

COMPETITION SCENARIO IN CAMBODIA*

Introduction

Cambodia was disrupted by civil war and isolated from the rest of the world under Pol Pot's (*Khmer Rouge*) regime and for quite long, even after that. The country's basic infrastructure was totally destroyed, the intelligentsia devastated – which included the majority of its legal, economic and engineering expertise. A democratic administration was established in 1993, trying to shake-up the economy of the country since the late 1980s. However, most of the efforts were ineffectual, as the country continued to be torn apart by 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. 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 is growing. In this context, the task of building a comprehensive framework of market-oriented laws to create well-functioning private markets has become important priority on the development agenda of Cambodia.

Cambodia's recent memberships to the Association of South-east Asian Nations (ASEAN) and the World Trade Organisation (WTO) also 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 to the WTO are cornerstones of Cambodia's economic policy. Moreover, to fulfil its accession commitments to the WTO, Cambodia would soon have to adopt a national legislation on competition issues.

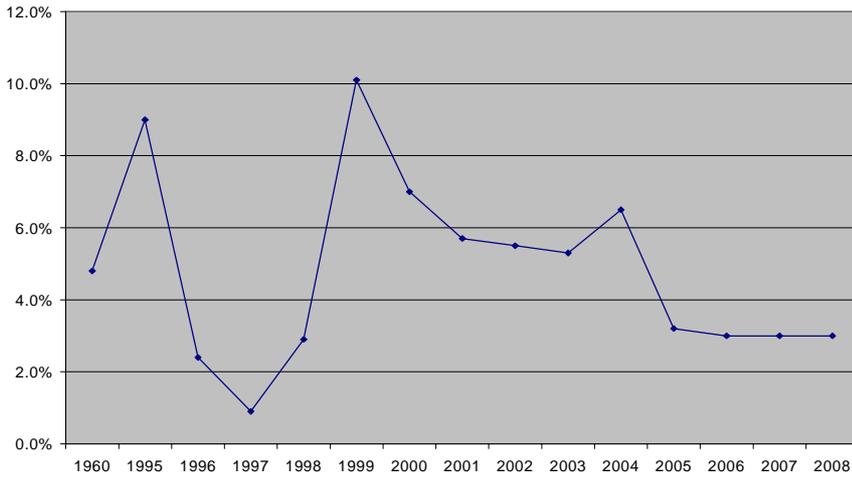
This chapter looks at the existing state of competition, regulation and consumer protection in Cambodia as part of the research activity undertaken under the CUTS 7Up2 Project – “Advocacy and Capacity Building on Competition Policy and Law in Asia”. More specifically, it analyses the implications of existing government policies and interventions on the markets in the absence of a competition policy and law in the country in Section Two. The argument put forward is that Cambodia has much to gain from the implementation of such a law and policy, and, without the same the country's long-term growth prospects as well as social welfare will be undermined. Section Three discusses the overall structure and the nature of competition in some industries/sectors, where and when the scarce information and database in the country allows. Section Four explores the existing regulatory regime in some key sectors, such as telecommunications, electricity and financial services, while Section Five looks briefly at such regime *vis-à-vis* consumer protection. Section Six highlights the various anti-competitive practices and unfair trade practices observed during the process of field research undertaken under the 7Up2 project. In Section Seven, the results of a perspective survey, also administered under this project, regarding the desired competition regime, which should be built up for Cambodia, are presented. The chapter is then completed with some concluding remarks and recommendations for the future.

The Existing Economic Policy Regime and its Implications on Competition

Overview of the Economy

After the collapse of the *Khmer Rouge* regime in 1979, Cambodia pursued a centrally planned economic system. In 1989, Cambodia began its transformation towards a free market-oriented economic system; however, the country was still distracted by civil war during the subsequent period, limiting the scope for economic development. The support of the international community led to the 1991 Paris Peace Accord that unified all conflict parties and the first free and fair national election in 1993 under the auspices of the United Nations Peace Keeping Process, known as United Nations Transitional Authority in Cambodia (UNTAC). With the establishment of the

Figure 5.1: GDP Growth of Cambodia



Source: EIC, compiled from government and international organisation primary data and EIC model's projection.

slowed from seven percent in 2000 to 5.5 percent in 2002, and to 5.3 percent in 2003. According to Economic Institute of Cambodia's (EIC's) model projection, Cambodia's GDP growth would decline (to only 3.2 percent in 2005 and 3 percent for the coming years) (see Figure 5.1) due to the elimination of the quota system worldwide, resulting in a great decline of Cambodian garment exports to the US.²

Cambodia's economy is cash-based and highly dollarised. The exchange rate in recent years was about 4000 riels per US\$. Inflation rate was about

first coalition government, Cambodia intended in earnest to restore itself to peace.

5.6 percent from January to December 2004, whereas had been only 0.5 percent in 2003.

To back the political aims, many reforms have been undertaken with assistance from the international community. In 1994, a medium-term adjustment and reform programme aimed at restoring the macro-economic stability was launched and a process of institutional strengthening supported by the international community was undertaken.

Agriculture, as mentioned earlier, remains the backbone of the economy. It employs more than 70 percent of the total workforce. The contribution of the agriculture sector to GDP has been in declining trend, but its value (in US\$ term) has a slight up-down change. Agriculture contributes about 26 percent to GDP in 2004 down from about 30 percent in 2003, and 40 percent in 1995. On the other hand, the contribution of the industrial sector has been in increasing trend, while that of the service sector seems to be stable. Contribution of the industrial sector was about 16 percent in 1995, but this figure almost doubled (about 27 percent in 2003 and 30 percent in 2004), thanks to the growth of the garment industry under the quota system. The service sector contributed

During those first years of liberalisation and reforms, foreign direct investment (FDI) in Cambodia increased significantly, rising from 3.5 percent of gross domestic product (GDP) in 1994 to 8.3 percent in 1996. Investment covered almost all sectors of the economy. Economic growth was relatively strong, averaging at about seven to eight percent per year. However, persistently weak governance and the political crisis of 1997, together with the Asian financial crisis led to a sharp economic slowdown.

Despite a large number of investment projects in the garment industry since 1997 and in the tourism industry since 1999, the total volume of FDI flow into Cambodia has declined progressively, plummeting to less than 1.5 percent of the GDP in 2002.¹ As a result, Cambodia's GDP growth steadily

Figure 5.2: Cambodia-Percentage of GDP by Industry Origin at Constant Price in 2000



Source: EIC, compiled from government and international organisation primary data and EIC model's projection.

about 45 percent to GDP since 1995, but its value has increased significantly, recently (about 60 percent).

Cambodia's total exports have noticeably increased in recent years from US\$0.3bn to US\$2bn in 2003. The US, which used to absorb just 1.4 percent of Cambodia's exports in 1996, has become a major destination for Cambodia's exports, which rose to about 60 percent in 2003 due to the boom in garment exports. In the same year, the value of garment exports was about US\$1.6bn, equivalent to about 80 percent of the total exports. The US and the European Union (EU) markets absorbed about 70 percent and 25 percent of the country's garment exports respectively.

Total imports reached about US\$2.8bn in 2003, up from about US\$1.6bn in 1996. Cambodia's trade balance thus has been in deficit during this period. Cambodia's imports are dominated by other ASEAN countries, accounting for between 40 percent and 70 percent of the country's total import value.

Cambodia's Economic Policy Regime and its Implications on Competition

Cambodia does not hitherto have any competition legislation. The concept of competition, however, is no longer new to Cambodia. The 1993 Constitution of Cambodia declared the pursuance of an economic mechanism based on market forces in the country, and obliquely provided for the role of the State to take necessary intervention measures to protect the competitive process of the marketplace as well as to protect consumer welfare.

Article 62 of the Constitution requires the State to pay attention to and help solve production matters, protect the price of products of farmers, crafters, and find the marketplace for them to sell their products. The State needs also to respect market management in order to guarantee a better standard of living for the people (Article 63). As regards consumer protection, the State has the mandate to ban and severely punish those who import, manufacture or sell illicit drugs, or counterfeit and expired goods, which affect health and life of the consumers (Article 64).

The Royal Government of Cambodia has paid fair attention to promoting competition in the market. Development of the private sector has been considered an important force for gearing up economic growth and generating employment. The government acknowledged its critical roles as the architect of development by creating an environment conducive to the development of private enterprises. The role of government has therefore been, *inter alia*, to ensure fair competition, transparency, and accountability between enterprises including public enterprises in the markets.

Excerpt from the RGC's Rectangular Strategy

Rectangle III: Private Sector Development and Employment Generation, Slide 1: Strengthening the Private Sector and Attracting Investments: [...] (i) implementation of policy of Cambodian economic integration into the regional and world economy; (ii) development of both software and hardware national infrastructure networks; and (iii) strengthening of the legal framework for enterprise. Within the framework of legal framework enhancement, the policy also takes account of various laws, regulations and institutional capacity that facilitate business, trade and private investment, especially "fair competition, transparency, accountability and fruitful partnership between private and public sectors".

The enactment of a competition law is a part of the government's immediate agenda to fulfil the commitments in the WTO accession deal of Cambodia. Accordingly, a competition law is scheduled for approval by the National Assembly and the Senate of Cambodia by March 2005 and January 2006, respectively.³ However, the political deadlock after the elections of July 2003 has delayed the whole schedule for enacting laws in compliance with the WTO deal.⁴

Trade Policy

During the 1970s when the country was shattered by regional conflicts and civil wars, there was virtually no trading activity, domestic or foreign, in Cambodia. Under the socialist-style economic system adopted in the early 1980s, both domestic and foreign trade was effectively controlled by the State through a network of state-owned trading monopolies. Together with the process of market-oriented reforms, which started in the late 1980s, Cambodia's trade policy was gradually liberalised.

The abolishment of the state monopoly for foreign trade in 1987, and the promulgation of the foreign investment law in 1989 allowing private companies to engage in foreign trade, was the initial steps towards trade liberalisation. Since then, Cambodia started to remove all restrictions placed upon firms and individuals engaging in international trade. The adoption of the 1993 Constitution, formalising the pursuance of a clear-cut market economy system in Cambodia, was the biggest landmark confirming the full freedom of Cambodian people to engage in both domestic and foreign trade.

Since 1994, Cambodia eliminated most quantitative restrictions and licensing of imports, except for certain commodities like pharmaceutical products, gold and silver, ornaments, ammunition and various cultural and medical materials. Imports of some products such as pork, motorbike tyres, right-hand four-wheelers,

and second hand footwear, however, are banned. Several classes of products — such as fish, live animals and raw hides and skins — are subject to export taxes.

Tariffs were drastically reduced over time, the latest reduction in 2001. The highest rate of 120 percent was reduced to only 35 percent. The tariff system was simplified by reducing the number of tariff bands from 12 to 4. But a cascading structure still prevails, with the highest rates applying to processed goods and lowest rates on raw materials, as an effective shield to protect the infant processing industries in Cambodia.

The RGC retains its control over exports on the basis of the rule of origin (RoO) as required by other trading partners, health, security reasons as well as public interests in the form of licences and permits. This type of control involves: (i) exports of commodities, which have bearings on national security, safety and health (such as food, military equipments, pharmaceutical and medical goods); and (ii) exports of rice due to food security purposes. Weak institutions and governance, nonetheless, render the RGC's control over exports inefficient. There are many exports that have been illegally carried out, particularly at the borders with Thailand and Vietnam.

Cambodia has pro-actively integrated itself into regional and global markets. The country has become a member of ASEAN since April 1999, and agreed to gradually reduce most tariff rates by 2010 (0-5 percent target) under the ASEAN Free Trade Agreement (AFTA) schemes. In September 2003, Cambodia was fully admitted to the WTO with a package of membership deals that include concessions and commitments to reduce tariffs of goods, open the services sector, and comply with the WTO Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement.

The liberalisation policies have generated positive impacts on the trade flows of Cambodia, especially when quantitative restrictions were removed. The import and export value have significantly increased. Due to limited numbers of investments and low level of domestic productions, Cambodia is heavily dependent on imports of consumer goods, such as cigarettes, televisions, gold, motorcycles, beer, construction materials, cloth, clothing, sugar, cement, steel, and petroleum products, etc, to cater to the needs of the consumers.

Few state trading companies continue to exist with some privileges; however, trading activities become more dynamic with the increased participation from the private sector. Competition on both export and import markets, as well as on the domestic trading markets becomes stiffer, forcing market players to increase efficiency and adopt new techniques to

compete for customers. An increased number of market participants, coupled with tariff reductions, has led the prices of a wide range of imported goods to lower vastly, hence benefiting poor Cambodian consumers.

Investment Policy

After the 1993 election, Cambodia started changing its investment policy with a view to attracting more investors into the country. The new 1994 Investment Law was therefore enacted, and subsequently another two sub-decrees: the Sub-decree on the Implementation of the Investment Law No. 88 ANKR-BK issued in 1997 and Sub-decree No. 53 ANKR-BK on Restriction on Some Sectors of Investment issued in 1999.

Cambodia does not restrict investment, except in certain sectors for national security, social safety and economic necessity reasons. Investment in certain highly 'sensitive' sectors is prohibited by both national and foreign investors, such as processing of cultural items, processing of timber and wood products using local raw materials, production of toxic chemicals and weapons production. Certain other sectors require some equity participation by a national or require special approvals from the government for foreign involvement, such as tobacco, alcohol, gemstones, rice mill, wood and stone carving, silk weaving, publishing, printing, radio and television, and land ownership.

A wide range of incentives is to be provided to qualified investors⁵ without discrimination based on nationality, providing a significant financial benefit to all approved projects. Nearly all approved projects will enjoy a corporate profit tax rate of nine percent (as compared to the standard rate of 20 percent), except for investment projects on national resources exploitation like timber, oil, mines, gold, and precious stones. A tax holiday of up to eight years may be awarded, depending on the size of the project, sector, location, employees and other criteria. Other incentives include non-taxation on the distribution of dividends or profits; 100 percent import duty exemption on construction materials, means of production, equipments, intermediate goods, raw materials and spare parts if a minimum of 80 percent of overall goods produced by an investment project is destined for export or if the project is located in the Special Promotion Zone (SPZ); and no restriction on employment of management personnel and experts, technical personnel, skilled workers, who are subject to compliance with immigration and labour laws.

Investment in some sectors that are not entitled to incentives such as projects in transportation services, duty free shops, restaurants or other types of entertainment clubs, business centres, telecommunication services, press related activities,

professional services, retail and wholesale trading, etc. On the other hand, incentives are available for investments into a variety of areas such as crop production, livestock, fisheries, industrial manufacturing, textile and garments, milling, construction of hotels, construction of physical infrastructure, etc.

Cambodia's investment policy has significantly increased the total amount of capital invested in the country. This investment policy has contributed substantially towards increased market participation, and has thus created a favourably upward drive on market competition in the economy. The equal treatment between domestic and foreign investors is rather a unique feature of Cambodia's investment policy as compared to other countries in the region, which usually have two different policies for domestic and foreign investors. Both national and foreign investments are treated in a fair and non-discriminatory manner in Cambodia, with the only exception that foreign investors cannot own any land and only Cambodian nationals are entitled to land ownership. Nevertheless, the Investment Law provides foreign investors with two alternative, viable possibilities: they can either acquire long-term leases of up to 70 years, renewable upon request; or make a joint-venture with local companies that own share of more than 51 percent of the equity capital.

Industrial and Privatisation Policy

The Cambodian economy is characterised by a very small and less developed industrial base and a large agricultural sector, which has always been the backbone of the economy. The garment sector is the only manufacturing industry in Cambodia of any note, benefiting from the Most Favoured Nation (MFN) and Generalised System of Preferences (GSP) privileges granted by the US and EU. Lying at the core of Cambodia's industrial policy is a policy to focus more resources on and provide more incentives to attract investment first and foremost into those sectors, where Cambodia has comparative advantages as thrust areas for export promotion, and secondly into the development of physical infrastructure and production of basic necessities and utilities to cater to the domestic needs instead of relying completely on imports. In more details, as formally pronounced by the RGC⁶, Cambodia's industrial policy is built upon seven main points:

- First, developing labour-intensive industries, such as garment, toy and footwear;
- Second, promoting the development of agri-business by strengthening the legal framework for longer-term land management and providing incentives to establish agri-processing factories;
- Third, developing industries which are based on the utilisation of basic natural resources, mainly by processing the existing natural resources in the

country such as fish, meat, cement production, brick and tile by using technology and sustainable sources of energy;

- Fourth, promoting small and medium-sized enterprises (SMEs), micro-enterprises and handicraft by providing micro-finance, streamlining procedures, providing marketing services, training on production techniques, management and supplying information on sectoral development;
- Fifth, encouraging technology transfer and export product diversification by promoting the assembly of electrical appliances and electronics products for domestic and industrial use and improving product quality;
- Sixth, establishing industrial and export processing zones (EPZ) by developing infrastructure, improving service quality, streamlining procedures and encouraging investments; and
- Seventh, increasing the production of goods for import substitution to some extent by encouraging the development of paper, chemical industries, such as the production of fertilisers, acid, as well as daily consumption goods such as soap, paint, electrical appliance, water pump and agricultural inputs, etc.

These policies, coupled with a cascading tariff structure (the highest rates being applied on processed and final products, and the lowest on raw materials), could mean effective protection for domestic industries against competition from imports and promotion of exports to compete with goods produced and marketed internationally by other trading partners of Cambodia. There are, however, downside risks involved. One such risk may be that different commodities will enjoy varied levels of protection, which might lead to costly resource misallocation, by inducing scarce resources away from productive activities to less productive ones. The other is that the costs of such protection might easily be transferred to other down-stream industries or the local consumer.

The one slight difference of the Cambodian economy when compared with other economies in the same region lies in the smaller size of the 'inefficient' state sector of the sort found, for instance, in Vietnam, Lao PDR or China. In Cambodia, where corruption is a tremendous problem, the State, or rather representatives of the State seem to be more interested in collecting rents, snatching away forest and land ownership rather than building up their business empires, shielded away from the competitive threats of the domestic private sector or other foreign players. This characteristic, together with a rigorous process of opening up the economy and liberalisation, has led to a full-fledged privatisation policy for Cambodia's State assets.

Consequently, many State-owned enterprises (SOEs) have been sold and/or leased to the private sector. Some have received foreign investment and have been turned into joint ventures. As on April 2000, the number of privatised SOEs – mainly in the manufacturing, agriculture and commerce sectors – amounted to 177, of which 152 had been leased to private investors, five were turned into joint ventures and 20 had been sold off.⁷ Seven rubber companies would remain SOEs until 2006, along with around 13 enterprises that are considered to have a crucial role in providing public services to the Cambodia economy (see Table 5.1).

Though some SOEs remain in existence in Cambodia, they seem not to pose a big threat to competition to other private traders, as they are required to compete fairly with private companies on the same markets and are not entitled to special trading rights or privileges. Evidently, some SOEs have lost in competing with private traders and have thus collapsed due to their limited technologies and inabilities to compete with other imported products in the market.⁹ The collapses of SOEs may prove that the government industrial policy does not actually favour the state enterprises.

Market Structure and Competition

The Cambodian economy is made up of a handful of SOEs and a vast private sector, of which the huge majority constitutes small and informal enterprises. The agricultural sector mostly comprises of small-scale or household production units, which operate on an informal basis, without any form of registration or taxation. The non-farm sector operates both formally and informally, also with a big discrepancy in proportion between the two segments. It was estimated that, in 2001, there were about 27,000 small enterprises in Cambodia, which did not register with the Ministry of Commerce (MoC) and only half of this number operate their business with a MoC's licence. Only approximately 9,000 companies have officially registered their business. Small enterprises, while often licensed to operate by the MoC and other relevant ministries at the provincial-municipal level, normally do not pay profit taxes and are regulated informally by the local level authorities. Non-licensed enterprises are often subject to paying small-scale unofficial fees to local authorities. Those commercial enterprises, which are registered with the MoC, are subject to profit taxes based on the filing of financial statements with the tax authorities. There is a grey area between

Table 5.1: List of State-Owned Enterprises (as on March 2003)⁸

Ministry in Charge	Name of Enterprise
Ministry of Agriculture, Forestry, and Fisheries	Chub Rubber Plantation Company Krek Rubber Plantation Company Memut Rubber Plantation Company Chamkar Andaung Rubber Plantation Company Pem Chang Rubber Plantation Company Boeung Ket Rubber Plantation Company Agricultural Inputs Company
Ministry of Public Works and Transport	Sihanouk Ville Port Phnom Penh Port Kampuchea Shipping Agency and Broker (KAMSAB) Laboratory of Construction Royal Railway of Cambodia Neak Loeung Ferry Prek Kdam Ferry
Municipality of Phnom Penh	Phnom Penh Water Supply
Ministry of Industry, Mines and Energy	Electricity of Cambodia (EDC- Electricite du Cambodge)
Ministry of Economy and Finance	Rural Development Bank
Ministry of Commerce	Green Trade Company
Joint-venture enterprises (51%: State shares)	Cambodia Pharmaceutical Enterprise Camintel Company
Source: WTO: Report of the working party on the accession of Cambodia dated August 2003 (WT/ACC/KHM/2)	

Table 5.2: Medium and Large Industrial Establishment in 2004		
ISIC Code	Type of Manufacturing	No.
31	Manufacture of food, beverage and tobacco	39
32	Textiles, Wearing Apparel and leather industries	320
33	Wood and Wood Products	7
34	Paper and Paper Products	5
35	Chemical, Rubber and Plastic Products	20
36	Non-metallic Mineral Products	11
37	Manufacture of Basic Metals	12
38	Other Manufacturing Industries	1
Total Manufacturing		415
Source: <i>Ministry of Industry, Mines and Energy</i>		

country. On the other hand, the scanty and seriously defective telecommunications and transportation networks facilitate the prevalence of monopolistic behaviours and abuses of dominance at the provincial level, due to difficulty in goods circulation and services provision.

The high level of informality of the market and low economic administration and management capacity in Cambodia makes the maintenance of a database

informal and formal sectors where enterprises are locally licensed, but are not formally registered and taxed. If an enterprise grows to a certain point, it must register with the MoC and formalise its operations. At this point, the enterprise will pay profit tax based on the real regime method and will be subject to oversight from several ministries relevant to its business. Because of the increased administrative and tax burden resulting from entering the formal sector, there is an incentive to stay small. Enterprises will only register if their size is big enough to qualify for the incentives given in accordance with the Investment Law, or to apply for import and import licences as well as to improve their access to the formal financial sector¹⁰. Owing to such a cause, the informal sector is vast in Cambodia.

The low industrialisation level and high dependence on imports for most products in Cambodia places the small community of local enterprises of the country under huge competitive pressure from foreign players. An extensive number of impediments, including complicated licensing procedures, lack of access to financial capital, poor access to social infrastructure such as health care, limited access to vocational trainings, poor road and transportation conditions, high costs of electricity, etc., also render competition with imported products difficult for facing Cambodian enterprises¹¹. Besides, smuggling and counterfeiting are also very rampant in Cambodia, which makes life even more difficult for honest producers and traders.

In addition to local production and registered imports, informal across-the-border trade undertaken by small Cambodian traders (other than smuggling) with Vietnam, Thailand, Lao PDR, China, is also substantially serving the Cambodia market. This is another informal feature of the Cambodia economy, which somehow helps reduce the scope for monopolisation or cartelisation practices over imports – the bloodline to various economic sectors in the

on the market shares of enterprises an impossible task at the current stage. Hardly any information or statistics on market shares is available, either from government reports or private sources like companies' websites or market research reports. Even where information is available, it is often inaccurate, and imperfect.

The Manufacturing Sector

The manufacturing sector in Cambodia is very less developed and comprises mostly of small, unregistered enterprises. According to an annual survey of industrial enterprises undertaken by the Ministry of Industry, Mines and Energy (MIME), there were about 27,000 small industrial establishments with fewer than 50 employees in Cambodia, most of which are food, beverage and tobacco manufacturers, as compared to around 400 licensed medium (50-200 employees) and large (over 200 employees) industrial establishments, most of which are in the garment sector (75 percent).

Textiles, Wearing Apparel and Leather Industries

According to the 2004 MIME report on industrial establishments, the number of textile and garment factories in Cambodia amounted to 320 in total. These factories compete fairly with each other. Since the main markets of these enterprises are mainly for exports, there should not be worrisome concern about whether these enterprises may apply any anti-competitive practices in Cambodian markets.

Tobacco

In this sector, competition is stiff among producers and importers. However, the biggest local producer, British-American Tobacco (BAT) acquired market share of 43 percent, Paradise Tobacco Co. had its share of only one percent of the market and other domestic producers six percent in 2001. Imports accounted for 50 percent of the domestic market¹² during the same period.

Table 5.3: Market Structure of Electricity in Cambodia in 2003

Type of Operation	Operator	No. of Operators
Distribution only	Private companies	7
Generation only	Private companies	7
Generation, distribution and transmission (rural areas and some provincial towns)	Private companies	69
Generation, distribution and transmission	Electricité du Cambodge (SOE)	1

Source: *Electricity Authority of Cambodia (EAC): Report on power sector of Cambodia 2003*

Services and Utilities

Electricity

Electricity in Cambodia is generated by Independent Power Producers (IPPs) licensed by the government. Through the Power Purchase Agreement, IPPs sell electricity to a supplier who has a consolidated licence. Sometimes, suppliers may also generate electricity and supply electricity through its own distribution system, subject to licenses issued by the government.

The state-owned *Electricité du Cambodge* – Electricity of Cambodia (EDC) holds a virtual monopoly over most of the electricity generation, transmission and distribution activities in the country with its system of 22 isolated operations. However, there is also some participation from the private sector; for example the IPPs, who generate electricity and resell to EDC and/or operate small-scale provision of electricity in some rural areas.

Telecom Services

Fixed-line services: There are three (03) fixed-line service providers in Cambodia: the Ministry of Posts and Telecommunications of Cambodia (MPTC), Camintel (a joint venture of PT Indosat of Indonesia and the RGC) and another Thai-owned company, Camshin.

Cellular telephone services: There are four (04) companies providing mobile services in Cambodia: (i) CamGSM Co., Ltd. (commonly known as Mobitel); (ii) Cambodia Smart Communications Company Ltd. (Casacam) – a joint venture of the Smart Group of Thailand, Telekom Malaysia and the RGC; (iii) Cambodia Shinawatra (Camshin) – previously a joint venture

with the RGC to provide a WLL network, now, a fully Thai-owned company licensed to provide GSM mobile services; and (iv) Cambodia Mobile Telephone Company (CamTel) – starting in 1992 with an analogue AMPS system, this Thai-owned company is no longer popular among mobile phone users since the launch of GSM, due to limited functionality and a lack of analogue handsets.

Internet services providers (ISPs) Four companies are currently sharing the Cambodia market: Camnet of the MPTC, Online, CamGSM and Camintel.

Transportation

The Cambodian railway line runs from Phnom Penh to Poipet (Cambodian-Thai border) and from Phnom Penh to Sihanouk Ville, where there is an international seaport. Railway transportation is still under State monopoly. However, the railway transport service has not been popular among Cambodians due to low service standards, lack of security and safety.

There are some other state-owned companies dealing with the transportation, namely: Sihanouk Ville Port, Phnom Penh Port, Kampuchea Shipping Agency and Broker (KAMSAB), Neak Loeung Ferry, and Prek Kdam Ferry. Besides these, most transport companies are small-scale private companies.

Water and Sanitation

Phnom Penh is the only place that can supply water to the majority of its residents. Water supply in Phnom Penh reach about 70 percent of all its residents – there are about a million of the total population of 13 millions resident at the moment. The Phnom Penh Water Supply Authority is the only state-owned company under the direction of the Phnom Penh government that provides clean water within the municipality. Another 16 licences were awarded to private providers to supply water in some parts of provincial and district towns.

Solid waste management systems are in existence only in certain urban areas in Cambodia. Some years ago, the municipality of

Table 5.4: Market Shares of ISP in Cambodia at the End of 2003

Company	Status	No. of Users	Market Shares
Camnet	SOE	1,526	21%
Online	Private company	3,244	45%
CamGSM	Private company	1,747	24%
Camintel	SOE	635	9%

Source: *Ministry of Posts and Telecommunications of Cambodia*

Table 5.5: Anticompetitive Practices						
Practice of Unfair Competition (In percent)	All firms	Micro	SME	Large	Exporter	Non-exporter
Conspire to limit access to markets/suppliers	34	34	34	36	41	33
Receive subsidies (including toleration of arrears)	31	31	31	34	37	30
Violate copyrights, patents or trademarks	31	31	29	37	40	29
Don't pay duties or observe trade regulations	25	22	25	34	40	22
Avoid sales tax (VAT and others)	22	16	25	35	40	19
Avoid labour taxes/regulations	20	14	26	30	40	16
Source: <i>World Bank, 2004</i>						

Phnom Penh concluded an exclusive contract with a private company, Cintri Ltd., for a term of 50 years to collect garbage in the vicinity of Phnom Penh. With the assistance of donors including ADB and JICA, garbage collection services in some parts of the municipality were provided by the Phnom Penh Waste Management Authority (PPWM), under the Department of Public Works and Transport (Ministry of Public Works and Transport). The liquid waste management in Phnom Penh on the other hand is overseen by the PPWM. This utility is billed in water supply bills.

Banking

The banking system in Cambodia consists of commercial banks, specialised banks, micro-finance institutions and representative offices of banks operating under the supervision of the National Bank of Cambodia (NBC). According to the Bulletin No. 10 of the NBC, there are fourteen (14) commercial banks, of which one bank is owned by the RGC (Foreign Trade Bank). Three specialised banks have been also recorded; one of them, the Rural Development Bank belongs to the RGC. Besides, there are another nine licensed micro-finance institutions. Some other 27 micro-finance institutions were registered as non-governmental organisations (NGOs) and about other 60 NGOs also provide micro-finance services though they do not register at all.

There is no clear information about market shares of these banking operators. However, a commercial bank (ACLEDA), formerly a non-profit NGO assisted by the ILO/UNDP project, has claimed itself as one of the largest commercial banks in Cambodia, possessing 13 percent of the market in the overall credit market and four percent of the deposit collection market.

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 restriction on entry into markets, or put extra burden and restraint on the competitive process therein. 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, motorbike tyres, right hand drive vehicles, used footwear. Particularly, at the provincial and local levels, such restrictive regulations are very rampant, due to the enormous authority exercised by local government officials and the high incidence of corruptive behaviours. For instance, in Preah Vihear province, on the northwest of Cambodia, bordered with Thailand, the governor issued a regulation authorising only one person to conduct the sale of eggs. Any activity of selling eggs by others in the said province is considered unlawful¹³.

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 privilege for the EDC to provide power transmission to the distribution companies and bulk power consumers. More than often, the sectoral regulatory frameworks in place seem to be unclear and ambiguous and thus subject to different interpretations and uncertainty. The telecommunication sector, in particular, does not yet have clear provision to guide the licensing procedures, and incumbent SOEs plays both the roles of regulator and market player. These practices, however, will be

discussed in more details in the following part focussing on regulatory policies in selected sectors.

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 major obstacle for a new business operator to enter the markets, or existing economic entities to formally register themselves – leading to the high incidence of informality amongst enterprises in Cambodia and therefore disorder and mismanagement. To register a business, operators are required to register with the MoC, need to secure patent tax and/or value added tax identification numbers issued by the Ministry of Economy and Finance (MEF) and to get approval for their internal rules and regulations from the Ministry of Labour. In the event that the business is related to specific areas that are tied to other ministries, operators are required to get licences from those relevant ministries as well. For example, if the intended business undertakings may affect the environment, operators are required to obtain licence from the Ministry of Environment. The registration costs approximately US\$1,500 and takes 94 days to complete¹⁴.

The government has actually pledged to reform the business registration process. A renowned example has been the recent reform at the MoC. A new regulation that officially reduces the registration costs to US\$177 was released in late 2004. In practice, facilitation services have often been suggested, and the registration fee generally ranges from US\$250 to US\$300 including both official and facilitation fees¹⁵. The biggest constraint on the competitive process in Cambodia, however, is an apparent and serious lack of transparent and accountable administration. Corruption threatens fair deals among players in the markets. The World Bank (WB) survey pointed out that the corruption level in Cambodia was double than that of Bangladesh, Pakistan, and China. Corruption payments may be up to five percent of annual sales revenue, exceeding six percent for large firms¹⁶. 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. Lately, there had been a controversy over the procurement of military uniforms. A representative of a private company, Paragon, allegedly reported that his company had lost a contract to provide clothing to the military, despite bidding a price lower than that offered by the winner¹⁷.

In addition, weak institution and governance also negatively affect fair competition in the markets. The government is still feeble in protecting intellectual property rights (IPRs) 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 been allowed illegally to pass the border checkpoints without paying taxes, to the detriment of suppliers dealing on legally imported products. For instance, there has been much concern raised by local pharmaceutical producers, complaining of the difficulties in competing with cheap smuggled medicine¹⁸.

A survey conducted by the WB shows that anti-competitive practices in Cambodia are fairly noticeable (Table 5.5), posing a moderate problem to enterprises. 34 percent of the survey respondents informed that there were conspiracies with the government to prevent other competitors from entering markets. About 31 percent of firms are of the same opinion – that the government treatment to all firms is not fair, while certain firms receive the government subsidy and their arrears have been tolerated. 31 percent of respondents agreed that the violation of intellectual property rights has been moderately significant. Besides, between 20 to 25 percent of the interviewed firms invoked 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 anti-competitive practices by nature, except for the conspiracies to limit access to markets or suppliers.

Sectoral Regulation & Competition

Liberalisation and deregulation have become the latest fashion as countries across regions are moving towards adopting market-based reforms and reducing government intervention in their economies. Trade barriers are being lowered, foreign investment is being encouraged, protection of domestic industries being withdrawn and state monopolies being eliminated and privatised. These changes reflect the heightened confidence that free market forces will help increase productivity and competitiveness at the firm as well as economy-wise level, contributing to growth and development. However, the normal operation of market forces, left to themselves, may not lead to increased economic efficiency and fair distribution of welfare, due to a multitude of reasons. Market failures may prevail instead; hence, there is a clear case to introduce some sort of government intervention, in order to correct distortions created by market failures and improve the efficiency in the way the market operates. In fact, experience suggests that particularly during the early period of any transition from a non-competitive (or minimally competitive) market to a competitive (or more competitive) one, the government will have to oversee and manage change. It may not need to direct the change, but at the very least, a process will be needed that can resolve disputes, respond to market failure, and provide new entrants with a sense of stability and fairness. An effective regulatory

framework is, therefore, more essential than ever during this period of introducing initial competition into the market, especially in the absence of a competition policy and law, which happens to be the case in most developing economies.

In the absence of a national competition policy and law, as in the Cambodia context, 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 may affect to some extent competition among various players in markets. The government policies in different specific sectors compose closer instruments that impact competition in those sectors. A very simple example of this would be a wide range of government sectoral policies linked to matters of licensing, pricing, ensuring operational standards, etc. More concretely, in order to achieve the optimal utilisation of resources, government policies may reflect on the policies that determine the number of people to be licensed, the prices of services or products to be fair and reasonable, sectors or types of industries to obtain the government subsidies, and so on.

For that reason, it is of crucial importance to examine the government policies in different sectors of the economy while examining the competition regime in any country. Hereby discussed are three sectors – electricity, telecommunications, and financial services. These are the sectors in which the government has adopted specific rules and regulations. Besides, there is also the participation of SOEs therein, in competition with the private sector.

Electricity

Almost all infrastructures in the electricity industry in Cambodia including generation, transmission and distribution facilities were destroyed by the civil war in the 1970s. In the wake of the war, electricity facilities have been restored and developed under the management of the MIME. The task of electricity supply was assigned to the EDC for Phnom Penh and to other small enterprises for each province throughout the country.

Cambodia still has a very low capacity of power generation. Electricity supply is very limited, especially in provinces. Many households in the rural areas do not have access to electricity services; and where electricity is available, firm and individual consumers have to pay one of the highest costs in the world for their use. The total length and density of the electrical grid is nearly nine times lower than in Thailand and five times lower than in Vietnam.¹⁹ Electricity cost in Cambodia is much higher than that in its neighbouring countries, Thailand (four times cheaper) and Vietnam (three times cheaper).²⁰

To improve the situation, the government has pledged many reforms by restoring and developing electricity infrastructures and thus improving electricity supply. One of the major reforms is the establishment of a lucid electricity policy as enshrined in the 2001 Electricity Law.

The Electricity Law aims to ensure the protection of consumer rights to enjoy a reliable, adequate supply of electric power services at reasonable cost; 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 industry²¹. This Law, therefore, governs all electric power supplies and services in Cambodia, which include 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 MIME and the EAC. The MIME is responsible for setting and administering the government policies, strategies and planning in the power sector, whereas the EAC has duty to ensure that the electricity services provision and use of electricity are efficiently, qualitatively and sustainably performed (Article 3). 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 (Article 4). The EAC implements those policies, strategies and guidelines by issuing regulation, rules, procedures and order, in a transparent manner, to attain the ultimate aims 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 supply of electricity services. The Authority also approves tariff rates and charges, terms and conditions of licensees, order the licensee to implement guidance procedures and standards for investment programmes, review the financial activities and organisation structure of licensee 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, prescribe fees applicable to licensees. In relation to consumer affairs, the EAC evaluates and resolves consumer complaints if the complaints relate to the violation of the conditions of licence.²² In order to ensure fair competition for public interests in the power markets, the EAC may approve

or disapprove, or restrict the conduct of a business merger or reorganisation, or a major acquisition or sale of assets or security or expanding the licence's business activities.

The EAC issues licence to enterprises whose competence satisfies the requirements of the Authority to provide electricity in the market and satisfies the service obligations and conditions. However, in deciding upon whom to get a licence, the Authority needs to take into account other government policies, strategies and planning in power sector and public interests. The absence of clear provisions on criteria to acquire a licence leaves much discretion to the Authority, which may be arbitrary.

The Electricity Law mentions different types of licenses to be issued by the Authority. These licences include generation, transmission, dispatch, distribution, bulk sale, sub-contract and consolidated licence (i.e. a licence, which may be the combination of some or all types of licences). Only person in form of company is eligible to apply for and obtain a licence, except for the case where electricity services provisions (generation, distribution or retailing) are of small size. No licensee may hold more than one licence or own shares in, or have any other direct financial interest in any other licensees, except for a state-owned licence.

All these licences may be issued to both private and SOEs. Nonetheless, the Law reserves special rights for the state-owned utility, EDC, to provide transmission service to distribution companies and bulk power consumers throughout Cambodia under the national transmission licence. The Law also states that consolidated licences can be issued to the EDC and to isolated systems to generate, transmit, dispatch, distribute and sell electricity to consumers. In practice, consolidated licences have been issued to EDC that provides services in Phnom Penh and capital towns of various provinces, and to the private sector in some rural areas.

Though the Cambodian Electricity Law is quite open to the private sector, the monopoly regime is still applied. Consumers within a zone or territory determined by the licence of the EAC could not choose other suppliers of their best possible choice. For instance, the EDC which obtains consolidated licence from the EAC in Phnom Penh and some other provincial towns has the sole right to provide transmission service for the whole country and to provide distribution service in its licensed areas, and to operate generation facilities at different locations. To date, EDC supplied electricity in its licensed areas of Phnom Penh, Sihanouk Ville, and some other provincial towns. This practice seems to be in contradiction with the initial aims of the Electricity Law that intends to introduce and promote competition in the electricity market.

Telecommunications

Cambodia has been identified as one of the countries in the South-east Asian region that has the lowest levels of information and communication technology development. Telecommunication facilities and human resources were devastated under the *Khmer Rouge* regime. Not many persons have access to the telephone line and Internet. At the beginning of 2001, about 0.26 percent of the population (about 30,880) have access to fixed-line telephone. Internet access and telephone costs are high. Therefore, only a limited number of people in Phnom Penh may afford the high costs.

Notwithstanding these problems, the government has made a lot of progress in the telecommunication sector. Cambodia's mobile phone system is comparatively close to world class, competitive and privately provided. There has been a remarkable rise in the number of mobile phone subscribers. In 2000, about 80 percent of telephone subscribers use mobile phones; this was because fixed-line telephone is not well developed, mobile phone markets have been open to private investment and competition, and payment method and installation is not complicated and allows consumers to afford the costs²³. Besides, the fixed-line system in the country is also relatively modern. Also, there is participation of the private sector in the investment of mobiles, wireless, networks, Internets and gateways²⁴. Cambodia has been rated by the International Telecommunication Union (ITU) as a country having partial competition in the telecom sector²⁵. The government has introduced a national telecommunication policy and telecommunication master plan under the auspices of the ITU and the United Nations Development Programme (UNDP) to promote developments in the sector.

In Cambodia, the policy-making and regulatory power in the area of telecommunication services belongs to the 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 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 bridge these aims, the MPTC adopted policies to promote 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 the law, 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 discretionary²⁶. 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 Telstra²⁷, an Australian firm, for the establishment of an international gateway stated that no new gateways would be built²⁸.

In addition to a role as both 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 fixed line network, the MPTC owns shares of 51 percent of the company, which is named Camintel. MPTC also operates its own business in providing international telephone gateway to Cambodia in competition with another private company. Besides, MPTC also engages in the provision of Internet services.

There is no independent regulator or policy-making body in the telecommunication sector, since the MPTC is at the same time regulator and one of the market operators. Therefore, there is often some sort of 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 overseas 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 the other sectors.

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 privatised²⁹.

Financial Services

The Cambodian economy is cash-based. The scare of past political turmoil and civil war has restricted people's confidence in the banking system. This results in a large amount of cash outside the banking

system, and a low level of savings inside. Instead of saving in banks, people prefer to keep cash idle or to finance their families or friends through personal networks. Families' and friends' support provide roughly one-fourth of the overall financing; and for small rural non-farm and urban informal enterprises, financing through families and friends is close to 50 percent³⁰.

Cambodia is also a highly dollarised economy. Dollarisation started during the period of 1991-95 and continued to prevail since then. In the cash-based economy, a large amount of cash dollars circulate outside the banking system. Even banking transaction reflects high dollarisation; as more than 90 percent of liability, assets and shareholder's equity are predominantly in US dollars³¹.

The banking system in Cambodia consisted of the National Bank of Cambodia (NBC), 14 Commercial banks (one state-owned commercial bank), three specialised banks (one state-owned specialised bank), one representative office of Standard Chartered, 2,158 registered exchanges bureaux and around 96 micro-finance institutions (including NGOs)³². The NBC issues licences, de-licences, regulates, and supervises banks and financial institutions and other relevant establishments such as auditors and liquidators, in accordance with Article 7 of the Law on the Organisation and Conduct of the National Bank of Cambodia. NBC has 20 provincial branches. Among micro-finance institutions, there are nine licensed institutions, 27 registered NGOs and around 60 non-registered NGOs, according to NBC's estimates.

To strengthen the banking system, in early 2000, the NBC conducted a bank re-licensing programme requiring increase in capital requirement and use of CAMELS rating system. As a result, the number of banks was reduced from 31 in 2000 to 18 in 2004. With these actions, the government expected to upgrade standards and improve the soundness and reliability of the banking system and hence the public's confidence in it. In addition, a blueprint for the financial sector for 2001-2010 was introduced. The blueprint sets three phases for the reform programmes. The ultimate goal of the reform programmes is to have a competitive, integrated and efficient banking system that effectively mobilises savings and has a reliable payment system and safety net, as a means to support the growth of the private sector through financing.

However, some main constraints for banking sector development remain, such as the high cost of information and the lack of legal infrastructure to support the enforcement of financial contracts. Only a few firms produce financial statements. Thus, banks are unable to provide loans on the basis of cash-flow analysis but on collaterals due to lack of clients' financial information. Moreover, collateral

registration system is cumbersome and requires banks to go through several steps to identify, to confirm and register secured interests; and there is no proper collateral valuation system yet.

The absence of some important regulations and procedures has also limited the scope of competition in banking sector. There is no regulation governing merger and acquisition (M&A) and business diversification that allow banks to expand their activities into other businesses³³. For instance, when competition in banking sector becomes fierce, some small and weak banks may decide to merge and some banks may adopt strategies to expand into non-bank financial business.

Legally, the minimum capital requirement for commercial bank is 50 billion *riels* (approximately US\$13mn)³⁴, 10 billion *riels* for specialised bank and 250 million *riels* for micro-finance institutions (MFI). The reserve requirement is eight percent for banks and five percent for MFIs. However, in practice, the banks must maintain 10 percent of capital as a form of guarantee³⁵. This idle reserve increases banks' operational cost and eventually increases consumer interest rate. The blueprint highlights the reform of streamlining reserve requirement and phasing out guarantee deposit, but so far these requirements are still in practice.³⁶

There are two state-owned banks: the Foreign Trade Bank (FTB), a commercial bank, and the Rural Development Bank (RDB), a specialised bank. The FTB was under the direct management of the NBC and operates business activities like other private commercial banks. In 2000, in an attempt to have equal status to other commercial banks, 80 percent of FTB shares were transferred to the Ministry of Economy and Finance (MEF) and the NBC retained only 20 percent. Five largest commercial banks including the FTB hold more than 50 percent of total banking assets and deposits, according the 2001 Financial Blueprint Report. The blueprint also mentioned plans to privatise in the first phase (2001-2005), but the bank is still owned by the State, cent percent.

The RDB does not compete with other banks. It is a wholesaler for the financial sector and a source of financing for other banks. It processes banking operations and loan services to provide micro-finance services to which most people in rural areas have access. The RDB's main objective is to refinance credit funds and services to licensed financial institutions, commercial banks, specialised banks, micro-finance institutions, associations, development communities and SMEs that take part in the rural development in Cambodia³⁷. The main funds of the RDB come from the government and international donors.

Competition and Consumer Protection

An effective competition policy and law not only contributes to enabling a business environment conducive to enterprise development, promoting firm-level productivity and competitiveness, but also helps improve consumer welfare. Consumers will be able to enjoy the best possible choice of goods, with the best possible quality at the lowest possible prices and have adequate supplies of goods and services; since a fair competitive process in the market, safeguarded by competition policy and law, will impose huge pressures on enterprises to try their best to satisfy customers' demands and preferences and protect their market positions by fair means. On the other hand, many anti-competitive practices and unfair competition practices, if not prevented and stopped in time, may significantly impair the legitimate rights and interests of the consumers.

It is of vital importance to understand that consideration for consumer interests and welfare is not a novel idea. The concern over consumer abuses has, in effect, been raised by many countries as well as international organisations since long time ago. An exemplary practice in this regard is "The Guidelines for Consumer Protection", adopted by the General Assembly of the United Nations in 1985 and amended in 1999. The Guidelines provides some important international norms served to guide all governments in undertaking policies to protect consumers who often face injustice in economic terms, educational levels, and bargaining power.

The Guidelines focuses on (i) physical safety; (ii) promotion and protection of consumers' economic interests; (iii) standards for the safety and quality of consumer goods and services; (iv) distribution facilities for essential consumer goods and services; (v) measures enabling consumers to obtain redress; (vi) education and information programmes; (vii) promotion of suitable consumption; and (viii) measures relating to specific areas such as food, pharmaceuticals and water. The Guidelines also recognise several basic consumer rights, such as the right to satisfaction of basic needs, the right to safety, the right to be informed, the right to best choice of products, the right to be heard, the right to redress, the right to consumer education and the right to a healthy environment³⁸.

In Cambodia, consumers are entitled to constitutional rights to make use of safe and healthy products that do not harm their lives and health, and to use products of decent quality³⁹. Cambodia has not yet established any authority or State agency that is specialised in consumer issues. Consumer movements are also non-existent in the country and there has been no consumer representative group to act on behalf of consumers on such matters as considering and helping to resolve

complaints from individual consumers, or initiating legal actions against private firms or individuals who commit any act detrimental to consumer interests.

However, to ensure that the constitutional value of consumer rights is guaranteed, there have actually been some laws and regulations that seek to safeguard consumer safety and health in Cambodia.

Legislations Pertaining to Consumer Protection

There are two main areas in which Cambodian laws and regulations seek to protect consumer interests. These areas are: quality and safety of products and services, and protection of marks and names against acts of unfair competition.

Quality and Safety of Products and Services

The Law on the Management of Quality and Safety of Products and Services, hereinafter known as the Quality and Safety Law, followed by three relevant regulations of the Ministry of Commerce and Industry – namely, Prakas⁴⁰ on product expiry date, Prakas against food products devoid of appropriate packaging labels and Prakas on the registration of industrial products, play very important roles in assuring the safety and quality of products and services that benefit Cambodian 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 Khmer language prior to commercialisation, which include 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.

Manufactures or service providers are also required to provide accurate information of the composition or configuration of the products, goods, or services. In case of the first commercialisation of products or services that could harm consumers' health or safety, manufactures or service providers need to obtain prior authorisation from the relevant institutions following an inspection and an indication of usage guidelines in *Khmer* language. Besides, there are also some other requirements relating to the inspections by the relevant State authority. For instance, manufacturers or service providers are obliged to provide proof of inspections or records of prior examinations upon request from inspecting agents, to present proper compliance certificate for exportation and importation if the products may be harmful to the health or safety of

consumers, or may negatively affect fair commercial practices as required by international trade or conventions.

The Quality and Safety Law also prohibits deceitful, misleading or false commercial advertisement or any advertisement that is likely to cause confusion on the quality and safety of products, goods, and services. The Law describes the manner of advertisement that causes confusion to consumers. It may be related to product expectation; identity, type, nature, place of origin, physical or nutritional quality, contents, quantity, manufacturing methods and date of production; expiry date, usage guidelines and terms; methods of sales, product availability, price; other warranties. The person who bears liability for civil and criminal actions is the advertiser placing commercial advertisements in the capacity as an initiator.

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 party, regardless of being a party to a contract or not for the falsification. These means are identity, type, nature, place of origin, physical or nutritional quality, contents, and quantity; past inspections, usage guidelines, non-conforming usage, risks associated with usage, precautionary measures for all products, goods, and services; manufacturing methods and date of production, use, or consumption of products.

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* to 10,000,000 *riels* and/or the imprisonment from days to one year, depending on the severity of the offences.

In addition to the Law, there are another three supplementary regulations (Prakas), which also seeks to impose relevant obligations on manufacturers and services providers. One requires that companies, factories, enterprises and handicrafts register their products with the Ministry of Industry before circulating them on the markets.⁴¹ The regulation intends to ensure proper industrial products labelling in accordance with national standards and prevent products counterfeiting.

The MoC Prakas No. 329 on Measures Against Food Products Devoid of Appropriate Packaging Labels bans importation, circulation, sale, and display for sale of food products devoid of appropriate trademarks or labels or whose trade marks or labels do not meet legal requirements, regardless of the health and safety quality of the substances. Legal requirements necessitated by this Prakas are: name of product; name and address of person(s) responsible for the products (producers, packagers wrappers, or

traders), source, lot numbers and date of manufacturing, date of expiration, ingredients, usage instructions (where applicable), licence from the concerned authorities before products circulation (if required and for local products).

Measures to enforce this Prakas includes returning to proprietors for rectification in compliance with the rules and regulations governing labels trademarks on condition that the health and safety quality of ingredients are suitable; seizing or destroying food products; or shipping back to the country of origin. Sanctions are a warning letter for the first time, and imposing penalty in accordance with the laws, in cases of repeated offence.

Finally, the MoC Prakas No. 335 on Product Expiry Date imposes liability to sellers for the quality and expiry date of food products. This Prakas requires both imported and locally produced food to have expiry date on their products.

Protection of Marks, Trade Names Against Acts of Unfair Competition

The Law Concerning Marks, Trade Names, and Acts of Unfair Competition 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. Apparently, the Law seems to protect mark or trade name holders rather than consumers.

However, this kind of protection does have impacts on consumer interests, for the reason that it prevents consumers from choosing any product or service under confusion or due to false information or allegation. In particular, Chapter 7 of the Law on 'Act of Unfair Competition' provides for certain acts to be considered as acts of unfair competition. These acts include: act that creates confusion by any means whatever, with 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 does not provide any criteria that determine the extent of the likelihood of confusion, allegation or indication. This absence leaves the interpretation to the court to fill up the gap.

Trademark and trade name are required to be registered to be eligible for protection. Nonetheless, the law makes exception to well-known marks. This provision is in compliance with the 1883 Paris Convention for the Protection of Industrial Property that seeks to protect well-known marks even though

they have not been registered in the countries, which are parties to the Convention. Limited human and financial resources make it difficult for the relevant State authority to identify which mark is well known. The Law gives hierarchy to relevant international treaties in case of conflicts between the provisions of this Law and other international treaties, to which Cambodia is a party.

The law also provides for injunctive measures imposed by the court to protect trademarks or trade names' holders from infringements or to preserve evidence relevant to an alleged infringement. Besides, the law provides for border measures and sanctions against act of unfair competition that range from fine of 1,000,000 *riels* and one month imprisonment to fine of 20,000,000 *riels* and five year imprisonment. In case of repeated offence, the penalty will be doubled.

Administration

The MoC, MoI and MEF are main State agencies responsible for consumer protection in Cambodia. The Cambodia Import/Export Inspection and Fraud Suppression Department (Camcontrol) under the MoC administers products labelling and/or issue 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.⁴²

The Customs Department under the MEF that takes charge of administering international trade flows into and out of Cambodia also contributes to consumer protection. This Department administers clearances of incoming/outgoing consignments into/from Cambodia, issues permission letters/import permits, customs import/export declarations and collects customs duty and consumption taxes.

The Department of Inspection and Industrial Standards (ISC) under the MoI also help to guarantee safety and quality of products for consumers. ISC is a national standards body that promotes standardisation and conformity assessment activities as a means to upgrade the quality infrastructure to increase the competitiveness of Cambodian products and services in domestic and export markets. With the assistance of the United Nations Industrial Development Organisation (UNIDO), ISC carries out standardisation, product and systems certification activities and provides testing, information services, training and consultancy. One of the duties of the ISC is to assist and protect consumers in respect of quality of goods and services. The Department grants its certification mark or licence following satisfactory testing and inspection results. This certification is beneficial to consumers to understand that products or services have been guaranteed in terms of quality

and safety in accordance with a Cambodian standard⁴³.

The Department of Metrology under the MoI, which works in close co-operation with the ISC, also plays an important role in protecting consumer interests. Its main duty is to maintain the conservation of primary and secondary standards after the inspection by the ISC. It is in charge of registration, calibration, verification, and inspection of measuring equipment and issuing licence to manufacturers, importers, repairers and sellers of weight and measure instruments⁴⁴. For instance, it checks measure instruments of various gas stations to ensure the amount of gas is accurate.

Prevalent Consumer Concerns

Though Cambodia has managed to construct a relatively good legal framework concerning protection of consumer interests, the enforcement of these laws and regulations in place is not a simple task. The law enforcement capacity in Cambodia is relatively weak. The administrations are also not effective and efficient due to limited financial and human resources. Bureaucracy and corruption are at the root of the problems. As a result, the status of consumer protection in Cambodia seems not to be satisfactory. The display of thousands of unsafe and poor quality products in various markets proves this argument right. Recently, the RGC seems to be committed to a variety of reforms including fights against corruption and judiciary reform⁴⁵. The success of the reforms, however, depends to a great extent on the government's will and commitment.

In general, the guarantee of basic consumer rights in Cambodia is at a very infant stage. The main cause is that there is a lack of resources and a vast majority of consumers are not at all aware of safe and quality products. Only a limited number of products have been certified for standards. In this regard, there is

Table 5.6: Percentage of People having Access to Water and Sanitation in 2000

	Percentage
Access to improved sanitation	17
Access to an improved water source	30

Source: UNDP: Human Development Report 2004

urgent need for capacity building of relevant stakeholders — government officials, the civil society, the media and consumers to protect consumer interests against unsafe products.

Poverty is another problem that limits the promotion of basic consumer rights. Between 40-45 percent of the Cambodian population live under poverty line, i.e. below US\$1 a day. Cambodia is still one of the poorest countries in the world, ranking 130 out of 177 countries according to the United Nations Development Programme (UNDP) 2004 Human Development Report⁴⁶. The most urgent and prevalent consumer concern is their right to basic needs. Many people do not have access to basic utilities such as electricity, clean water and sanitation (see Table 5.6). For this year, as of 2006, the situation is worse. About 500,000 people are short of food due to the ongoing drought, according to the UN World Food Programme (WFP)⁴⁷.

Anti-competitive Practices

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 Cambodian markets and have eventually damaged consumer interests and rights.

RTPs have commonly been defined as acts or behaviour of enterprises which, through an abuse or

Box 5.1. Price-Fixing Amongst Boaters to Siem Reap

To leave for Siem Reap, the most popular tourist town in Cambodia, there are three means of transportation: by boat, by road and by air. Boats are the most popular, especially for tourists, since the road to Siem Reap is not well developed. Boat transportation services to Siem Reap are provided by 08 private companies. The price for one-way travel from Phnom Penh, the capital of Cambodia to Siem Reap is 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 turned

many of the boaters to extensive losses. 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 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 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 Thai Bunkheing, Owner of Royal Express Boat, on April 26-27, 2005

Box 5.2. Refusal to Deal in the Telecom 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 a 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 that Mobitel had deliberately blocked

customers of Camshin from reaching the Mobitel phones. Customers of the 011 line could not dial to the 012 line, therefore. 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 refusal to deal.

Source: *Cambodia Daily*, October 18, 2000

acquisition and abuse of a dominant position of market power, or through formal, informal, written or unwritten agreements or arrangements among enterprises, limit access to the markets or otherwise unduly restrain competition, having or being likely to have adverse effects on trade, and on the economic development of a country. It is, however, difficult to have a clear-cut definition or to point out specific features of UTPs. The determination of whether a practice may be fair or not depends upon different circumstances and maybe on case-by-case basis. In general, whether acts or behaviour be abusive hinges upon its purposes and actual effect in actual situation, viz. it may limit access to markets, restrain competition or have adverse effect on trade or economic development of a country.⁴⁸

Horizontal Restrictive Trade Practices or Cartel Agreements

Collective Price-fixing

Instead of competing with each other, competitors may collude to fix prices in the markets, which assure them the highest profits. In general, in this type of RTPs, competitors usually make agreements to set prices above that of the least-efficient producer in the market. Price-fixing arrangements may be made under some other forms, such as:

- Agreements on a standard formula, according to which prices will be computed;
- Agreements to maintain a fixed ratio between the prices of competing but non-identical products;
- Agreements to eliminate discounts or to establish uniform discounts;
- Agreements on credit term that will be extended to customers;
- Agreements to remove products offered at low prices from the market so as to limit supply and keep prices high;
- Agreements not to reduce prices without notifying other cartel members;
- Agreements to adhere to published prices;
- Agreements not to sell unless agreed on price terms are met; and
- Agreements to use a uniform price as starting point for negotiations.

Market Allocation or Market Sharing

Some firms may make agreements so as not to compete with each other in a given market or allocate markets among them. Firms can decide allocating markets either geographically or according to customers or class of customers. When the colluding firms face competition from any outside firm, then these firms may allow each other to compete freely while continuing to allocate areas where they do not face outside competition. The agreement between two firms to allocate market is a very serious anti-competitive practice, and may have a greater impact on competition due to price-fixing. For instance, two firms may conclude an agreement stating: "my firm will sell our products only in Phnom Penh and the rest of the markets in Cambodia belong to your firm".

Output Restriction

Another case of anti-competitive practices is when firms agree to place limit on supplies to a proportion of their previous sales. In order to enforce this, a pooling arrangement is often made, whereby firms selling in excess of their quota are required to compensate other members, who may be selling less than their agreed quota, by making payments to the pool. The ultimate objective of limiting supplies is to create an artificial demand-supply gap, or even serious scarcity, and hence raise prices in the markets. For example, firms may agree with each other not to produce their products more than a fixed number of products, let say, 500 products a year. Since there are not many products in the markets, their products may be charged at high prices at the expense of consumers.

Bid-Rigging or Collusive Tendering

In this case, in the course of offers or quotations during a tendering/bidding process, firms may agree with each other not to offer the lowest offer possible. It would also be the case, if they agree with each other not to participate in the tender or make fake offers. Bid rigging may also take the forms of bid suppression (one or more competitor agrees not to enter into a tendering process or withdraws its application for the tender), complementary bidding (firms arrange among themselves as to which firm wins a tender) and bid rotation (competing firms agree to take turn to win a tender).

These kind of practices exists to a large extent in Cambodia, but there is lack of information. In practice, relatively competent public authority may decide as to which firm should get the contract issued by the authority without any tendering, or private firms may collude with the authority to favour their bidding.

Vertical Restrictive Trade Practices

Tied-Selling

Here the supplier forces the reseller, wholesaler or customers to purchase goods or services that these people do not desire to purchase (tied products/services) as a condition for purchase of some other goods or services that they want to purchase (tying products/services). The tied-sale arrangement is such that even if the customer does not want to purchase the tied product/service, (s) he has to purchase it in order to get the desired product/service. However, such behaviour is only possible if the firm has market power over the tying products/services in the relevant market.'

Exclusive Dealing

In an exclusive dealing arrangement, the producer/supplier forces their downstream distributors or retailers not to deal with other competing producers or suppliers. This type of anti-competitive arrangement may act as a significant barrier to new entrants into the markets and affect competition adversely.

Refusal to Deal

"Here firms that are at different levels of the same production-supply chain enter into agreement (vertical agreement) whereby, they agree among themselves not to sell or buy from certain customers. In other words, they agree to refuse to deal with any third party, normally a competitor of one of them. Though this may be a fair marketing strategy for optimum profit, sometimes such practices may reduce competition in the market and consequently could be restrictive in nature.

From the point of view of competition law and policy, vertical agreements are most likely harmful when at

least one of the transacting parties is dominant in either upstream or downstream market. However, even restrictive vertical agreements that involve dominant firms can result in efficiency gains. Thus whether or not such practices are anti-competitive depends on the specific case".

Resale Price Maintenance

For this type of RTP, the producer requires retailer to sell goods at a certain price, so that the price is the same everywhere. Consumers, therefore, could not choose to buy the products at any place of their choice since the prices are maintained and the same anywhere anyway.

Discriminatory Dealing

In this case, a manufacture or a supplier of goods charges, for the same or similar product, a higher price from one dealer and a lower price from another; the practice is referred to as price discrimination. The discrimination in price can be made either through fixing or charging different prices from different buyers or classes of buyers or by granting discount, commission, allowance or rebate at different rates to different buyers or class of buyers.

Predatory Pricing

"Predatory pricing is pricing of the product below the cost of production with the intention to drive out competitors from the market. Predatory pricing is something difficult to prove against any firm". However, it is believed that these kinds of practices are not prevalent in Cambodia.

Other Anti-competitive Practices

Mergers and Acquisitions Resulting in Dominance in Market

Merger is a combination between two or more firms whereby the identity of one (or more) is lost and results in a single firm. Acquisition (or takeover) of one firm by another usually involves the purchase of all or a sufficient amount of shares or assets of another firm to enable it to exercise control.

Box 5.3. Anti-competitive Acquisitions in the Education Sector

The business of educational services in Cambodia has been booming since 1998. Many businessmen have opened schools that provide educational services such as kindergarten, English, short computer training courses. One school that expanded its business greatly in Phnom Penh was the Newton Thilay Institute. The Institute started from only one school, but its business developed quite well. Subsequently, the Institute

opened other branches and at the same time attempted to buy other schools, which were its competitors. As a result, seven competing schools were bought. Now, the school acquires significant market shares in the markets of kindergarten, English and computer training course (if not including the highly standard and expensive schools, those which provide very good services and charge high fees).

Source: *Phone interviews with the Vice-president of Newton Thilay Institute*

Box 5.4. Abuse of Dominance in the Mobile Phone Service Market

Mobitel, a leading mobile phone service provider, obtained in 1998 its first patent on the 'scratch cards' as a prepaid billing system for its customers. The 'scratch card system' is a system using cards that bear a hidden 10-digit code number that customers will scratch to reveal and then dial into the phone. A computer then credits the phone with an amount of money on the card.

The exclusive rights granted to Mobitel by the MIME over this 'scratch card' system had hindered other competitors' business and refrained other mobile operators from doing the same thing. It should be noticed that according to the general principles of patent law, three prerequisite elements—novelty, non-obviousness and usefulness—are required to obtain a patent right. Scratch Card for mobile users was not novel at that time, since the system had been applied a long time ago in other countries. However, since Cambodia did not have a patent law until December 2002 (Law on the patents, utility model certificates and industrial designs), Mobitel had easily abused the hammer granted by the MIME to ask other competitors not to adopt similar systems.

The dispute between Mobitel and its competitor, Samart had reached the Court. Mobitel asked the Municipal Court for an injunction against Samart, which had been planning to launch its own scratch card system. The Municipal Court issued an injunction preventing Samart from using the scratch card system. The Municipal Court then ruled in favour of Mobitel. The Appellate Court then upheld the trial court's decision. The courts' decisions were then viewed by the public as to block the free-market policy and business opportunity of other competitors and ruin customer rights.

The problem was later resolved when a clear statement from the MIME was released. The Ministry asserted that there was actually confusion misused by Mobitel over the granted patent. The letter received by Mobitel, which had been signed by the Minister of Industry, was only to certify the receipt of the application for patent, not a patent certificate. The controversy was cleared out. The Supreme Court in October 1999 lifted the injunction of the lower court; meaning Samart was since then free to use the scratch cards billing system. All mobile operators now are free to use scratch cards for their customers.

Source: *Cambodia Daily* issue on August 23, 1999; *Cambodia Daily*, Vol. 16, Issue 66, October 27, 1999; *Cambodia Daily*, Vol. 16, Issue 28, September 2, 1999

Such mergers and acquisitions (M&As) might be horizontal, vertical or conglomerate. Horizontal M&As involves firms that are competitors at the same level of the production-supply chain. Vertical M&As involves firms that are at a different level of the production-supply chain (e.g. firm producing cold drinks merges with the other producing bottles to contain such cold drinks). Conglomerate M&As involves firms in diversified and unrelated business (e.g. firms producing cars merges with a firm that deals in finance).

When two competitors merge together, it is but obvious that the market share of the merged entity would be more than what they used to share, individually. Broadly, there could be three consequences due to any horizontal merger: (a) a monopoly, (b) the merged entity becoming a dominant player in the market, or (c) the merged entity as unable to capture enough market power.

While case (a) and (b) might pose competition concerns, case (c) is unlikely to give rise to any competition concern, if there remain other competitors in the market. Hence, the issue of concern to a competition authority is not the merger itself, but whether or not such merger results in a monopoly situation or a dominant market player. Consequently, the determination of relevant market becomes the central issue. The merging entity would try to define the relevant market in broader terms so that their

market share becomes lesser. Once the relevant market is determined, often it becomes very clear whether or not such mergers are anti-competitive.

Abuse of Dominance

Dominant firms, which have control over the markets, may restrict new entries into the markets or foreclose the commercial opportunity of weaker traders or create barriers in economic freedom of its probable competitors. That is to say, a dominant firm is in a place to adversely affect existing as well as future competition in the market.

Being dominant is not an abuse. However, a dominant firm may abuse the competition in the following cases:

- Charging excessive prices;
- Price discrimination (charging different prices, according to the profile of customers);
- Tie-selling;
- Refusal to deal;
- Predatory pricing;
- Exclusive dealing; and
- Resale price maintenance.

Perspectives on Competition Policy

This part presents the findings of a perception survey undertaken in Cambodia by the EIC that involved 50 respondents. About 20 respondents representing the businesses community, 10 representing the policymakers (mostly high-ranking government

officials and members of the Parliament), and 20 consumers including lecturers, researchers, university students, NGO staffs were interviewed during the course of the survey.

Background and Methodology

A tripartite questionnaire containing around thirty questions was designed and used for all three groups of respondents. The questions were structured in a 'multiple choice' manner for the purpose of simplicity. No subjective questions were asked though additional information provided by the respondents, particularly in cases of anti-competitive practices prevalent in Cambodia was recorded.

The focus of the survey was to probe the extent of public awareness and the major trends of perceptions regarding competition related issues. However, it should be noted that given the small size of the sample, and the geographical boundary of the survey (Phnom Penh), the outcome might not be representative; especially because the level of literacy as well as the legal and economic knowledge in Phnom Penh is significantly higher than in the rest of the country. Besides, several constraints were recorded during the survey process. Firstly, many businessmen and policymakers, let alone consumers, did not have a sound understanding and knowledge on competition related issues, even though they represented the more educated and aware class in Cambodia. A lot of explanations had to be made before the interviewees could respond to the questions. Language was another barrier to the understanding of the respondents. The questionnaire was designed in English and many technical terms related to competition were used. Many of these technical terms do not exist in the *Khmer* language, as yet. There was indeed necessity for the interviewers to provide technical assistance and in-depth explanation from one question to question. In many instances, responses to earlier questions had to be changed as the respondents understood the issues clearly only as questions unfolded.

Besides, respondents were allowed to make multiple responses to some questions. In such cases, an ordinal approach to the 'multiple choice' answers was used, i.e. respondents were asked to assign ranks to the different choices he/she made. The interviewer then assigned priority ranking instead of mere 'yes-yes' or 'no-no' type response. As already noted,

subjective information provided by the respondents were recorded separately.

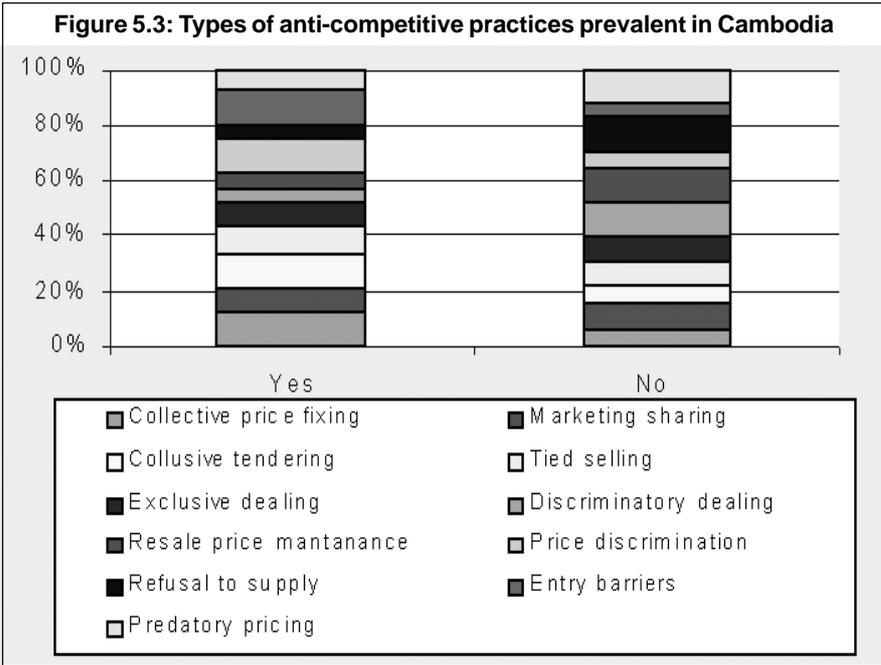
Field Survey Results

In general, a large proportion of the respondents from all the three groups, namely business community, consumers and policymakers, 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 were of the view that anti-competitive practices do prevail in Cambodia. They also pointed out a handful of areas where anti-competitive practices are most prevalent and that the concerned governmental agencies have done very little to put a stop to such practices.

Likewise, most of the respondents believed that effective implementation of legislation that seek to check anti-competitive practices, even if only to some extent, could go a long way in benefiting all sections of the society, including the consumers and the business. In addition, an overwhelming majority is also in favour of a comprehensive competition law. They have, however, pointed out the need for exemptions and exceptions within the legal framework on grounds of economic development, public interest or general welfare. The following sections present a more detailed breakdown of the field survey results.

The Extent of Anti-competitive Practices in Cambodia

A large number of consumers, businessmen and policymakers pointed out that anti-competitive practices are prevalent in Cambodia. Of the 50 respondents, 42 respondents (84 percent) viewed that anti-competitive practices prevail in Cambodian



markets. However, the perceived extent and degree of anti-competitiveness varied across the respondents. While 48 percent of the respondents stated that the extent of anti-competitive practices were extreme, around 36 percent of them stated that anti-competitive practices were significant. 12 percent of the respondents viewed that moderate anti-competitive practices did prevail. Four percent of the respondents stated that the extent of anti-competitive practices in the Cambodian markets is insignificant.

Raising barriers to entry and collective price-fixing were termed as the most common forms of anti-competitive practices prevalent in the country. However, a majority of respondents could not give concrete examples to support their claims, arguing that their choice was just an 'informed response'. In addition to the already mentioned two types of anti-competitive practices, respondents also viewed that price discrimination, collusive tendering, and tied selling were also common in Cambodia.

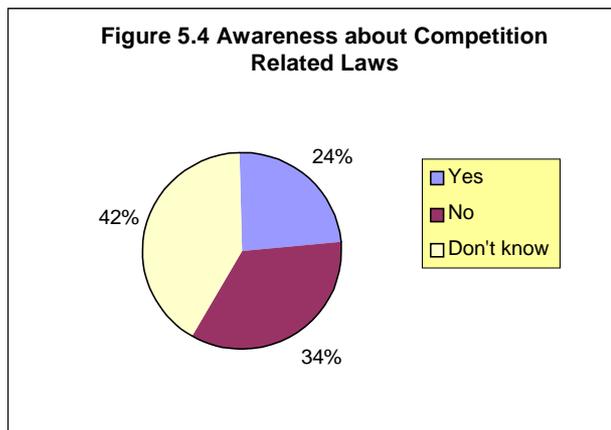
A large number of respondents agreed that sectors with more market participation such as petroleum, telecommunications, public utility and garment were substantially plagued by anti-competitive practices. Other sectors perceived to be also affected by anti-competitive practices were banking, airline, pharmaceutical products, food and beverage, and tourism, etc. All the respondents, including rather informed officials, however, could not cite specific examples to support their responses.

Extent of Awareness Regarding Relevant Legislative Framework

In Cambodia, there is no legislation that directly regulates market competition even though various existing policies do have some impacts on the competitive process of the market and certain legislations have extensively provided for the protection of consumers. Only 24 percent of the total respondents were aware of the existence of any law or regulation relating to various anti-competitive practices in the market, while 42 percent responded that they had no idea.

Though three consumers chose a positive answer, no one was able to mention a law that prevents anti-competitive practices. Only one businessman was able to name some legislations (the Electricity Law and Fishery Law). Policymakers were in the best position to have the highest level of awareness (80 percent). However, once they were asked to name those relevant laws and regulations, some could not specifically mention their exact names, and were not able to relate them to anti-competitive practices. Their valid answers were the Law on Trademark and Unfair Competition, the Investment Law, laws and regulations allowing monopoly, and law related to the IPRs.

In addition, in response to the question of whether the existing rules, regulations or laws – which were not specifically enacted to protect consumer interests, to control competitive behaviour of enterprises and to regulate competition related issues – are enough to protect competition in the market, about 85 percent asserted that the existing rules and regulations were not sufficient, while 8.5 percent opposed the idea. It means that the vast majority of respondents favoured a competition law that aimed to protect general interest of businesses and consumers.



The Necessity for a Comprehensive Competition Legislation

An extensive number of the total respondents (98 percent) viewed 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. There was only one interviewee who provided a negative answer for the solely reason that even a law was enacted; its enforcement was not going to be effective anyway.

While the vast majority (94 percent) of the three groups of respondents agreed that “business efficiency and consumer welfare” should be the objectives of such competition legislation, if it was to be adopted, 69 percent of the respondents suggested also its focus on other socio-economic objectives. None of them had any other specific objectives for the competition legislation.

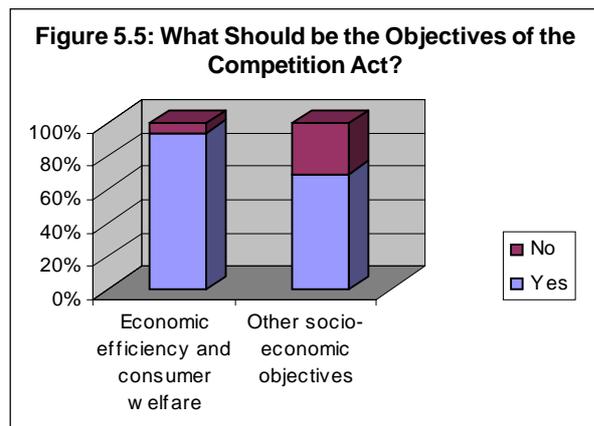
Scope and Coverage of the Competition Law

When asked if the competition law should cover all types of enterprises and entities in all areas of commercial activities, 41 percent of all respondents gave their positive responses, while 57 percent opposed and two percent did not know the answer. Among all categories of respondents, 70 percent of policymakers echoed that there should be exception for certain types of enterprises or activities or any other exceptional reasons.

To the further question on what types of enterprises or entities should be excluded from the purview of the competition law, 55 percent of the respondents pointed to SMEs since they deserved some preferential treatment. Another group of 13 percent seemed to favour Import/Export-oriented Enterprises, while others (32 percent) favoured SOEs.

That is not all. 80 percent of respondents also supported the view that violations of the competition law would be permissible if some reasons such as technological advancement, protection of SMEs or any favourable condition to some socially disadvantaged groups, etc. prevailed. Regarding this point, another group comprising 16 percent of the respondents disagreed and four percent mentioned that they were unaware as to the same. Since most of businessmen category belonged to SMEs, 90 percent of them supported the idea that the competition law should make exception on the basis of the above grounds.

Only 66 percent of respondents were aware that some anti-competitive practices occurred abroad, but had impacts on Cambodia's market. 88 percent of the respondents were of the common view that Cambodia's government should have jurisdiction over those foreign firms committing competition abuses abroad that affected Cambodia's markets.



The Competition Authority

The role of the competition authority has been found important for the enforcement of the competition law in order to bring the desired benefits to the economy and welfare of consumers. The contribution of all respondents' opinions about how the competition authority looks like and how much power it should be allocated has been of significant value for this part. Respondents argued for a strong and competent competition authority to be set up on a permanent basis to discharge all the responsibilities, as stipulated by the competition law. However, respondents were of different opinions on the status of the competition authority. 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 SOEs or foreign firms, while 16 percent of respondents viewed to have the authority established under the authority of a relevant ministry. This relevant Ministry is likely to be the Ministry of Commerce, since for the time being, the MoC has a Department called Domestic Trade Department. Only a very small number of respondents (two percent) desired the authority to be managed and performed by the ombudsman.

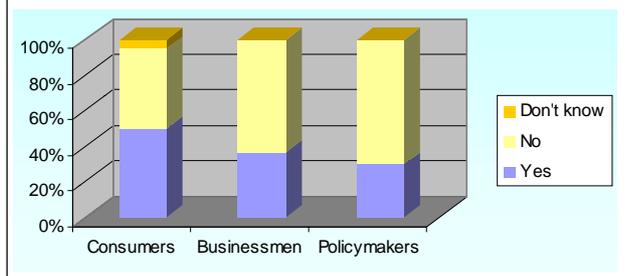
Concerning the regulatory power of the competition authority, irrespective of the structure of the competition authority, about half (52 percent) of the respondents viewed that the authority should have both investigative and adjudicative powers to deal with any case of anti-competitive practice. Another 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 court. 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, while only eight percent disagreed. 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 answered that all competition-related issues in some specific sectors should be given to only specialised agency and the competition authority should not involve. 42 percent agreed that specialised agencies were needed, but they needed to share some power with the competition authority. More interestingly, the other 28 percent also concurred with the standpoint to leave all powers to the specialised agency with the leeway of the competition authority to only provide advice on the competitive impacts of the sectoral policies.

Besides, the duties of the competition authority are not limited to only either investigation or adjudication, according to the vast majority of respondents. Nearly all respondents (96 percent) viewed that the authority should also take part in the affairs of advocacy and publicity, etc., by keeping interaction with different stakeholder groups, such as consumer organisations. Only two respondents said they did not know of and

Figure 5.6: Should the Competition Act Cover all types of Enterprises and Activities?



the other two opposed to the vast majority's idea without specifying their reasons for disagreement. Approximately, three-fourths (70 percent) favoured the way of a consultative committee in order for the competition authority to play a role in advocacy or publicity, while only 36 percent proposed public hearings.

Other Implementation Issues

In response to the question of whether dominant firms breed efficiency and such position in a given market is in itself an offence or not, an overwhelming majority of respondents (96 percent) agreed that it was not an offence, and continued further that the activities of these dominant firms needed to be monitored to prevent abuse of market power. Only two percent of respondents provided their dissenting opinion. The same number to this latter group did not know what the answer was.

With regard to M&As, nearly all respondents (98 percent) suggested that M&As should be subject to review to determine whether they had any adverse affects on competitions, especially when the M&As resulted in monopoly situation or a dominant market player. However, there were divided viewpoints among these respondents who suggested the review. Half of them stated that all M&A operations should be reviewed regardless of any circumstance, while another half viewed the opposite, saying that only if

the M&As exceeded a determined level of market shares of the merging firms, should the M&As be subject to review. That is to say not all M&As should be reviewed, but only the M&As that go beyond an embedded benchmark.

It is important to note that even though more than half of respondents disagreed, about half emphasised that the dominance of firms and M&As were acceptable for the sake of national or public interests including their ability to compete internationally and the increase of the economy competitiveness, while Cambodia had become a member of WTO.

After being explained on the difficulties in searching for evidence, particularly in case of collusion, etc. among various market players, a large majority of respondents (88 percent) agreed that the competition law should have provisions for leniency clause and whistle-blower protection in efforts to ensure the effective implementation of the competition law.

The Way Forward

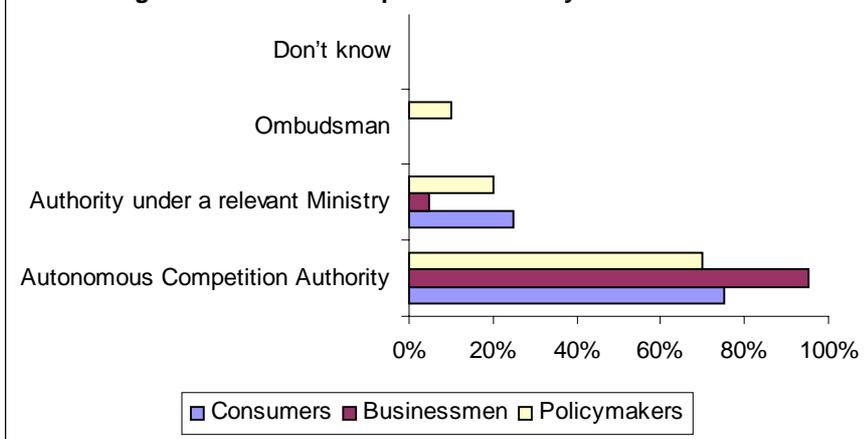
The Cambodia government has made its decision to open the country's national markets to the region and the world through its integration into the ASEAN and WTO. From an optimistic viewpoint, the liberalisation has, to some extent, benefited consumers due to better availability of products and services with better price, quality and choice. However, the government's tasks should not end up with opening its economy to the outside world.

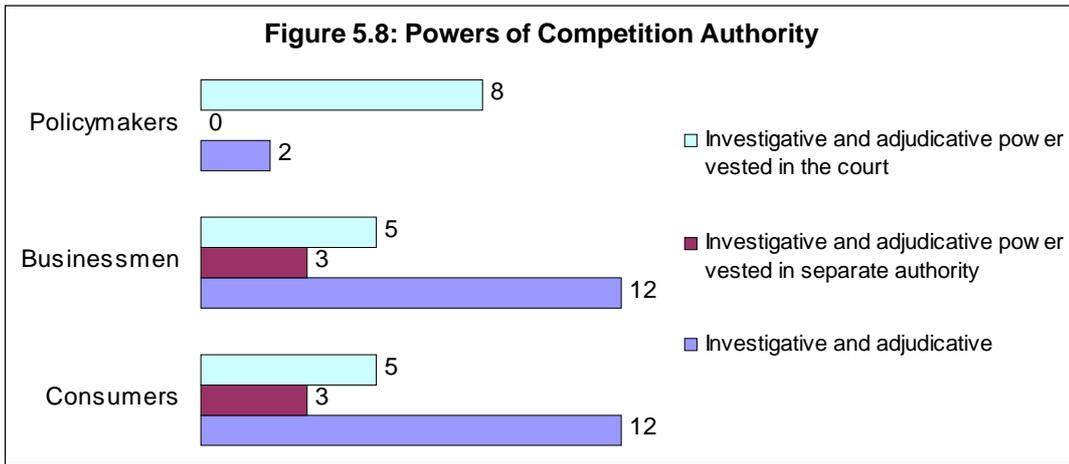
To take advantages of the liberalisation as much as possible, Cambodia needs to work much harder. One of the important tasks is to strengthen the comparative advantages of the country to be able to compete with other countries. That is not all. As it has undoubtedly been perceived that many anti-competitive practices prevailed in the Cambodian markets, there is an indispensable need for appropriate policies and legislations to be adopted to guide the markets in order to render the economy more efficient, to dispense with

concentration of economic power that benefits only a small number of people, and to allocate resources in a better manner resulting from the best choice of products and services available at decent prices and quality. This will help alleviate poverty, while the fight against poverty in the country seems to be unsuccessful.

The RGC has in fact paid a fair deal of attention to competition issues. The agenda of the government policies mentions the

Figure 5.7: Form of Competition Authority to be Established





importance of fair competition in the markets. Plus, competition legislation has also been on the government's priority list to be drafted. Hopefully, a competition law will be soon enacted. However, it is critically important to understand that the existence of the competition legislation would mean nothing if its enforcement is not effective. Effective enforcement of the competition law requires concerted efforts of the government to tackle competition offences through its different sectoral policies, the actions of a competent competition authority and an independent judiciary. In other words, human resources are inevitably needed. A rough perception survey in this paper indicating that the concept of competition is very new to many Cambodians may validate the argument. It is, thus, important to provide capacity building to different groups of stakeholders whose works may relate to competition issues such as: policymakers, judges, prosecutors, lawyers, businessmen, consumers, civil society, and academia/media.

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 high costs of electricity and telecommunication services, for instance, remain a big problem for

economic development and all consumers, many of whom could not afford and do not have access to these physical infrastructures. These sectoral policies need to be remodelled to ensure the economic and social welfare of the country. The government seems to be aware that such change is very important by virtue of the recent regulation of the MEF that required all State Institutions to suspend the sale, exchange, rent and investment of the state property that had been permitted without clear and transparent procurement procedures.

Good governance and transparent and accountable institutions are other indispensable tools that help guarantee a fair deal of 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 process, 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. So, the collusive firms earn much at the expenses of the consumers, the one who bear the cost. Panacea for these matters strongly depends upon the government's will. At this stage, we look forward to the arrival and long-awaited success of a variety of the government reform programmes.

Notes:

* This chapter has been researched and written by Nuth Monyrath of the Economic Institute of Cambodia (EIC), Cambodia. The author acknowledges the support received from Nitya Nanda and Alice Pham of CUTS C-CIER in designing the study and their comments and suggestions on the draft. Comments and suggestions were also received from Sok Hach of EIC and the members of the Project Advisory Committee.

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- 35 Oum Sothea and Sok Hach (October, 2004), Cambodia Economic Watch, Issue 1.
- 36 Ibid.
- 37 Available at <http://www.rdb.com.kh/data/about%20RDB.htm>
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- 39 Article 64 of the 1993 Constitution of Cambodia
- 40 Prakas (declaration) is a type of regulations issued by any ministry; The hierarchy of the law in Cambodia follows by: Constitution, Kram (law), Kret (Decree), Anukret (sub-decree), Prakas (declaration or regulation) and Sarachor (circular)
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