the ICT developments.

The Telecommunications Act recognises the paramount importance of telecommunication in the development of Lao PDR, as well as the role played by the private sector in developing the industry. Article 4 of the Act states that the State encourages local and foreign investors to compete and to cooperate in investment in the construction, development and expansion of the telecommunication network and services in accordance with the system prescribed by the Government.

Electricity Sector

The Electricity Law, adopted in 1997, set the regulatory framework for the power sector in Lao PDR. The Law is strongly committed to private sector participation in power sector development and export promotion. It strives to define a clear procedure for power project approval, and includes an explicit State guarantee to protect the rights

and interests of both foreign and domestic investors in electricity enterprises.

Under the law, the Ministry of Industry and Handicrafts (MIH) has the primary responsibility for policy formulation and strategic planning, which are undertaken jointly with the State Planning Committee (SPC) and the Science, Technology and Environmental Agency (STEA). It also has the responsibility for preparing and implementing legislation and regulations, and for overseeing the performance of electricity enterprises. The Department of Electricity (DoE), which was established within the MIH, has the primary responsibility for strategic power planning, project identification and evaluation of power project proposals.

Electricité du Lao (EdL), an incumbent SoE, is recognised by the Law to be responsible for developing and operating Lao’s main generation, transmission and distribution assets, and for managing electricity imports to its grids and exports from its stations. Access to EdL’s transmission network is guaranteed for both private and public generators.

The Law explicitly stipulates, “The owner of an electricity transmission line... does not have the right to refuse unless the transmission of electricity over that transmission line cannot be technically guaranteed...” (Article 28), and “All electricity production sources must send electricity into the National Electricity Transmission Grid unless... there is yet no national transmission grid”. (Article 29).

Consumer Protection

In Lao PDR, there is no specific law, regulation, or institution on consumer protection. Nonetheless, some of the current legislations do have some bearing on consumer protection in Lao PDR.

Most relevant is the Prime Minister’s *Decree on Goods Price Control* (October 2001). The Decree, to be implemented by the Ministry of Commerce (MoC) – controlling the prices of strategic goods that have a direct impact on production and on Lao people’s lives – aims to promote business operations, production and commerce, as well as protect the consumers by keeping goods at reasonable prices.

The MoC is to be directly responsible to the GOL for the control of prices of consumer goods and raw materials. The MoC list goods under state control in each period, and coordinate with relevant services and agencies to ensure the adequate supply of domestic goods to meet consumer demand. The MoC also reviews consumer complaints and oversees the management activities of commercial services in the provinces, the municipality, and the special economic zones. An agency in charge of price control management is to be set up within the MoC and relevant authorities in the provinces, the municipality, and the special economic zones.

Also relevant are issues related to standards, quality, testing and metrology (SQTM). The Department of Intellectual Property, Standardisation and Metrology (DISM), under the STEA, is the government agency in charge. The DISM was established in 1993, under the STEA, consisting of four main divisions. The DISM is empowered to organise the formulation of national standards; provide and implement quality system and product certifications, testing and calibration, etc; supervise and inspect on quality of goods and products and measuring instruments, etc.

Issues related to food safety are under the control of the Food and Drug Administration Commission (FDA), which was established in June 1991, comprising of nine members, representing seven ministries and a permanent bureau. The FDA has been located within the Food and Drug Department (FDD), Ministry of Health (MoH), which carries out all activities of the Commission in practice. The FDA Commission is chaired by the Minister of Health

Box 19.2: Small Steel Producers Steal Market Share by Cheating Consumers

According to the Vice President of the Construction Materials Group (CMG) of Lao, a rise in the number of small-sized steel manufacturing businesses is killing the country’s steel industry. He added that increasing competition between companies for customers has pushed down the sale price of steel bars in the country, in recent times. There are about ten new small-sized companies in the steel market, so production is increasing day by day. National steel production is currently 200,000 tonnes per year, with steel consumption being at a low average of only 50,000 tonnes per year.

An investigation undertaken by the CMG has revealed that the quality of the steel, produced by most of these small-sized steel companies, does not comply with the standards. “We use chemicals to check and conduct tests on the durability of the steel and have also found that the size of the products is different to industry standards”, said a CMG official.

The CMG pointed out that people who thought they were buying cheaper steel from the small companies were actually paying more per tonne, because the size of the products was smaller than the accepted standard. (The standard width of steel bars was 10 mm and 1,000 kg of steel produced 162 steel bars. Small steel companies used only 600 kg of steel to produce 162 steel bars and the bars were only eight or nine mm in width. Group members sell 162 steel bars for 5.5 million kip per tonne, but small steel companies sell 162 steel bars for 3.5 million kip per 600 kg.)

Source: (www.vientianetimes.org.la, 22.11.04)

and is responsible for managing, controlling the quality of various food products and drugs that are imported and domestically produced, in order to protect and ensure consumers' health.

The Food Law has been adopted by the National Assembly in May 2004 and will soon be implemented. Based on the Codex Alimentarius Commission guidelines and good manufacturing practices, some necessary food standards of Lao have been established, such as the Standard for drinking water, ice cream, tomato sauce, iodised salt, mineral water and ice.

The deficient legal framework and the low capability of the administration, as well as the poverty situation in Lao PDR has been aggravating the welfare of Lao consumers. Though the country's economic performance has improved considerably in recent times, a large number of Lao consumers still find it difficult to get access to most basic needs in their daily lives. In addition, budget and technological constraints of the State and the low awareness level of the consumers, expose the latter to many products, production processes and services, which are below standard, or even hazardous to health or life.

The low level of awareness also leads to a low level of complaints or cases of consumer abuses being reported. Unfair and uncompetitive practices have been noted in Lao PDR in the case of steel bars and drinking water, where fierce competition has induced manufacturers to cheat on the quality and standards of products (see box 19.2), in order to be able to give out reduced prices.

There are also cases of misleading advertisements and deceptive promotional programmes. However, nobody has ever been punished for such conduct due to the absence of a strong legal framework and lack of investigative and law enforcement capability. Redress of damages for consumers is, of course, beyond the current thought processes. A draft Decree on Consumer Protection is in the pipeline, at the moment, with the MoC. However, it has been overshadowed by other more 'priority' legislative agendas.

Concluding Observations and Future Scenario

From the aforesaid analyses, it is beyond doubt that the future of competition in the Lao economy depends, to a

large extent, on whether the country has an appropriate competition regime, and a national competition policy or not. However, as can be seen from the various weaknesses in the recently promulgated *Decree on Trade Competition*, as well as the bad shape of the process to put the Decree into operation, a more sincere attitude towards the issue should be adopted in Lao PDR. At the very least, a thorough diagnosis of the health of the market, as well as a survey of market behaviour and public perceptions, should be undertaken as a proper preparatory process.

Given the overlapping nature of competition and consumer issues, and the lack of financial and human resources to deal with them, many small economies have adopted a hybrid approach by coupling consumer and competition policies. They have only one organisation dealing on both issues. This will, also, probably be the right approach for Lao PDR, given its resource and human capacity, and the novelty of issue. The possibility for a regional approach with the other two Indochinese neighbours, Vietnam and Cambodia; or within the ASEAN framework, should not be ruled out either.

Having the three main stakeholders – the consumer, the business and the policymakers – to reach a consensus on various issues, relating to competition, is key to the effective implementation of a Competition Law. This can be brought about by involving all stakeholders in informed debates and open discussions. This, in turn, will require that all the stakeholders have the capacity to understand the issue and put forward their fears. Thus, capacity building of the different stakeholders will form an integral part of developing a competition culture in Lao PDR.

Though competition has recently been recognised as a major driving force for socio-economic development, there remains much more to be done before any benefits can be reaped. As said, strong institutions are yet to be developed and more training is required. On the other hand, looking at the low economic capabilities of the country as a whole, good regulation and adequate intervention by the State is needed, so as to avoid the scenario when a large part of the economy will be controlled by a handful of monopolies possessing capital and technologies. Unfettered competition may be destructive for local SMEs in the end.

Suggested Reading

Comprehensive report on the competition scenario in Lao PDR, prepared under a CUTS project entitled 'Advocacy and Capacity Building on Competition Policy and Law in Asia' (7Up2 project).