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## **Trade**

### **Competition law – the business of playing by the rule book**

*By Bui Xuan Hong*

A market economy is a place where the rights of every person and entity doing business are equal before the law. As a result, competition among businesses is natural, inevitable and is acknowledged and protected by the law, as it greatly contributes to the development of the society. Therefore, one of the most important tasks of the State is to protect the legitimate interests of consumers and businesses, as well as setting up a legal framework for healthy competition.

In the course of competition, market players may harm the competitive environment, for example, by trying to limit competition. As a result, law on competition in any country should have two categories of provisions: first, those on restrictive competition practices and, secondly, those on unfair competitive practices.

Regarding restrictive competition practices, in Vietnam, since a market economy with a socialist orientation was implemented together with granting the right to autonomy in running business, market players are entitled to enter into an agreement, to set up the price of goods, provide services and to join organisations or associations at their discretion. These acts are aimed at obtaining a higher position in the market or increasing market shares. However, if such an agreement or arrangement exceeds certain limitations, this shall damage the market environment and deter the consumer's right of selection of products or services. Even at its highest development, this kind of competition shall terminate competition itself and a monopoly will be created. However, in the past, there was a lack of regulations governing restrictive competition practices.

As regards unfair competition, a number of regulatory provisions to deter unhealthy practices are in place, such as prohibition of misleading information or defamation of another enterprises. However, these regulations were scattered in numerous documents and applied to a wide number of fields, such as on advertisement, promotion, trade, copyrights and trademarks.

In order to create a legal system for competition, on December 3, 2004, the National Assembly passed the Law on Competition, which applies to all organisations, individuals doing business, and professional associations, existing in Vietnam.

In Vietnam, as the concept of unhealthy competition is rather familiar and we may see this via the prohibitive provision in many legal documents, this article's purpose is to introduce the regulations governing the restrictive competition practices, which is divided into three categories: (i) restrictive competition agreements; (ii) abuse of a dominant position or monopoly and (iii) economic concentration under the Competition Law.

In order to measure the nature and level of such practices, the Competition Law presents the concept of a "relevant market" via two elements – products and geography. Firstly, a relevant product market is a market where products and services may be substituted by others based on usage, characteristics and price. Secondly, a relevant geographic market is the specific geographic area where products and services may be substituted for other ones with similar competitive conditions with neighboring areas.

**Competition agreements**

Based on the parties thereto, agreements with the purpose of limiting competition can be divided into the following basic types: an agreement among the entities doing business in the same field, i.e. among competitors known as a horizontal agreement; an agreement among the entities at different stages of the business process, for instance between the distributor and the manufacturer, also known as a vertical agreement, or among entities of different businesses. The aim of such agreements may be to fix prices, fix share markets or supplies, restrict volume and investment, fix unrelated trading conditions, impede market entry, exclude market entry or collude to win tender.

Restrictive competition agreements can be divided into two categories with two different treatment methods. Accordingly, agreements to impede market entry, exclude market entry, collude to win tender are strictly prohibited without exception or exemption. The remaining agreements shall be also prohibited in case the parties thereto have a market share, in a relevant market, of more than 30 per cent. The exemption in some circumstances shall be applied where their target aims to lower the price and benefit the consumers.

**Abuse of monopoly position**

In general, the law cannot limit the capacity of business and its competitive advantages which arise from entities that have large market shares or hold a dominant position in the market. However, a legal framework to limit the huge influence of such entities in the market can prevent such entities abusing its dominant position. According to the Competition Law, an entity is considered to have a dominant market position if it has a market share of 30 per cent or more in a relevant market or is capable of substantially restricting competition. Notably, the provision on “substantially restricting competition” creates flexibility in determination of the percentage of market share.

However, with regard to the association of a number of entities, if the group act together, restricting competition will be identified as follows: (i) two entities with a market share of 50 per cent or more in relevant market; (ii) three entities with a market share of 65 per cent or more in relevant market and (iii) four entities with a market share of 75 per cent or more in relevant market. However, problems may arise when more than four entities with a market share of more than 75 per cent in a relevant market act together to restrict competition as the Competition Law is silent on such cases. A system of implementing documents of the competition law that include the cases which have not been governed by the law shall be enacted soon.

Based on the way that abuse of a dominant position affects consumers or competitors, under the law, such practices will be divided into two groups: (i) practices that directly affect consumers, including - fixing unreasonable sale/purchase price or minimum resale price, restricting production and distribution volume, applying different commercial terms to transactions of a similar nature creating unfair competition, fixing unrelated trading conditions and (ii) practices directly affect the rival, including selling below cost, preventing new rival's entry into market. All of above practices are strictly prohibited with no exceptions.

Monopoly is a special case of dominant market position and the Competition Law also prohibits a market player of imposing disadvantageous conditions and unilaterally amending/terminating contracts without a legitimate reason.

### **Economic concentration**

Apart from using business entities' capacities and competitive advantages to obtain a dominant position, businesses may try to merge, integrate, consolidate, acquire or set up a joint venture, -known as economic concentration - to acquire such a position. Economic concentration, therefore, shall have a significant influence on the competitive environment via reducing the number of independent business entities.

The concentration shall vary from the integration of competitors - known as horizontal concentration; entities joining at different stages of business - vertical concentration; or entities from different businesses combining - conglomerate concentration.

Similarly with regulations on restrictive competition agreement, the element of market share in relevant market is taken into account to define the method of economic concentration. Before undertaking economic concentration, the legal representatives of the entities, with resultant market share from 30 per cent to 50 per cent, must inform Competitive Management Agency of their intention. The Competition Law prohibits all economic concentration where the resultant market share is over 50 per cent in relevant market. Again, the issue is that it is unclear whether the Competition Law also governs vertical or conglomerate concentration.

In cases of economic concentration, exemption is still feasible if after undergoing concentration, the new enterprise is still a small and medium size, or if one or more relevant parties is at risk of dissolution or insolvency, or such concentration is aimed at enhancing export, socio-economic development or scientific and technical advances.

Playing the function of a protective instrument in a market economy and to maintain a healthy environment for competition, upon coming into full force on July 1, 2005, the Law on Competition is expected to spur on the business environment. However, all necessary guidance should be made now to ensure the full effectiveness of this important law.

## **Other Sectors**

### **Finance**

- Decision 59/2005/QD-TTg, dated March 23, 2005, of the Prime Minister, promulgated Regulation on financial management on Development Assistance Fund.
- On March 28, 2005, the Ministry of Finance issued Decision 988/QD-BTC, on issuance of the regime on accounting for insurance of Vietnam Dong deposits.
- On March 29, 2005, the Ministry of Finance issued Decision 17/2005/QD-BTC, on the orientation of price of petrol and oil in 2005.

- Circular 22/2005/TT-BTC, dated March 30, 2005, of the Ministry of Finance, with detailed regulations on allowance for managerial positions in professional organizations under the Ministry of Finance.
- The Ministry of Finance issued Decision 19/2005/QD-BTC, on April 01, 2005, on the supplementation of the List of projects borrowing from development investment credit of the State.
- On the same day the Ministry of Finance issued Circular 24/2005/TT-BTC, guiding the implementation of the Regulation on financial management to Social Policy Bank, issued together with the Prime Minister's Decision 180/2002/QD-TTg dated December 19, 2002.
- Decision 71/2005/QD-TTg, dated April 05, 2005, of the Prime Minister, on the regime of management, operation of the credit of National Fund for employment.
- The Minister of Finance issued Decision 21/2005/QD-BTC, on April 07, 2005, on the amendment of Regulation on procurement of national reserve commodities, issued together with Decision 31/2004/QD-BTC, dated April 06, 2004, of the Minister of Finance.

## **Taxation**

- Circular 04/2005/TT-BTM, dated March 24, 2005, of the Ministry of Trade, on adjustment of list of import items applicable of quota in 2005 (amendment of Circular 10/2004/TT-BTM, dated December 27, 2004, of the Ministry of Trade.
- On March 28, 2005, the Ministry of Finance issued Decision 16/2005/QD-BTC, on the adjustment of the list of goods and import duty tariff for applying quota.
- On April 08, 2005, the Government issued Decree 48/2005/ND-CP, on the reduction of import duties on some products imported from Thailand.

## **Banking**

- On March 25, 2005, the State Bank of Vietnam issued Decision 316/QD-NHNN, on adjustment of the interest for rediscount and refinancing interest of State Bank of Vietnam to banking credit organizations.
- On April 04, 2005, the Prime Minister issued Decision 69/2005/QD-TTg, on the Regulation on settlement of debts in risk of Social Policy Bank.

## **Inspection**

- On March 25, 2005, the Government issued Decree 41/2005/ND-CP, with detailed regulation and guiding the implementation of a number of articles of the Law on Inspection.

**Water, Mineral**

- Decree 34/2005/ND-CP, dated March 17, 2005, of the Government, dealing with administrative violations in the field of water resources.
- Circular 20/2005/TT-BTC, dated March 16, 2005, of the Ministry of Finance, regulating the collection, payment and management on the use of the fees for granting licence for mineral operation.

**Post & Telecommunication**

- The Prime Minister issued Decision 58/2005/QD-TTg, on March 23, 2005, on the approval of Project on pilot establishment of Vietnam Post and Telecommunication Corporation.

**Construction**

- On April 06, 2005, the Government issued Decree 46/2005/ND-CP, on the inspection in the field of construction.
- On April 01, 2005, the Ministry of Construction issued Circular 04/2005/TT-BXD, providing guidelines for making and management of expenditures of construction investment project.

**Land**

- The Prime Minister issued Decision 74/2005/QD-TTg, regulating the using of amount from transfer of land-use right and workshop in moving.
- On April 13, 2005, the Ministry of National Resources and Environment issued Circular 01/2005/TT-BTNMT, providing guidelines for the implementation of a number of articles of Decree 181/2004/ND-CP, on the implementation of Land Law.

**Healthcare**

- On April 06, 2005, the Government issued Decree 45/2005/ND-CP, dealing with administrative violations in the field of health care.

**Education**

- On April 11, 2005, the Government issued Decree 49/2005/ND-CP, dealing with administrative violations in the field of education.

**Miscellaneous**

- The Government issued Decree 35/2005/ND-CP, on March 17, 2005, dealing with violation of officers, cadre who break the law.
- On March 21, 2005, Office of the Government issued Circular 04/2005/TT-VPCP, guiding the implementation of Government's Decree 104/2004/ND-CP,

dated March 23, 2004, on Official Gazette of Social Republic of Vietnam toward the activities of Official Gazette under the Central.

- On March 29, 2005, the Government issued Decree 42/2005/ND-CP, on the issuance of public bond in 2005 – bond for education .
- The Prime Minister issued Decision 68/2005/QĐ-TTg, on April 04, 2005, on the approval of the program for support the development of intellectual property of enterprises.

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