



Situated in the Indochina Peninsula, the Kingdom of Cambodia has a relatively small territory of 181,035 square kilometres. The country shares its borders with three countries: Thailand to the north and the west, Vietnam to the Southeast and the East, and Laos to the North. In the South and Southwest, Cambodia borders the Gulf of Thailand.

Cambodia has been a French protectorate and a colony since 1863. Following the Japanese occupation in World War II, it achieved partial independence from France in 1949, and full independence in 1953.

### Economy

Cambodia's GDP growth steadily slowed down from seven percent in 2000 to 5.5 percent in 2002 and 5.3 percent in 2003. Being an agri-based economy, the country, currently, has more than 70 percent of its workforce employed in the agricultural sector. The contribution of agriculture in GDP, though, has been declining together with the structural shift of the whole economy, from 40 percent in 1995 to 30 percent in 2003, and 26 percent in 2004. The contribution of the industry sector in GDP has been increasing, whilst services seem to be stable.

Cambodia's total exports have been on the increase in recent years, rising from US\$0.3bn to US\$2bn in 2003, with the US being a dominant destination for exports. Total imports reached about US\$2.8bn in 2003, up from about US\$1.6bn in 1996, dominated by other Association of Southeast Asian Nations (ASEAN) countries.

### Competition Evolution and Environment

Cambodia has been disrupted by civil war and isolated from rest of the world under the Pol Pot (Khmer Rouge) regime and for quite long even after that. The country's basic infrastructure was totally destroyed, the intelligentsia devastated, which include the majority of its legal, economic and engineering expertise. A democratic

PROFILE	
Population:	13.4 million***
GDP (Current US\$):	4.3 billion***
Per Capita Income: (Current US\$)	310 (Atlas method)*** 2,060 (at PPP)***
Surface Area:	181 thousand sq km
Life Expectancy:	54 years**
Literacy (%):	69.4 (of ages 15 and above)**
HDI Rank:	130***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report, UNDP, 2003 (**) For the year 2002 (***) For the year 2003	

administration was established in 1993, trying to shake-up the economy of the country since late 1980s. However, most of the efforts did not come across effectively as the country continued to be torn apart by the civil war.

Being one of the Least Developed Countries (LDCs) and now on the way to opening up and carrying out market-oriented reforms, Cambodia is striving to mobilise all domestic and international resources available as well as grasp the opportunities for growth and development by liberalising trade and investment.

In this context, the task of building a comprehensive framework of market-oriented laws to create well-functioning private markets has become as an important priority on the development agenda of Cambodia.

The Cambodian economy is becoming increasingly complex: urbanisation rates are increasing; the labour force is shifting from agriculture to light manufacturing and services; the market is expanding; and the enterprise sector growing.

\* Original paper submitted in May 2005. Revised in June 2005 & February 2006

Cambodia's recent memberships in ASEAN and the WTO require economic strategies, which are more adaptable to the changing environment. All these changes also demand a policy framework that will provide flexibility for market players and, at the same time, require the least regulatory intervention, stable institutions to enforce contracts and property rights, and enhance the predictability, transparency, and accountability of state actions.

Though Cambodia does not yet have a competition law and policy, it has outlined a rather ambitious programme to increase the economy's international competitiveness. The cultivation of private markets, economic integration into ASEAN and accession into the WTO are cornerstones of Cambodia's domestic and foreign policy.

### Competition Policy and Law

In realising the country's commitment to adopt a competition law in its accession to the WTO, a concept Sub-decree on Trade Competition has been recommended in Cambodia (hereinafter referred to as 'the concept bill'). This concept bill was drafted with inputs from the Consumers International (CI) and the United Nations Conference on Trade and Development (UNCTAD). It has not yet been accepted by the Government for submission to the Parliament. Some other discussions are also going on in the direction of drafting a comprehensive competition law for Cambodia, instead of a subordinate legislation as in this case.

The objective set in the concept bill is to 'encourage fair and free economic competition by regulating the abuse of business operators with influence over markets, improper concerted acts and unfair business practices, both domestic and international, thereby stimulating creative business activities and protecting consumers'.

The Bill consists of six chapters, with 17 provisions, providing for the:

1. establishment and responsibility of a Trade Competition Committee (TCC);
2. establishment of the TCC Office in the Internal Trade Department of the Ministry of Commerce (MoC) and its staff's powers and duties;
3. prohibition against the abuse of the business operators with influence over markets, restrictions on business mergers, restrictions on improper concerted actions, prohibitions on unfair business practices, restrictions on the conclusion of unreasonable international contracts;
4. exemption cases under the concept bill; and
5. offences.

The law, when decreed, is to be administered by the MoC. The Trade Competition Committee will be headed by the Minister of Commerce as Chairman, with the Secretary of State for Commerce in the Ministry acting as Vice-

Chairman, and 8-12 other members, who will be appointed by the Council of Ministers.

The concept bill, however, does not specify the functions of the Committee, neither any activity that the Committee should undertake in order to fulfil its responsibilities. Instead, it only *vaguely* outlines the five areas of competition regulations under the Sub-decree as responsibilities of the Committee, such as 'regulating the abuse of business operators with influence over the market', and others, like business mergers, improper concerted actions, unfair business practices and conclusion of international agreements.

The concept bill prohibits 'business operators with influence over market', which is defined to mean 'one or several business operators in any market of goods or services whose market share and total sales exceeding that fixed by the Trade Competition Committee with approval of the Council of Ministers and published in the Official Notice, [however, consideration on the condition of market competition shall also be taken into account]', to:

- 1 fix, alter and maintain prices unreasonably;
- 2 control the sale of goods or the rendering of services unreasonably;
- 3 interfere into the activities of other business operators or in the entry of new competitors unreasonably; and
- 4 compel, either directly or indirectly, other business operators who are his own customers to limit the sale or the purchase of goods, the rendering of services, or to restrict their opportunity in buying or selling goods, acquiring or rendering services unreasonably.

Whereas 'market' is not defined by the concept bill, the threshold for defining 'influence over market' is left to the discretionary power of relevant authorities. Terms like 'unreasonably', on the other hand, provide a basis for the rule of reason approach in assessing abuse of dominance practices. Whilst there is nothing wrong with administrative discretion, the absence of implementation guidelines that expand on these vague terms may make the enforcement uncertain and subjective.

Any merger between business operators that may cause a monopoly or substantially restrict competition, as prescribed by the Committee, are prohibited, except for 'where permission, therefore, is obtained from the committee'. Criteria, on which such permission can be obtained, however, are not illustrated.

The concept bill also stipulates that no business operators shall agree with other business operators by contract, agreement, resolution, or any other means, to jointly engage in any act (deemed as *improper concerted action*) that may cause monopoly or substantially restrict competition, such as:

- fixing, maintaining, or altering prices;
- determining the terms and conditions for trade in goods or services or for payment of prices or compensation thereof;
- restricting the production, shipment, transportation of, or trade, in goods or services;
- restricting the territory of trade or customers;
- hindering or restricting the establishment or expansion of facilities or installation of equipment necessary for the manufacturing of products or the rendering of services;
- restricting the types or specifications of the goods, at the time of production, or trade, thereof;
- establishing a corporation, or the like, aimed to jointly conduct or manage primary areas of businesses; and
- hindering or restricting the business activities or the nature of the business of other enterprises, thereby substantially restraining competition in a relevant area of trade.

Exemptions from these cases will be granted considering that such acts will help in ‘promoting export or industrial restructuring’, ‘promoting research and technology development’, ‘strengthening the competitiveness’, of SMEs, etc.

The concept bill also prohibits business operators from engaging in ‘unfair business practices’, which may ‘impede fair trade’, the like being:

- 1 Unreasonably refusing to transact with or discriminate against a certain transacting partner;
- 2 Unreasonably excluding competitors;
- 3 Unreasonably luring away or coercing customers of competitors to deal with oneself;
- 4 Unreasonably taking advantage of one’s bargaining position in transacting with others;
- 5 Transacting with others on terms and conditions which unreasonably restrict their business activities or engaging in acts that unreasonably disrupt the activities of other business operators; and
- 6 Unreasonably providing specially related persons or other business operators with temporary payments, loans, manpower, real estate, securities, or intangible property rights, etc.

Extraterritorial jurisdiction on competition issues is assumed through provisions regulating the conclusion of international agreements or contracts (though the term ‘extraterritorial jurisdiction’ is not clearly defined).

## Sectoral Regulation

### *Telecommunications Sector*

In Cambodia, the policy-making and regulatory power in the area of telecommunications services is under 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 business in Cambodia. Yet, there is no legal provision governing these licensing procedures.

### Box 7.1: Collective Price Fixing by Boaters

To leave for Siem Reap, the most popular tourist town 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, the capital of Cambodia, to Siem Reap, was about 40,000 riels (approximately US\$10) for Cambodian nationals and around US\$25 for foreigners.

Competition between these boat companies, however, has driven the price down beyond the profitable level (sometimes to well below 20,000 riels) and, thus, turning causing huge losses to many of the boaters.

Recently, the companies decided to sit down together and resolve the problems. Even though no written agreement was recorded, the companies have entered into an agreement to fix their service prices to 40,000 riels for Khmer nationals and US\$20-25 for foreigners, after months of negotiations.

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 turn from one company to another. The bigger companies can have more quotas to provide the services.

*Source: Phone interviews with Eng Ang, Chief of Cambodian Dry Port and Mr. Thai Bunkheing, owner of Royal Express Boat, on April 26-27, 2005.*

A draft law on telecommunication regulation 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 them available as widely as possible in the country. To achieve these aims, the MPTC adopted policies to promote an open, fair and competitive market.

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; development of human resources; and
- promotion of telecom services in remote rural areas.

In the absence of a regulatory law for the sector, the decision of the MPTC on whether a licence should be issued, on the basis of the necessity for development of 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, a contract signed between the MPTC and Telstra,<sup>1</sup> an Australian firm, for the establishment of an international gateway states that no new gateways would be built.<sup>2</sup>

In addition to its role as policy-maker and regulator, the MPTC also provides the operation of the fixed line network that has been built with assistance by the international donor community. Nonetheless, the State telecom sector remains less competitive as compared to other private operators, given its weak management system, institutional structure, and human resource constraints.

### **Electricity Sector**

Almost the entire electricity infrastructure in the country, including generation, transmission and distribution facilities, was destroyed during the civil war in the 1970s. After peace was resumed, Cambodian electricity facilities have been restored and developed under the management of the Ministry of Industry (MoI). The responsibility of electricity supply was assigned to the *Electricité du Cambodge* (EDC), a State-owned company, for Phnom Penh, and to other small enterprises for each province.

To improve the general situation in the sector, the Government has pledged many reforms for restoring and developing electricity infrastructure and electricity supply. One of the major reforms is the establishment of a lucid electricity policy as enshrined in the 2001 Electricity Law.

The Law aims to ensure the protection of consumer rights, in enjoying a reliable, adequate supply of electric power services at a reasonable cost; to promote private ownership of the facilities for providing electric power services; promote competition, and create favourable conditions for attracting investment in the commercial operation of the electric power industry<sup>3</sup>.

This Law, therefore, governs all electric power supplies and services in Cambodia, which include the provision of services; use of electricity; generation, transmission, distribution of electricity; and other related services.

According to the Law, there are two institutions, which are accountable for electric power supply and services – the MoI, Mines and Energy (MIME) and the Electricity Authority of Cambodia (EAC). The MIME is responsible for setting and administering the government policies, strategies and planning in the power sector, whereas the EAC has a duty to ensure that the electricity services and use of electricity are sustainable, and efficiently and qualitatively performed.<sup>4</sup>

In other words, the MIME is responsible for overall guidelines, policies and strategies, which are mainly related to investment; restructuring; private sector participation; privatisation of public utilities; planning and agreements on electricity import/export; subsidies to specific classes of customers.<sup>5</sup>

The EAC implements those policies, strategies and guidelines by issuing regulations, rules, procedures and orders, in a transparent manner, to attain the ultimate aim of efficient, qualitative and sustainable provision of electricity services and use.

In this regard, the EAC, which is a legal public entity and autonomous agency to regulate the electricity services, delivery and consumption, has been empowered to issue, revise, suspend, revoke or deny any licence for the supply of electricity services.

The Authority also approves tariff rates and charges; terms and conditions of licensees; oversees the implementation of the guidance procedures and standards for investment programmes; reviews the financial activities and organisation structure of licensees, to the extent that these activities and organisation directly affect the operation of power sector and electricity supply; approve and enforce the performance standards for licensees; and prescribe fees applicable to licensees.

In relation to consumer issues, the EAC will evaluate and resolve consumer complaints if the complaints relate to the violation of the conditions of licence.<sup>6</sup>

### **Consumer Protection**

Cambodia does not have a specific legislation on consumer protection. The current, existing laws and regulations in the country, protect consumers mainly *vis-à-vis* quality and safety of products and services, and the protection of marks and names against acts of unfair competition.

1 Telstra was the Australia Company that contracted with the MPTC to install the first international gateway for 10 years. Telstra owned 51 percent of the revenue and the MPTC took the remaining shares. Its contract was expired in 2000 and the gateway now is owned and operated by the MPTC.

2 International telecommunication union (ITU), *Khmer internet: Cambodia case study*, March 2002, p. 7

3 Art. 2 of the Electricity Law

4 Art. 3 of the Electricity Law

5 Art. 4 of the Electricity Law

6 Art. 7 of the Electricity Law

The most significant is the Law on the Management of Quality and Safety of Products and Services, which is followed by three relevant regulations of the Ministry of Commerce and Industry. These include Prakas<sup>7</sup> on product expiry date, Prakas against food products devoid of appropriate packaging labels, and Prakas on the registration of industrial products. All play a very important role in assuring the safety and quality of products and services that benefit consumers.

In order to ensure the safety and health of the consumers, the Quality and Safety Law requires manufacturers or service providers to indicate on their products, goods and services, the ingredients, composition, users' guidelines, manufacturing date, and expiry date, and some other requirements in the Khmer language prior to commercialisation. This includes all stocking operations, transport, custody for purpose of trade, sale display, and sales of products and goods; all gratuitous gifts of all products including importation and exportation as well as sales, provisions of services or the provisions of gratuitous services.

The Quality and Safety Law also prohibits deceitful, misleading or false commercial advertisement, or any advertisement that is likely to cause confusion regarding the quality and safety of products, goods, and services. Any act to falsify or attempt to falsify products, goods, or services is severely prohibited. The Law characterises a variety of means of the falsification act and even imposes liability to third parties, regardless of being a party or not to a contract for the falsification.

The penalties for any violation of the Quality and Safety Law consist of fines and imprisonments. The sanctions range from the fine of 500,000 *Riels* (approximately US\$125) to 10,000,000 *riels* (approximately US\$2500) and/or the imprisonment up to one year, depending on the severity of the offences.

The second relevant piece of legislation in the area of consumer protection is the Law Concerning Marks, Trade Names, and Acts of Unfair Competition, which aims to protect the marks and trade names registered in Cambodia, and prevent acts of unfair competition on the creation, the utilisation of marks and trade names.

Though this Law seems to protect mark or trade name holders rather than consumers, it does have a positive impact on consumer interests, since it prevents consumers from choosing any product or service under confusion or due to false information or allegation.

### Box 7.2: Refusal to Deal Harming the Consumers

In recent months, there have been some complaints from users of Mobitel, a big mobile phone service provider in Cambodia, that they could not reply to the Short Message Services (SMS) sent to them by users of Camshin, another mobile phone service provider. If Mobitel users want to reply to SMS messages sent by Camshin users, they need to re-write their SMS. This is somehow troublesome for Mobitel users to send SMS to Camshin users, who account for only a small proportion amongst mobile users.

*Source: Interviews with some Mobitel users in Cambodia*

In particular, Chapter 7 of this Law on 'Acts of unfair competition' provides for certain acts to be considered as acts of unfair competition. These acts include: acts that create confusion by any means whatever relating to the establishment, the goods, or the industrial commercial or service activities of a competitor; false allegations in the course of trade to discredit the establishment, the goods, or the industrial, commercial or service activities of a competitor; indication or allegations that, when used in the course of trade, are liable to be misleading to the public regarding the nature, manufacturing process, characteristics, quantity, or suitability for purpose of the goods.

The Law on Trademarks and Unfair Competition does not provide any criteria that determine the extent of the likelihood of confusion, allegation or indication. This absence leaves interpretation to the Courts to fill the gap.

The MoC, MoI and Ministry of Economy and Finance (MEF) are the main State agencies responsible for consumer protection in Cambodia.

The Cambodia Import/Export Inspection and Fraud Suppression Department (Camcontrol), of the MoC, administers products labelling and/or issues quality-certificates in addition to fraud suppression; quality control and safety; and both field and institutional inspections of agricultural products and foodstuff. Camcontrol has regulatory responsibility for ensuring that exported and imported goods meet relevant international and local requirements.<sup>8</sup>

### Concluding Observations and Future Scenario

The Cambodian Government has, in fact, paid a fair deal of attention to competition issues. The policy-making agenda of the country does mention the importance of fair

7 Prakas (declaration/notification) is a type of regulations issued by any ministry; The hierarchy of the law in Cambodia follows the order by: Constitution, Kram (law), Kret (Decree), Anukret (sub-decree), Prakas (declaration or regulation) and Sarachor (circular)

8 Anukret No. 54/ANK/BK of 22 September 1997, on the Organisation and Functioning of the Ministry of Commerce.

competition in market development and promotion of consumer welfare. Drafting a legislation on competition has been put on the Government's priority list.

In the absence of a specific competition law and policy, other socio-economic policies play a very important role in ensuring that firms are competing fairly in the markets. Some policies, law and regulations of the Cambodian Government in different sectors have shown significant impacts on competition.

The high costs of electricity and telecommunication services, for instance, are posing a serious hindrance to enterprises' growth and overall economic development, as well as the welfare of the consumers, many of whom cannot afford and do not have access to these utilities.

These sectoral policies need to be revised to ensure the economic and social welfare of the country.

Good governance, transparency, and reliable institutions are other indispensable tools to guarantee the fairness of competition in the market. Cambodian institutions are still weak. Bureaucracy and rampant corruption in Cambodia make competition uncertain and prohibitive.

In particular, complicated licensing processes, tax evasion, absence of clear procurement policies, and unaccountable procurement procedures, have created an unfair environment for firms to compete fairly with each other, and raise entry barriers for new firms. So, the colluding firms earn much at the expenses of the consumers, the ones who bear the cost. Resolution of these matters strongly depends upon the Government's will.

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### Suggested Readings

Samnang Chea, Denora Sarin, Hach Sok (2004), *Cambodia's commitments under the general agreements on trade in services*, EIC Economic Review, vol. 1, No. 4

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