

Competition and Consumer Dossier in Vietnam

(July-September 2011)

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A. LAWS & POLICIES

1. New Law improves Consumer Rights

The Law on Protection of Consumer Interests, passed by the National Assembly on November 17, 2010, took effect on July 01, 2011. It replaces the 1989 Ordinance on Protection of Consumer Interests.

The new regulations will create a firm foundation for the effective protection of consumer rights in the future. Business individuals and organisations trading in the list of essential goods and services are required to register a sample of standard contracts with the relevant State agencies.

The eight rights of consumers mentioned in the new Consumer Protection Law are in line with those adopted by the UN. Besides the clear regulations on the consumer rights, the law prohibits providers/traders of goods and services from conducting fraudulent or misleading acts by way of providing inaccurate, misleading, or concealing the information about their goods or services.

According to the law, business individuals and organisations are required to label their goods, publicly display prices of goods and services, and provide sufficient information on the possible adverse effects of goods and services on the health of consumers.

According to the new law, service providers and goods traders are obliged to prove that they have not committed any violations against consumer rights.

<http://english.vov.vn/Home/New-law-improves-consumer-rights/20117/127968.vov>

www.qdnd.vn/qdndsite/vi-vn/75/72/182/155/160/152859/Default.aspx

Food for Thought

There are 15 new points in the Consumer Rights Protection Law (the Law) compared with the Ordinance No. 13/1999/PL-UBTVQH on consumer rights. In general, the Law is aiming at providing consumers with more rights to protect themselves as well as requiring more responsibilities from enterprises. Most importantly, consumers are no longer obliged to prove the faults of manufacturers and providers of goods and services and they do not have to pay the litigation cost in advance as was the case during the previous law.

Before the promulgation of the Law, the Ordinance on Protection of Consumers' Interests of Vietnam was the most important legal instrument on consumer protection in Vietnam, which is inclined to defining general guiding principles rather than providing an effective framework to protect the rights and interests of Vietnam consumers. Besides, there is already a Law on Competition and several provisions in various regulations in Vietnam which consumers can rely on to protect their rights. These laws and regulations have been providing ex ante protection to consumers in Vietnam (such as the Law on Standards and Technical Standardisation 2006, the Law on Quality of Goods 2007, the Ordinance on Measurement 1999, the Ordinance on Food Safety and Hygiene 2003, the Ordinance on Advertisement 2001) or the compensatory ones (such as the Civil Code 2005, the Criminal Code 1999, the Civil Procedural Code 2006, the Commercial Law 2005, and the Ordinance on Administrative Fines 2002).

However, the consumer protection movement in Vietnam is still weak. It is the weak position of consumers in the society that makes them easily vulnerable to producers' unfair trade practices. Besides, Vietnamese consumers are also characterised by their lack of knowledge, information

and low awareness of their own rights to protect themselves. More importance should be attached to the implementation of the Law. However, it is true that the Law cannot be a “one size fits all” key to handle all issues regarding consumers. It should be applied in parallel with relevant regulations mentioned above. Hence, this requires a combined effort involving state agencies, consumer protection associations and consumers themselves so that the Law can take its full effect.

2. Tightening Administrative Sanctions in the Pricing Field

In order to tighten price management, on September 29, 2011 the Government issued Decree No. 84/2011/ND-CP detailing violation of regulations on price and price appraisal, punishment forms and ranks, punishment competency and procedures.

As compared with the Decree No. 169/2004/ND-CP which is already in effect regarding sanctions imposed for administrative violations in the pricing field, most of penalty levels are higher than previously. In addition, the new Decree also imposes the penalty level for violation of regulations on establishing and using the price stabilisation fund.

Furthermore, individuals and organisations that infringe the regulations may be subject to an additional penalty and obliged to remedy the consequences thereof, such as being stripped of, for a definite or indefinite period of time, the price appraiser’s card or certificate of eligibility to business activities, supply of goods, services, price appraisal services, or other licenses, etc.

This Decree takes effect from November 15, 2011 and cancel the Government’s Decree no. 169/2004/ND-CP dated September 22, 2004 on sanctions against administrative violations in the pricing field, cancel articles 6, 7, 8 & 9 of the Government’s Decree no. 107/2008/ND-CP dated September 22, 2008.

www.luatviet.com/news/tightening-administrative-sanctions-in-the-pricing-field/1/281

<http://vci-legal.com/publications/legal-breaking-news/punishment-for-administrative-offences-in-price-sector-decree-no-84-2011-nd-cp-vn>

Food for Thought

In a market economy, market rules should be applied, not administrative measures. However, State regulations on price management very necessary in Vietnam given the fact that the legal system in Vietnam is still not comprehensive enough and has many loopholes. In fact, price registration has been sparsely regulated in subordinate legal documents such as the Decree 75/2008/NĐ-CP, Circular 104/2008/TT-BTC and Circular 122/2010/TT-BTC on price stabilisation. For a long time there is a lack of discipline and price registration is more of a paper work than applying to reality. Hence, strengthened price management is of great importance especially when it comes to consumer protection. In fact, Vietnam’s price management policies are quite different from those of other countries. In other countries, there are systematic retail networks (supermarkets and supermarket chains), while in Vietnam, the distributors are separated enterprises, mostly small businesses, who are always raising sale prices erratically.

However, in the long term, these administrative measures should not be abused and be eliminated when the market turns to rely more and more on its own mechanisms. The best way to manage the price is by creating a healthy market which is not dominated by a handful of large companies. In addition, State administration agencies should provide consumers with more information of products and their listed prices through different channels such as media so that they make wiser choices about the products they buy. Otherwise, consumers will suffer most due to the unavailability of information.

B. Cases

I. Anticompetitive Practices

1. MoF Vows to Clarify Petroleum Cost Prices

Deputy Minister of the Ministry of Industry and Trade (MoIT) Nguyen Cam Tu, who supports petroleum distributors and importers, said that petroleum enterprises have been incurring big losses, warning that if the enterprises are not allowed to raise the retail prices, they will “die”, and the petroleum supply would be interrupted.

However, despite the warning the Minister of Finance (MoF), Vuong Dinh Hue said that he understood well the petroleum cost prices and that he did not regret making the decision on slashing the petrol price by 500 dong per litre lately, the move that MOIT and petroleum enterprises called an “unreasonable decision”.

Hue said that before making the decision, he had found out from the figures updated by the customs agencies that Petrolimex, the petroleum distributor that holds 60 percent of the market share, could make a profit of 780 dong for every liter of petrol sold.

Hue continues to keep a firm attitude when replying to the MoIT about the possible collapse of the petroleum product distribution network. He said that if Petrolimex and other petroleum distributors continue incurring losses, they should leave the market.

<http://en.baomoi.com/Home/economy/english.vietnamnet.vn/MOF-vows-to-clarify-petroleum-cost-prices/185944.epi>

<http://vietnambusiness.asia/mof-vows-to-clarify-petroleum-cost-prices/>

Food for Thought

The current petroleum market is still an oligopolistic one. According to a survey carried out by the Competition Administration Department (CAD) under the MoIT, competition in this market remains weak with 10 enterprises having the exclusive rights to import and distribute petroleum products on the domestic market. Among them, five enterprises (Petrolimex, Petec, PV Oil, Saigon Petro and Mipeco) are now considered as holding the biggest market shares. That is why importers raise retail prices when the world prices increases but are too reluctant to reduce retail prices when the world prices decrease. Besides, State intervention into petroleum pricing, with the use of its financial tools, has “distorted” the petroleum price mechanism. Permission must be sought from the ministries of Finance and of Industry and Trade to make any changes in price. This is the first time that the MoF and MoIT disagreed on petrol price. If the MoF’s efforts involving inspecting imported petrol prices and taking a closer look at the use of the Petrol Price Stabilisation Fund pay off, it is much hoped that the price of this essential commodity will be managed more effectively.

2. EVN Accepts Chinese Electricity

The Vietnam National Oil and Gas Group (PetroVietnam) and the Vietnam Coal and Mineral Industries Group (Vinacomin) complained that they have suffered heavily because the Electricity of Vietnam (EVN) has unexpectedly reduced the electricity purchasing volume from their power plants.

PetroVietnam's and Vinacomin's power plants are gas-turbine or thermo power plants, which have the sale prices higher than hydropower plants' prices, therefore, it is understandable why EVN has refused to purchase electricity from the sources.

However, the problem here is that while EVN cuts down the electricity volume purchased from domestic IPP sources, it still keeps purchasing high-priced electricity from China. Under the contracts that EVN signs with China every year, EVN will purchase a certain fixed volume of electricity from China. The seller (China) will define the sale prices depending on the output ordered by the buyer (EVN). Both the parties have to follow the provisions of the contracts, and fines will be imposed on the purchase volume increases or decreases.

A question has been raised as to why Vinacomin and PetroVietnam cannot impose fines on EVN when it unexpectedly cuts down the electricity purchasing volume. "The problem is that the contracts signed with Vinacomin and PetroVietnam are not the contracts on product underwriting, therefore, none of them can punish EVN," the expert explained.

<http://english.vietnamnet.vn/en/business/12133/evn-refuses-vietnamese--accepts-chinese-electricity.html>

Food for Thought

EVN is the sole power distributor in Vietnam and accounts for 55 percent of the country's generation capacity or up to 70 percent share (if power plants included). It is anticipated that the corporation will continue to control a majority stake in the nation's power market for the next ten years.

The distribution monopoly can only be eased when the market becomes more competitive and more large investors enter into it. In fact, as of January 2012, Vietnam will officially apply a competitive power market mechanism under which various companies can compete to win to the right to generate and sell electricity. This has been operational since July 01, 2011 on a pilot basis attracting 83 power generators, each of which has a production capacity of over 30 megawatts.

However, in this case the problem lies in the unclear contracts between EVN and Vinacomin and PetroVietnam. EVN must be aware of this but what matters is whether they want to change the provisions to protect these partners to whom it owed thousands of billions dong. Whatever reason it is, a question remains whether the domestic resources have been fully taken advantage of? The answer is that there are many sellers but there is only one buyer on the market. EVN decides which companies to buy electricity from. It is a monopsony. Only when there is a real competitive power market will this situation come to an end. Then it is necessary that an independent electricity regulatory authority with full-fledged power should be established for more effective supervision and monitoring of the competitive market (as of now the Electricity Regulatory Authority of Vietnam is under the Ministry of Industry and Trading).

II. Unfair Competitive Practices

1. Agel Vietnam Unexpectedly Shuts Down

Members of Agel Vietnam, a US-based multi-level marketing (MLM) group has been on a knife's edge when hearing that the group has officially withdrawn from Vietnam. Tens of thousands of people have lost their money because of the decision.

The US Agel Group said that it did not cause the losses and denies the responsibility for this, saying that Agel Vietnam must take responsibility in this case.

The members of Agel Vietnam's network not only have suffered losses because they have lost products and commissions, but also because they cannot ask for products back from other members, who borrowed products from them before.

...Agel Vietnam's members have been gathering, planning to raise a lawsuit against the company's director. Letters of denunciation have been sent to the ministries of Planning and Investment, Industry and Trade, the Competition Administration Department, the Market Management Agency and to the Police.

<http://vietnamnews.vnagency.com.vn/Politics-Laws/Law-Justice/215725/Unlicensed-telecoms-companies-face-fines.html>

<http://en.baomoi.com/Home/society/hanoitimes.com.vn/Agel-Vietnam-unexpectedly-shuts-down-many-people-become-moneyless/159312.epi>

Food for Thought

First of all, it should be noted that there is often a thin line between legitimate multi-level marketing opportunities and pyramid schemes. Legitimate multi-level marketing is when a person becomes an affiliate who sells certain products for distributors and earns money based on commission. These people can use their own relationships to increase their sales revenue or to involve more people in the network. But, pyramid schemes usually involve people making some percentage of money off by getting other people to join in on the program, and the money is not in selling but in recruiting.

The act of pyramid schemes for illicit profits is strictly forbidden in Article 48 of the Competition Law of Vietnam. Those acts can be:

- (i) To request those who wish to participate to pay a deposit, buy an initial volume of goods or pay a sum of money for the right to participate in the multi-level sale network;*
- (ii) Not to commit to buy back goods at 90 percent at least of the price at which the goods were sold to participants for re-sale;*
- (iii) To give participants commissions, bonuses or other economic benefits which are gained mostly from the enticement of other people to participate in the multi-level sale network; and*
- (iv) To supply false information on the benefits of the participation in the multi-level sale network, false information on the nature and utilities of goods in order to entice the participation of other people.*

So the question is whether Agel is a pyramid scheme or not. There are certainly plenty of controversial arguments about this. Nevertheless, it should be admitted that though being high-priced, Agel products are of good quality and US Agel group possesses experienced team of leadership and distributors. These are all reasons behind its overwhelming success and development in America and in Thailand afterwards. However, Agel Vietnam closed its business suddenly only after 3 years of establishment which caused great damages of millions of distributors in Vietnam. It is because that in Vietnam, being exploited by certain individuals, business practices are not the same way it should be. For example, whoever wishes to join the network of Agel Vietnam has to pay US\$726 in advance. As already mentioned, this act is clearly forbidden in Article 48 of the Vietnam Competition Law. Agel Vietnam's business culture is also a

critical issue. Its distributors often spoke poorly about their competitors and they are driven by greed and by profit rather than focus on sustainable development.

III. Consumer Protection Issues

1. Watchdog Powerless in Controlling Gas Prices

Gas price in the world has dropped sharply by US\$60 per tonne in comparison with early August to US\$800 per tonne. Consumers hoped that the retail price would decrease. However, gas firms did not lower the retail prices; they just offered higher commissions to sales agents to boost sales.

Explaining this, Le Thi Anh Man, Deputy General Director of Saigon Petro, said that the world price is released once every month, at the beginning of the month, being applied to the clients who register long term contracts, and valid for the whole month.

Nguyen Si Thang, Chair of the Vietnam Gas Association, said that gas trading firms decide not to lower the retail prices, but offer higher commissions, because they want to boost sales and compete with rivals.

HCM City has stopped granting new licenses to sales agents in the city, in a plan to restructure the business facilities for gas trading. The problem is that the restructuring has not been completed over the last six years.

The interruption in licensing gas sales agents for a long time has accidentally caused unhealthy competition. Meanwhile, gas trading firms have been mushrooming. Therefore, in order to make profits, gas firms have to offer high commissions to their sales agents, or the sales agents would shift to distributing the products from the suppliers who offer higher commissions. <http://english.vietnamnet.vn/en/business/12470/watchdog-agencies-powerless-in-controlling-gas-prices.html>

Food for Thought

Decree 107 on gas trading management stipulates that enterprises are allowed to define sale prices themselves and responsible to State administration agencies in terms of price. However, the State inspection and supervision are not strict enough. This allows sales agents to freely increase retail prices unreasonably without paying attention to possible damages to consumers.

2. Baby Formula Prices Escalating

A bulletin released by the US Department of Agriculture on September 16 showed that milk (input) price has decreased by 30 percent, or US\$1000 per tonne over the price seen at the beginning of March.

Meanwhile, the prices of baby formulas continue rising on the Vietnamese domestic market, which has raised big worries among housewives. In early February 2011, when the input price increased in the world market, suppliers immediately raised the retail prices in Vietnam. However, later, when the world's prices decrease, they do not intend to ease the prices.

Explaining the price increases, External Relations Director of Friesland Campina Vietnam, said on Tien phong newspaper that input production costs have increased continuously, thus forcing the company to raise sale prices. The EUR/VND exchange rate has increased by 9-11 percent,

while Vietnamese importers have to pay in foreign currencies for the milk imports. Besides, the price of materials for packaging has also increased by 5-18 percent.

The baby formula price increase has become the hot topic on online forums. “Milk products are always higher in Vietnam than other regional countries. And now suppliers have raised the prices once again, thus making the prices unbearably high. Let’s boycott the dairy products which have increased in prices,” a mother wrote.

However, State management agencies remain powerless in controlling the prices of baby formula in the domestic market. In 2010, relevant ministries once took inspection tours to dairy producers and suppliers to learn about their pricing mechanisms, and discovered unreasonable expenses of the producers and suppliers. However, nothing has been changed since then.

<http://english.vietnamnet.vn/en/business/13359/baby-formula-prices-escalating--state-management-agencies-powerless.html>

<http://en.baomoi.com/Info/Baby-formula-prices-escalating-state-management-agencies-powerless/9/185203.epi>

Food for Thought

According to statistics of the Vietnam Competition Administration, the Ministry of Industry and Trade, milk price in Vietnam is 60-200 percent higher than the price of the same milk in some regional countries. Though producers and importers blame the price hike on higher exchange rate and input costs, some pointed to their practice of price manipulation and consumers’ lack of awareness as the underlying reason. According to some economists, importers “join hands” with importers to inflate the material cost which eventually leads to unreasonably retail price. On the market, currently there are 300 types of milk and some 200 Vietnamese enterprises importing materials and finished milk products. But in fact, there are only four-five brands which accounts for 80-90 percent of the total output on the market which may result in a market monopoly which cannot be controlled by State agencies.

Besides, consumer behaviour is also a problem. Milk companies are said to be taking advantage of consumers’ price-equals-quality fallacy to earn huge profits by selling products at unreasonably high prices. In the absence of any other indicator of quality, many consumers assume that the more expensive product will have higher quality so they prefer foreign brand names more than domestic ones.

In a nutshell, in such a case like this, more stringent State management and better consumer education and awareness-raising activities are required, while further research is to be called for to identify the true reason behind such price hikes in the market.

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