

CPI Antitrust Chronicle

February 2013 (1)

Developments in Vietnamese Competition Law and Policy

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I. BACKGROUND OF VIETNAM COMPETITION LAW

Beginning in the early 1990s, Vietnam started to open up its economy, promote external trade, and has received FDI capital. Its admission into ASEAN in 1995 marked the first important step in the process of Vietnam's integration with the international economy. ASEAN has decided to form an ASEAN Economic Community ("AEC") in 2015. According to the commitment among Member States, all ASEAN economies shall promulgate a competition law by 2015 to ensure a healthy and fair competition environment. On that basis, ASEAN member states will establish a mechanism for coordination and cooperation among ASEAN competition authorities to enforce competition laws and policies in ASEAN region.

Also, while in the process of negotiating accession to international trade/economic organizations like APEC or WTO, with respect to the competition area Vietnam was under great pressure to make a strong commitment to build a transparent legal framework, effectively implement competition policies, and establish an independent competition agency to ensure a level playing field for both local and foreign enterprises operating in Vietnam.

Along with reform and an opening-up policy, Vietnam's economy has achieved impressive growth in the late 20th and early 21st centuries. Rapid development of many industries and services has created competition pressure on enterprises and set out a requirement to build a legal framework to facilitate the competition environment. The transition from a centrally planned economy to a market-oriented economy with state management has raised awareness of a number of unfair competition acts or anticompetitive acts that can cause negative effects on economic development. In addition, the economy developed from a low starting point that included the existence of a number of sectors or areas characterized by state monopoly. This led to restrictions in the development of non-state enterprises and a negative impact on the competition environment in general.

Before the promulgation of the Competition Law, anticompetitive acts or monopolies in some specific areas had been regulated by separate and scattered provisions in a number of legislations such as the Ordinance on Price, the Ordinance on Telecommunications, the Law on Credit Institutions, Commercial Law, Electricity Law, etc. However, implementation of this type of legislation was not really effective, partly due to lack of a complete and consistent legal framework, lack of state management competency on competition and monopoly control, lack of sanctions, etc.

In that context, in 2000 the National Assembly and the Government saw the need to put the Competition Law into a legislative program. Vietnam Competition Law was passed by the

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National Assembly on November 9, 2004, and came into force on July 1, 2005. The Law was a result of a four-year process that saw various drafts circulated for comments from both domestic and international experts. The Competition Law is the first of its kind in Vietnam.

II. VIETNAM COMPETITION AGENCIES—A YOUNG AGENCY

The competition management agency of Vietnam is currently divided into an investigation agency (Vietnam Competition Authority or “VCA”) and a handling agency (Competition Council). VCA is responsible for discovering, investigating, collecting, and searching for relevant evidence in restrictive competition cases and then producing an investigation report.² The Competition Council is in charge of judging, making decisions, and solving the complaints related to the competition restriction cases.

The VCA is affiliated with the Ministry of Trade (now the Ministry of Industry and Trade) and has the following tasks and powers: (i) control the process of economic concentration; (ii) receive exemption application dossiers; (iii) put forward opinions to the Minister of Industry and Trade for submission to the Prime Minister for decisions; (iv) investigate competition cases related to competition restriction acts and unfair competition acts; and (v) handle and sanction unfair competition acts. The head of VCA shall be appointed or dismissed by the Prime Minister at the proposal of the Minister of Industry and Trade.

The Competition Council³ is established by the Government and is composed of between eleven and fifteen members appointed or dismissed by the Prime Minister at the proposal of the Minister of Industry and Trade (in fact, at the proposal of Ministers or heads of sector regulatory agencies). The Competition Council is tasked to settle complaints about competition restriction cases.

The Chairman of Competition Council shall be appointed or dismissed by the Prime Minister among members of the Council at the proposal of the Minister of Industry and Trade. In order to settle a specific competition case, the Chairman of Competition Council sets up a Competition Case-Handling Council composed of at least five members, one of whom shall be the president of the hearing. Based on competition case dossiers transferred by VCA, the Competition Case-Handling Council shall organize hearings and adopt decisions on handling competition cases by a majority vote.

III. RECENT ENFORCEMENT OF VIETNAM COMPETITION LAW

A. Investigation of Competition Restriction Cases

From 2006 until now, VCA has investigated six cases relating to competition restriction acts, specifically as follows:

1. Cases on Abuse of Dominant Position in the Market

- In 2008, VCA investigated a beer company (“THP”), which abused its dominant position in the premium beer market to prevent entry of new competitors.

² Article 49, Viet Nam Competition Law.

³ Article 53, Viet Nam Competition Law.

- The second case related to a complaint by a number of enterprises, operating in the film industry, accusing the Megastar Media Company Limited of abusing its dominant market position in the distribution of imported motion pictures or movies. In May 2010, VCA accepted the complainant dossier. Currently, the case is under investigation for verification and clarification.

2. Case on Abuse of Monopoly Position in the Market⁴

- VCA investigated the Vietnam Air Petrol Company (Vinapco), which had imposed unfavorable conditions on a customer and abused its monopoly position by unilaterally modifying or cancelling a signed contract without plausible reasons.

3. Cases on Competition Restriction Agreements—Cartels

- A competition restriction agreement between 19 non-life insurance companies in the car insurance market in Vietnam;
- A competition restriction agreement between enterprises in the roofing panel market in North and Central of Vietnam; and
- A competition restriction agreement between non-life insurance companies in the pupil insurance market in Khanh Hoa province.

B. Investigation and Handling of Unfair Competition Cases

From 2006 to the end of 2011, VCA investigated 94 unfair competition cases under the competition procedure, 58 of them related to advertising for the purpose of unfair competition. The remaining 20 cases related to the acts of illicit multi-level sales, 8 cases related to the acts of discrediting other enterprises, 4 cases related to the acts of sale promotion for the purpose of unfair competition, 3 cases related to the acts of misleading indication, and 1 case related to the act of disturbing business activities of other enterprises. Among these 94 cases, VCA has made 83 handling decisions with fines up to 4 billion 256 million dong.⁵

III. CONCLUSION

After seven years of enforcement, Vietnam's Competition Law has created an important legal corridor that contributes to forming and maintaining a level playing field for businesses to facilitate economic development and the efficient allocation of social resources. In the process of handling competition cases, on the one hand, the competition authorities have emphasized the goals of protecting legitimate rights and interests of organizations and individuals in their business activities. On the other hand, it has also aimed at warning enterprises to terminate or avoid similar acts.

The total number of competition cases under investigation and settlement, and the process of enforcing competition law, have been hindered by some negative factors, namely a lack of competition culture, a lack of resources (human and budget), and weakness and loopholes in the current legal framework, which needs revising or supplementing to be in conformity with

⁴ 2010 Annual Report of Vietnam Competition Authority.

⁵ 2011 Annual Report of Vietnam Competition Authority.

good practices. To ensure effectiveness in the course of enforcing the Law, and to satisfy practical demands from business in the context of the new economy, more research and any amendments in the Law will need to be done in a quick and comprehensive manner by competent agencies.