

## **The Role of Competition Policy and Approaching Method of Competition Bill of Vietnam**

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The guarantee of free economic activity and effective functioning of market mechanisms requires the establishment and effective enforcement of competition law and policy. In the context of global economy with growing international trade and investment, the importance of competition law and policy in each economy has increasing rapidly. Anti-competitive activities in a market of one economy may cause negative effects on a market of another economy through international trade and investment. In addition, a fair market system serves as an element for boosting economic activities both domestically and internationally. Recognizing the importance of competition policy and law in the economic development, Vietnam has been facilitating the establishment of legal systems on competition policy with a view to promoting the fair and competitive environment, thus enhancing the sustainable economic development.

### **I. Scope and functions of competition policy**

#### **1. Scope of competition policy**

According to the consolidated report of the United Nation Conference on Trade and Development (UNCTAD), competition policy mentioned in the Doha Declaration covers measures against restrictive business practices, including (i) the prohibition of cartels; (ii) the prohibition of abuses of dominant market power; (iii) the control and review of mergers and acquisitions (M&As). This is a traditional approach to competition policy. However, in some economies including Vietnam, competition policy is considered as all measures of the government to maintain competition as a market-economy regulating instrument. These measures are those against restrictive business practices and unfair competition.

Each country has its own objectives of competition policy. Therefore, one country could not expect to get good results when applying the competition policy of another country. In addition, such application may result in adverse effects on the economy. However, a country can hardly develop its own competition policy is being under construction in an attempt to create and develop a level playing field; to protect legitimate rights and interests of producers and consumers; and to further boost socio-economic development.

#### **2. Functions of competition policy**

- Providing basic foundation for a competitive environment, in which free and effective competition is strengthened and protected. In order to get this, competition policy should ensure free trade, free options and free market access for enterprises.
- Regulating a competitive environment towards serving determined objectives, such as high economic efficiency, producer and consumer protection, maintenance of self-control enterprises system, assurance of procedural fairness and honesty in business, etc.
- Stabilizing prices in the domestic market, which could hardly be achieved in case of the existence of monopoly practice.
- Restricting negative impacts resulted from the State's extensive intervention in market activities such as longer time of decision making of enterprises and higher transaction costs.

## **II. The role of competition policy in the economic development of Vietnam**

As above-mentioned, the competition policy should not be considered in isolation with others such as trade policy, institutional restructuring policy, privatization policy, industrial policy and social policy. That is the reason why “competition policy” term is frequently construed in a broad meaning which covers many policy areas of the government with a view to reducing restrictive business practices and enhancing the economic development.

The role of the competition policy in the economic development of Vietnam could be illustrated in the following points:

Firstly, broader scope of regulatory monopoly than that of natural monopoly.

In order to improve the competitiveness of domestic enterprises in the international integration process, in the mid 1990s, Vietnamese Government decided to establish a series of state-owned corporations, which play the roles of “national champions” in the international competition. This type of business is gathering of state-owned enterprises specializing in the same range of vital and strategic products in the economy, without taking account the economies of scale ordinarily regarded as a basis of natural monopoly.

In fact, the widespread existence of these corporations has restricted competition between corporations and other non-member enterprises and even among member enterprises of a corporation. In addition, these corporations could not improve their competitiveness when being strongly protected from the competition of other domestic enterprises, especially foreign invested ones and of the imported goods and services. Without domestic competition experience, these corporations could hardly face fierce competition in the international market.

That’s why the Government promulgated Decision No 58/2002/QĐ-TTg of the Prime Minister on re-evaluating the effectiveness of corporations as a basis for corporation restructuring.

Secondly, the enhancement of the equitisation policy for state-owned enterprises

Before carrying out the “Doi moi” (renovation) policy in 1986, there mainly existed two components of the economy: state sector and collective sector. That’s why Vietnam economy entered into the last decade of 20<sup>th</sup> century with more than 12,000 state-owned enterprises. In the light of economic reform and the development of multi-sector economy, the Government has consecutively restructured the army of state-owned enterprises. 808 enterprises were equitised, the others were structured, merged or dissolved. State-owned enterprises of small scale, which could hardly be equitised and should not retain State-ownership, were assigned, sold, contracted out and leased. Up to 31 August 2002, Vietnam has equitised and transformed ownership of 985 enterprises. At present, the Government “resolutely carries out the ownership transformation towards more reasonable restructuring state-owned enterprises, focusing on key sectors and industries, and important areas; transforms state-owned enterprises into joint-stock companies; enhances the equitization of enterprises which should not retain 100% State-ownership. These are important steps to create fundamental changes in improving the effectiveness of state-owned enterprises.”

Thirdly, the implementation of trade liberalization policy in the process of globalization.

In accordance with the renovation process and in response to the guidelines for integration of the Government, the first Law on Export-Import Tariff of Vietnam was promulgated in 1991. After resuming relations with international financial and monetary organizations such as IMF and WB in 1992, Vietnam officially became a member of the Association of Southeast Asia Nations (ASEAN) and signed the Protocol to participate in the CEPT/AFTA Agreement on 25 July 1995, began to fulfill the obligations of

AFTA member from 1 January 1996. Vietnam is also one of 25 original members of the Asia-Europe Meeting (ASEM) in March 1996, and participated Asia-Pacific Economic Forum (APEC) from November 1998. On 13 July 2000, Vietnam – US Bilateral Trade Agreement was officially signed. It marked an important milestone in Vietnam’s international economic integration process. Vietnam has signed the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China in November 2002. Vietnam submitted its application for the accession to the World Trade Organization in the beginning of 1995 and hopes to be an official member of this organization in the near future. This above-mentioned integration process has made basic change in the role of competition towards improving the competitiveness of domestic goods and services.

Fourthly, the improvement of regulations in the economic field.

In the transition period, Vietnamese government has carried out a series of economic reforms. Following are the most prominent renovation areas:

- In terms of enterprises formation: the Government has wiped out market access barriers erected against domestic investors.
- In terms of investment: the Government abolished most regulations discriminating between domestic and foreign investment and there were generally no substantive differences between these 2 categories of investment, even concerning the establishment, maintenance, management and control of enterprises.
- In terms of price controls: the Government has been gradually eliminating a system of dual pricing.

Though there is not any authority specializing in competition, the Government has gained some certain achievements in promulgating economic regulations based on the principle of competition. However, in the forth-coming time, it is necessary to have an authority supporting the Government in this field so that all economic regulations will be enforced based on the principle of competition.

And finally, the activities of government agencies at all levels.

At present, the State administrative agencies are divided into 3 levels: Central Government level, Ministerial level and Provincial level. However, more than 10 years of economic reform towards a market-based economy is not long enough for the roles of these agencies at all levels to be fully aware of. There still exist domestic market separation and business partner designation by the state management agencies. This may be considered as a typical character of a transition economy. That is the reason why competition laws of all members of the Community of Independent States (CIS) cover state agencies at all levels in the lists of governed subjects. The Draft of Vietnam’s Law on Competition has been established in accordance with this direction. The Draft shall govern the abuse of power of the government agencies. However, this behavior shall only be governed by an administrative consultative mechanism against restrictive business practices.

### ***III. Main provisions of draft of Vietnam’s Competition Law***

As mentioned above, the major purpose of Vietnamese Competition Law is stipulated in the preamble of the Bill: “To create and promote equal and non-discriminatory opportunities in the process of competition for all business individuals and organizations; protect and encourage fair competition; prevent restrictive business practices and unfair competition practices in the market; to protect national interest, the legitimate rights and interests of enterprises and consumers with the aim of contributing to social-economic development.”

Based on mentioned above purposes, the scope of application of Vietnamese Competition Bill is broader than that of Competition Law or Anti-Trust Law in traditional sense.

Vietnamese Competition Bill governs restrictive business practices (anti-competitive agreement, abuse of dominant position, economic concentration) and unfair trade practices in business and other practice which have the effect on competition in the territory of Vietnam.

Regarding the object of application, Vietnamese Competition Bill is expected to apply a broad scope of objects:

- “Vietnamese enterprises and associations;
- Foreign enterprises and associations in case their business transactions with a Vietnamese contracting party have an effect on the competition in the territory of the Socialist Republic of Vietnam;
- Enterprises engaged in public utility or in the field of State monopoly provided that these enterprises have operation out of business scope assigned by the State or their practices go beyond the tasks and duties assigned by the State in the territory of the Socialist Republic of Vietnam.”

#### 1. Anti-competitive agreement

According to Competition Bill of Vietnam, anti-competitive agreements such as price fixing, market allocation, volume restriction, bid rigging are prohibited only if these agreements lessen or restrict the competition in the relevant market substantially.

#### 2. Abuse of dominant position

There are also provisions to examine the dominant and monopolistic position. The main criteria to examine the dominant position is the 30% market share in the relevant market. Besides, in certain cases, following criteria will be used:

- a. the financial power;
- b. the development of the distribution network and the access to sources of goods and services;
- c. the enterprises connection with other enterprises;
- d. the capacity of the enterprises of preventing competitors from effectively competing or removing efficient competitors from the relevant market

However, a dominant position enterprise will be found guilty if that enterprise conducts abusive practices to maintain or strengthen the dominant position.

#### 3. Economic concentration

All economic concentrations will be prohibited only if the economic concentration has or is likely to substantially restrict competition a relevant market.

#### 4. Unfair trade practices

This chapter in the Vietnamese Competition Bill governs some behaviors such as misleading advertisement, improper multi-level sales, unduly assumption of trade instructions, etc.

#### 5. Competition Authority

At the moment, the Vietnamese Competition Bill offers two models of competition authority:

- (i) The first model: an independent ministry;
- (ii) The second model: a Department under the Ministry of Trade

The final decision to approve which model is under the power of National Assembly.

While many industrialized countries have the long-time history of market economy development, Vietnam – a developing and transition economy has been facing a lot of difficulties in establishing and enforcing its competition laws and policy.

However, the importance of competition policy is undeniable. That is why ASEAN's member countries agreed with Indonesian initiative to hold a Conference on Competition next March in order to gain a common understanding and to create a legal framework governing competition behaviors within and among ASEAN member countries. ASEAN countries will agree on the major principles to govern competition behaviors and take the responsibility to maintain or set up necessary institutions at national or international level to pave the way for economic integration between ASEAN countries.