

**Promoting Competition  
Policy & Law in Lao PDR**  
A Civil Society Perspective

#0601

**CUTS**  
International



National Economic Research  
Institute (NERI)

# Promoting Competition Policy & Law in Lao PDR A Civil Society Perspective

CUTS Centre for Competition,  
Investment & Economic Regulation  
**CUTS C-CIER**



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# Promoting Competition Policy & Law in Lao PDR

## *A Civil Society Perspective*

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# 1

## *Introduction*

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### **Competition, Competition Policy and Law**

Competition has increasingly been recognised as the cornerstone of thriving economies throughout the world. It is essential for the efficient allocation of resources, helps to promote innovation, increases factor productivity, creates more employment and income earning opportunities, enables small and medium enterprises (SMEs) to participate in the market, and is thus a useful tool for poverty reduction. The selling point of competition, however, is that it offers lower prices, better qualities, and freedom of choice to customers.

This significance of competition, unfortunately, was not realised until very recently by many developing countries and previously centrally planned economies. Until then, these countries had relied solely on the public sector and monopolistic State-owned enterprises (SOEs) as the touchstone of the economies, giving them preferential treatment and subsidies, suppressing market competition to the maximum extent possible. Mismanagement, heavy State intervention, and the lack of business motivation certainly resulted in great losses, and more severely, led to major socio-economic crises. These countries were then forced to adopt development strategies that acknowledges/recognises the role of the private sector and the significance of market processes and competition, enabling widespread market participation, trade liberalisation, and economic integration into the world.

However, left to their own, the normal operation of market forces may not lead to an increased economic efficiency and fair distribution of welfare, due to a multitude of reasons. Market failures may prevail instead, or market participants may collude, or abuse their market positions to distort and limit competition for their own benefits. It is in this context that the role of competition policy and law arises.

Competition policy refers to those government measures that directly affect the behaviour of firms and the structure of the industry. It is an integral part of economic policy, and may embrace several elements such as trade liberalisation, industrial, investment, and privatisation policies, which have the main objective of preserving and promoting competition as a means to ensure efficient allocation of resources in an economy, resulting in the best possible choice of quality, the lowest prices, and adequate supplies to consumers.

Competition law, on the other hand, is a body of legal rules and provisions that ensures fairness and freedom in the marketplace by regulating the competitive conduct of firms, prohibiting anti-competitive arrangements and abuses of dominance, which impede the competitive process and hamper the legitimate rights and interests of other market players, including the consumers. Competition law is a quintessential element of competition policy.

**Competition Policy = Economic Policies Affecting Competition +  
Competition Law**

### Lao PDR

Lao People's Democratic Republic (Lao PDR), with an area of 236,800 km<sup>2</sup>, is a small landlocked country situated at the centre of the Indochina peninsula, sharing borders with China, Vietnam, Cambodia, Thailand, and

Myanmar. The capital city is Vientiane. 70 percent of the total territory is mountainous, richly forested, and/or covered by rivers.

In 2003, Lao PDR ranked 135<sup>th</sup> out of 175 Less Developed Countries (LDCs) in the United Nations Development Programme (UNDP) Human Development Index (HDI), making it one of the poorest countries in Asia. Lao PDR has been a centrally planned economy since its establishment in 1975 until 1986,

<b>LAO PDR PROFILE</b>	
Population	5.7 million ***
GDP (Current US\$)	2 billion US\$***
Per Capita Income (Current US\$)	320.0 (Atlas method)*** 1,730 (at PPP.)***
Land Area	236.8 thousand sq. km
Life Expectancy	54.5 years**
Literacy	66.4 (of ages 15 and above)**
<i>Sources:</i> - World Development Indicators Database, World Bank, 2004 (**) For the year 2002 (***) For the year 2003	

when the country made a drastic turn to adopting a market-based economic development mechanism.

Lao PDR has been moving in the direction of promoting competition by various policy tools. The Government of Lao (GOL) has, in several instances, showed its commitment to ensure a fair trading and competitive environment in the economy. Most significant of all is the issuance of the Prime Minister's Decree on Trade Competition in early 2004, which, though still a subordinate legislation, is the first step towards adopting a full-fledged competition policy and law, as well as building a healthy competition culture in the country.

### **The 7Up2 Project**

The 7Up2 project, whose full name is 'Advocacy and Capacity Building on Competition Policy and Law in Asia', is a multi-stakeholder initiative, implemented by Consumer Unity & Trust Society (CUTS), with support from the State Secretariat for Economic Affairs, Switzerland (SECO), the Swiss Competition Commission (COMCO), and the Department for International Development (DFID), UK, aimed at accelerating the process towards a functional competition policy and law for selected countries in Asia and advancing an enabling environment for the law and policy to be enforced in a better manner. Lao PDR is one of the project countries, besides Vietnam, Cambodia, Bangladesh, Nepal, and India. In Lao PDR, the National Economic Research Institute (NERI) is the country partner for the project.

The 7Up2 project is an action-orientated programme that aims to promote, through research based advocacy and capacity building activities:

- Structures and actors able to advocate effectively for competition legislation;
- Developments/changes in national competition policies and laws where they exist;
- Training facilities in the countries on competition issues; and
- Meaningful dialogue between civil society and government officials.

As part of the 7Up2 project, in sequence to a bigger, more comprehensive Country Report on the Competition Scenario in Lao PDR, this Advocacy Document aims to be a simple and concise publication that will provide a synopsis of the competition scenario in the country (as summary of the research findings presented in the Country Report), and put across key recommendations to carry forward the national agenda on competition policy and law in the country.

## 2

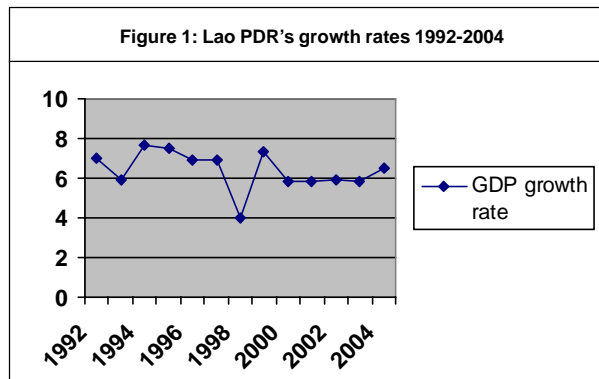
### *Lao Economy at A Glance*

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Though Lao PDR belongs to the LDCs group, the country's economic performance, so far, has been fairly good. Indeed, from 1986 until now, Lao PDR has maintained a relative macroeconomic stability, with a high growth rate, comparatively stable price levels and exchange rate, and a considerable increase in foreign direct investment (FDI) inflows, which have contributed greatly to the improvement of the living standards of the Lao people.

Lao PDR 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 Gross Domestic Product (GDP) per capita increased from about US\$200 in 1990 to US\$320 in 2003.

Lao PDR's international economic relations have also expanded. In 1997, Lao PDR became a full member of the Association of South-East Asian Nations (ASEAN). In 2004, Lao PDR 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). Within industry, the sectors of manufacturing, electricity, construction, mining, and quarrying account for most of the GDP. The backwardness and the small size of the industrial sector in Lao has resulted in an economy heavily dependent upon imports especially in consumer goods, which come mainly from Thailand, China, and Vietnam.

### Major Economic Policies

- In **1986**, the New Economic Mechanism (NEM) was adopted as a comprehensive economic reforms programme to develop the country till the year 2000.

NEM marked the transformation of the Lao economy from a centrally planned system to an open market-based system. It was built around three main pillars: (i) macroeconomic stability and fiscal adjustment; (ii) private sector encouragement; and (iii) public sector reorganisation. This affected and required amendments in all the other major policies of the government, including: SOEs privatisation, investment, and trade liberalisation and the enactment of the necessary legal and regulatory framework in Lao PDR.

<i>Industrial Policy</i>
<p>Lao’s industrial policy focuses on three main elements: (i) promotion of small and medium-sized enterprises (SMEs), (ii) import substitution, and (iii) targeting industries and specific products for promotion.</p> <p>To reduce the high level of import-dependence of the economy, the GOL has been following protective measures such as increased tariff barriers on overseas goods, quantitative restrictions on imports of goods competing with domestic production, preferential tax treatment for domestic manufacturers, and preferential government procurement of domestically produced goods. These policies, though essentially aimed at promoting domestic industrial production, discriminated against foreign competitors, were against the trade liberalisation commitments made by the GOL, and were taxing domestic consumers and downstream producers instead.</p>

### *Trade Policy*

The external trade regime of Lao PDR has also undergone a considerable degree of liberalisation. Private sector participation in external trading activities is now allowed, the network of state trading enterprises is restructured, and their monopoly of foreign trade has eventually been dismantled in a large number of commodities. Quantitative Restrictions (QRs) on import goods have been abolished substantially, while most of the 'necessary' goods can be imported. The tariff structure has been greatly rationalised, particularly import duties have been greatly reduced. The system of restrictive export licensing to protect domestic producers has now been abolished and the elaborate system of import licensing has been simplified and relaxed.

However, in practice, public officials can, and do, intervene in a wide range of decisions affecting all private trading activities, including that of exporters.

- Since **1987**, Lao's domestic trade has been opened to private and co-operative traders, and government administrative bodies have been instructed not to interfere in trade. The previously imposed restriction on the free movement of agricultural produce from one province to another has been removed. The GOL has also adopted the 'one market, one price' principle and lets all prices be determined by the market, except for some strategic goods.
- In **1990**, the GOL adopted a Decree on the Conversion of SOEs to Other Forms of Ownership (Decree No. 17), which provided that most SOEs were to be transformed into enterprises under other forms of ownership, through leasing, sale, and joint ownership; all by open tendering.

### *Investment Policy*

The investment related laws in Lao PDR has laid bases for a fairly liberal investment regime that allows foreign participation in most sectors of the economy. Foreigners can hold the majority, sometimes up to 100 percent of capital in firms operating in most of the sectors. The laws also provide foreign investors with certain incentives such as personal income tax rate at a flat 10 percent, instead of up to 40 percent in other cases.

The Domestic Investment Law, however, 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'.

- In **January, 1991**, the GOL notified a ‘Disengagement Plan’, which emphasised on: (i) privatising most large SOEs, except those of ‘strategic’ significance; (ii) closing down heavy loss-making SOEs that could not operate without subsidies and loans; and (iii) strengthening the finance of those that remained under state control.
- In **1991**, a new Constitution was enacted, guaranteeing state protection to all forms of domestic and foreign investment in the country, guaranteeing the property rights of all individuals and organisations, and encouraging all economic sectors to compete fairly and co-operate with one another in carrying out their production and business activities.
- In **1994**, the Business Law No. 03/NA was passed, upholding 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).

## 3

### *The Lao Market*

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The weakness of the Lao economy is partly rooted in the fact that it is actually ‘a group of separated small segments of sub-national economies’, in addition to being discouragingly small. Most of the population is concentrated in regions that are comparatively developed, economically, such as Vientiane, Luan Prabang and Savanakhet, where income levels and consequently, living standards are higher. The rest of the country is without 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, are practically isolated due to the deficient infrastructure. The country’s lack of territorial access to the sea, remoteness and isolation from world markets, which inflate transportation costs and lower effective participation in international trade, also negatively affect competition and development.

#### **Manufacturing Sector**

The manufacturing sector in Lao PDR is quite small and backward with very few major industries. As of 2003, there are 25,807 manufacturing enterprises in the country, 97 percent of them being small enterprises (household units). The large and medium enterprises are mainly SOEs or joint ventures and 100 percent foreign companies. The capital base of the private sector in Lao PDR is very low and the market demand is very small and segmented. The following table presents the market structure in the major manufacturing sectors in the country:

**Table 1: Market Structure of the Main 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)		13%	34.2%	51.9%	Registered production capacity in 2004 (pieces per year)
2. Cement	Concentrated—03	19.8%	44%			Registered production capacity (with the third player starting its operations from June 2004)
3. Beer	Monopolistic—01	2%	98%			Sales volumes over the years from 1997-2002 (bottles per year)
4. Tobacco	Competitive (with competition from imports)—02	40%	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%			Sales volume from 1991-2000 (motorcycles per year)
6. Steel	Competitive—11		15-20%	n/a <sup>1</sup>	n/a.	Production capacity in 2004 (bars per year)
7. Electricity Generation	Highly concentrated with dominant government player: - Electricité du Lao (EdL) — 42% - Independent Power Producers (IPPs) – 41.5% - Provincial authorities		42%			Electricity generation volume in 2000 <b>Note:</b> 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)

(Various sources)

(n/a: data not available)

Overall, structural competition has not been as much a source of concern for Lao's manufacturing sector as behavioural competition. An SME survey of 72 manufacturing enterprises (42 food processing enterprises, and 30 non-food) in the Vientiane Municipality, undertaken by NERI, revealed that only 12.7 percent of the surveyed enterprises thought that they didn't have any competitor in the city; 28.2 percent said that they have some competitor; while the majority, 59.1 percent, said that they have many competitors. While 66.2 percent of the surveyed enterprises thought that the number of competitors is on the increase, i.e., the market structure is turning more competitive, only 5.6 percent thought that there were now fewer competitors and the remaining 28.2 percent thought that there had been no changes. A majority thought that competition from domestic rival enterprises is the strongest, rather than competition from Thai, Chinese, and Vietnamese products.

## Services & Utilities

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

**Table 2: Market Structure of Various Service and Utility Sectors in Lao PDR**

Industry	Type of Competition (Number of Operators)	Market Share	Calculated by
Banking	Small market dominated by State sector	- 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	Assurance General du Lao (AGL)	
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	- 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			
Public Switched Telephone Network	Oligopoly with 01 incumbent operator	- LTC (Lao Telecoms) – 86.5%	Number of subscribers as

(PSTN)	dominating the market	- ETL (Entreprise des Telecommunications du Lao) – 12% - LAT (Lao Asia Telecom) – 1.5%	of December 2004
Cellular	Oligopoly with 01 incumbent operator dominating the market	- LTC – 66.6% - ETL – 19.6% - Millicom – 10.2% - LAT – 3.4%	Number of subscribers as of December 2004
Internet Services	Oligopoly	- LTC – 75% - PlaNet Online – n.a. - GlobeNet – n.a.	Number of subscriber as of September 2001
Cable Television	Duopoly	- Electronic Yang Jin Cheng Du Company of China – n.a. - Thailand's UBC pay Direct-to-Home service – n.a.	
<b>Energy</b>			
Electricity Generation	Dominant state player	- EdL (Electricite du Lao) – 42% - Various IPP projects (with EdL as a partner) – 56% - Provincial generators – the remaining shares	Total installed capacity and electricity generation in 2000
Electricity Transmission	State monopoly	EdL	
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	- Lao State Fuel – 47% - Caltex - Shell - Indochina	Sales volume in 2000
<b>Water</b>			
Urban Water Supply	Provincial government monopoly	<i>Nam Papa</i> ('water supply enterprise') SOEs	
Rural Water Supply	n.a.		Normally assisted by international NGOs on non-profitable basis

(Various sources)

(n/a: data not available)

## **Policy-induced Barriers to Competition**

Some domestic laws and regulations in Lao PDR pose barriers to entry. Many manufacturing as well as service and utility sectors that display high market concentration receive state protection in various forms. These include state control and quantitative restriction, high tariffs imposed on competing imported products, stringent licensing conditions, or changes in the tax regime that benefit domestic players.

Certain laws or administrative decisions also grant exclusive rights to SOEs to provide services to the public. For example, till today, the Electricity Law grants a statutory monopoly in the ownership of the distribution system and supply of electricity to the Electricité du Laos (EdL). Private sector 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 instance, it is not only the inadequate infrastructure that raises transport costs and increases the delivery time for traded goods, but also cumbersome customs procedures, as complained by several enterprises. Firms also lament that labour legislation is a major hindrance to competition. Of specific note is the legislation concerning maximum working hours and overtime hours, which conflict with the need of the firm to work at full capacity with eight-hour shifts.

Complicated registration procedures, adding up to a lack of information and awareness on the side of businesses also greatly impede market entry. Consultations reveal that, on average, business registration may take up to 45-60 days in Lao PDR, in comparison to about seven days in Vietnam. The 1999 Manufacturing Industry Law is said to contain several unclear licensing requirements, such as approvals for transfer of machinery to other sites, the need to obtain approval for changing the number of machines used or for expanding factory buildings, the requirement to use mainly domestic raw materials, inspections of the technical standards of machinery and equipment used, and fines associated with violations in these areas.

## **Anti-competitive Practices as Barriers to Competition**

The perception survey conducted within the framework of the project – as will be discussed subsequently – has 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 an 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 are reported on anti-competitive practices and undertaken by the SOEs, which enjoyed statutory monopoly granted by the GOL.

### **Monopolies**

While the underlying principle for privatisation in Lao PDR has been to eliminate State monopoly on trade and pave the way for a free market economy, the privatised enterprises have failed to infuse competition into the economy, due to the virtual absence of post-privatisation monitoring and an evaluation mechanism.

Besides, as mentioned before, a monopolistic element/tendency still remains in many sectors due to the concentrated structure of the market. The concluded joint-venture agreements between the GOL and the private companies, when opening up the previously monopoly sectors of the country, contained provisions that restricted outright, market entry by other enterprises, such as those negotiated for the Lao Brewery, the Lao Tobacco and the Lao Telecoms. Even though, these agreements have eventually lapsed, the monopolistic powers of the incumbent enterprises still remain.

### **Price- Fixing and Other Cartel Arrangements**

In Lao PDR, it has been reported that some business or professional associations, which had been established with the objective of protecting their professional interests, showed a tendency towards cartel behaviour. Examples include the Vientiane Private Colleges Association (VPCA), the Vientiane Drinking Water Group (VDWG), etc. So much so, that even the *tuk-tuk* (auto-trishaw) 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 in which they are allowed to operate. There have also been complaints from consumers and media reports about the exorbitantly high and curiously

uniform rate set by the private schools in Vientiane, or simultaneous price hikes in the telecommunication sector.

### **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. Sometimes, it so happens that a certain member of a group will submit token bids that are not competitive in price or, if competitive in price, then on special terms that will be unacceptable. All in order to enable a specific group member win the bid. This practice is called ‘complementary bidding’, one which has occurred in many privatisation cases in Lao PDR. The Lane Xang Hotel case is one such instance, where the final and highest bid that the GOL received totalled to only half the amount expected. This case, together the other failed sale of State assets, has induced the GOL to resort to private price negotiations, instead of competitive bidding, during the privatisation process.

### **Tied- selling**

Tied-selling can be practised in (a) a subtle form; by combining the sale of a slow-moving item with items in hot demand; and (b) bluntly, in which selling is carried out by bundling related goods and services. It is not uncommon to buy a slow-moving item in return for the sale of a fast-moving item – from a trader. As the market is imperfect, the creation of an artificial scarcity through hoarding or limiting supply is quite common. Even when the product is in abundant 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 nature in markets for agricultural produces and fuels in Lao PDR, though no action has ever been undertaken by relevant State agencies in this regard.

Tied-selling also takes place in schools and hospitals. In most private colleges, the students are usually asked to purchase books, stationary, and uniform from the school itself – ostensibly to maintain a uniformity of quality, and equable standards among students. Similarly, in some private hospitals, doctors prescribe medicines and (coercively) advise the patients to purchase the same from certain pharmacies, if the patients want to be sure of the merit of the medicines, both by way of quality and brand.

### **Abuse of Dominance**

In Lao PDR’s small and fragmented domestic market, where the 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 (while continuing to earn rent). An example that serves as a pointer to this fact is the grief of the farmers of the country when the Lao Brewery Co. had abused its monopsonistic position to purchase agricultural products (rice, maize, etc.) from them at below cost prices. There have also been complaints from passengers about the exorbitantly high fares set by Lao Aviation, despite the low service quality and safety level. However, since both the above-mentioned enterprises are single buyers/service providers in their area, there is no way out for the disadvantaged customers.

So many other anti-competitive practices must have occurred and gone unnoticed and unpunished in Lao PDR, owing to the low level of awareness and, correspondingly, the alertness of local stakeholders. It is high time some action is undertaken so that the 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.

## 4

# *The Current Legal and Institutional Framework*

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### **Decree No. 15/PO on Trade Competition (2004)**

There is, as yet, no competition law in Lao PDR. However, a Decree on Trade Competition was drafted during 2002-2003 and passed by the Prime Minister in February 2004, and was supposed to become effective from August 2004. The Decree was drafted and promulgated as a subordinate legislation to the Business Law 1994 of Lao PDR. The objective 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 PDR to function efficiently in the market economy mechanism as determined by the Government of the Lao PDR*”.

The Decree would apply to the sale of goods and services in business activities by all business entities, which have established and operated a business in the Lao PDR, no matter whether they are state-owned, privately-owned, or foreign-invested, etc. Some specific sectors or business, however, may be exempted for socio-economic or security reasons.

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 and its Secretariat under the Ministry of Commerce, which will be responsible for the implementation and enforcement of the Decree.

### *Prohibited Practices under the Decree*

#### **Merger and Acquisition**

It is prohibited for a businessperson to monopolise the market in the form of a merger or acquisition that destroys competitors or substantially reduces or limits competition.

#### **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.

#### **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. 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 act that is 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 any 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.

#### ***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 people of relevant experience appointed by the Minister of Commerce. The Commission will have its office and its permanent secretariat set up within the Ministry of Commerce. Its key responsibilities would be to:

- Monitor business activities and take actions against offenders;
- Consider submissions from businesses and grant exemptions from prohibitions set by the Decree;
- Consider appropriate market share for a business that dominates the market; and
- Examine complaints from businesses and consumers.

### ***Penalties***

A business entity that commits offences under the Decree shall be first notified by the Trade Competition Commission to change and rectify its behaviour. If the business entity fails to comply with the Commission's order, temporary suspension of all its business activities may be applied until the behaviour is changed and rectified. The business entity may even be closed down indefinitely, and may be punished in accordance with the law. The violator would also have to compensate any business entity that has incurred losses consequent to the offences. Any civil servant or government authority that commits offences under the Decree would also be punished according to relevant laws and regulations.

## **Sectoral Regulatory Policies**

Sectoral policies play a very important role in building up a competitive environment in any country. As to how many players should be licensed to operate in one industry in order to achieve optimal resource utilisation, as to how the products should be priced (administratively fixed for all players, or by market prices), as to how much of subsidies or incentives should be given to different categories of players, and as to the policies of entry and exit – 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 PDR. As such, the Law is strongly committed to private sector participation in power sector development and export promotion. It strives to define a clear procedure for power project approval, and includes an explicit State guarantee to protect the rights and interests of both foreign and domestic investors in electricity enterprises.

Under the law, the Ministry of Industry and Handicrafts (MIH) has the primary responsibility for policy formulation and strategic planning, which are undertaken jointly with the State Planning Committee (SPC) and the Science,

Technology and Environmental Agency (STEA). It also has the responsibility for preparing and implementing legislation and regulations, and for overseeing the performance of electricity enterprises. The Department of Electricity (DOE), which was established within the MIH, has the primary responsibility for strategic power planning, project identification, and evaluation of power project proposals.

EdL, an incumbent SOE, is recognised by the Law as responsible for developing and operating Lao's main generation, transmission, and distribution assets, and for managing electricity imports to its grids and exports from its stations. Access to EdL's transmission network is guaranteed for both private and public generators. The Law explicitly stipulates, "The owner of an electricity transmission line...does not have the right to refuse unless the transmission of electricity over that transmission line cannot be technically guaranteed..." (Article 28), and "All electricity production sources must send electricity into the National Electricity Transmission Grid unless...there is yet no national transmission grid" (Article 29).

### ***Telecommunications***

Lao PDR has made a number of changes to the structure of its telecommunication sector over the last decade. The Ministry of Communication, Transport, Post, and Construction (MCTPC) is the government agency responsible for telecommunication policy and regulation. The Department of Posts and Telecommunications is the functional unit within the MCTPC whose tasks include frequency management; telecoms, 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. Because of the time-consuming legislative process, the Act is yet to be implemented; and only a draft Sector Policy Statement exists. The statement and subsidiary legislation, such as decrees and regulations, have not yet been finalised. With the help of different donors, the MCTPC is working to complete the Sector Policy Statement and Decrees, essential to making the telecom law operational, as well as to establish a regulatory authority for the sector.

Guiding principles are to broaden the access to services, and to keep the real cost of service provision as low as possible; in addition, to try to establish and maintain linkages with neighbouring countries, especially the neighbours in the greater Mekong sub-region. Appropriate technologies will be included in the overall regulatory process, taking into account the ICT developments.

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

### ***Banking***

Lao is one of the poorest countries in East Asia, with a financial system that is small, and characterised by a high degree of government involvement. Ever since the NEM was initiated in 1988, the mono-banking system as instituted in the State Bank of Lao (SBL), since 1975, has been replaced by a two-tier banking system. In 1990, the Central Bank Law established the Bank of Lao PDR (BOL) as the central bank in place of SBL. A Prime Minister's Decree (No. 3) was issued in 1992 on the Management of Commercial Banks and Other Financial Institutions, paving the way for the establishment of the private banks, officially opening the sector to competition. Since then, several improvements have been made to the legal and regulatory framework of banks. Yet, despite the improvements, implementation has remained weak during the second and third periods.

While the Ministry of Finance (MOF) is responsible for the formulation and implementation of fiscal policies, the BOL is entrusted to oversee the banking sector and exercise control over monetary variables to bring about monetary stability in the Lao economy. However, the 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. The current structure of the banking system provides diversity and limited competition within the banking sector, based on service quality and interest rates, subject to the limits specified by the BOL. 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 provisional needs, administrative costs, and profit goals. In the existing circumstances of the commercial banks, where the occurrence of non-performing loans 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.

## **Consumer Protection Policy**

In Lao PDR, there is no specific law, regulation, or institution on consumer protection. However, there are a number of sectoral laws with respect directly or indirectly to consumer protection (See Annex 1).

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

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

## 5

# *What Do The Lao People Know and Think About Competition?*

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### **The Survey**

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 its 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 same. That is 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.

### **The Respondents**

The questionnaire survey was administered to 50 respondents in Lao PDR. Twenty respondents representing the business community, fifteen representing the policy makers – mostly government officials, and fifteen consumers, including economic journalists, academicians, lawyers, etc., were interviewed during the course of the survey.

### **The Questions**

For the purpose of simplicity, the questions were structured in a multiple-choice manner. No subjective questions were asked, but additional information provided by the respondents was recorded.

The survey reflected clearly the ignorance of the public on competition related issues.

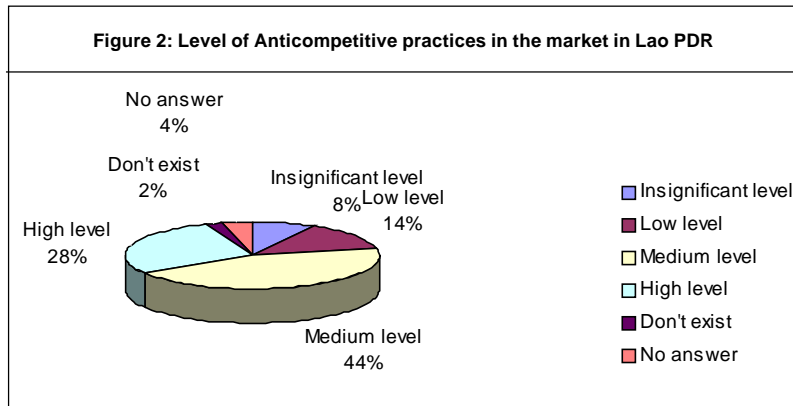
## Extent of Awareness Regarding Relevant Legislative Framework

Except for the Prime Minister's Decree on Trade Competition, which was promulgated recently in 2004, no other law or regulation in Lao PDR directly mention or regulate anti-competitive practices, though many of them do affect the competitive conditions in 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 the respondents were not sure whether such laws and regulations exist, while 8 percent gave a negative answer.

The aware were mostly government officials, in addition to some college teachers.

## Extent of Anti-Competitive Practices in Lao PDR

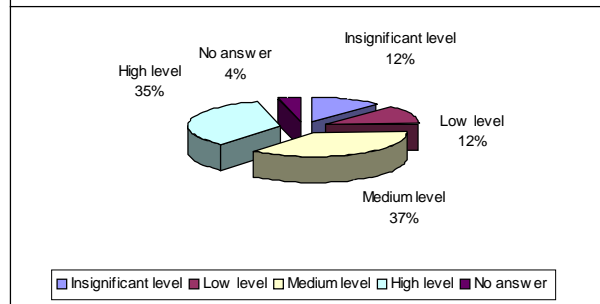
An overwhelming number of respondents (70 percent) viewed that anti-competitive practices prevail in the Lao market. Discriminatory dealing and bid rigging were termed as the most common forms of anti-competitive practices prevalent in the country. However, a majority of respondents could not give examples to support their claims.



## Sectors Most Affected by Anti-Competitive Practices in Lao PDR

A large number of respondents pointed out that sectors with more market participation, such as domestic trade, and sectors with large fixed costs, such as heavy industries, the construction industry, and telecommunications, are substantially plagued by anti-competitive practices. The perception is that the entertainment industry, educational services, processing industries, etc are the other sectors substantially affected by anti-competitive practices.

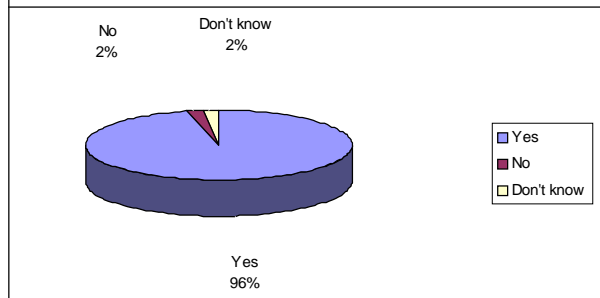
**Figure 3: The Level of Impacts of Anticompetitive Practices on Consumer Welfare in Lao PDR**



## The Necessity of A Comprehensive Competition Law and Its Objectives

96 percent of the total respondents believe that comprehensive law dealing with competition issues should be enacted in Lao PDR. They believe that the enactment of such a law would help increase the competitiveness of business enterprises in Lao PDR, which is very important in the context of the country's integration process into the regional and global economy, for example the ASEAN Free Trade Area (AFTA), or the WTO.

**Figure 4: Do we need competition policy and law in Lao PDR?**



A majority in all the three groups of respondents agreed that ‘business efficiency and consumer welfare’ should be the objectives of such a legislation for competition, if it were to be adopted; while many others, mostly government officials, added the objectives of ‘economic development’ and ‘regulation of businesses’ when queried on the same.

### **Scope and Coverage of the Competition Law**

50 percent of the respondents unanimously echoed that competition law should cover all business sectors in Lao PDR, 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 market, aiding the economy’s reform process, from a centrally planned mechanism revolving around the state sector to one relying on market forces and signals.

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 opted for sectoral regulation outside the purview of competition law.

### **The Competition Authority**

All the respondents argued that a strong and competent competition authority should be set up on a permanent basis to discharge all the responsibilities, as would be stipulated by the competition law. However, there was a divided viewpoint on whether the competition authority should be an autonomous agency or not. Half of the respondents argued for the autonomy of the competition authority, so that it 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 PDR.

A large proportion of respondents opined that the competition authority should have both investigative and adjudicative powers. A majority of respondents supported the idea of entrusting the Competition Authority with the powers to deal with both anti-competitive practices and consumer protection issues.

### **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. Fifty-one percent of the respondents thought there should be a ban on some of the anti-competitive practices, with exemptions being made on the ground of public interests.

More than half 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 able to compete internationally, in order to increase the overall competitiveness of the economy.

## 6

# *Agenda for Action*

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The 7Up2 project was launched in the three Indochina countries (Lao, Vietnam and Cambodia) in April 2004, two months after the Prime Minister's Decree on Trade Competition was adopted in Lao PDR. However, since the initiation of the field survey and project research on the competition scenario in Lao PDR till now, when all activities are nearing completion, there has been very little by way of change *vis-à-vis* competition policy and law. Several reasons are accountable for this.

Many years of intrusive and restrictive government intervention into the operation of the markets has resulted in a serious lack of competition culture and competition thinking in Lao PDR. By itself, competition remains a new concept in the country and different stakeholders have different views on its importance for poverty reduction, economic development, and competitiveness growth of Lao enterprises. Even though the GOL has pronounced competition to be a 'major driving force for economic development', Laos' approach in this direction, however, has been viewed by many as rather cautious, and state intervention into various market functions remains rather strong as compared to other economies in the region. Under many aspects, Laos remains a centrally planned economy and market development is still at a very premature stage.

The PM's Decree provided that a Trade Competition Commission would be set up under the umbrella of the Ministry of Commerce to take charge of the Decree's implementation process. However, no movement towards this end has been undertaken. This is largely due to the pressure of more urgent priorities, since Lao PDR is still in the process of improving and completing the basic legal and regulatory framework. There is also a clear lack of interest, resources, and an implementation capacity on the government's side; hence, the stultifying delay in carrying the Decree forward.

The weak administration capacity and weak rule of law enforcement, coupled with the lack of public availability of laws and regulations are the other major problems that Lao PDR is facing, which negatively affect the whole system and process. Corruption among government officials is stated to be another factor, given that those affected by the laws are said to bribe the officials, to not to implement them. There are also no adequate facilities and funding available to print, disseminate, and explain the law to relevant parties as well as the wider public. There are no effective and consistent mechanism to make the laws and regulations known to the people. As many people who live outside the main cities and commercial centre do not write and read on a frequent basis, or cannot write and read (due to the low literacy rate), they know very little about the existing laws in order to claim their legal rights.

Take a look at the other three major stakeholder groups, other than the government, identified by this project as having significant roles to play in the development and implementation process of competition policy and law in Lao PDR. They are the business, the media, and the consumer.

The project survey results revealed that the business community in Lao PDR is not well-informed about the PM's Decree on Trade Competition. There are two major reasons for this incidence:

- (i) The Decree was not drafted on the basis of the real scenario in the country and therefore, it is not relevant for being applied to the economic transactions that take place; and
- (ii) Since the implementation part has been completely inactive, no compliance education has been done.

Besides, there is no consumer movement (or very faint efforts) in Lao PDR at the moment. This is a critical issue, since a strong consumer movement is a concomitant factor for building a healthy competition culture in a country and ensuring the effective implementation of a competition law.

To make matter worse, and in face of the lack of interest and expertise on the government's side and the lack of awareness on the part of the layman, the media in Lao PDR, is unfortunately, totally unaware of competition issues, and has never reported any case of anti-competitive practices and unfair competition practices. This annuls the role of the media as a means of spreading knowledge and generating interest on relevant issues.

The lack of clarity and precision regarding laws and regulations is also another problem in Lao PDR. This creates confusion. And different interpretations or a wide flexibility often gives the officials wide discretion in applying the laws.

Many laws and regulations contain general terms without explaining specifics, particularly in the area of trade and investment laws. The PM's Decree on Trade Competition is no exception to this, as has been analysed in greater details in the preceding chapters. The laws and regulations are also very inconsistent, since there is no mechanism to refer to other relevant legal documents before drafting a new law, which more often than not creates gaps as well as overlaps.

Taking stock of the current state of affairs regarding competition policy and law in Lao PDR, the challenges towards building a healthy competition regime in the country seem enormous, which means a corresponding amount of initiative, efforts, time, and technical assistance is required. To begin with, putting the PM's Decree on Trade Competition into operation should be identified and highlighted as the cornerstone. Several advocacy and capacity building activities also need to be undertaken to take the issues forward, through various strategies such as:

### **Generating Demand and Renewing Interests**

Over a year has elapsed since the PM's Decree on Trade Competition was supposed to start being effective (August 2004). The long delay reflects clearly that the government lacks the capacity and resources to initiate the necessary moves, and has therefore lost interest on the issues. This interest needs to be renewed before any initiative can be taken or any effort be made. The stated efforts can be done directly *via* some policy dialogues with the relevant offices and officials, specifically, the Ministry of Commerce, or indirectly *via* some training workshops to build their implementation capacity, and hence enhance their confidence to take the lead. The academia and the media's awareness on the benefits of competition policy and law should also be promoted, so as to generate demand from the bottom up to kick-start the Decree's implementation process.

### **Building the Trade Competition Commission for Implementation**

The experiences from Vietnam, a neighbouring developing economy and a fellow 7Up2 project country, show that having a piece of legislation in place, having a nominal enforcement agency is not enough. The officials of the competition authority, i.e. the Trade Competition Commission and its Secretariat, once they are established in Lao PDR, need to be familiarised with technical knowledge and equipped with practical tools, before any competition law, or subordinate legislation can be implemented. Specialised training on

specific and technical competition issues should be planned and undertaken in this regard.

### **Enhancing Awareness**

As evident from the preceding analysis, a major proportion of stakeholders in Lao PDR do not possess any knowledge about competition, posing the need for raising awareness of and assigning appropriate roles to the different stakeholders – the business, the media, and the consumer – *vis-à-vis* competition issues. The substance of the PM’s Decree and its compliance requirements should be made known to the business community, whose conduct will be the main subject of the Decree. The media’s awareness on competition issues also needs to be raised so that they can expose anti-competitive practices, unfair competition practices, and thus help in generating the awareness of the wider public on the concerned issues. A consumer movement needs to be created and its members should be familiarised with competition issues for self-protection and for their future lobby on competition law, consumer protection law, and other related legislations. These tasks can be done through various advocacy and capacity building tools such as seminars, workshops, press releases, and news articles, etc. Regarding the last point on the consumer, some dynamic, capable, and dedicated members of society need to be specially selected and trained to form a catalyst group for the future consumer movement in Lao PDR.

### **Hybrid Approach**

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 policy and law in one single piece of legislation, or having separate laws being administered by a single agency. This probably will also be the right approach for Lao PDR, 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.

### **Maximum Consultation**

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. This can be brought about by involving all sides in informed

debates and open discussions. This, in turn, will require that all the stakeholders have the capacity to understand the issue and put forward their fears. Thus, capacity building of the different stakeholders will form an integral part of developing a competition culture in Lao PDR.

### **More Appropriate Legislation**

As can be seen in the various weaknesses in the PM's Decree on Trade Competition analysed before, 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. It is proposed that Lao PDR should adopt a more comprehensive competition law to replace the Decree on Trade Competition in the next five year plan (2006-2010), which is to be considered and approved by the Next Session of the National Assembly of Lao by 2006.

No	Name of Law	Law No.	Date	Effective Date
1	Constitution	01/NA	14 /08/ 1991	15 /08/1991
2	Property Law	01/90/NA	27/06/1990	27 /07/1990
3	Contract Law	02/90/NA	27/06/ 1990	27 /07/ 1990
4	Law of Non-Contractual Obligations (Tort Law)	08/90/NA	29/11/1990	24 /12 1990
5	Insurance Law	11/90/NA	29 /11/ 1990	24 /12/ 1990
6	Labour Law	02/94/NA	14 /02/ 1994	21/03/1994
7	Business Law	03/94/NA	18 /07/ 1994	13 /08/ 1994
8	Water and Water Resources Law	02E96/NA	11 /10/ 1996.	02 /05/1996
9	Road Transport Law	03/97/NA	12/03/ 1997.	31/05/ 1997
10	Law on Agriculture	01/98/NA	10 /10/ 1998	06/09/1998
11	The Law on the Processing Industry	01/99/NA	03 /03/1999	26 1999
12	Environmental Protection Law	02/99/NA	03 /03/ 1999	26 /03/1999
13	Law on Drugs and Medical Products	01/NA	08 /03/2000	22/05/ 2000
14	Road Traffic Law	02/NA	08 /03/2000	22/05/2000
15	Law on Hygiene, Prevention and Health Promotion	01/NA	10 /03/2001	25 /03/2001
16	Telecommunications Law	02/NA	10 /03/2001	25 /03/2001
17	Education Law	03/NA	08/03/2000	22 /05/ 2000