

Competition and Consumer Dossier in Vietnam

A. COMPETITION DISTORTIONS

I. Laws & Policies

1. Government issues new decree on e-commerce

On May 16, 2013, the Government issued the Decree No. 52/2013/NĐ-CP on E-Commerce revoking the Decree No. 57/2006/NĐ-CP promulgated in 2006.

Unlike the previous Decree which mainly comprises of framework provisions clarifying principles of the Law on Electronic Transaction applicable to data messages used in commercial transactions, the new Decree on E-Commerce clearly stipulates about operations and State management in e-commerce. The Decree is aimed at establishing a legal framework for transparent and fair competition-based e-commerce transactions so as to develop e-commerce operations, to contribute to improving the competitiveness of businesses, and to build modern commercial practices in Vietnam.

The Decree, coming into force from July 01 2013, comprises of 80 articles arranged in 7 Chapters.

www.moit.gov.vn/en/Pages/News.aspx?IDNews=289



Food for Thought

The new decree to regulate e-commerce activities is deemed necessary given the fact that the existing legal framework has gotten quite outdated, failing to handle several recent cases of using the Internet for illegal purposes. More stringent and specific regulations would certainly help creating a convenient regulatory corridor for enterprises operating in this area as well as improving consumer protection in online transactions. However, the new Decree is only expected to be able to solve around 50% of the problems faced by enterprises as it doesn't cover all the aspects of e-commerce but only the most typical ones such as acts of holding illegal multi-level business, acts of defrauding customers on e-commerce website or acts of falsifying the registration information. Some provisions are said to be too vague. In line with the tight management policy on e-commerce operations, a government portal titled <www.online.gov.vn> will be set up to publicise information of websites and enterprises involved in e-commerce business. Accordingly, compliant or law-breaking websites will be named. However, conditions based on which firms are blacklisted are not specified, which causes it hard to implement the Decree. Another challenge is that such regulation is likely to be taken advantage of by rivals to eliminate competitors out of the market.

It is highly advisable for the government to complete a legal framework for the regulation of e-commerce as this sector is becoming increasingly popular as a result of booming technology and the Internet. Therefore, in addition to the newly-enacted Decree, corresponding Circulars which adapt to constant changes that e-commerce subjects to every day is required for its smooth operation. However, at present, it is imperative for the government to make the Decree as widely known by enterprises, organisations and individuals taking part in e-commerce as possible. Besides, endeavours should be directed towards developing the capacity of human resources for e-commerce management in remote localities, along with management agencies at all levels.

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2. Circular finally issued to guide implementation of amended IP law

A number of articles of the Decree No. 103/2006/ND-CP, guiding the implementation of a number of articles of the Law on Intellectual Property have been amended and



supplemented under the Decree No. 122/2010/ND-CP dated 31 December 2010 (Decree 103). In connection with such amendments and supplementations, the Ministry of Science and Technology has issued the Circular No. 05/2013/TT-BKHCH dated February 20, 2013, amending and supplementing a number of articles of the Circular No. 01/2007/TT-BKHCH dated February 14, 2007, guiding the implementation of the Decree 103, amended and supplemented under the Circular No. 13/2011/TT-BKHCH dated July 30, 2010, and the Circular No 18/2011/TT-BKHCH dated July 27, 2011.

<http://vietnamnews.vn/economy/239661/circular-finally-issued-to-guide-implementation-of-amended-ip-law.html>

3. Regulations on contents of application registration form for model contracts and general transaction provisions

On May 30, 2013, the Ministry of Industry and Trade issued the Circular No. 10/2013/TT-BCT promulgating the application registration form for model contracts and general transaction provisions.

According to this Circular's requirements, it is compulsory for these model contracts and general transaction provisions to clarify the subject of consumers, to be applicable nationwide or at least at one or some central-affiliated cities and provinces (the name(s) of the central-affiliated cities and provinces has to be clearly inscribed if these contracts and provisions are not applicable nationwide). Anytime when detecting that



content of model contracts, general transaction conditions violate the Law on Protection of Consumers' Rights, agencies accepting registration have the right of and responsibility for requesting the business organisations, individuals concerned to amend and/or cancel that violating content.

Those who draft model contracts and general transaction provisions have to study the general legal and regulatory framework carefully so that the contracts and conditions enclosed the registration application do not contain any terms violating the Law on Protection of Consumers' Rights and general contractual principles. Individual and organisations shall take full responsibility for the truthfulness and accuracy of the contents in the registration application and the documents enclosed.

This Circular takes effect on May 30, 2013 and replaces the Decision No. 659/QD-BCT dated February 15, 2012.

<http://vietnamlawdata.com/home/index.php/archives/755>

II. CASES

1. Foreign firms disallowed to buy coffee from farmers



Tussles between local and foreign coffee exporters in the past three to four years would come to an end on June 07, 2013 when foreign entities are banned from directly purchasing coffee from farmers and establishing coffee-buying networks. The Ministry of Industry and Trade has promulgated the Circular 08/2013/TT-BTC providing detailed regulations on commodity trading and other related activities of foreign-invested enterprises (FIEs) in Vietnam.

Provision 4 of Article 3 of the Circular specifies that "Foreign companies already granted export licenses are only allowed to directly purchase commodities of Vietnamese traders already acquiring business registration and import or distribution licenses for export." Besides, the rule says these firms are disallowed to organise goods purchasing networks in Vietnam for export, including opening spots for collecting export items, except for the cases in line with local rules or international treaties to which the nation is a signatory.

<http://english.thesaigontimes.vn/Home/business/trade/28956/>

Food for Thought

It is clear that by laying down the policy, the Government of Vietnam aims to protect domestic companies. According to the Ministry of Industry and Trade, FIEs now collect up to 60-70 percent of the total coffee output in Vietnam, which is about 1.3 million tonnes. FIEs can directly sell coffee beans purchased in Vietnam to international processing firms whereas local firms have to sell coffee via international intermediaries. As a result of gaining higher profits, foreign firms pay higher prices for coffee than local ones. Therefore, Vietnamese firms are likely to be pushed out of the market in the end for being less competitive.

Evidently, FIEs will be hurt the most by the new Circular. Many of them have paid huge costs to implement sustainable coffee programmes such as 4C, Rainforest, UTZ for farmers and have not fully benefited from them yet. The scenario might be that some of them could leave the Vietnamese market for other countries, which would go against the trend of economic integration when Vietnam has already been a WTO member. It can't be foretold whether farmers will benefit from this policy in the long term but in the immediate term, they have to face great losses as a result of restricted access to international markets for coffee. It is predicted that there will be a 50 percent decrease in sale turnover if the new Circular takes effects as planned. In addition, without a level playing field on the market, local firms are likely to control prices and hurt farmers.

Some experts even consider this "a narrow-minded policy" as purchase price is not the only reason that has caused many Vietnamese firms to go bankrupt. Some other reasons which could be cited include high interest rates and bad corporate management.

In a nutshell, policies to support local firms' development in competition with FIEs should be developed. However, the government should be cautious in its approach so as not to end up in adopting protectionist and restrictive measures and hurt the level playing field on the market. Besides, any policies should be devised, taking into account the interests of all stakeholders, especially those directly involved in production. In the long run, local firms should develop closer links with farmers so as to be sustainable and more competitive.

2. K+ holding exclusive rights to Premier League matches

Vietnam's television channel K+ announced at a press conference yesterday that it holds the exclusive rights to



air the matches of the English Premier League (EPL) in Vietnam during the three seasons from 2013 to 2016. This means that Canal+ Overseas, who had sealed the deal with IMG Media, the sales representative in Asia, has transferred the rights to its member firm K+. K+ is a joint venture between the France-based Canal+ Overseas, which holds a 49 percent stake in the company, and Vietnam Television (VTV), which holds a 51 percent stake.

The price of the exclusive packages which Canal+ Overseas purchased from IMG has not yet been revealed. Earlier, IMG offered three packages to local TV stations to show live games with a total price of US\$37.5n for the 2013-2016 seasons, meaning double the US\$19m-dollar price for the three previous seasons starting from 2010.

<http://tuoitrenews.vn/sports/8814/k-holding-exclusive-rights-to-premier-league-matches>

Food for Thought

The three brands of the Vietnam Television (VTV), namely VTVC, SCTV (a joint venture between VTV and Saigontourist) and K+ (a joint venture of VTV and the French Canal+) now have 3 million subscribers out of the 4.5 million subscribers nationwide. In this specific case, taking advantage of its monopoly position, VTV was apparently playing a two-faced game when allowing K+ to obtain the exclusive rights.

Other pay TV companies on the market will be greatly affected as EPL draws a huge audience nationwide every year. However, consumers will suffer the most. As K+ has possessed the exclusive rights to air 2 best packages among the 3 packages offered by IMG, subscribers of other TV channels won't be able to watch the most interesting EPL games unless they subscribe to K+. Even in case that these packages are shared by K+ on other TV channels, consumers will have to pay 150,000 Vietnamese Dongs per month in addition to the fees for using the services of other providers. The total fees will be too high in that case, approximately 300,000 Vietnamese Dongs.

Though having unanimously declined to buy the rest of total packages in the first place, several television stations have announced their decision of airing some EPLs matches in package 3 free of charge. It can be said that the controversy on EPL exclusive rights has come to its closure. However, one thing to mention is that the price offered by IMG was nearly 40 million US\$ for the 2013-2016 seasons compared to 19 million for the previous seasons starting from 2010. The question is that if there had been no monopoly and the local competitors played in a healthy manner, would the foreign company have enjoyed such a doubled price like that?

As per the latest development, Viettel and FPT Telecoms have been licensed to provide cable TV services, showing steps by the government to break the monopoly on the pay TV market. These new entries will bring consumers, especially in rural and disadvantaged areas, more chances to access to pay TV services. Besides, regarding concern regarding consumers being charged more for watching EPL games, it is also much hoped the government should come up with some policies to prevent any potential exploitation of consumers like this.

B. CONSUMER PROTECTION ISSUES

1. Mobile network operators unexpectedly raised 3G service fees



Since April 2013, MobiFone's and VinaPhone's mobile Internet subscribers have to pay VND10,000 a month more for no-limit 3G package service. The users of MobiFone's MIU and VinaPhone's MAX service packages, for example, would have to pay VND50,000 a month instead of VND40,000.

Viettel now charges VND40,000 a month for a similar service package, MiMAX, but users have to pay the additional fee of VND10,000 a month. As such, after the latest moves, VinaPhone's and MobiFone's service fees have become equal to Viettel's.

The move by mobile network operators of increasing the 3G service fees has been described as a behavior of retaliation to the free OTT (Over-The-Top) application developers.

<http://english.vietnamnet.vn/fms/science-it/70606/mobile-network-operators-unexpectedly-raised-3g-service-fees.html>

Food for Thought

It is calculated that with this decision, these mobile network operators will gain approximately 100 billion dong per month which is claimed to offset the losses caused by free OTT applications. From the regulatory perspective, the decision to increase the 3G fees at the cost of consumers' interests is not justifiable. According to the Law on Protection of Consumer's Rights, when adding contract terms potentially harmful to consumers' interests, service providers have to consult consumers before taking any decision. The contract here can be understood as the agreement in which consumers accept to use the unlimited 3G package at 40,000 dong per month. As pointed out by experts and lawyers, the move seems to be about "collusion rather than competition." Such practice of increasing price could be considered monopolistic as consumers have no alternative but to continue using their services.

From the consumer perspective, telecommunications is becoming an essential utility nowadays so the increase of 3G fees is very sensitive given the sluggish national economy. It

is unreasonable to harm their interests on account of free OTT applications or security reasons. Not all of them use these applications and with regard to privacy issues, it is up to them to decide which applications to use to ensure that their personal information is safe. This is not to mention that the quality of 3G services is still not good in terms of slow access speed and unstable or sometimes non-existent connection.

It is advised that the government, specifically the Ministry of Industry and Trade, should look into the matter and come up with suitable methods to supervise and control these applications. At the same time, any price decision should come along with higher quality and better service.

2. Heavy-handed approach wanted

It requires a heavy-handed approach to rise through the influence of major State-owned juggernauts to make the Vietnamese fuel market more transparent for the sake of consumers.

On April 18, the Ministry of Finance sent a notice to major fuel wholesalers to request a cut on retail prices by VND 87-408 per liter. This is a rare occasion when an administering body responds instantly to the world's price changes. Nevertheless, the fuel market's thorniest issue concerning quick increases and slow cuts remain unsolved.

www.thesaigontimes.vn/uploads/NewEpaper/2013/weekly_19lb_2013/files/assets/basic-html/page28.html



Food for Thought

The issue of fuel prices has again sparked public debate. The fuel market in Vietnam is considered oligopolistic as only a cluster of importers account for the major market shares. Therefore, a suitable price management mechanism is extremely vital. However, the Decree No 84/2009/ND-CP on trading petrol appears to only protect the business, at the cost of keeping consumers' interests at bay. In fact, the regulation does not work effectively as fuel prices in the country does not keep pace with global prices and the government has to come up with price-subsidy policies such as tax, stabilisation fund, etc in the context of widening budget deficit. Recently, consumers have had to consecutively bear the burden of three petrol price hikes in just a month. It

is much expected that the Decree will be amended in a way that treat consumers more equally and fairly.

However, in a recent consultation workshop to collect opinions for the draft amendments of Decree 84, fuel consumers still have their rights ignored. The event was mostly attended by representatives of wholesalers and relevant management agencies. The continuance of such biases in policy-making is likely to severely violate the rights of consumers and the “openness, transparency and in pace with market developments” is likely to remain a slogan. There is still much to be discussed regarding the amended Decree. However, it is high time that the challenges of price regulations should be resolved so that the interests of the State, enterprises and consumers can be harmonised.

The information in this newsletter has been collected through secondary research and CUTS Hanoi is not responsible for any errors therein. The press clippings used here have been suitably adapted and summarised to convey their essence to the reader without any distortion of content. For earlier issues, please visit: www.cuts-hrc.org/en/competition-dossier/competition-dossier

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