

COMPETITION SCENARIO IN LAO PDR*

Introduction

After the protracted civil war, which lasted two decades, the Lao People's Democratic Republic was formed in 1975 and followed a centrally planned economic development model, or the so-called socialist orientation, under the leadership of the Lao People's Revolutionary Party (LPRP). The principal feature was a high degree of centralisation of economic decision-making, strict control by the State and little reliance on the market, or prices.

Thus, what was produced, by whom, for what use and sold at what price was predominantly the subject of administrative decisions; the private sector had only a negligible share of the market and was often oppressed as being 'capitalistic elements'. To ensure that production would cater to the whole country's demand, the people's consumption patterns were predetermined by the State: salary was paid in the form of coupons that could be redeemed only in State department stores and goods available in rural areas were limited to sparsely-stocked State stores. Under this system, SOEs assumed the leading role for the whole economy. They were required to meet a large number of detailed plans, physically termed targets, and were heavily subsidised by the State budget. There was no concept of 'competition' or 'business rivalry' in the country during this period.

Some progress was achieved, mainly in rice production. However, such growth was accompanied by high inflation, large budgetary deficits, increasing trade deficits, overvalued and multiple exchange rates, inadequate level of public resources to finance and manage the expanding number of public sector projects and growing dependence on foreign aid and borrowing. It was against this background that the Government reappraised its development strategies and embarked upon a series of reform measures in the mid-1980s.

It was recognised that under the detailed centralised planning system, with high subsidies for loss-making economic units and artificially low prices and wages, there was a lack of incentive and flexibility, which led to low efficiency level and slow growth rate at the enterprise level. In 1986, the LPRP Fourth Congress adopted a resolution to develop the country by the

year 2000 through economic reforms, known as the New Economic Mechanism (NEM), built around three main pillars: (i) macro-economic stability and fiscal adjustment; (ii) private sector encouragement; and (iii) public sector reorganisation.

After launching the NEM, Lao has achieved significant success in economic development and macroeconomic stability, with a high growth rate, relatively stable price levels and exchange rate and a considerable increase in FDI inflows, which have contributed greatly to the improvement of the living standards of Lao people.

However, though competition is officially pronounced to be a 'major driving force for economic development', many have viewed Lao's approach towards this direction as being rather cautious. The State's intervention into various market functions remains rather strong, as compared to other economies in the region. In many aspects, Lao remains a centrally planned economy and the LPRP holds tight control over its commanding heights. Nonetheless, some initial cornerstones of an evolving competition policy have been set, most recently, the adoption of a Decree on Trade Competition in the country.

This chapter provides an overview of the competition scenario in Lao, as part of the research agenda covering Lao, Vietnam, Cambodia, India, Nepal, and Bangladesh, undertaken under the 7Up2 project ('Advocacy and Capacity Building on Competition Policy and Law in Asia'). Section Two presents the development background for the discussion that follows, with some key economic policies, such as investment, industrial and trade policies, as well as their implications on the competitive process in Lao. Section Three compiles the data available on market structure in some major industries in the economy, as well as the nature of competition in such markets. Section Four reviews the regulatory framework in some key sectors, such as electricity, telecommunications, and banking, taking note of the significant interface between sectoral policies and competition policy and law. Section Five looks at the policy for consumer protection in the country, with a focus on the unfair trade practices prevalent on the Lao markets, their impacts on consumer welfare and concurrent measures for handling them. Major anti-competitive

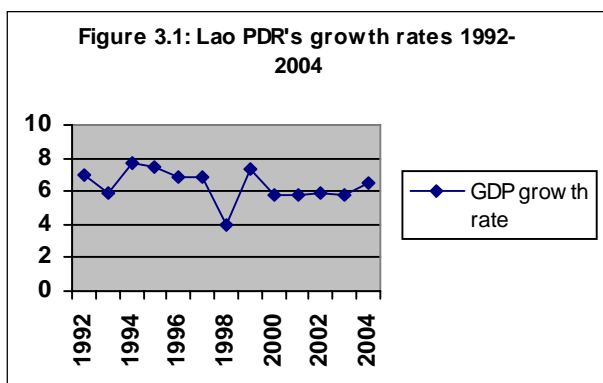
practices are listed in Section Six, with some illustrative examples of cases, which have happened in Lao so far. Perspectives on competition policy, drawn on the results of a field survey undertaken within the framework of the 7Up2 project, are presented in Section Seven. The Prime Minister's Decree on Trade Competition of Lao is analysed in Section Eight, followed by the conclusion –providing some food for thought and further discussion.

The Development Background

Overview of the Economy

Starting from a very low base, Lao has maintained moderate, but steady, growth rates that have averaged at seven percent per year between 1992 and 1997. The growth rate, however, slowed to 4.5 percent between 1996/97 and 1997/98 because of the financial crisis in Thailand, which is the most important single market for Lao exports, and then recovered to just under the seven percent rate that had been achieved in the early 1990s. Nominal GDP per capita increased from about US\$200 in 1990 to US\$320 in 2003. Even though Lao has got a huge trade deficit since the opening-up of the economy, the country's balance of payments has improved a great deal recently. The value of exported commodities and services increased from US\$247,127,337 in 1996 to US\$322,618,759 in 2001, corresponding to an average growth rate of 5.09 percent per annum. The value of imported commodities and services, in the meanwhile, reduced from US\$686,093,320 in 1996 to US\$533,583,102 in 2001, by an average reduction rate of 3.7 percent per annum.

Lao's international economic relations have also expanded. Lao has not only cemented its relations with regional Asian economies but has also been establishing and developing relations with other countries and regions in the world, like the US and the European Union. In 1997, Lao became a full member of the Association of South-East Asian Nations (ASEAN). In 2004, Lao signed an agreement on Normal Trade Relation with the US and officially applied for the World Trade Organisation (WTO) membership.



Agriculture remains the backbone of the economy, accounting for 57 percent of the total GDP in 1995, and still accounting for around 48 percent in 2003, followed by industry (26 percent) and services (25 percent) and import duties (one percent). With a relatively small share of the economy, industry posted an impressive growth of around 11 percent for 2002-2003. Services grew by 5.7 percent in 2002, lower than the performance of previous years, due to the impact of the general trends of economic slowdown in the region and in the world, which were, in particular, caused by the SARS phenomenon and the Iraq war, affecting, considerably, the tourism sector. Agriculture grew by only four percent in 2002 and an estimated 2.2 percent in 2003.

The backwardness, as well as the small size of Lao industrial sector, has resulted in a high level of import-dependence of the economy, especially in consumer goods, which come mainly from Thailand, China, and Vietnam. This resulted in the Lao economy being highly susceptible to regional and global turbulences.

The Economic Policy Regime & Competition

Prior to and during the launching of the NEM, Lao political and state leaders have recognised that one of their first and fundamental task, in order to boost economic growth and development, is to “outline a promoting policy and create conditions for the development of all economic sectors’ production and for free circulation of commodities, eradicate definitely the hampering way of management and obstructing the roads and trying to restrict the circulation of commodities [...]”¹. The diversified nature of the business community in Lao was recognised and private right of ownership thus acknowledged. “The relations of sale-purchase, production-business among the different (economic) units are equal relations, without discrimination, not considering the state enterprises as ‘superiors’, without transgressing the individual households and the private enterprises’ free business rights in order to pressurise, hinder all citizens’ legal livelihood. The state only urges the (various economic) units to organise the production-business in the context of the laws and policies outlined by the state”.² Though still heavily formulated under the socialist style, these guidelines have clearly regarded free market competition, with a controlled role of the State, as the new way of organising the economic system in Lao.

The 1991 Constitution of Lao, which followed shortly, reiterated the broad framework for competition to evolve in the national economy. This spirit of the Constitution was further developed by other policies, laws and regulations promulgated subsequently. The Business Law No. 03/NA dated July 18, 1994, for instance, upheld that “all types of operations

conducted by enterprises in all economic sectors are inter-related and competing on an equal footing before the law". (Art.5).

The Government of Lao (GoL), in a Letter of Intent and Memorandum on Economic and Financial Policies (MEFP) addressed to the International Monetary Fund (IMF), on the March 26, 2001, reconfirmed:

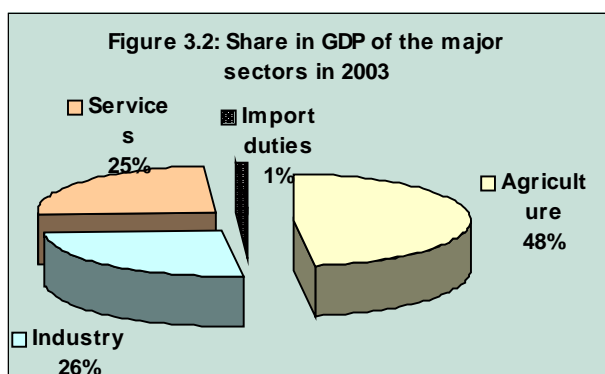
"A range of measures have also been adopted, or are being implemented, to promote the private sector by removing barriers to entry and levelling the playing field vis-à-vis the state sector...Further improvements in governance and transparency in public administration will include the prompt publication of rule-making documents, including implementation regulations and notices, clearer administration of property rights, and the removal of bureaucratic impediments for the establishment and operation of enterprises".

It, thus, can be clearly seen that competition has assumed a remarkable position during the formulation and implementation process of Lao's economic policy regime. The remaining critical point is the capacity needed to undertake such intents in a serious and effective manner.

Lao's Industrial Policy: Possible Negative Impacts on Competition?

Prior to 1986, the GoL's industrial policy was aiming at 'socialist transformation' of the industrial sector. Industry in the country has been developed largely under the auspices of the State, with practically all enterprises, other than micro enterprises or very small household economic units, operating as SOEs. It was only after the introduction of the NEM that the significance of enterprise autonomy in the context of decentralised, democratic decision-making, together with greater reliance on market signals and management skills, was recognised.

This enabled the private sector to participate and play an ever-increasing role in the economy, especially after the LPRP's Resolution of January 1988 acknowledged the potentially useful contribution of the private sector during the transition from a subsistence economy to a market-oriented one. The Resolution also advocated for equal treatment of public and private economic sectors in commercial relations and the law. A more level playing field for competition in most economic activities was, thus, created since enterprises of all types of ownership are almost in equal footing as regards capital, access to resources and legal treatment. The State only reserves its control over some strategically important sectors, including fuel, electricity, water, telecommunications, timber, mineral resources, food, medicine, chemistry, alcohol, and tobacco.



Nevertheless, the private sector in Lao, except for foreign-invested enterprises, remains practically small in size, unorganised and in a disadvantageous competitive position due to low capital base, lack of technological and managerial skills. Micro, small and medium-sized enterprises (SMEs) account for a very large share of the enterprises active in Lao and are indeed the emerging private sector. The GoL, therefore, considered promotion and development of the SMEs sector as a thrust area for industrial development.

Another focal point of the GoL's industrial development strategies and policies is the development of import-substituting production of selected consumer goods, to reduce the high level of import-dependence of the economy, to some extent. The Lao Ministry of Industry and Handicrafts' strategy, for example, has a very strong import substitution orientation. It outlines strong protective measures in support of import substitution, such as increased tariff barriers on goods overseas, quantitative restrictions on imports of goods competing with domestic production, preferential tax treatment for domestic manufacturers³ and preferential Government procurement of domestically produced goods. These policies, though essentially aimed at promoting domestic industrial production, discriminated against foreign competitors and were somewhat counterproductive to the trade liberalisation commitments made by the GoL.

Examination also reveals that, apart from the export-oriented industries like electricity or garment, many of the remaining industries are standard import-substituting ones: for example, beer, soft drinks, cigarettes and tobacco, furniture, and among fabricated metal products, roofing sheets – all directed towards the domestic market. Some of these are among the most prominent industrial establishments, as indicated by the number of employees. Such an import substitution policy, though protecting domestic industries and generating more employment, ultimately transferred all costs to the consumers. Besides, the problems would be further aggravated when the less competitive domestic enterprises would, eventually, have to be exposed to stiffer international competition, given the GoL's current liberalisation commitments.

Domestic Trade Policy Reforms Boost Market Participation

The adoption of a socialist economic development model prior to 1986 in Lao led to the establishment of a complex, but inefficient, structure of price control and planned distribution through State stores for all agricultural produces and consumer goods. In particular, farmers were not allowed to move their produce across provincial borders. The movement of goods between provinces was, generally, limited to State companies. This policy aggravated the impact of natural barriers and poor infrastructure that hamper national economic integration.

The situation has improved since 1987. Domestic trade was opened to private and co-operative traders and administrative bodies were instructed not to interfere in trade. At the same time, the various state trading companies were restructured to enhance their efficiency. Others were dismantled, such as the government rice procurement companies, as a result of the abolition of payment of wages in kind. All procurement and distribution activities involving state companies must be based on contracts, with prices and other contract terms freely negotiated between the parties.

The most far-reaching step taken by the GoL has been the adoption of the 'one market, one price' principle, which called for the elimination of the dual price system (official and parallel market prices) for most agricultural produces and consumer goods and the determination of all prices by the market. Market pricing, based on the real supply and demand conditions, was introduced to create incentives for producers to expand manufacturing base, for farmers to promote cash crop and for traders to participate in the market freely. As a result, prices of rationed and subsidised goods, such as rice, sugar, cloth, and petroleum, increased and procurement prices were raised by 50 percent to 100 percent. This liberalisation, therefore, has led to a substantial rise in internal trading activities, with increased market participation by several private traders and trading companies. Ultimately, market competition got its breathing space to grow, instead of getting suppressed by the old structure.

However, in practice, public officials can, and do, intervene in a wide range of decisions affecting all private trading activities, including that of exporters. It was revealed that provincial commercial authorities set indicative price ranges for some products and strictly limit the movement of some goods (e.g., rice and livestock products) between provinces and across borders. Many stakeholders (including provincial officials) noted the existence of such controls, but the degree of intervention appears to differ between provinces and districts. There continue to be major differences between the provinces in the prices of

agriculture produces, which appears too large to be explained by differences in transport costs.

Encouraging Trade Liberalisation vs. remaining Protective Restrictions

Important steps were also taken towards foreign trade liberalisation, which used to be completely monopolised by the State. Right after the launching of the NEM, the GoL started an overall reform of the trading system, allowing private sector participation, rationalising the network of state trading enterprises and, eventually, dismantling their monopoly of foreign trade in a large number of commodities. Government Decree No. 18 of 1987 on 'State monopoly on strategic export and import goods' reduced import duties and revised all customs procedures. The number of restricted items on the list of 'strategic' goods was reduced. The strategic goods that SOEs had exported monopolistically were reduced to only coffee, logs, and mineral resources (plaster and tin). Though, by then, the State still retained the right to control and grant trade licences, private sector participation is allowed in export/import. Quantitative restrictions on import goods were abolished in substance, while most of the 'necessary' goods could be imported.

Lao's external trade regime went through some more rounds of reform in 1993, 1995 and 2001/2002. The tariff structure has been greatly rationalised and, in particular, import duties were greatly reduced. A major liberalisation occurred in 1995, when the former tariff schedule, which had a maximum *ad valorem* rate of 150 percent, was replaced by the current schedule, which comprised of only six separate import duty bands (five percent, 10 percent, 15 percent, 20 percent, 30 percent and 40 percent) instead of the twelve-band regime of the post-reform period.

The five percent and the 10 percent duty rates apply to imports of raw materials, agricultural inputs, capital equipment and essential consumption goods, such as basic foods and pharmaceuticals. The 40 percent duty rate applies to products such as motor vehicles, tobacco, perfume, and other luxury goods. As in many countries, the principle underlying the tariff system is to apply the lower rates of duty to raw materials used by domestic producers and to use the higher duty rates to protect domestic producers against import competition⁴.

In addition to using import duties, the GoL's protectionist or import-substitution policy also showed in the various types of taxes levied on imported goods, which pushed the prices of such items exorbitantly, leaving them in a disadvantaged position to compete in the Lao market, which is characterised by a low level of income and a weak purchasing power. In addition to import duties, there are four other types of such tax. These are the excise

tax, the additional excise tax, the turnover tax, and the profit tax. Since the excise tax is levied on the value of imports, inclusive of customs duty, and since the turnover tax is levied on the value of imports, inclusive of both customs duty and excise tax, the overall rate of tax can be very high. This, from a competition point of view, equals to raising import duties to protect domestic manufacturers.

Some encouraging aspects of Lao's trade policy that have been of restrictive export licensing to protect domestic producers (as opposed to licensing that is used for security, environmental, moral or religious reasons) has now been abolished and the elaborate system of import licensing has been simplified and relaxed. The coverage of potentially restrictive import licensing is still all-encompassing, but it is now mainly used as a registration purpose, although domestic producers of cement, steel, wood products, and most agricultural products continue to receive substantial protection in the form of non-tariff barriers.

Equal Treatment of Foreign and Domestic Companies

Lao first promulgated its Foreign Investment Law in 1988, which was amended in March 1994. In 1995, a Domestic Investment Law was adopted, completing the legal framework for promoting investment in the country. The Department for Promotion and Management of Domestic and Foreign Investment (DDFI), under the Committee for Planning and Co-operation (CPC), approves and monitors all investment projects under these two laws. The Chamber of Commerce and Industry, founded one year later, was expected to assist the Committee in attracting new investment.

Three types of investment arrangements are possible under the 1994 Foreign Investment Law: (i) contractual or co-operative for investment in existing state or private enterprises, (ii) joint ventures, and (iii) private ventures. The law also lays the bases of quite a liberal investment regime that allows foreign participation in most sectors of the economy, guarantees investors against confiscation and nationalisation – a principle formally stated in the 1991 Constitution – grants them total freedom to manage their business, and repatriate profits and capital, and individual income to their home countries third countries, after income tax has been paid, and offers specific investment incentives. Foreigners can hold the majority, sometimes up to 100 percent of capital in firms operating in all sectors, with the exception of those related to the environment, national security, public health, and socio-cultural heritage. Both the said laws as well as subordinate regulations⁵ provide investors with certain business incentives, while the Domestic Investment Law provides that domestic investors can get access to equally, or even

more, generous incentives than foreign investors for 'promoted industries' and projects involving 'large capital base' and 'advanced technology'. Domestic investors, when not being granted special privileges, are, however, disadvantaged *vis-à-vis* foreign investors, as they have to pay 35 percent profit tax.

There have been several recommendations for an overhaul of Lao's investment policy. The current provisions are perceived as distorting competition, since it discriminates between foreign and domestic investors, between large and medium and small-sized domestic investors. Besides, they are also not consistent with other policies (for example, profit tax benefits are based on the size of the investment project, giving more incentives to larger projects, thus discriminating against SMEs which are supposed to be promoted by the government), and highly inefficient. To make matter worse, the *de facto* application of the policy and laws is that 'everything is negotiable'. The GoL has recognised these issues as well as the need for amendment. To that end, a Presidential Decree has been drafted and received much consensus. By this decree, the conditions for domestic and foreign investors will be harmonised, with rationalised incentive systems.

Market Structure and Competition

The weakness of the Lao economy is partly rooted in the fact that the Lao economy is actually 'a group of separated small segments' of sub-national economies, in addition to its discouragingly small size. The country has an average population density of only 22 people per km² and a per capita income level of US\$320 per year (as estimated by the Atlas method), which, though already portraying a small demand size as well as a low purchasing power, still underestimates the real problems. Most of the population is concentrated in relatively developed economic locations such as Vientiane, Luan Prabang and Savanakheth, where the income levels and living standards are higher. The rest of the country does not have many industrial and commercial establishments. A majority of the people make their living through growing and bartering agricultural products. These regions, especially the Northern part of the country, are practically isolated due to the poor condition of the infrastructure system. The Lao economy, in general, lacks an integrated domestic market that can act as a 'backdrop of demand' when the trading environment is not favourable. Besides, the country's lack of territorial access to the sea, remoteness and isolation from world markets by the inflation of transportation costs and the lowering of effective participation in international trade also negatively affect competition and development.

Market Structure and Competition

The Manufacturing Sector

Lao does not have a database on market shares. Information on enterprise turnover, sales, production volume or consumption of inputs is extremely scarce and not at all systematic, sometimes even contradictory or inaccurate. Even the number of business establishments in the respective sectors/industries varies greatly according to sources. The Ministry of Industry and Handicrafts (MIH) maintains a database on registered production capacity and number of employees of firms in some of the manufacturing industries in the economy. The Lao National Chamber of Commerce and Industry (LNCCI) has also its own database on the same information over its registered members. Using these databases and other indicative information published in various research reports/documents as well as survey results by the UNDP, UNIDO, IMF, WB, etc., one can get a fair idea of the market structure in some manufacturing industries in Lao.

As of 2003, there were 25807 manufacturing enterprises in Lao, 97 percent of which were small enterprises (household units) (which is around 24800), 814 medium-sized firms and 119 large firms. The large and medium enterprises are mainly SOEs (around 54) or joint ventures and 100 percent foreign companies. The capital base of the private sector in Lao is very low and the market (demand) is very small and segmented.

The manufacturing sector in the country, as said, is quite small and backward, with very few major industries. Lao is, indeed, import-dependent for many consumer products, machinery and manufacture equipments and even raw and semi-processed materials. This, together with the small size and low purchasing/consumption level of the domestic market, tends to twist what is reflected by the concentration ratios.

A market supplied by only two producers, with a CR1 indicator of approximately 40 percent, is usually considered duopolistic, such as the case of the country's tobacco manufacturing industry. However, though there are only two domestic players – Lao Tobacco Co., the market leader SOE with 40 percent of market share, and Dokmaideng Tobacco Co., a Chinese-invested enterprise whose market share is around 20 percent (with a production volume of around 40 thousand packs per year) – competition from imported tobacco (accounting for 40 percent of market share) is quite high. This is not to mention the pressure from illegal imports – smuggling, which has been on the rise. The small Lao market could not have afforded more enterprises' presence without turning out to be inefficient from being competitive. As of the

current market situation, prices appears competitive: the retail price for one soft pack by Lao Tobacco is 4000 kip and for one hard pack 6000 kip (in Vientiane), while the Dokmaideng tobacco is sold at 5000 kip; prices of imported tobacco are in the range of 3000-4000 (and smuggled one around 1,300 kip). There seems to be no sign of monopolisation either, though Lao Tobacco used to hold more than 50 percent of market share before 1998. The entry of the Chinese enterprise as well as imported tobacco has not faced any difficulty. Instead, the market has adjusted quite well to reach the current competitive structure.

The motorcycle assembly industry is another interesting case in point. With the establishment of Suzuki and Honda plants in the early 1990s, the domestic players enjoyed a market share of more than 85 percent (the competitive hinge was for imported motorcycles from Japan) until 2000. With the entry of low-priced imports from China and South Korea, the market share of the old leaders was driven down to a desperate hinge of five percent in 2004. The imported motorcycles from China and South Korea are of acceptable quality, while they are priced at only around half of the prices of the domestically assembled ones (the price of a Honda Wave 100cc is around 13 million kips, while the imported one costs only 5-6 million per unit). The low and moderate-income consumers in Lao, of course, will pick the cheaper one.

A good structure is observed in the textile and garment sector, with a high level of market participation and competitive concentration ratios. This is due to the fact that the sector is mainly geared up for export, i.e., larger targeted markets and higher profit margins. The domestic demand is served either by sub-contractors, small enterprises' niche production or household businesses (who distribute their products through small businesses/traders informally at the local small physical markets), or 'smuggled' goods from Thailand, China, Vietnam, etc. There is usually a rather long-term and stable contracting relationship between the exporting enterprises and the sub-contractors, with little trace of abuse of dominant positions. There are cases of exclusive dealing, however, mainly in return for technical support, viz., training of employees, quality control, etc.

Pharmaceuticals and steels and the like sectors, where economies of scale permit some big players to enjoy a competitive edge, remain competitive since small-sized producers have managed to win some specific groups of customers either by relatively lower prices or product diversification. Industries/sectors, which require large sunk costs and have large fixed costs components such as cement and electricity generation, are either highly concentrated or show monopolistic trends. Beer is one exceptional case, which sees a State monopoly – Lao Brewery Co. – dominating the market,

while the price and quality remain competitive and consumer-friendly. The GoL is trying to promote *Beerlao* as a national champion and expand its reach to regional export markets. During the first six months of the year 2003, the company sold about 37 million litres of beer, 14.5 percent more than the previous year and double the figure estimated in the six-month plan. Lao Brewery has invested about 80 billion *kip* (US\$8mn) to further increase its capacity to about 85 or 90 million litres per year and is planning to open a new factory in the southern part of the country over the coming two years. External competition is expected to rise steeply, once tariff barriers on alcoholic

beverages (currently 30 percent on beer and 40 percent on spirits, ten percentage points lower than in 2001) are lowered within the framework of the ASEAN Free Trade Area.

Another major industry in Lao is the agro and food processing industry. The country's large agriculture sector certainly creates a situation where this industry plays an important role in the living of the people. The sector comprises of a handful of real industrial-sized companies with minimal turnover, a thousand scatter-based rice mills and a few hundreds of small-scale establishments. Lao's huge food imports value

Table 3.1: Market Structure of Some Manufacturing Industries in Lao

Industry	Types of Competition (Number of Enterprises)	Imports	Concentration Ratio			
			CR1	CR4	CR8	Calculated by
1. Textile and Garment	Competitive—59 enterprises (with 43 sub-contractors)	19.8%	13%	34.2%	51.9%	Registered production capacity in 2004 (pieces per year)
2. Cement	Concentrated—03	2%	44%			Registered production capacity (with the third player starting its operations from June 2004)
3. Beer	Monopolistic—01	40%	98%	n.a. ¹		Sales volumes over the years from 1997-2002 (bottles per year)
4. Tobacco	Competitive (with competition from imports)—02		App. 40%			Production and sales volumes in 2000 (packs per year)
5. Motorcycle Assembly	Competitive (with market entry of low-priced imports from China and South Korea since 2000) —02		75%		n.a.	Sales volume from 1991-2000 (motorcycles per year)
6. Steel	Competitive—11		15-20%			Production capacity in 2004 (bars per year)
7. Electricity Generation	Highly concentrated with dominant government player: <ul style="list-style-type: none"> • <i>Electricité du Lao</i> (EdL) — 42% • Independent Power Producers (IPPs) – 41.5% • Provincial authorities 		42%			Electricity generation volume in 2000 Note: EdL's volume includes that of its 5 plants, viz. Nam Ngun I, Selabam, Xeset, Nam Dong, Nam Loeuk) while there are only two IPPs, each with one plant, viz. Theun Hinboun, and Houahay Ho)

8. Pharmaceuticals		Competitive— with 15 enterprises, 05 of which are major players		30%	n.a.	n.a.	Production volume in 2002
9. Agro and food processing (including beer, tobacco as well, in addition to coffee, liquor, soft drink, sugar, feed, oil, processed fruit and veg <i>et al</i>)		Low degree of industrialisation with thousands of small-sized workshops Dominated by 11 major industrial enterprises		50%	90%	95%	Estimated turnover in 2002 (million US\$)
10. Wood processing	Logging	Oligopolistic— 03 central SOEs and a number of provincial SOEs		n.a.			Data in 2001 (World Bank and interviews with the Ministry of Industry and Handicrafts)
	Primary Wood Industry	182 factories, viz. 159 sawmills and 21 miniature mills, and 02 plywood factories		n.a.	n.a.	n.a.	Data in 2001 (UNIDO)
	Secondary Wood Industry	1269 furniture manufacturers, most of which are family-owned, micro families purely serving the domestic market		n.a.	n.a.	n.a.	Data in 2001 (UNIDO)

(amounting to US\$30mn in 2002), however, shows an extremely low development/industrialisation level of a hardly viable industry. It is difficult to say whether the industry is competitive or not, with such a large informal sector, and such high level of import-dependence for completed products, not to mention unofficial trade. However, in some cases, it is quite alarming to see a whole sub-sector, like coffee, dominated by one major industrial firm – Dao Huang Co. – which handles about 70 percent of coffee exports and has an estimated turnover of US\$20mn (in 2002). This essentially means the livelihood of hundreds of thousand farmers can be easily affected and distorted.

In a similar situation, and of equal significance, is the wood processing industry. This industry accounts for about 40 percent of total exports of merchandise goods and employs around 22,000 people [as of 2002] and yet is at the stage of early development, as it consists mainly of inefficient small and medium-sized sawmills, plywood mills and other wood processing plants representing the low value-added primary industry sub-sector, in addition to 1269 cottage-based furniture manufacturers. Such a structure certainly cannot be regarded as concentrated or uncompetitive. The whole sector, however, is simply below efficiency level. Besides, in the industry's logging segment,

especially its log quota allocation, there still exist many competition issues, which subsequently hamper performance in the whole industry chain.

For a long time, logging was mainly carried out by three SOEs (Phoudoi, DAFI and ADS), under the Ministry of Defence, about who there have been reports of an abuse of dominance. Competition was once experimented with in this market, through the application of competitive bidding. However, after some time, it was revealed that the bidders had colluded with each other to set very low prices to get the quotas (collusion to win auction at low bids). Therefore, the GoL has again abandoned this method and given quotas to only the three SOEs and, recently, to some fictitious organisational entities under provincial governments, with territorial monopoly rights.

After the wood was cut, they would be sold to various enterprises for processing at government-set price levels and quotas. Traditionally, the Ministry of Agriculture and Forestry and the Prime Minister's Office did not base their log quota allocation on competitive bidding, but on administrative decisions. Quotas were given to the various wood industries at fixed rates, but, as the production capacity of the

processing sector by far exceeds the annual logging volume, not all companies received the full amounts of raw materials needed to satisfy their production needs. This system led to bribery, favouritism of particular companies and, consequently, to erection of barriers to market entry, entrepreneurial growth, and fair competition.

Services and Utilities

The level of market concentration in the services and utility sector tends to be significantly higher than that of the manufacturing sector. This is because most services and utility sectors in Lao, in particular transport, telecommunications, and electricity, are not yet liberalised and remain very much a state-owned enterprise domain. These enterprises are often granted monopoly rights that they sometimes auction off to private concessionaires through long term revenue-sharing concessions, as described earlier. Consequently, the market structure of most service industries can be described as monopolistic or oligopolistic.

The high concentration level of the service and utility markets in Lao is a result of demand and supply constraints, as well as the half-hearted commitment to competition on behalf of the government. The small-sized, segmented market as well as consumers' low purchasing power could not give the service and utility sectors a demand pull, to attract more entries or to encourage expansion of businesses. The domestic operators themselves face serious financial and technological constraints. In addition, the country's business environment is not at all outstandingly favourable and encouraging, as compared to other countries in the region, to attract better-financed and capable foreign investors. The GoL's *ad hoc* tendency to favour the state and domestic players add up to the uncertainty of the situation.

At the same time, the small size of the market, as well as the low demand in Lao, does not require too many service operators to be efficient. Another promising aspect is that the markets are still developing, with more and more participation being observed in recent times. The country's premature, yet growing, economy, in particular the manufacturing sector as well as the increasing urban population, is expected to create the scope for growth. The telecom sector in Lao provides an exemplary case. While the country is catching up in terms of the technology it is installing, it still has one of the lowest telecom penetration rates in Asia, in terms of the number of subscribers. The total penetration rate across the country is just around five percent – fixed and mobile telephony combined. The mobile sector is actually bigger than the fixed one, accounting for more than 65 percent of subscribers.

In 1996, the government established a joint venture between the state-owned Enterprise of Post and

Telecommunications Lao (51 percent) and the Thai company, Shinawatra International, giving birth to Lao Telecom (LTC). The company has a 25-year licence (with five-year exclusivity) to Build-Own-Transfer telecom infrastructure for projects under the Lao Telecommunications Master Plan. LTC's exclusivity expired in October 2001. However, the incumbent still dominates the market, with business lines across fixed, mobile, Internet and broadband services, though it has had to deal with new players since 2002. One of which is the government-owned ETL, which recently gave a US\$24mn contract to Alcatel to upgrade its mobile and fixed network. Another is Lao Asia Telecom (LAT), also owned by the government. In the mobile sector, the Tango mobile service is fully owned by Sweden's Millicom, which also has a network in Cambodia. And, there are apparently other carriers in the region interested in obtaining licences in Lao, including one from Malaysia.

The banking sector is another growing service industry which is relatively liberalised and less concentrated, though still dominated by the state sector. At year-end 1999, the banking system in Lao comprised of (a) four state-owned banks, *viz.*, BCEL (Banque pour le Commerce Extérieur du Lao), Lao May Bank, Lane Xang Bank and Agriculture Promotion Bank (APB); (b) three joint-venture banks, *viz.*, Joint Development Bank, Vientiane Commercial Bank and Lao-Viet Bank; (c) seven branches of foreign banks, including that of Bangkok Bank, Krung Thai Bank, Thai Farmers Bank, Thai Military Bank, Siam Commercial Bank, Bank of Ayoudhya and Public Bank; and (d) one representative office – Standard Chartered. All these banks are commercial banks, except for APB, which is a state-owned bank primarily geared towards financing agricultural and rural development, but also performing commercial banking operations.

The Lao banking sector is still small in absolute terms, with total assets in the system amounting to approximately US\$408mn, as well as in relation to the size of the Lao economy, with the ratio of total assets of the banking system to GDP being only about one-fourth, which is particularly low for an economy with a non-diversified financial system. This small market is dominated by state-owned commercial banks, having more than two-thirds of the total assets. The three largest banks (BCEL, Lao May Bank, and Lane Xang Bank) are fully owned by the government; BCEL maintains a dominant position accounting for approximately half of total deposits and almost 40 percent of total loans in the system. As for foreign participation, Thai banks dominate, as six out of seven foreign bank branches are Thai bank branches. This concentration made Lao more vulnerable to shocks occurring in the Thai economy – for instance, the recent Asian financial crisis.

Table 3.2: Market Structure of Various Service and Utility Sectors in Lao

Industry	Type of Competition (Number of Operators)	Market Share	Calculated by
Banking	Small market dominated by the State sector	<ul style="list-style-type: none"> • 04 State-owned banks — 70.7% • 03 Joint-venture banks — 20.9% • 07 foreign bank branches — 8.3% • 01 foreign bank representative office – 0% 	Assets as % of total by end 1999
Insurance	Monopoly	<i>Assurance General du Lao (AGL)</i>	
Transport			
• Trucking	Competitive market with many small service providers		
• Inter-provincial Bus Transport	Competitive market with many small service providers		
• Aviation	Domestic: State monopoly	Lao Aviation — 100%	
	International: Oligopoly	<ul style="list-style-type: none"> • Lao Aviation – 53% • Vietnam Airlines – 23.5% • Thai International Aviation – 20.5% • China Yunnan Aviation – 3% 	Number of flights into Vientiane International Airport as of 2000
Telecommunications			
• PSTN (public switched telephone network)	Oligopoly with 01 incumbent operator dominating the market	<ul style="list-style-type: none"> • LTC (Lao Telecom) – 86.5% • ETL (Entreprise des Telecommunications du Lao) – 12% • LAT (Lao Asia Telecom) – 1.5% 	Number of subscribers as of December 2004
• Cellular	Oligopoly with 01 incumbent operator dominating the market	<ul style="list-style-type: none"> • LTC – 66.6% • ETL – 19.6% • Millicom – 10.2% • LAT – 3.4% 	Number of subscribers as of December 2004 Number of subscriber as of September 2001
• Internet Services	Oligopoly	<ul style="list-style-type: none"> • LTC – 75% • PlaNet Online – n.a. • GlobeNet – n.a. 	
• Cable Television	Duopoly	<ul style="list-style-type: none"> • Electronic Yiang Jin Cheng Du Company of China – n.a. • Thailand's UBC pay Direct-to-Home service – n.a. 	

Energy			
• Electricity Generation	Dominant state player	<ul style="list-style-type: none"> • EdL (Electricite du Lao) – 42% • Various IPP projects (with EdL as a partner) – 56% • Provincial generators – the remaining shares 	Sales volume in 2000
• Electricity Transmission	State monopoly	EdL	Total installed capacity and electricity generation in 2000
• Electricity Distribution in Urban Areas	State monopoly	EdL	
• Electricity Distribution in Rural Areas	State monopoly	EdL and off-grid EdL providers	
• Petroleum Supply and Trading	Oligopoly	<ul style="list-style-type: none"> • Lao State Fuel – 47% • Caltex • Shell • Indochina 	
Water			
• Urban Water Supply	Provincial government monopoly	<i>Nam Papa</i> (“water supply enterprise”) SOEs	Normally assisted by international NGOs on non-profitable basis
• Rural Water Supply	n.a.		

On the other hand, there exist many virtual monopolies in Lao’s service and utility sectors. Insurance, for example, is a one-company industry. Prices and indemnities are controlled. Assurances Generales du Lao (AGL) was established in 1991 and is still the only licensed Lao incorporated insurance company⁷. AGL is a joint venture between the State of Lao (49 percent) and Assurances Generales de France (51 percent), now part of the Allianz Group. It benefited from a three-year official monopoly and remains in that dominant position until today.

Domestic aviation and water are two sectors where the government enjoys absolute monopolies. There is no private participation due to a multitude of reasons: government policies on reserving monopoly rights for the state, public interests, unfavourable investment conditions, low degree of profitability, etc. Electricity is, however, a special case.

Lao’s great potential in hydropower has attracted the attention of a great number of foreign investors. This enabled the government to develop a rather competitive market for power generation. In addition to EdL, which has a 42 percent market share, there are several foreign IPPs – which mainly operate in Lao through the BOT (Build-Operate-Transfer)⁸ model, in

partnership with EdL, as a nominated shareholder by the GoL and are all geared up for power export. Altogether, the IPP accounts for 56 percent of market shares; the rest of market shares belong to provincial off-grid EdL operators. EdL itself is a ready partner for any new power projects. In the domestic distribution market, however, EdL enjoys absolute monopoly, as it possesses the whole national gridline network. There have been plans by the Government of Lao to contract some EdL functions to the private sector, e.g., construction, billing, and collection. In order to increase efficiency and encourage private participation, the government also plans to offer isolated EdL distribution grids to concessionaires to operate and manage within the framework of published GoL tariff guidelines.

Barriers to Competition

Administrative and Other Policy-induced Barriers

Some domestic laws and regulations pose barriers to entry. Many manufacturing as well as service and utility sectors that display high market concentration receive state protection in various forms, including state control and quantitative restriction, high tariffs

imposed on competing imported products; stringent licensing conditions, making new entries difficult; or changes in the tax regime that benefited domestic players. This includes petroleum products; construction materials like steel and cement; agro-processing products like coffee and beer; vehicles; electricity; minerals; tobacco; and timber products. In the banking sector, only one branch of each foreign bank can be licensed to operate in the Vientiane Municipality. Outreach of banks is also very restricted. There are only few bank branches reaching out to districts and villages. The GoL has not allowed foreign banks operating in the country to extend services outside the Vientiane Municipality. The recent changes in the Taxation Law, as already mentioned before, are also tilting the balance of competition in favour of domestic players.

Certain laws or administrative decisions also grant exclusive rights to SOEs to provide services to the public. For example, until now, the Electricity Law grants a statutory monopoly in the ownership of the distribution system and supply of electricity to the EdL. Private [foreign] participation has been subject to a build-transfer-operate (BTO) agreement, whereby the private operator builds the network and then transfers the ownership of the network to the state enterprise in exchange for an exclusive right to operate the network for a specified period of time. Under such an arrangement, the private concessionaires cannot claim any asset and are subject to operating conditions set by the state enterprise, some of which restrict competition.

At the same time, some of the laws, regulations and administrative procedures by themselves constitute barriers to competition and need to be substantially improved. For example, it is not only the inadequate infrastructure that raises transport costs and increases delivery times for traded goods, but also cumbersome customs procedures, as is the complaint of several enterprises. While it already takes two- three days by truck to cover the 670-km distance from Vientiane to Bangkok, sealed containers have to pass an additional customs inspection at the Thai border. This regulation concerning handling and transportation implies that, at the border, all Lao trucks have to be unloaded and reloaded onto Thai trucks. At present, Lao trucks are allowed into Thailand only within the province adjoining the crossing point. The carriage of Lao transit cargo through Thailand can be done only through designated and licensed road haulers (with only one being Lao). The lack of flexibility in working hours at customs checkpoints also raises delivery time and cost, since trucks cannot cross the border after 4 p.m. What's more, transport legislation limits the vehicle load limit for trucks operating in Lao to 8.2 tons per axle versus 9.1 tons in Thailand and Vietnam, raising import costs. Firms also lament that labour legislation is a major hindrance to competition. In

particular, the legislation concerning maximum working hours and overtime hours conflicts with the need of the firm to work at full capacity with eight-hour shifts.

Barriers to Competition by Private Anti-competitive Behaviours

The perception survey conducted within the framework of the project – as will be discussed subsequently in the report – revealed that various types of private anti-competitive practices occur in the Lao market, including counterfeiting, predatory pricing, price fixing, exclusive dealing, monopolisation of upstream markets, territorial exclusivity, etc.

Most of these private anti-competitive practices have not yet been dealt with, due to the absence of enforceable competition legislation. More problematic is the high incidence of anti-competitive practices in the informal sector, where enterprises are least aware of how to protect themselves. A number of cases on anti-competitive practices undertaken by SOEs are also reported, which enjoyed statutory monopoly granted by the GoL. Many of SOEs in Lao hold *de facto* regulatory power that is derived from the operational conditionality they impose on the private concessionaires. The weak regulatory framework, as well as low enforcing capability of regulators, allows SOEs to wield the regulatory authority in their possession. The specific cases will be discussed in subsequent sections of the chapter.

Sectoral Regulation and Competition

Sectoral policies play a very important role in building up a competitive environment in any country. While competition policy and law are still new concepts in many developing countries, all States have been dealing with the issues of licensing, pricing and ensuring operational standards for specific sectors in various forms (sectoral regulators, line ministries, etc). How many players should be licensed to operate in one industry in order to achieve the optimal utilisation of resources, how the products should be priced (administratively fixed for all players, or by market prices), how much of subsidies or incentives should be given to different categories of players, entry and exit policies – all these issues, which a regulator would face everyday, clearly have a great bearing on market competition within the specific sector, as well as in downstream and related industries.

Electricity

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

protect the rights and interests of both foreign and domestic investors in electricity enterprises.

Under the law, the Ministry of Industry and Handicrafts has the primary responsibility for policy formulation and strategic planning, which are undertaken jointly with the State Planning Committee (SPC) and the Science, Technology, and Environmental Agency (STEA). It also has responsibility for preparing and implementing legislation and regulations and overseeing the performance of electricity enterprises.

The Department of Electricity (DoE), which was established within the Ministry of Industry and Handicrafts, has the primary responsibility for strategic power planning, project identification, and evaluation of power project proposals.

Lao National Committee for Energy (LNCE) is the GoL agency with powers to manage the development and marketing of power projects for export. It negotiates on behalf of the GoL and reports to it on matters concerning investment in power projects, regional grid interconnection, export sales of electricity, and contracts with project sponsors.

Electricité du Lao (EdL) develops, owns and operates the country's main generation, transmission and distribution assets and manages electricity imports to its grids and exports from its stations. Access to EdL's transmission network is guaranteed for both private and public generators. The law explicitly stipulates, "The owner of an electricity transmission line...does not have the right to refuse unless the transmission of electricity over that transmission line cannot be technically guaranteed..." (Article 28) and "All electricity production sources must send electricity into the National Electricity Transmission Grid unless...there is yet no national transmission grid" (Article 29).

EdL was corporatised as a public company under a Charter approved by the Ministry of Industry and Handicraft (MIH), along with two other SOEs, the Electrical Installation and Construction Company, which is responsible for micro hydropower schemes in remote areas, and the Hydropower Engineering Consultants Co., which carries out investigations, surveys, design, construction, supervision and other related engineering services in co-operation with foreign hydropower companies. EdL's role in the sector has expanded far beyond domestic utility operations in Vientiane and sales of power to Thailand. It now supplies many towns and districts in the provinces. Electricity tariff is variably set by the GoL is "subject to socio-economic conditions and the standard of living from time to time", with a view to promoting recovery of costs of supply, repayment of loans and reasonable returns for investors.

With a view to increasing power generating capacity and achieving optimal use of Lao's natural resources, the GoL has been involving several IPPs in the sector, in addition to State investment. This move was a significant step to open the power sector to competition, at least the electricity generation segment. IPP projects, however, can only be undertaken with the State of Lao as a shareholder⁹ and only through the build-operate-transfer (BOT) and other similar models of implementation and with an export mandate. Under the GoL's policy to date, EdL has been the implementing agency for government power projects and has been the agency nominated by the GoL as its shareholders in all IPP projects¹⁰.

As mentioned in the discussion so far, in Lao, the government regulates the private sector directly by the publication of decrees, rules and the issuance of business licences. In the case of the electricity sector, which consists of a single state-owned monopoly, the government has regulated mostly by setting the electricity prices. With the increasing entry of foreign companies into the business of electricity generation in Lao, the government requires a comprehensive regulatory framework. The Electricity Law of 1997 has introduced a licensing system that sets out the steps and conditions to be observed by private investors seeking mandate to develop IPP projects. Regulations, however, are yet to be drafted to establish the conditions for issues of licences and define the procedures to be followed, as well as the rights and obligations attached to such a licence.

Therefore, to date, BOT agreements between developers and the Lao government have been drawn up on an *ad hoc* basis. Industry analysts generally agree that such an approach does not lead to the best projects or decisions and recommend avoiding this scenario by establishing a clear framework of rules and competitive bidding for BOT projects.

Telecommunications

The Ministry of Communication, Transport, Post and Construction (MCTPC) is the government agency responsible for telecommunication policy and regulation in Lao. The Department of Posts and Telecommunications is the functional unit within the MCTPC, whose tasks include frequency management, telecom and post policy, long-term development strategy, licensing and regulation. The MCTPC has an annual budget allocated by the government.

The Lao National Assembly adopted a Telecommunications Act in April 2001. Due to time-consuming legislative process, the Act is yet to be implemented and only a draft Sector Policy Statement exists. The Statement and subsidiary legislations, such as decrees and regulations, have not yet been finalised. With help from different donors, the MCTPC is working to complete the Sector Policy Statement and

Decreases essential to making the telecom law operational, as well as to establish regulatory authority for the sector. The guiding principles are to broaden the access to services and to keep the real cost of service provision as low as possible, in addition to try to establish and maintain linkages with neighbouring countries, especially the neighbours in the greater Mekong sub-region. Appropriate technologies will be included in the overall regulatory process, taking into account the ICT developments.

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

While the Telecommunications Act sets out general obligations of operators with respect to universal service, no formal policies or specific objectives have yet been defined for universal service or access in Lao. The Act also provides for the establishment of a telecommunication development fund for the progressive development of an up-to-date telecommunication system through pooling of government resources, contributions by foreign aid donor agencies and a share of the revenue generated by the provision of telecommunication services. No actions have yet been taken to establish the fund. At present, operators do not have any obligations for the extension of the network outside of the terms and conditions of their licences.

Banking

The Ministry of Finance (MoF) is an important institution of the financial system of Lao. Its main responsibility is the formulation and implementation of fiscal policies. The MoF is responsible for the preparation of the government budget, to be submitted to the National Assembly, and administering the approved budget, including inspection of SOEs and government ministries for compliance. MoF is in charge of (a) tax administration; (b) customs duties; (c) managing the investments of the government in SOEs, including State-owned commercial banks¹¹; (d) management of state property; and (e) government procurement guidelines and regulations.

The Bank of Lao (BoL) is the apex institution entrusted to oversee the banking sector and exercise control over monetary variables to bring about monetary stability in the Lao economy. It has the tools of monetary control, such as a reserve ratio, open market operations and the discount window, to manage the liquidity in the banking system, i.e., the traditional role of a central bank.

However, BoL suffers from inexperience in effectively performing that role. The institution's mandate reveals conflicting objectives and a lack of autonomy *vis-à-vis* the executive power, the MoF. This is a major weakness and handicap in times of instability and high inflation, as experienced at the time of the Asian financial crisis. Besides, despite recent improvements, banking supervision by the BoL remains weak. The prudential framework, which departs from international best practices in some aspects, is not enforced. Consequently, the BoL cannot contribute to financial stability as much as it should.

The requirement on capital adequacy and basic guidelines on operations of commercial banks were first set out in 1992. Since then, the BoL has made progress in developing a legal and prudential framework, which is more suited to a market-oriented system. The present framework can be further improved. Indeed, the Decree Law No. 2 of March 2000, which is the current regulatory instrument over commercial banks and other financial institutions, addresses the subject of supervision in an elliptical way: it mainly addresses issues that are commonly embedded in Business Law and has only a few articles that describe the main objectives pursued by supervisors and how they are to handle their duties. Although this kind of legal arrangement provides flexibility to supervisors, allowing them to take any action they deem necessary, it exposes supervisors to political pressure that may be difficult to resist and result in prudential forbearance and costly bailouts.

The current structure of the banking system, with three joint venture banks and seven foreign bank branches, in addition to the SOCBs, provides diversity and limited competition within the banking sector, based on service quality and interest rates, subject to the limits specified by the BoL. There is evidence that the BoL exercises direct and indirect influence over interest rates by prescribing minimum and maximum deposit interest rates, as well as maximum lending interest rates for various sectors. The banks are not allowed to vary lending rates based on risk profiles of borrowers, within the same sector. Furthermore, through moral persuasion, the BoL induces banks to allow lower rates to sectors assigned priority in the country's development programme and encourages them to cap their lending interests at an average of five percent, regardless of their provisioning needs, administrative costs and profit goals. In the existing circumstances of the commercial banks, where the occurrence of NPLs is rather high, the BoL's influence over bank interest rates or spreads may affect the long-term viability of the commercial banking system, as well as distort competition between the various players in the system. In general, real interest rates have been negative since the onset of the 1997 Asian financial crisis, as the BoL pursued an inflationary policy (or at the very least, did not try to control

inflation). However, the gap between the inflation rate and the nominal interest rate is narrowing.

The lack of a specific *modus operandi* for the treatment of the failing and failed banks remains a weakness. Such procedures are presently needed. Some progress was achieved in the area of enforcement instruments. The Decree Law on the Bank of Lao provides the BOL with the right to issue, impose fine, and withdraw banking licences. BoL Regulation 4 (1996) adds the following tools to the BoL supervisory toolkit: removal or dismissal of the Board of Directors and the temporary suspension or termination of activities. However, despite recent improvements in the framework and institution building efforts, effective enforcement of decisions is weak. Lack of people, necessary skills, resources and procedures remain the major constraints in banking supervision.

Consumer Policy

The main objective of the competition policy and law is to preserve and promote competition as a means of ensuring efficient allocation of resources in an economy, resulting in:

- the best possible choice of quality;
- the lowest possible prices; and
- adequate supplies to consumers.

To put it differently, ensuring competition is just a means of achieving the above-stated objectives. Obviously, maximising of consumer welfare becomes a predominant concern. Governments, subsequently, need to design and implement a competition policy and law with the understanding that the consumers need the invisible hand of the State to protect their legitimate rights and interests and promote their welfare¹².

The examination of the legal framework as well as institutional arrangements for consumer protection in respective countries' contexts has therefore become an integral part of the competition-related discussions. The assessment of the impacts on consumer welfare has also become inevitable in various competition investigation and review processes by competition authorities around the world. Further, in face of the resource and capacity constraints, which are quite popular concerns in most developing countries around the world, having a hybrid approach for both competition and consumer protection is becoming more and more a worthwhile consideration for policy makers.

In Lao, there is no specific law, regulation or institution on consumer protection. The 'consumer' is a recently recognised subject in the laws of many Asian countries, even the more advanced market economy. It is, therefore, a completely new subject for Lao legislators and law enforcers. However, while the relatively more

developed countries already had laws with emphasis on consumer protection, such as those on weights and measures, contracts, product safety and liability, advertising, sales of goods and services, provision of public utilities, etc, Lao does not have many such legislations due to the bad shape of the overall legal system and the limited capability of the administration. Nonetheless, some of the current legislations do have some bearing on consumer protection in Lao.

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

Article 2 of the Decree emphasises that the management of the prices of goods is determined by market mechanisms under State management. Goods to remain under state control, in terms of prices, include some imports, agricultural produce, industrial products, some domestic products and natural resources for export.

The Decree also points out the rights and obligations of businesses in the areas of commerce and production. Entrepreneurs must hold accounts (bookkeeping) according to the law, put price labels on goods for sale, co-operate with officers in the inspection of the prices of goods and be entitled to lodge complaints or file appeals against inspectors and bad practices.

The Ministry of Commerce is to be directly responsible to the GoL for the control of prices of consumer goods and raw materials. The Ministry will list goods under State control in each period and co-ordinate with relevant services and agencies to ensure adequate supply of domestic goods to meet consumer demand. The Ministry will also review consumer complaints and oversee the goods management activities of commercial services in the provinces, the municipality, and the special economic zone. An agency in charge of price control management will be specifically set up within the Ministry of Commerce and relevant authorities in the provinces, the municipality and the special economic zone.

Businesses that violate price control regulations, including those involved in price-hiking, hoarding, causing turbulence and producing counterfeit goods, will have their business operation licences revoked and be prosecuted according to the law.

The implementation has been underway. The Ministry of Commerce frequently made public, on popular

media, information as to the average market (sometimes controlled) prices of various types of goods as well as services for widespread reference, to prevent unfair business practices harming the consumers. The price control management unit is yet to be set up within the Ministry of Commerce and the agency currently in charge of relevant issues is the Department of Domestic Trade. However, consumers are yet to be equipped with necessary knowledge about their rights and the available forum for lodging complaints and seeking redress.

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

Issues related to food safety are under the control of the FDA Commission, which was established in June 1991, comprising of nine members, representing seven ministries and a permanent bureau. The FDA has been located within the Food and Drug Department (FDD), Ministry of Health (MoH), which carries out all activities of the Commission in practice. The FDA Commission is chaired by the Minister of Health and is responsible for managing, controlling the quality of various food products and drugs that are imported and domestically produced, in order to protect and ensure consumers' health.

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

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

While the bad incidence of poverty deprives Lao consumers of access to basic utilities, budget and

technological constraints of the State, the low awareness level of the consumers expose the consumers themselves to many products, production processes and services which are below- standard , or even hazardous to health or life.

Take the case of foods. As in all low-income economies, the consumers in Lao have strong preference for, or in most cases total reliance on, the 'wet' market for their daily family feeds for a multitude of reasons (more convenient pick-up arrangement of produces, stronger customer base, more affordable prices, etc.). It was revealed that, except for the amount of food self-consumed by the producers/farmers, more than 90 percent of the food in the market is supplied by wet market traders. The supply chain is structured in a way that vegetables, poultry, rice, maize, etc., will go straight from the farm gates to those wet markets, where they would be picked up by the consumers. Hazards lie at every point along this chain.

Labelling is also a problem, as it has always been with safety and standards issues. And, of course, with Lao's low industrial base, high level of dependence on commodity imports, goods and services are never sophisticated and diversified enough, or offered at competitive prices. Sadly enough, in most cases, consumers are totally ignorant of this bad situation, as well as their legitimate rights to be informed and protected against possible abuses. This low level of awareness also leads to a restricted incidence of complaints or cases of consumer abuses being reported. Unfair competition practices have been noted in Lao in the case of steel bars and drinking waters, where fiercer competition has induced manufacturers to cheat on the quality and standards of products, in order to be able to give out reduced prices. There are also cases of misleading advertisements and deceitful promotional programmes. However, nobody has ever been punished for such conduct, due to the absence of a strong legal framework and lack of investigative and law enforcement capability. Redressal of damages for consumers is, of course, beyond practicability. A draft Decree on Consumer Protection was in the pipeline with the Ministry of Commerce. However, it got overshadowed by other more 'prioritised' legislative agendas.

Anti-competitive Practices

Free and open markets are generally recognised as the best institutional structure for achieving important goals of economic policy: efficiency, dynamic growth, equitable allocation of resource and opportunity for all market participants. Economists and policy makers, however, have also long recognised that markets are not inherently fair, efficient or open. The ideal situation is when markets are not concentrated; there are a great number of buyers and sellers. Then there would be a strong tendency for efficient,

workable and fair ways of doing business to develop as an inevitable outcome of the interactions of a large number of players, all seeking a neutral and open market place.

But, no such inherent tendency exists in markets where a substantial difference in the size between buyers and sellers exists or where the market is highly concentrated on one side. Besides, if one side has significant and persistent advantages in information or some other important elements related to transactions between buyer and seller, then too such a market is unlikely to experience much pressure for desired conditions. There is also a constantly grave danger that the competitive conditions in such markets will be distorted by strategic anti-competitive practices by market participants who seek to maintain or increase their market position and accrue unjust rents and profits, without necessarily providing goods and services at a lower cost or of higher quality. These practices, including price-fixing and other cartel arrangements, abuses of dominant position or monopolisation, mergers that limit competition and vertical agreements that foreclose markets to new competitors impose immediate burdens on the disfavoured class of market players and, ultimately, on consumers and the economy as a whole – as less efficient production and market transactions take place. They are, sadly enough, pretty common in developing and transition economies, since the disordered market situation, without necessary rules and supporting institutions, has always been conducive to collusive behaviours.

Lao is no exception. The various historical, cultural and socio-economic conditions of the country contribute to the incidence of anti-competitive practices there. While the incidence of some anti-competitive practices must have been rather high for a long time, they probably have been overlooked by the State officials, the public, the media, and even the business community, due to low level of awareness and, sometimes, misconception. The old mindset of a centrally planned economic mechanism, which has been inculcated into the whole society, for example, tends to make people think that price-fixing, market-sharing or output restriction, by whoever, the State or private companies, are common and legitimate conducts. In many cases, the low sophistication level of strategic business skills and the normally small scale at which people in Lao are doing business suggests that anti-competitive practices are less likely.

Transformation of Public Monopoly into Private Monopoly

At present, most of the LDCs, including Lao, are going through a spate of privatisation and deregulation. Unfortunately, many of the public sector enterprises, which were monopolies in the hands of the

governments, are either being transformed into private monopolies or are in the process of becoming so. This can harm the interests of consumers, especially the poor.

Instead of competitive bidding, State assets in Lao are being sold or leased out on private negotiation basis. Private negotiations mean lack of transparency, accountability, and the due process of law. They also means too much of concession, usually in the form of legal exclusivity or monopoly for a fixed period of time, which ultimately leads to no market contestability. This, together with the possibility of corruption, which cannot be ruled out in any case, makes it quite possible that the process would simply mean generating some state revenues, removing state monopolies and creating private-sector monopolies. Very few public enterprises have shown any significant enhancement of their competitiveness after privatisation. Due to the virtual absence of post-privatisation monitoring and an evaluation mechanism, the privatised enterprises have failed to infuse competition into the economy.

Price-fixing and other Cartel Arrangements

In LDCs, market-sharing and price-fixing cartels are prevalent in various degrees. In Lao, it was reported that some business or professional associations, which were established with the objective of protecting their professional interests, showed a tendency to cartel behaviour. Examples include the Vientiane Private Colleges Association (VPCA), the Vientiane Drinking Water Group (VDWG), etc. So much so that even *tuk-tuk* operators in Lao have formed their association, the *Tuk-Tuk* and Jumbo Transport Association (TJTA) and its members are instructed to charge standard fares between specific destinations, as well as display the name of the pick-up area where they are allowed to operate.

The VDWG, though not a government agency, has power over prices and quality standards over all members and recently closed three businesses that were in contravention to the Group's regulations. In addition to reports that the VDWG has done good work, in terms of quality control, there are also complaints that prior to the Group's formation, competition among the numerous drinking water manufacturers in the municipality helped drive down prices, which were raised again after the Group's formation.

Similarly, there were complaints from consumers that, despite the growing number of private colleges operating in Vientiane, rates remain exorbitantly high for students and, curiously, similar. The role of the VPCA was vague to many, since there is no apparent improvement in the colleges' performance and students do not benefit from the existence of such an association.

The recent price hikes in the telecommunication sector also make consumers grieve. *The Vientiane Times* reported on the February 2, 2004:

Bid-rigging

This practice is widely prevalent, especially in the construction and/or supply sector, where contractors or suppliers sit down together and decide the price at which one contractor or supplier will receive the contract. It is decided beforehand who would be winning the contract and the norm is that the winner has to be from within their group. Then, the person/firm that receives the contract compensates the other contractors/suppliers.

In 'bid-suppression' or 'bid-limiting' schemes, members of the group would refrain from bidding or withdraw a previously submitted bid, in order that a member of the group, previously decided upon, wins the bid. Or, the members of the group will create difficulties for other bidders who do not belong to the group, by refusing to supply inputs, conclude sub-contracts or otherwise.

Sometimes, some member of a group would submit token bids that are not competitive in price or, if competitive in price, then on special terms that will not be acceptable, in order to enable a specific member of the group to win the bid. This practice is called 'complementary bidding', which happened in many privatisation cases in Lao. One such case is the Lane Xang Hotel case, where the final and highest bid that the GOL received amounted to only half of the expected amount. This case, together with another one of the failed sale of State assets, has induced the GOL to resort to private price negotiations instead of competitive bidding during the privatisation process.

In other cases, if contracts are to be awarded on a perennial and regular basis, then the contractors/suppliers decide the timing and the amount of contract each one of them is going to receive on a rotation basis. This practice was reportedly quite prevalent in the logging industry in Lao, where logging quotas are limited. Bid rotation, together with corruption, has caused huge economic and efficiency loss to the industry.

Tied-selling

Tied-selling can be (a) a subtle form of tied-selling by combining the sale of a slow-moving item with items in hot demand; and (b) a blunt tied-selling carried out by bundling related goods and services¹³. Both types of tied-selling are generally quite prevalent in economies like Lao, but consumers rarely question the legality of such practices, since they are very much used to the rationalised and forced purchase under the old centrally-planned economic mechanism, where consumption patterns were decided

administratively by the State rather than by consumers' choice.

Having to buy a slow-moving item in return for the seller selling a fast-moving item is not uncommon. Since the market is imperfect, the creation of an artificial scarcity through hoarding or limiting supply is quite common. Even when the product is abundant in supply in the intermediary markets, it reaches the consumers in a quantity and at a price desired by the producers and/or middlemen. There have been incidences of this type in markets for agricultural produces and fuels in Lao, though no action was undertaken by relevant State agencies in this regard.

Tied-selling also takes place in schools and hospitals. In most of the private colleges, the students are usually asked to purchase books, stationary and uniform from the school itself – ostensibly to maintain uniformity among the students and quality. However, the hidden motive behind such a practice is to extract as much money as possible from the parents, in the name of imparting 'quality' education. Similarly, in some of the private hospitals, doctors prescribe medicines and (coercively) advise patients to purchase them from certain pharmacies, if the latter want to make sure that the medicines are of good quality and brand.

Abuse of Dominance

Monopolist or dominant enterprises, besides giving the benefits of economy of scope and scale, are the sources/undertakers of many anti-competitive practices. This may not be much of a problem in bigger economies where the size of the economy is such that it can accommodate a large number of firms. In Lao's small and fragmented domestic market, where market structure in most industries is usually monopolistic, monopsonistic or oligopolistic, firms have a strong temptation to abuse their market power and engage in predatory behaviour. Sometimes, this is done to accrue more unjust economic rents and sometimes, to preserve their monopoly positions (and continue to earn rent). An example that is a pointer to this fact is the Lao farmers' grief when the Lao Brewery Co. abused its monopsonistic position to purchase agricultural produces (rice, maize, etc.) from them at below cost prices. There are also complaints from passengers about the exorbitantly high fares set by Lao Aviation, despite low service quality and safety level. However, since both the above enterprises are the single buyer/service provider in their area, there is no way out for the disadvantaged customers.

A type of predatory intent, which is typically found in small developing economies, is the predatory behaviour by a foreigner supplier. When predatory behaviour crosses a border, it becomes a case of dumping. Motorcycle assemblers in Lao were faced with tremendous business difficulties, when the

market was flooded with cheap products from China and South Korea, which were priced at half their products' prices.

In another case, control of distribution channels by one or some enterprises of the same group, and, hence, lack of access to customers by other enterprises also amounts to abusive behaviour. Such was the case of black plastic water pipes, where the Lao producers complained that they could not market their products, since all the distribution outlets were controlled by Vietnamese enterprises, even though the products produced by the Lao and the Vietnamese are of the same quality and price.

Many more other anti-competitive practices must have taken place and gone unnoticed, unpunished in Lao due to the low level of awareness and, hence, alertness of local stakeholders. It is high time some action is undertaken so that disadvantaged market players, the consumers, and the economy, as a whole, are not victimised by private rent-seeking behaviours, which frustrate the goal of having a fair, transparent, and open marketplace.

Perspectives on Competition Policy

The question regarding the issue of regulation of markets is not whether it is required or not. Indeed, it is inconceivable to find a country where there is no regulation. The question is "What is the optimum type or amount of regulation"? If a country does not have a well-designed regulatory or competition framework, chances are that existent rules and regulations may do more harm than good. It would definitely help if some empirical assessment of the existent or proposed regulatory measures could be made.

Besides, the effectiveness of any law in a country depends on the extent to which the law has actually evolved in the country in tandem with the socio-economic and historical developments. It is necessary that there be some amount of acceptability and ownership of the law among the stakeholders. This is possible only if their expectations are taken into consideration while drafting the law¹⁴.

These were the reasons why it was decided that a questionnaire survey should be undertaken within the framework of this particular project for each project country, in order to take stock of the existent regulatory framework therein, capture the expectations of the national stakeholders, as well as collect more first-hand information about anti-competitive practices in the project countries. This part presents the findings of the said questionnaire survey in Lao, which involved fifty respondents. About 20 respondents representing the business community, 50 representing the policy makers, mostly government officials, and fifteen consumers, including economic journalists,

academicians, lawyers, etc., were interviewed during the course of the survey.

In general, a large proportion of the respondents from all three groups, namely, business community, consumers, and policy makers, did not have a clear understanding of competition. Nonetheless, they were aware of the 'unfair' practices. A majority of the respondents were of the view that anti-competitive practices do prevail in Lao. They also pointed out a handful of areas where anti-competitive practices are most prevalent and that the relevant governmental agencies have done very little to put a stop to such practices.

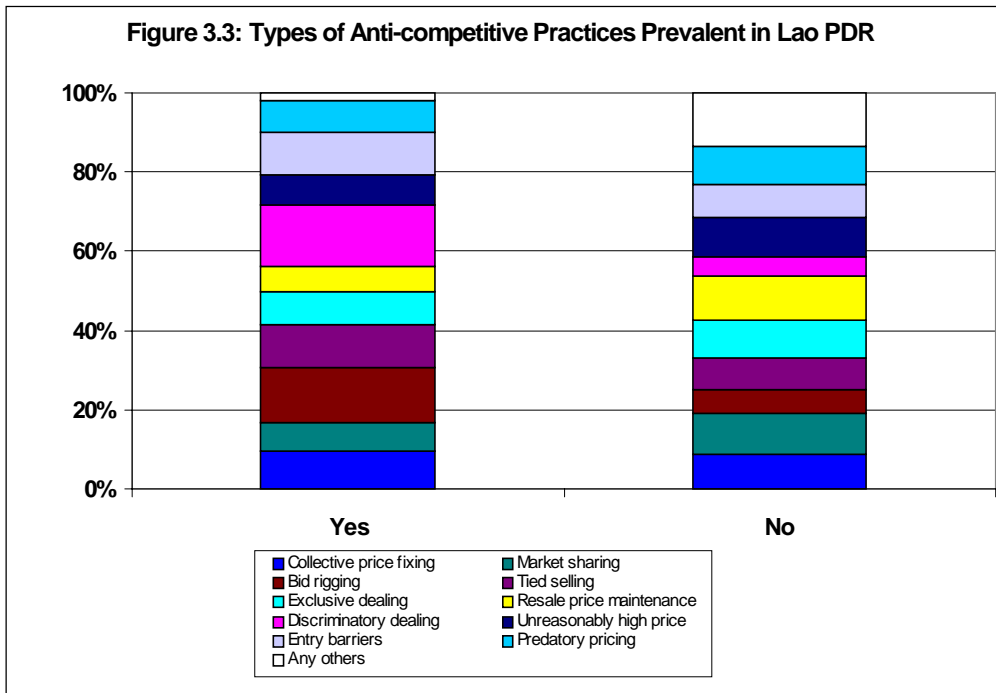
Likewise, most of the respondents believed that effective implementation of legislation that seeks to check anti-competitive practices, even if only to some extent, could go a long way in benefiting all sections of society, including consumers and business. In addition, an overwhelming majority is also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

The Extent of Anti-competitive Practices in Lao

An overwhelming number of consumers, businessmen and policy makers opined that anti-competitive practices are prevalent in Lao. Of the 50 respondents, 36 respondents (70 percent) viewed that anti-competitive practices prevail in the Lao market. However, the perceived extent and the degree of anti-competitiveness varied across respondents. While 27 percent of respondents stated that the extent of anti-competitive practices was huge, around 43 percent stated that anti-competitive practices were significant. Fourteen percent viewed that moderate anti-competitive practices did prevail. An eight percent stated that insignificant anti-competitive practices prevailed, while another six percent did not know what answer to give. Only two percent of the respondents thought that there were no anti-competitive practices in Lao.

Discriminatory dealing and bid-rigging were termed as the most common forms of anti-competitive practices prevalent in the country. However, a majority of the 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 anti-competitive practices, respondents viewed that tied-selling, entry barriers to new ventures, and collective price-fixing were also common in Lao.

A large number of respondents pointed out that sectors with more market participation, such as domestic



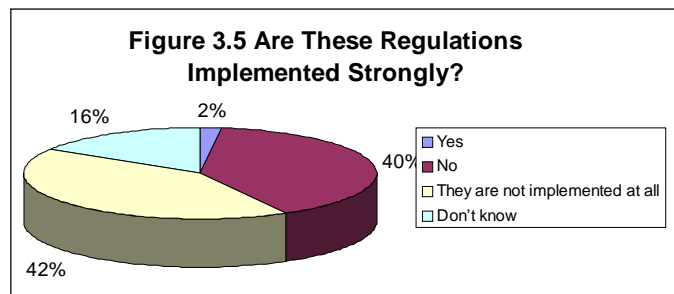
the country substantially. However, only 42 percent of the respondents were aware of the existence of any law or regulation checking anti-competitive practices in the market. Half of the respondents were not sure whether such laws and regulations exist, while eight percent gave a negative answer. Despite this, references to a few laws were made during the course of interviews, to double-check the

trade, and sectors with large fixed costs, such as heavy industries, the construction industry and telecommunications, are substantially plagued by anti-competitive practices. Other sectors perceived to be substantially affected by anti-competitive practices include the entertainment industry, educational services and processing industries. All of the respondents, including rather informal officials, could not, however, cite specific examples to support their response.

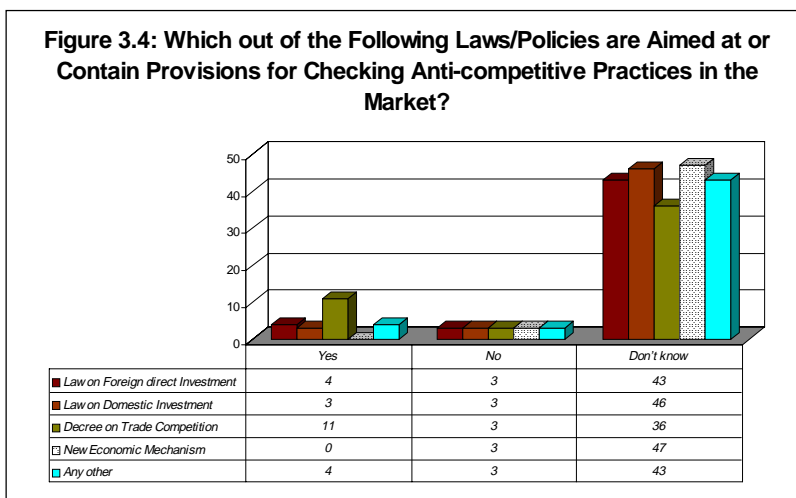
awareness level of the respondents as regards the regulatory framework. It was found that many respondents who were aware of the laws were not

Extent of Awareness Regarding Relevant Legislative Framework

Except for the Prime Minister's Decree on Trade Competition, which was promulgated recently in 2004, no other laws or regulations in Lao directly mention or regulate anti-competitive practices, though many of them do affect the competitive conditions in



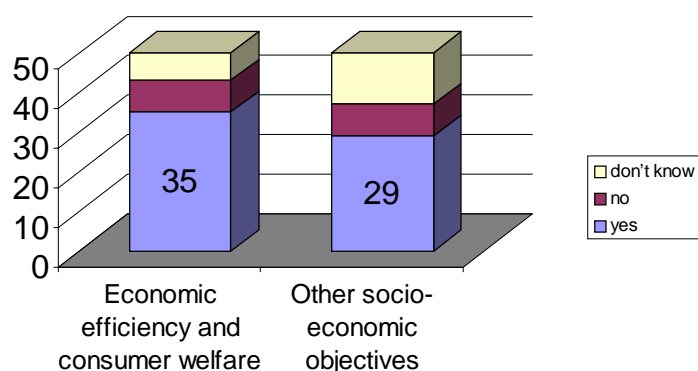
able to relate them to anti-competitive practices. Only eleven respondents referred to the PM's Decree on Trade Competition, while a majority of them could not make up their minds even after hearing the names of the laws and policies.



No consumer was aware of the promulgation and the upcoming implementation of the Decree. The percentage amongst the business community was also extremely low, even though they are the ones who would have to comply after the Decree became effective. Those who were aware were mostly government officials, in addition to some college teachers.

Consequently, almost every respondent was very sceptical of the enforcement practices in Lao. Eight percent of them conceded that the implementation of

Figure 3.6: What Should Be the Objectives of the Competition Law?



mostly government officials, also added 'economic development' and 'regulation of businesses' when being asked whether there was any other socio-economic goal they wanted to mention. This shows that the mindset of the Lao people is heavily affected by the communist economic planning style. Some of the businessmen were not sure whether regulation of business should be given more focus now that the country is under going market reforms. On the other hand, most government officials were of the view that, unless the State keeps an eye on the economy, businesses might start seeking unjust rents and the anti-competitive practices would become more prevalent.'

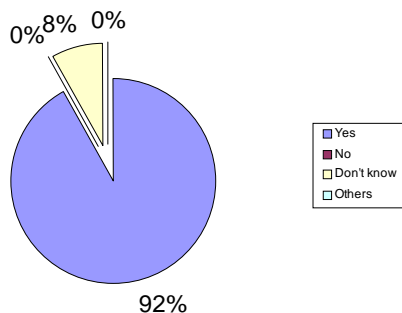
laws by relevant government authorities, not limited merely to anti-competitive practices, was very poor. All the groups of respondents, including policy makers, also asserted that proper implementation of laws aimed at protecting the general interest of businesses and consumers would be to the benefit of all.

The Necessity for a Comprehensive Competition Law and its Objectives

An overwhelming proportion of the total respondents (96 percent) viewed that a comprehensive law dealing exclusively with competition issues should be enacted in Lao. Only two consumers were not sure if such a law would be needed. All government officials and businesspersons responded that a Competition Act is the need of the hour. They believed that the enactment of such a law would help increase the competitiveness of business enterprises in Lao, which is very important in the context of the country's integration process into the regional and global economy.

While a majority in all three groups of respondents agreed that 'business efficiency and consumer welfare' should be the objectives of such a competition legislation, if it were to be adopted, many of them,

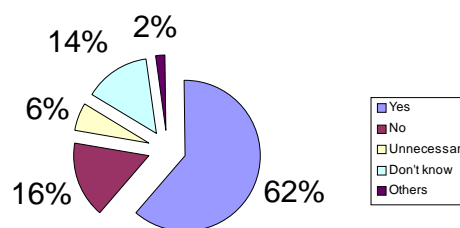
Figure 3.7: Should the Competition Law Regulate Foreign Firms Doing Business in Lao as well?



Scope and Coverage of the Competition Law

Fifty percent of the respondents unanimously echoed that competition law should cover all business sectors in Lao, i.e., both private and government entities. They opined that such an approach would mean that a level playing field is ensured for all players in the

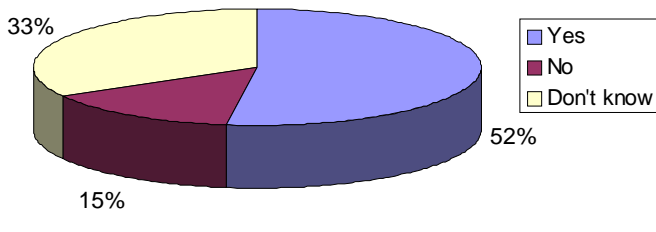
Figure 3.8: Should We Have Separate Regulatory Rules for any Specific Sectors?



market, aiding the economy's reform process from a centrally planned mechanism centred on the state sector to one relying on market forces and signals. Most of the remaining respondents (84 percent) thought that some reservations should be made for non-profit making undertakings (with a social mandate), since they are not enterprises by virtue of profit and should not be treated at par with normal firms. Some of them (20 percent) were of the view that small and medium enterprises should be given some preferential treatment under the law, while 16 percent appeared to favour the export-oriented enterprises. Almost all of the respondents (92 percent), however, thought that the Lao Government should have jurisdiction over foreign firms committing competition abuses in the Lao market.

On the other hand, while more than half of the respondents (62 percent) thought competition law should also take care of issues within specific sectors such as telecommunications, electricity and water, respondents who were more informed of the technical and competitive aspects of these particular markets

Figure 3.9: Should the Competition Law Deal with Issues Related to Intellectual Property Rights as well?



Ministry of Commerce). Half of the respondents argued for autonomy of the competition authority, so that the latter could have effective control over the powerful SOEs or foreign firms, while an equal number thought that the authority should be at the committee or department level, under the Ministry of Commerce, given the resource and capacity constraints in Lao. Others could not give a definite reply; some agreed that the authority should be set up as an Ombudsman so that government officials could not easily misuse their powers and the political balance of competitive forces in the market is safeguarded.

opted for sectoral regulation outside the purview of competition law. Some consumers were, however, not sure how regulation and competition should interface, while some government officials remained undecided.

The question as to whether competition abuses related to IPRs should be included within the competition law or not proved tricky to most. Even after being explained how IPRs could be misused to tilt the competitive balance unjustly, only half of the respondents could come to a final positive reply. One-third of them remained undecided, while around 15 percent thought that IPR issues should be regulated separately.

The Competition Authority

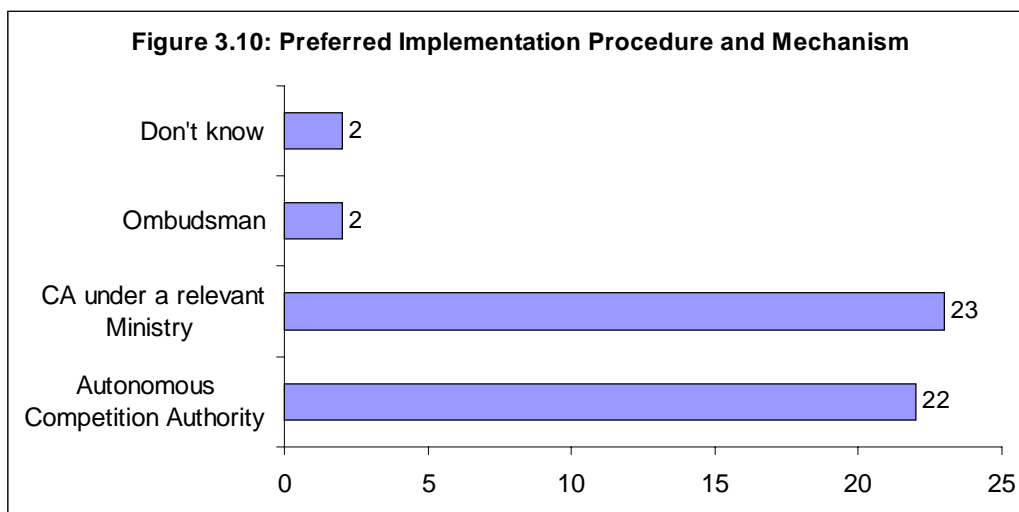
All the respondents attributed great significance to the role of enforcement if the competition law was able to bring the desired benefits to the economy and welfare of the consumers. They, therefore, argued that a strong and competent competition authority should be set up on a permanent basis to discharge all the responsibilities, as will be stipulated by the competition law. There was, however, a divided viewpoint on whether the competition authority should be an autonomous agency or whether it should be set up under a relevant Ministry (in this case, the

Ministry of Commerce). Half of the respondents argued for autonomy of the competition authority, so that the latter could have effective control over the powerful SOEs or foreign firms, while an equal number thought that the authority should be at the committee or department level, under the Ministry of Commerce, given the resource and capacity constraints in Lao. Others could not give a definite reply; some agreed that the authority should be set up as an Ombudsman so that government officials could not easily misuse their powers and the political balance of competitive forces in the market is safeguarded.

Nonetheless, irrespective of the structure of the competition authority, whether autonomous or under some ministry or department, a large proportion of the respondents viewed that the competition authority should have both investigative and adjudicative powers. Figure 3.12 presents the responses of the interviewees.

On the question of whether the agency should be entrusted with powers to deal with both anti-competitive practices and consumer protection issues, a majority supported the idea. They opined that this would help address the resource and capacity constraints currently facing Lao and, at the same time, effectively aiming towards the ultimate goal of promoting consumer welfare in the country. Around one-fourth of the respondents, thought, however, that the two types of issues should be dealt with separately, by separate legislations and separate governmental agencies. They argued that while competition is yet to be a priority area for the Lao economy, due to the small industrial base and the low sophistication level of market behaviours, consumer protection is a much more pressing issue. Emphasising the worrying status of consumer welfare in the country, as well as the prevalence of consumer abuses at the local levels and in the informal market, the respondents stated that

Figure 3.10: Preferred Implementation Procedure and Mechanism



Box 3.1: Telecom Price Hike: Whose Fault?

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

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

There are now three main telecommunication service providers in Lao, but it seems that competition has not produced a positive impact yet. The prices are the same among all providers. The recent call cost rise was uniform among all companies. According to telecom experts, normally the service price of telephone calls will decrease if the companies have been established for a long period of time and have got more subscribers. Profit margins also increase,

allowing the prices to become lower and lower. In Lao, this theory seems to work the other way round.

The people responsible should explain the reason behind the lack of business competition or, at the very least, they should inform customers in advance about price rises, in order to avoid conflict between the consumers and providers. If they don't understand, consumers may go to the business premises and use inappropriate words to describe the companies and their employees.

A telephone service provider representative recently said that one reason why the companies had to increase their prices was because of the depreciation of the Lao kip against the US dollar. Another reason was that service providers needed more funding to continue expanding their networks. Despite this, one company reported last year it could earn about 300 billion kip, including a profit of about 120 billion kip. Providers seem to be making a good profit!

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

Source: www.vientianetimes.org.la

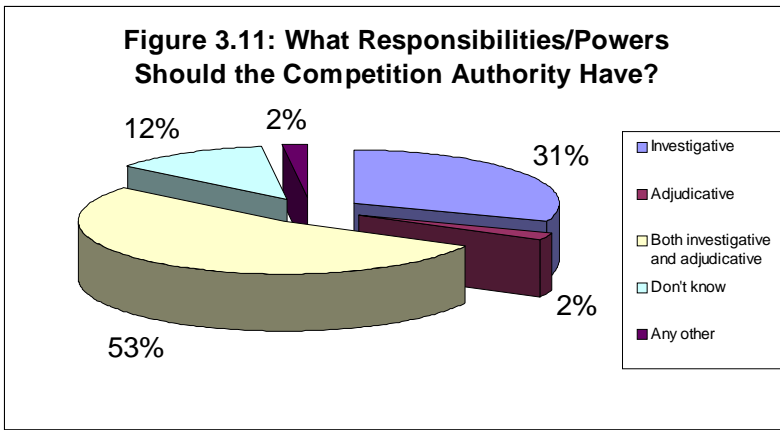
the government should have realised the need of enacting a consumer protection legislation long before.

Other Implementation Issues

Despite the recognition by a majority of the respondents that anti-competitive practices are prevailing unchecked, only 27 percent of the respondents agreed that there should be an outright ban on all anti-competitive practices. The others argued that such a prohibition would not be good for the general economy and social welfare and that there should be exemptions for cases related to efficiency, public welfare and larger national interests. About 51 percent of the respondents thought there should be a ban some of the anti-competitive practices, with exemptions being made on the ground of public interests. Besides, 72 percent of the total respondents stated that being in a position to abuse power should not automatically invoke the application of the competition provisions. They held that dominant

firms breed efficiency and such a position in a given market is not in itself an offence. Rather, their activities must be monitored to ensure that they do not abuse the economic power they possess, in order to cause damages to their weaker counterparts in the market.

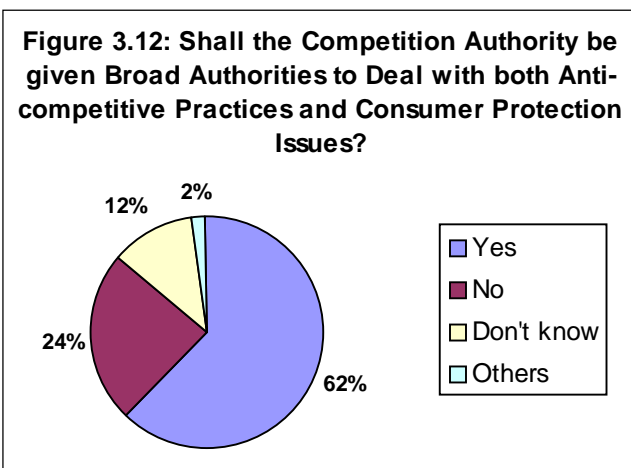
However, more than half of the respondents did suggest that mergers, acquisitions or any other form of combination involving two or more big players should be reviewed and monitored to check whether they would result in substantial lessening of competition in the relevant market. Twenty percent of the respondents, on the contrary, were of the view that even such big M&A cases should not be prohibited, arguing that the small size of the economy requires some big firms that would be able to compete internationally, to increase the overall competitiveness of the economy.



Competition Law

The NEM created an environment conducive to entrepreneurship, giving rise to the emergence of a vibrant, though small, business sector. This sector of businesses and entrepreneurial firms in Lao plays a vital role in creating employment and income and establishing a business climate receptive to foreign investors. Though the market economy in Lao has not reached the sophistication level like other countries with a longer history of liberalisation and privatisation, it has gone a long way since the landmark of 1986, with a larger diversification in forms of ownership, types of market players and more complicated trading behaviours.

Recognising that these new developments can have both positive and negative effects on the welfare of the common people in the country, the GoL has tried to enable the competitive trading environment and promote competition by revising old policies and laws or promulgating new and modern legislation. On the other hand, the GoL has also tried to adopt new measures to prevent rent-seeking behaviour and private capture of the liberalisation process in Lao. In this direction, a Decree on Trade Competition was drafted during 2002-2003 and passed by the Prime Minister in February 2004, supposed to become effective from August 2004.



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

Competition).

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

The Decree consists of five Chapters and 17 Articles. It would apply to the sale of goods and services in business activities (Article 4 – *Scope of Application*) by all business entities which have established and operated a business in the Lao, no matter whether they are state-owned, privately-owned or foreign-invested, etc¹⁵. Some specific sectors or business, however, may be exempted for socio-economic or security reasons (Article 13 – *Exemption*).

The Decree, among other things, defines the concept of market dominance, monopoly, merger and acquisition and unfair trade practices and provides for the establishment of a Trade Competition Commission, which will be responsible for the implementation and enforcement of the Decree.

Prohibited Practices

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

Monopoly, according to the Decree, is constituted when a business dominates the market individually or in collusion with other businesses (Article 2 – *Definitions*). This definition, however, is not in line with the conventional economic concept of

'monopoly' – a situation where there is **only a single** seller in a market. Another drawback of the Decree is to use the concept 'market' without clearly defining it.

Be that as it may, 'monopolising' is considered to constitute the intent underlying a trade practice prohibited by the Decree. These-prohibited practices include mergers and acquisitions, elimination of other business entities, and collusive arrangements.

Merger and Acquisition

It is prohibited for a businessperson to monopolise the market in the form of a M&As that destroys competitors or substantially reduces or limits competition. (Article 9 – *Merger and Acquisition*). However, it is not provided anywhere in the Decree as to who is considered to be a 'competitor', or when it can be said that competition is substantially reduced, or limited, or who can decide that competition has been substantially reduced or limited (the Trade Competition Commission?). This lack of clarity might make it practically impossible for the Decree to be enforced in the future in M&A cases.

Elimination of Other Business Entities

Causing losses directly or indirectly by conduct such as dumping, limiting or intervening with the intent to eliminate other business entities is also prohibited by the Decree (Article 10). However, as with other prohibitions, the Decree failed to clearly define the nature of the conduct, for example, what constitutes 'dumping', and failed to clearly prescribe the threshold by which such conduct will violate the regulations. Intent, in this case, 'eliminating other business entities', is required to be proved in any case of restrictive trade practices. However, relying completely on 'intent' to prove that a conduct is restrictive by nature and that such conduct violates the competition rules would provide the leeway for arbitrary decisions or rulings in future competition cases, especially when government officials or judges may be tempted by bribes or lobbying activities. Such ambiguity, sadly enough, is quite common throughout the Decree.

Collusive Arrangements Jointly Undertaken by Two or More Business Entities

The Decree prohibits any business entity from colluding or making arrangements to engage in any unfair trade practices that will create a monopoly in any market of goods and services (Art. 11 – *Collusive Arrangements*). These practices include (i) price-fixing; (ii) hoarding of goods or limiting the production, purchase, sale, distribution or importation of goods and services; (iii) collusive tendering; (iv) fixing conditions that, directly or indirectly, force the other

producers to reduce production, sale of goods or services supply; (v) limiting the customer's choice to purchase, sell goods and receive services; (vi) exclusive dealing; (vii) market-sharing in restraint of competition; (viii) territorial exclusivity in licensing agreements; (ix) entering into arrangements to fix conditions or the manner of purchase and sale of goods or services to restrict other business entities; and (x) any other acts that are contrary to the trade competition regulations prescribed by the Trade Competition Commission.

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

The Trade Competition Commission

The Decree provides for the establishment of a Trade Competition Commission, chaired by the Minister of Commerce, consisting of relevant parties of the trade sector and a number of relevantly experienced people appointed by the Minister of Commerce. The Commission will have its office and its permanent secretariat set up within the Ministry of Commerce (Article 5 – *The Trade Competition Commission*). Its responsibilities and powers would be to:

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

- xii) Implement any other duty and responsibility as may be assigned by the Government.

Penalties

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

Interestingly, though the Decree provides for consumers to submit complaints to the Trade Competition Commission for any wrongful competitive behaviour of business entities, it does not provide for any measure to recoup the losses or damages done to the consumer as a result of such anti-competitive practices by enterprises. This is a big drawback against the Decree's objective of "protecting the rights and legitimate interests of the consumers...in Lao".

Current Status of Implementation

Though the Decree was supposed to enter into effect since August 2004, until now its enforcement agency – the Trade Competition Commission – is yet to be set up and no further implementation guidelines have been released. To make matters worse, competition awareness, not to mention technical expertise, is particularly low in Lao. This is not only because competition is still a new kid on the block in the country, but also because of the low quality of the education system as well as the remaining control of the State over information. This necessitates the requirement of having more technical assistance, especially in the form of capacity building activities, if the Decree is to be effectively implemented to bring out its merits to the society.

The Way Forward

Competition is still a completely new concept in Lao and different stakeholders have different views on its importance for economic growth and enhancing the competitiveness of Lao enterprises. It is indeed disappointing to note that the captains of the Lao economy, the policy makers, are themselves not too enthusiastic about the role an effective competition regime can play.

Many years of intrusive and restrictive government intervention in the industrial and trade sectors has resulted in a serious lack of competition culture in Lao. This means that building a strong competition culture is the first step in ensuring that competition starts to play a more important role in the Lao economy. Building a competition culture is a difficult task and the government alone is not capable of doing this.

The government, thus, must recognise this and try to generate the interest of and assign appropriate roles to the different stakeholders – the business community, the media and the consumer – and raise their awareness *vis-à-vis* competition issues. It should proactively seek the opinions of these stakeholders, who are at the heart of the competitive process, whose interests and stakes are closely associated with that process, and suitably incorporate these opinions in the government's decision-making process.

The consumers can play an important role in developing a competition culture. But, given the low level of awareness of consumers and the complicated bureaucratic administrative procedures, as well as the absence of a consumer movement in Lao, their expected role seems to be difficult to be achieved. Hence, information dissemination and consumer education, simplification of the administrative procedures and establishment of a special agency dealing with consumer issues is required to strengthen the consumer movement.

The business community, one of the main stakeholders, seems to be apprehensive of a strong competition regime. Many business people argue that a strong competition regime will restrict their growth and the Lao economy is not at the stage of having such a regime. It seems clear that the business community needs to be made aware that it too is going to gain through enhanced efficiency, if there is appropriate competition legislation. Compliance education for the business sector is also a must, once there is a proper legislation on competition in place in the country, so as to reduce the transaction costs for the business (for compliance) as well as to reduce the enforcement costs for the competition agency, saving on scarce resources for other purposes.

It is beyond doubt, from the analyses in the preceding Chapters that the future of competition in the Lao economy depends, to a large extent, on whether the country has appropriate competition legislation and a national competition policy or not. However, as can be seen from the various weaknesses in the recently promulgated Decree on Trade Competition, as well as the bad shape of the process for putting the Decree into operation, the Lao Government does not appear to have done a good job. A more appropriate attitude towards the issue should be adopted. Or, at least a

thorough diagnosis of the health of the market, as well as a survey of the competitive behaviours of enterprises and public perceptions, should be undertaken as a proper preparatory process.

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

The possibility of having the three main stakeholders – the consumer, the business and the policy makers – reach a common consensus on various issues relating to competition is the key to the effective implementation of a competition law. The results from the field survey indicate that the views of the stakeholders largely

converge on most issues. But, there are several aspects on which their views differ. It is on such issues that a common consensus would be warranted. This can be brought about by involving all sides in informed debates and open discussions. This, in turn, will require that all stakeholders have the capacity to understand the issue and put forward their fears. Thus, capacity building of the different stakeholders will form an integral part of developing a competition culture in Lao.

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

Notes:

- * This chapter has been researched and written by Leeber Leeboupao of the National Economic Research Institute (NERI), Lao PDR, with special support from Alice Pham of CUTS C-CIER. The author acknowledges the support received from Nitya Nanda of CUTS C-CIER in designing the study and his comments and suggestions on the draft. Comments and suggestions were also received from the members of the Project Advisory Committee.
- 1 Resolution of the 5th Plenary Meeting of the Lao People's Revolutionary Party Central Committee (IV Session) on the New Mechanism of Economic Management, 1991
 - 2 Ibid.
 - 3 In October 2002, the National Assembly of Lao approved amendments in the Tax Law, introducing turnover tax rates, which differ between domestically produced and imported goods, requiring that imported goods be subject to 2-10 percentage points higher turnover tax than domestically produced goods. This is equivalent to raising import duties from a protectionist point of view. At the same time, the GOL is lowering import duties by about the same rate under the CEPT scheme, resulting in the Government pursuing seemingly contradictory policies, neutralising each other.
 - 4 George Fane, *International Trade Policy in the Lao PDR*, Australian National University 2003.
 - 5 The Prime Minister's Decree No. 46/PM regarding the Implementation of the Law on Promotion and Management of Foreign Investment in Lao, 23 March 2001, and Decision No. 013/CPC by the Chairman of the Committee for Investment, Foreign Co-operation and Domestic Investment, 27 February 2002.
 - 6 Data not available.
 - 7 Indochine Insurance, a Cambodia-UK joint venture, with head office in Phnom Penh, has set up a representative office in November 1999. As of August 2001, it does not conduct any business yet.
 - 8 For more details on this, see Sectoral Policies.
 - 9 Investment decisions about the extent of shareholding are made according to normal commercial principles based on projected rates of return, project risk profile and availability and terms of finance.
 - 10 However, this function conflicts with EdL's domestic supply business, obscures its commercial performance and distracts management from its primary role. Future policy is for EdL to focus on the domestic market (including power trade with neighbouring countries involving its own grids and surplus generation. Accordingly, the GOL is examining the possibility of an alternative agency to assume GOL's IPP shareholdings and apply professional commercial discipline as appropriate for the nature and size of the investments.
 - 11 This function started very recently, since the Government decided to transfer the ownership of those State-owned commercial banks from the Bank of Lao to the Ministry of Finance.
 - 12 Pradeep Mehta and Rajeev Mathur, *Competition Policy and Consumer Welfare*, in "Towards A Functional Competition Policy for India - An Overview", edited by Pradeep Mehta, CUTS, 2004.
 - 13 Ratnakar Adhikari, *Prerequisite for Development-oriented Competition Policy Implementation: A Case Study of Nepal*, UNCTAD (2004).
 - 14 CUTS, *Methodology (Survey Component) for Country Report*, 7Up2 Project, 2004.
 - 15 This scope of application was never clearly defined in the Decree in one Article. The scope of application mentioned in the text of the report was on the basis of the authors' overview of the whole Decree.