Competition Distortions Dossier

January -March 2017

1. EVN Banned from Investing in Property, Banking Sectors

Government-owned Electricity of Vietnam (EVN) is not permitted to mobilise capital to invest in the real estate and finance sectors. It cannot contribute capital to or invest in real estate projects or buy shares of banks, securities and insurance companies, venture and investment funds.

The Government of Vietnam has recently promulgated the Decree No. 10/2017/NĐ-CP providing a financial management mechanism for EVN, stipulating the use of State capital at the group, its mobilised capital and other sources of funding it manages for lawful business operations.

The group is responsible for controlling capital use and developing capital sources effectively for its production and trading. It should report to the Finance Ministry on its losses and debts which cannot be paid or any other violations to have supervision under the laws and regulations. Its investment abroad should follow requirements on the use of capital and assets under the Law on Management and Usage of the State capital on production and trading, the regulations on investment, foreign currency management and other related laws. Moreover, the decree would take effect from the beginning of April 2017.

http://vietnamnews.vn/economy/351188/evn-banned-from-investing-in-property-banking-sectors.html#yPWWq0jyyoGJMGjt.97

Food for Thought

In recent years, cases of failed investment in non-core sectors, which are not related to their main lines of business, of many corporations and State-onwed Enterprises (SOEs) have caused huge losses to the State budget, resulting in public discontent about the management and operation of these SOEs, including Vietnam Electricity Group (EVN). As a government-owned monopoly on electricity generation and transmission, after many years of operation, EVN still cannot ensure sufficient power supply to consumers, with regular power cuts on a large scale in many cities, especially in summers. Currently, power price has already been considered as being quite high, but EVN still claimed large losses, blaming foreign exchange rate differences as the main cause, and petitioned for subsidisation by hiking power prices. Therefore, in this context, the ban on their non-core investments is considered a judicious and reasonable move of the Government.

In Vietnam, SOEs often make the headline in the news, be it on the national media or as reported by international news agencies, or the hot topic for many research studies. This is probably because even though Vietnam has started its transition into a market economy from the former centrally-planning model for more than 20 years now, and has integrated quite extensively into the region and the world, the size of the public sector in almost all industries and the number of SOEs remain significant, as compared to that of the private sector – which is, on the contrary, considered as the main drive for economic growth in many other countries.

CONTENTS

Even though the total number of SOEs has reduced from around 7,000 in the year 1995 to only around 1,000 in the year 2010, SOEs revenue still accounted for over 63 percent in the VNR 500 list in 2012. Out of the ten biggest Vietnamese companies in the same year, eight are State-owned, only one being a foreign – invested enterprise (Samsung Electronics), and the other one being a joint venture between Vietnam and Russia (Vietsovpetro). Notably, many of these large SOEs are also either enjoying a monopoly in their respective industries (like EVN or SJC) or a dominant position in their market (such as VNPT or Viettel).

The issue is that, not all these dominant positions or monopoly positions have been acquired as a result of 'superior skill, foresight and industry', and thus winning the competition, but mainly because of the Government links that these enterprises are privileged to have. In addition to these administrative backings, SOEs in Vietnam also benefit from huge capital investments drawn from the State budget. Their hefty pockets might thus undermine the competitive balance to their advantages, and of course the situation would be even worse when any losses incurred are being unfairly passed on to the consumers in the form of higher prices.

2. State Monopoly Proposed for 20 Areas

The Ministry of Industry and Trade has recently unveiled a draft decree on State monopoly over the production and supply of goods and services in 20 areas in Vietnam. The Ministry was tasked with drafting the Government decree to clarify the 20 areas in which production and supply is off-limit to the private sector and to deal with the legal loopholes of relevant documents.

The proposed areas include defence, security, publishing, agricultural irrigation, traffic safety, lottery, and operation of infrastructure including first-grade airports and seaports. The Ministry said State monopoly was planned for such areas in line with the Government's policies that regulate SOEs to supply and ensure essential goods, public services, social welfare, security and defence, power transmission, construction and operation of large-scale and multi-purpose hydropower stations and nuclear power facilities, money printing and lottery.

The Ministry also said the 20 areas were picked based on input from Ministries and agencies. However, a number of Ministries are still split over the content of the draft decree. In mid-2015, the Ministry of Industry and Trade announced a draft decree on the production and supply of goods and services with State monopoly in 16 areas.

http://english.vietnamnet.vn/fms/business/172635/state-monopoly-proposed-for-20-areas.html

Food for Thought

Participation of the State in the market has a very long tradition in all economic systems. However, in market economies, such activity is generally regarded as being contrary to the intended competitive development of private businesses.

The reason for this view is not so much that these activities of the State will limit the profitability of private business, but the consideration that a self-regulating market economy will be the most effective system of organising business. State-regulated business on the contrary is considered not effective, slow, and limiting progress.

The common and reasonable approach is to limit direct and indirect State interventions in business to situations where special reasons justify restricting private businesses. Where the State is participating, a negative effect on the private businesses must be avoided. This is especially critical in the case of SOEs sharing business fields with privately-owned companies.

The reasons for the State intervening in business must be of a public nature. In former times, earning profit was one of the major reasons for such State-led activity. That would not be acceptable by today's perspective. The relevant reasons for intervention must be clear and restrictive. Public safety or protection of key functions of the State may be acceptable reasons. Intervening in business in cases where this is assumed to be benefitting the country is not a sufficiently clear condition. Such provision is too broad and is not considering that all legal business is benefitting the country.

A State intervention which is considered as justified should be able to pass the test whether the extent of intervention was required. In short, the question "Is this really necessary?" is necessary to be posed.

It might be beneficial that the Ministry of Industry and Trade (MoIT) intends to regulate the monopolistic activities of the State. This will allow the assumption that the State will not interfere in fields of business in monopolistic ways, which are not included in the new regulation. What is in fact worrying is the wide spectrum of goods and services included in the proposed list.

The organisation of the national currency is obviously an important task of the State, which makes it necessary to uphold a state monopoly on printing money and coinage as well as on the production of gold bars. This will also protect the public from counterfeit money and gold having less than the expected/regulated content of pure gold.

For other items, for example the import of cigarettes, the benefits of a State monopoly is not so clear. Why is importing cigarettes by the State or a State-owned company better for public safety than having it done by a licensed private company? The system of controlling the quality of imported goods by customs and other specialised State agencies would be applied in both cases in the same way.

3. Removing Deposit Interest Rate Cap Considered

Deputy Prime Minister of Vietnam Výõng Đình Hu has recently instructed relevant authorities to scrutinise

the possible removal of the deposit interest rate cap on short-term deposits.Vietnam currently still applies an interest rate cap of 5.5 percent for short-term deposits of 1-6 months. The rates for longer terms are floating.

The cap regulation has been imposed since 2010 when commercial banks, especially ailing ones with poor liquidity, took part in a race to increase deposit interest rates to lure depositors, causing a sharp rise in lending interest rates. Industry insiders and experts have proposed removing the deposit interest rate cap several times, saying that the cap regulation is an administrative measure and it does not follow international rules so it should be removed at a suitable time.

http://vietnamnews.vn/economy/344046/removing-deposit-interest-rate-cap-considered.html#Zdi5dLbKoy2uUZsH.97

Food for Thought

More recently, the State Bank of Vietnam (SBV) issued the Circular No. 39/2016/TT-NHNN to regulate the lending activities of credit institutions and foreign banks to customers, which would takes effect from March 15, 2017. This Circular replaces previous circulars and decisions of the SBV. The newest point of concern in this Circular is regulations on lending interest rates. Accordingly, credit institutions and customers negotiate lending interest according to the market demand and supply of capital, demand for loans and creditworthiness of the customer, except for cases applying the maximum interest rate for short-term loans in VND, i.e. the five (05) priority fields decided by the Governor of the SBV in each period.

Around the same time, the SBV also issued the Circular No. 43/2016/TT-NHNN on consumer loans of financial companies. Accordingly, consumer loan rates of financial companies are implemented in compliance with the regulations of the SBV on the lending activities of financial institutions and foreign bank branches to customers. Financial companies issued regulations on the frame of consumer loan rates, which are applied uniformly throughout the system in each period, which includes the highest lending interest rate and the lowest lending interest rate for each consumer loan product.

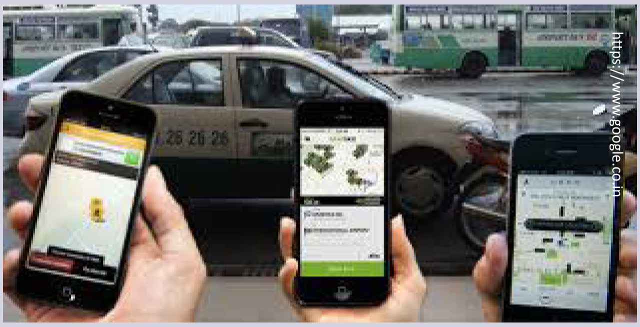
It can be seen that the above regulations broke the previous controversies on the interest rate ceilings, which do not exceed 20 percent /year of the loan amount under the provisions of the Civil Procedure Code 2015, which took effect from earlyin the current year.

With this new circular of the SBV, most of the lending rates in the market are completely floated. This should help Vietnam better fit the needs of the market economy. Interest rates are evaluated in accordance with market demand and supply, reflecting market movements and are being seen as "the price" of money being used. Theoretically, any "prices" which are controlled would only result in market distortions since they are not decided by the laws of market demand and supply.

From another perspective, interest rates are also an important tool to adjust the behaviours of all economic sectors in the market. If interest rates are low, people and businesses tend to borrow more, if interest rates are high, people and businesses tend to borrow less. Floating interest rate mechanism could push the prevailing interest rates in the market to an extremely high level, which makes it impossible for many economic entities to borrow because the borrowing cost is too high. But when interest rates go down, people and businesses would rush to borrow, which might drive up the inflation rate. Therefore, a measure to maintain interest rates at balance is extremely necessary, which is the reason why many Central Banks imposed interest rate caps in expectation of bringing the market to the desired level.

4. Unfair Competition with Uber, Grab Prompts Taxi Firms' Revenues to Dip

The growing popularity of app-based transportation services like Uber and Grab has eroded the profits of traditional cabs. Ride-hailing services like Uber and Grab are paying lower taxes and face less stringent rules, which have created unfair competition and led to falling revenues of traditional taxi firms in Vietnam, industry experts said.



The Hanoi Government has finished a draft law that, if approved, will force Uber and Grab cars to place taxi signs on their roofs in the latest attempt to regulate private cars' business. Uber and Grab drivers will also have to give passengers e-invoices with information including the operator's name, registered plate numbers, starting point, destination, time and fare.

http://e.vnexpress.net/news/business/unfair-competition-with-uber-grab-prompts-vietnamese-taxi-firms-revenues-to-dip-3546366.html

Food for Thought

New technologies or business models can profoundly affect the functioning of existing industries. The most visible examples are internet-based "sharing services" that are disrupting conventional taxi and hotel markets, such as Uber, Grab, AirBnb, while there are many others in diverse areas like finance, retail electricity and automobiles.

These disruptive innovations can deliver important benefits to competition and consumers, in terms of new and better services, and can stimulate innovation and price competition from established providers. However, they can also give rise to legitimate public policy concerns (for example: safety and privacy) and create demands for regulation. Established providers will often lobby for existing regulations to be applied to new providers to lessen their competitive advantage, sometimes claiming rightly or wrongly that this advantage arises from an 'unfair' exclusion from regulatory rules.

Uber and Grab's entry into Vietnam's market three years ago has clearly led to a lot of changes in the domestic taxi transportation market, which is most evident in the shift of a large number of customers using traditional taxis to these transporation apps.

Grab's main innovation was that it facilitates consumers in getting either a car/motocycle ride or a taxi easier. It can show how far the designated cab is from the pick-up location and enables pick-ups away from fixed-line addresses (with the apps one can call and get a cab for a pick-up from the side of a street rather than only from a home or office).

Uber is different; while providing alternative comfort to the consumer and evident economic benefits for the drivers, it is in head-on competition with the long established taxi companies in Hanoi and Ho Chi Minh City. The main difference between Uber's situation and Grab's, however, is the existence of the current transportation regulations.

While Uber is still struggling to get a clear legal recognition, Grab has been licenced to operate legally in Vietnam by the Ministry of Transport (MoT). From a mere legal point of view, Uber can be seen as breaking the (current) law. The transportation laws and regulations were made to protect people when using public transportation; thus the compulsory permits, standards and markings. But laws should not prevent innovation that brings value to consumers. To ban Uber (with all its benefits) for mere legal reasons would result in losing the opportunity to embrace those exact benefits.

It is easy to understand all these claims and cries by traditional taxi companies against Uber and Grab. Long-time drivers of established meter taxi companies are often slow to adapt to innovation and changes, with their livelihoods having been tied to a regulated system for so long. Thus, in the end, it is the MoT's decision that would decide the fate of Uber and that of public transportation, as a whole. Such a decision should be able to keep the playing field levelled and give all respective parties ample room for differentiation and coexistence. It should also ensure that players in the market, whether metered or apps-based, abide by safety regulations.

In the airlines industry, the low-cost carriers did not drastically affect the full-service airlines, they exist well and the consumer has more choice; the laws involved are related to flight safety. The Government should be the regulator of fair play and the market, especially the consumer, would be the final judge.

5. Vietnam's Transport Ministry Rejects Airfare Floor Price Proposal

The Transport Ministry has decided to keep the floor price at zero, against the will of Vietnam Airlines and Jetstar Pacific. Vietnam will not set a floor price for air tickets despite proposals by national flag carrier Vietnam Airlines and its subsidiary Jetstar Pacific, a government Minister said.

"If airlines are able to lower their prices, why should we stop them?" Transport Minister Truong Quang Nghia said recently. "Our job is to make sure price cuts and promotions adhere to the law", he indicated.

Regulations on air tickets will remain unchanged, and no floor price will be set. The ceiling price may be adjusted from time to time. In March 2017, Vietnam Airlines suggested a floor price for domestic air fares of between VND1.54 mn and VND4.2 mn (US$68-185). Jetstar Pacific, one of Vietnam's two budget airlines, proposed the floor be set at between VND 600,000 and VND1.2mn.

But VietJet Air, the country's only private airliner, said setting a price floor is not a common rule worldwide and is against Vietnam's competition law.

https://www.vietnambreakingnews.com/2017/04/vietnams-transport-ministry-rejects-airfare-floor-price-proposal/

Food for Thought

In their proposals sent to the Ministry, both Vietnam Airlines and Jetstar Pacific call for a floor airfare as a cushion in the fierce price war against private airline Vietjet Air. The private carrier, meanwhile, insists on maintaining the status quo, meaning it can offer air tickets at VND0 to attract passengers.

Jetstar Pacific reasons that seat supply in the domestic aviation market has been increasing by over 30 percent a year, forcing carriers to slash their ticket prices, sometimes to levels below cost. "This situation affects business efficiency and the sustainable development of the aviation industry", said an excerpt from the air carrier's proposal.

Similarly, Vietnam Airlines mentions that its revenue per passenger has been falling over the years, from an average of VND1.58mn per passenger in 2014 to VND1.48mn in 2015 and just VND1.3mn VND in 2016. The national carrier suggests that a floor airfare of VND1.54 mn be imposed to ward off price undercutting. Vietnam Airlines said that if the floor price is in place, its revenue will increase by some VND2,500bn after one year.

The MoT was said to be facing a tough choice: whether to advocate competition in the civil aviation industry to benefit the public by refusing proposals to impose a floor airfare, or to curb competition by siding with national flag carrier Vietnam Airlines and its affiliate Jetstar Pacific. It is tough because the two State-owned carriers want a floor air ticket price set to ensure profitability, but taking this option means putting the public interests at stake, let alone it goes against the basic rules of the market economy.

Competition resulting in lower prices is beneficial for consumers, say economics and transport experts in Vietnam. Competition is only harmful if market players ignore safety or quality standards when slashing prices, and under such cases, State management agencies need to step in, not to regulate prices but to guarantee safety and quality standards.

Vietnam's aviation market has potential for expansion, following annual growth of 29 percent in 2016, with passenger numbers reaching 52.2 million, based on data from the Civil Aviation Authority of Vietnam. The country will continue to see double-digit increases in passenger numbers over the next decade, following annual growth of 17 percent in the past decade.

Cashing in on low fuel prices and budget airlines, the new Vietnamese middle class are flying in ever-greater numbers within Southeast Asia. Malaysian budget airline AirAsia has said it will develop a low-cost carrier in Vietnam by teaming up with local businesses to take advantage of the country's travel boom.

The region's largest budget airline will partner Gumin Co., Hai Au Aviation Joint Stock Co., and businessman Tran Trong Kien in the venture, which is expected to take to the skies early in 2017, AirAsia said in a statement to Malaysia's stock exchange. Its Vietnam venture will need investment of VND1tn (US$44mn), with AirAsia to contribute 30 percent after raising internal funding, according to the filing.

Your views and comments are welcome at: *hanoi@cuts.org*

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