

Sharing Experience on a case of Abuse of Monopoly from Vietnam

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1. Background

❖ Domestic Airlines transport market (Year of 2008)

- Vietnam Airlines (VNA): 70%
- Jetstar Pacific (Jetstar): 29%
- Indochina Airlines: 1%

❖ Vietnam Air Petrol Company (Vinapco)

- Relations with VNA
- Monopoly in Jet-fuel Supply Service

1. Background

❖ Case initiations

- On April 1, 2008, a number of Jetstar Pacific Airlines (JPA) flights were either cancelled or delayed as Vinapco had refused to supply fuel due to a dispute over fuel service fees.
- Few weeks later, Vietnam Competition Authority (VCA) started its investigation on the allegation that Vinapco abused its monopoly power to make JPA accept “tough” contractual terms, including the new increased fueling fees.

2. Facts of the case

- ❖ The jet-fuel market in Vietnam
 - Vinapco is the sole jet-fuel provider
- ❖ Contractual terms between enterprises
 - Terms of payments
 - Termination of service
- ❖ Ongoing negotiations on aircraft fueling fees
 - Started in early 2008 as fuel price fluctuated
 - Disputes over supply service fees
- ❖ Extraordinary event on April, 1st 2008

2. Facts of the case

- ❖ Vinapco's defense
 - For its refusal to supply
 - For the terms included in the contract with Jetstar

3. Case analysis

- ❖ Market definition
 - Jet-fuel supply service
 - In all civil airports in Vietnam
- ❖ Monopoly of Vinapco
 - Historical reasons
 - Barriers to entry

3. Case analysis

- ❖ Relevant regulations
 - Art. 12 of the Competition Law
 - Monopoly: no competitor in the relevant market
 - Art. 14.2 of the Competition Law
 - Imposing unfavorable conditions on customers
 - Art. 14.3 of the Competition Law
 - Unilaterally modifying or canceling contracts without plausible reasons

3. Case analysis

- ❖ Alleged violations
 - Was Vinapco's refusal to supply jet-fuel merely a contract violation?
 - Tough contractual terms for Jetstar
 - Imposing tough terms – Jetstar had no other choice
 - Imposing increased jet-fuel supplying fees
- ❖ Who gets hurt? What sanctions should Vinapco be punished? Would the public accept our conclusions & recommendations?

4. Conclusions and rulings

- ❖ Investigation conclusion
 - Violation of the Competition law
 - Settlements
 - Fines: over 3.3 billion VND (about 1.7 million USD)
 - Removal of contractual terms
- ❖ Appeal to Vietnam Competition Council (VCC)
- ❖ VCC's decision appealed to Admin. Court

5. Some Concluding thoughts

- ❖ Selection of the 1st case is crucial
- ❖ Stronger sanction works better?
- ❖ Effective enforcement of the Competition Law is the best way to raise awareness of business community on competition issue as well as protecting their interests...

Thank you for your attention !!