

Competition Distortions Dossier

January-March 2016

1. Competition Watchdog Guides on Handling Fly-in-bottle Cases

A recent case, in which a man was imprisoned for ‘blackmailing’ a drink-maker with one of the company’s products that had a fly, has left Vietnamese consumers worried about how to respond ‘safely and legally’ if they are in a similar situation.

The Vietnam Competition Authority (VCA) on December 25, 2015 proved that it had listened to consumers by issuing a detailed guidance on what should be done to legally settle a dispute on product quality between customers and manufacturers.

The VCA, under the Ministry of Industry and Trade, clearly stated on its web site that the guidance was issued in the wake of the case of Vo Van Minh, who was given a seven-year jail term after losing the **fly-in-bottle lawsuit** against Tan Hiep Phat Group on December 18, 2015.

<http://tuoitrenews.vn/business/32440/vietnam-competition-watchdog-provides-guidance-on-handling-flyinbottle-caseso>



Food for Thought

According to Article 30 of the Law on the Protection of Consumer Interests, disputes arising between consumers and organisations or individuals trading in goods and/or services (hereinafter referred to as ‘goods/services providers/manufacturers’) could be dealt with through: negotiation, reconciliation, arbitration and lawsuits. Therefore, when detecting any sign of violation of the consumer protection law, consumers can directly contact the goods/services providers/manufacturers to submit a request for negotiation or ask a third party (either relevant State management agencies, law firms, social organisations working on consumer issues or any other capable organisations, and individuals) for help in reconciliation. Consumers can also use the method of commercial arbitration or directly sue to the jurisdictional court. Besides, consumers can also report or complain about the violations of the law (with or without reconciliation requirements) by the goods/services providers/manufacturers to the relevant State management agencies. According to the nature and magnitude of the case, as well as the level of cooperation and coordination, the method chosen totally depends on the consumers, as well as goods/services providers/manufacturers.

Amongst these methods, the Vietnam Competition Authority (VCA) suggests that consumers should seriously consider ‘negotiation’. Article 31 of the Law on the Protection of Consumer Interests stipulates that: ‘Consumers have the right to submit a request to organisations or individuals trading in goods and/or services to negotiate when their legitimate rights or interests are deemed to be infringed upon’. However, during the negotiation process, consumers should note that negotiation must be based on real and clear information. It means that consumers should only complain and negotiate with the goods/services providers/manufacturers when there is a sign that their rights have been violated. Before negotiating, consumers should collect all documents and available evidence related to the transaction as well as the relation between consumers and violators. Consumers have the right to negotiate an appropriate-level of compensation for the damages suffered by them during the negotiation process. The Law does not stipulate a maximum-level of compensation, which the parties can agree upon. The determination of the level of compensation completely depends on the nature and magnitude of the case; as well as the goodwill of the parties.

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With regard to goods/services providers/manufacturers, when encountering a crisis related to product quality and safety, there is nothing better than apologising with goodwill, taking responsibility and committing to repair the defect goods, and rectify the problems in the production process. In developed countries, product recall is a popular method for goods/services providers/manufacturers to fix and replace some defect products without damaging their long-term reputation. A decrease of their reputation in the short run is unavoidable, but these voluntary product recalls reconfirm the manufacturers' responsibility towards the consumers. In the world, big companies always listen to their consumers to produce better products.

Looking back on the Tan Hiep Phap case, the company did strike a deal (though later they said it was unwilling) with consumers to get back the evidence, then later on reported to the police for the man's seizure. Legally, Tan Hiep Phap was not wrong, but their unprofessional way made them lose consumers' confidence on two aspects: product quality and crisis management.

2. VNPayTV Not to Buy EPL Broadcast Rights

The Vietnam Pay Television Association (VNPayTV) has confirmed that they would not buy, at any cost, the broadcasting rights to the English Premier League (EPL) football matches in Vietnam for three seasons from 2016 to



2019. VNPayTV said that they would not pursue the purchase of the broadcasting rights in case they could not agree on the conditions for negotiation.

In a recent document sent to the EPL organisers, the association said they would only agree to a price, which is not 20 percent higher than that for the seasons in

2013-2015. Member television stations of the association committed not to enter into individual negotiation and let the negotiation committee work.

<http://english.vietnamnet.vn/fms/sports/149840/vnpaytv-says-will-not-buy-english-premier-league-broadcast-rights-at-any-cost.html>

Food for Thought

The right to broadcast English Premier League (EPL) football matches is one of the most luxury sport commercial products in the world and is offered publicly for all interested audiences including Vietnam televisions. For years, Vietnam has purchased the right to broadcast the EPL via a foreign distributor. As a result, all domestic television stations in Vietnam reportedly had to pay a big difference while buying these rights.

The bidding process for EPL broadcasting right is highly secretive and complicated. Even Virgin Media, a big cable television service provider in the UK, has once complained about the inderent difficulties. According to the agreement of some twenty EPL clubs, television rights are usually divided into seven packages for each region, and television stations

or cable TV service providers could buy retail ones. While submitting their proposal, all the units taking part in the bidding process are generally unaware of the number of competitors. EPL advocates to keep the number of units participating in the bidding process a secret: who is aiming to which package, which region, how much they offer, etc.

Historically, many delegates of Vietnam televisions have participated in the bidding process and Vietnam Television is the unit which directly negotiates with EPL but we cannot compete with foreign televisions. That is because the competitors of Vietnam televisions have a deep understanding of the sport industry in which they are operating. They have trading experts in the sport market who can predict the approximate prices of each regional packages, where is the gold-mine to exploit and how much they need to offer to win the package they aim. Besides, with long-term partnership, EPL always give them more favourable treatment than other competitors if any.

In this respect, Vietnam televisions are still inexperienced as compared to the international televisions, such as IMG, ESPN, MP&Silva or Dentsu, etc. In terms of financial resources, Vietnam televisions might be able to compete fairly. But, when taking part in any competitions, which we do not really understand how it happens, the chance of winning is very low.

If negotiations fail, there is a big chance that consumers in Vietnam would not be able to watch their favourite matches in the coming seasons. However, it should also be considered a positive sign when domestic television service providers are teaming together to avoid the winner's curse. Some said this is a buyers' cartel, which might violate the Competition Law 2004 of Vietnam, others said it is similar to an export cartel. However, a close examination of the various provisions of this law reveals no possible infringement.

3. Foreign Brewers Strengthening Foothold in Vietnamese Beer Market

Competition is getting tougher for domestic brewers as foreign rivals are increasing their share of the country's output.

In 2015, both Saigon Beer-Alcohol-Beverage Joint Stock Corporation (Sabeco) and Hanoi Beer-Alcohol-Beverage Joint Stock Corporation (Habeco), the biggest brewers in Vietnam in terms of output, saw a marked decrease in their share of the country's beer market.



Besides foreign brewers that have been present in the market for a long time, new players, such as Sapporo, AB-InBev, and Thai brewer Shingha, through its 25 percent ownership in Masan Consumer Holdings, are expanding aggressively.

<http://english.vietnamnet.vn/fms/business/150025/foreign-brewers-strengthening-foothold-in-vietnamese-beer-market.html>

Food for Thought

The beer market is often highly concentrated, due in part to economies of scale, and to the importance of brands and marketing, which can represent a barrier to entry. The beer market in Vietnam, on the contrary, is found to be highly contestable and competitive¹. There has been both new entry (through high profile international players forming joint ventures with domestic companies) and expansion in capacity by existing players in recent years, and both domestic demand and exports (largely to East Asian and South East Asian nations) have grown considerably. There has also been a trend away from state ownership in the sector, resulting especially from the partial privatisation of the largest beer producers, while the proportion of Foreign Direct Investment (FDI) enterprises in the market is on the rise. The battle for market share, therefore, is often exceptionally fierce.

In late 2015, taking advantage of the period during which Sabeco has reduced production to deal with their internal affairs, many enterprises have launched new competitive strategies with hope of rising and winning the competition. The State's capital divestment from leading State-owned beer producers has also opened up big opportunities for foreign companies to jump into Vietnam market. This is the reason why as soon as the Government of Vietnam (GoV) allowed the equitisation of Sabeco, many enterprises had been ready to plunge into the fight for market shares, including Sab Miller, Asahi Breweries, Kirin Brewery, Asia Pacific Breweries, etc. Amongst them, the strongest proponent is Thai Beverage with a direct offer US\$2bn.

This is no wonder because Vietnam is one of the largest beer markets in the world and Sabeco is a lucrative choice, currently leading this market with a 52 percent market share. Purchasing Sabeco's shares will allow foreign enterprises to enter the Vietnam market immediately without losing high costs and much time. Earlier, entry into the market here has proved to be quite problematic, thus further compounding the foreigners' resolve to strengthen their foothold here.

In August 2006, for example, it was reported that a foreign entrant to the beer market had to sell their factories in Vietnam to another foreign brewery, after an unsuccessful market entry. Although the companies' exit was partly for other reasons, it was suggested that exclusive agreements between other foreign firms and restaurants might also have hindered the company. Beer in Vietnam (particularly the more expensive foreign beers) is often consumed through restaurants. When the company tried to enter the market, they reportedly found that most of the restaurants had already committed exclusively with other foreign or joint venture beer producers. In the meantime, a study by the Vietnam Competition Authority (VCA) found that in Vietnam, 70 percent of beer consumption takes place in restaurants, and only 30 percent of beer is purchased to take home. The

VCA study also found that a large number of these restaurants have exclusive contracts with specific brands, which limits competition quite significantly.

4. Hanoi Parents Queue Overnight for Limited Vaccines

Many parents in Hanoi had to spend a sleepless night in rain at a local vaccine research centre to get a French-made vaccine that will protect their children from a range of contagious diseases.

Recent outbreaks of serious diseases in Vietnam have alerted local parents of the need to get their children vaccinated, but stockpiles of vaccine seem to almost be exhausted. Although Vietnam can make single disease vaccines in large stock, it cannot yet make the preferred 5-in-1 or 6-in-1 vaccine, which requires only one shot to immunise children against five diseases, including



diphtheria, pertussis, tetanus, hepatitis B, pneumonia and meningitis caused by *Haemophilus influenza* type B bacteria.

The General Department of Preventive Medicine of Vietnam said there was a shortage of the Pentaxim vaccines and it had been trying to secure supplies overseas.

<http://www.dtinews.vn/en/news/017002/43181/hanoi-parents-queue-overnight-for-limited-vaccines.html>

Food for Thought

This vaccines crisis in Vietnam was prompted by the several bad incidents reportedly resulting from the usage of domestically-produced vaccines, with children being hospitalised or dying in several locations throughout the country. Worried mothers, especially those from more affluent families in big cities like Hanoi and Ho Chi Minh City, even went to the extreme of going abroad to Singapore or Thailand, to have their children vaccinated with foreign-branded products, when unable to obtain the same thing in Vietnam. The prices of these foreign-branded vaccines there are said to be two or three times higher than in Vietnam (approximately around US\$2mn VND), not to mention the costs and hustle of going on an overseas trip. But several worried families are still very seriously considering to do so, saying they do not have any trust in the domestically-produced vaccines, which are being offered for free by the

Government, as part of the nation-wide immunisation programme.

Many reasons were quoted as leading to the current crisis. For example, technological changes and the tedious process of preservation and transportation are said to have led to dangerous product failures. On the other hand, foreign-branded vaccines have always been imported in small quantities, since importers are not sure about market demand, whereas the procedures for vaccine imports are not simple or fast. Therefore, when there is a sudden surge in demand, the importers cannot meet the requirements of the market. In the meantime, there is huge public outcry against bad economic management by the State, to which the Ministry of Health, the relevant State agency, does not seem to have any timely response. Funny enough, one of the responses by the Drug Administration (MOH) was to prohibit any price hikes for Pentaxim vaccines by private enterprises beyond the level of \$630,000 VND, while reassuring that some additional stocks are in the process of being imported into the country.

This is a classic case of inappropriate Government interventions, resulting in unnecessary market distortions, while consumers suffer. The Government has already done its job of providing 'free' domestically-produced vaccines within the national immunisation programme. It could go further by ensuring product quality and promote information and education amongst the citizens, but it need not do the additional job of controlling the price of the foreign-branded imports. It is only necessary for the Government to ensure that consumers have choice, by allowing imports, but it should be entirely up to the consumers to exercise that right of choice. If demand exceeds supply, prices would automatically adjust, perhaps to the price-levels of the Singaporean or the Thai markets, which might lead to a reduction in demand, i.e. consumers would return to the 'free' domestic products by themselves. High prices may also act as an incentive for importers to increase their stocks, thus resolving the current crisis.

5. Taxi Firms to Cut Rates as Petrol Prices Plunge

Taxi firms in Hanoi capital are likely to slash fares after domestic petrol prices plunged to a seven-year low, but any cut would take time to implement. In order to cut fares, taxi firms would have to register with the authorities, reset meters, reprint price lists and notify their customers about the change.

The Hanoi Transportation Association recently announced that it had set specific price levels at which transport enterprises were to adjust their charges, to facilitate the response in transport charges to petrol price fluctuations. However, continuous fluctuations in petrol prices and complicated administrative procedures still made it hard for transport charges to be adjusted in a timely manner.

Meanwhile, an official from the HCM City Department of Finance said that this agency had already asked local automobile transport enterprises to register new rates in light of recent fuel price declines earlier this month.

<http://vietnamnews.vn/economy/282586/taxi-firms-to-cut-rates-as-petrol-prices-plunge.html>



Food for Thought

Under the old centrally-planned economic mechanism that Vietnam pursued until the end of 1980s and early 1990s, the prices of most types of goods was decided by the State. Along with the transformation of the economy under the new economic management mechanism towards depending more on the operations of the market, a young private sector was formed in addition to the State and collective economic sectors in Vietnam. And only along with the reform and the formation of the private sector in the Vietnamese economy did the concept of competition begin to be known and prices of goods and services on the market were decided on the basis of supply – demand relationship, and by non – State subjects – the enterprises.

In a market economy, the role of the State continues to be indispensable as regulators, especially with regard to fixing market failures. The role of such regulators must be based on market rules and modern economics. However, in a relatively young market economy like Vietnam, until now, State regulation still depends to a great extent on administrative mechanisms.

Price regulations often aims at managing the prices of all goods and services of significant importance to one nation's socio-economic development, including setting prices, price registration, etc. of goods and services belonging to the State-monopolised sectors, public services, essential goods and services, etc. through administrative decisions by the State, with a view of managing competition between economic players, not allowing the competitive process to get too fierce, controlling prices of goods and services, so that they do not increase too high, especially in the time of high inflation or deflation. The State might also intervene in cases like natural and epidemic disasters, or other emergency cases. In addition, with the absence of competition law, price regulation also stipulated issues related to monopoly and monopoly pricing, etc.

In this case, however, taxi services could hardly be called an essential service. There is also no disaster or emergency, or any other reason for price control. The State could step in if there is suspicion that the Competition Law 2004 of the country is being infringed upon, perhaps by cartelisation amongst the various taxi companies. However, this does not seem to be the case, since the price hikes and price cuts do not follow any similar patterns. The market for taxi services, either nation-wide or in big cities, also appears quite competitive, with the participation of many players of quite

equal strength. On the other hand, there are a lot many substitutes for taxi services, including public transportation, or the use of personal vehicles like bicycles or motorbikes.

All in all, it is quite puzzling why this whole issue about cutting down taxi fares, to be proportionate to petrol price reductions, presumably to protect the consumer interests. Unfortunately, the consumer welfare does not increase as a result, while there must be huge resource losses to enact these price control measures.

6. Consumer Agitation as SJC Gold Cannot be Sold

There are recently a lot of contradictory opinions as to the fact that Saigon Jewellery Company Limited (SJC) gold bars, which are deformed – having only one identification letter – could not be sold.



Many readers said that the State Bank of Vietnam (SBV) had to satisfactorily deal with this situation to avoid disadvantages to the people because this is the result of bestowing SJC with a legal monopoly in the gold market.

<http://phapluattp.vn/kinh-te/quan-ly-thi-truong/buc-xuc-vi-ban-vang-sjc-khong-duoc-604057.html>

Food for Thought

Gold is a special foreign-currency and plays an important role in operating the national monetary policy. The value of gold is usually calculated based on its age. The deformation of gold is only externally and can be re-processed and rectified. The essential values of gold are its age and internal quality. Therefore, using the external errors as pretexts to refuse commercial transaction is considered wrong by many people.

The Decree No. 24/2012/ND-CP of the Government on gold business activities stipulates that the State exclusively produce gold bars, export gold material and import gold material for production of gold bars. The State Bank (SBV) is the agency that, on behalf of the Government, uniformly manages gold business activities in accordance with provisions of this Decree. It means that gold-trading organisations and individuals, including SJC, are not entitled to produce gold bars. SJC can only process when the SBV authorises in each occasion. It also means that SBV exclusively produces gold bars.

Explaining this monopoly, SBV said that this method is important to closely control the production and supply of gold bars in the market. It will also help to prevent the production of gold bars from smuggled gold material as well as facilitate to control smuggled gold, contribute to stabilising the interest rates, the foreign-currency market and the macro-economy. The SBV has acquired the management and control of the gold market, hence, they cannot refuse their responsibility for stabilising the gold market. Especially, in this case, they could not let the situation 'people cannot sell deformed gold' continue to happen.

Besides, SJC should also take responsibility when stopping one-letter gold transaction. One-letter type or two-letter type is just the way to distinguish the series of the manufacturer, while the qualities of golds are the same. According to the Law on Quality of Products and Goods, as the manufacturer, SJC have to observe the conditions for ensuring the quality of products and take responsibility to the law and consumers for the products they manufacture.

Currently, SJC is holding 95 percent market share in the gold market. The SBV should have more flexible and suitable mechanisms in the licencing process to enable SJC to reprocess and rectify deformed and on-letter gold bars to avoid damaging and to protect people's rights when they sell golds.

This Competition Distortions Dossier is prepared by CUTS Hanoi Resource Centre. 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.

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