Competition Distortions Dossier

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A. TRADE POLICIES

1. Price Hike in Imported Cars after Tax Changes

Imported cars are expected to become more expensive by around 5 percent if the Finance Ministry's draft plan to adjust the calculation of special consumption tax on imported automobiles gets approval.

Under the current regulations, the special consumption tax on imported automobiles is calculated on their cost, insurance, and freight value plus current import tariff.

However, the draft plan suggests that the special consumption tax on imported cars with less than 24 seats will be calculated on the basis of the current special consumption tax plus the domestic sale fee of importers. The domestic sale fee should be calculated on the basis of fees paid for services, such as packing, managing, advertising, displaying, transporting, and the warranty plus interest of tax payers. The draft plan will be submitted to the Prime Minister for approval in June and if approved, it will take effect from January 01, 2016.

http://vietnamnews.vn/economy/270429/imported-cars-to-cost-more-after-tax-changes.html

Food for Thought

Under current regulations, cars are subject to a special consumption tax rate of 15-60 percent. While imported cars are taxed based on their Cost, Insurance Freight (CIF) price, domestic ones are taxed based on their selling price, which is established by accumulating production cost, administrative cost, selling cost and profit. Hence, the draft plan received two contradictory responses. Supporters of the proposed calculation method are domestic auto manufacturers and assemblers, based on the understanding that the existing one results in a competitive advantage for importers. Meanwhile, as argued by auto importers, the current method is fair as domestic assembles could enjoy preferential access to government resources while the domestication rate remains low as compared to their commitments.

Undoubtedly, in case the draft plan is approved, the special consumption tax applicable to imported cars will go up by 5-10 might against the current levels. Prices of imported cars, especially luxury ones, might become very much higher, harming both importers and consumers. Currently, a car sold in Vietnam is already more expensive than those in neighbouring countries by between VND 50mn and VND300mn.

Under the roadmap of the Association of Southeast Asian Nations (ASEAN) Free Trade Area, the tax rate on Completely Built Unit (CBU) imports would fall to zero by 2018 and in practice, it has dropped from 60 percent in 2013 to 50 percent early previous year, leading many consumers to expect auto prices to fall in the year. A number of automobile manufacturers, such as Toyota are even considering whether to keep assembling cars or to import whole cars into Vietnam, for fear of losing its market. However, it is likely that car prices might not drop as expected by many. In reality, prices of some car models, especially those of small capacity, are even higher.

From a trade policy perspective, this draft plan, if not properly implemented, might adversely affect the attractiveness of the Vietnamese market and investors' confidence in the policy stability of the country. The auto industry development strategy sets a goal of turning Vietnam's automotive industry into a key industry meeting the demand of the local market for vehicles with a competitive advantage as well as for export.

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Furthermore, though Vietnam is a market of large demand, the automotive industry fails to develop to the maximum of its potential. Therefore, in any case, the development of the automotive industry must be taken into consideration. While there is a conflict of interests among auto firms and the excise duty is kept at a high-level, it is policy makers who need to identify the conflict and help to reach a compromise. Last but not least, any stance taken by the Government should not favour domestic goods and services at the expense of exports.

B. INVESTMENT POLICY

2. Regulating Costs from Children's Milk Products

On March 25, 2015, the Ministry of Finance issued Official letter No. 90/QLG-NLTS on reviewing, regulating to reduce costs, such as advertising costs, marketing costs.

In accordance with the new provisions provided in Clause 1 Article 6 of the Decree No. 100/2014/ND-CP prohibiting advertisements of milk products for children

under 24 months of age, this Official Letter requests dairy companies to remove advertising costs from their price structure, thus expectedly reducing the selling prices corresponding to the removed advertising costs.

http://luatvietnam.net/vbpl/67381/quan-ly-gia/advertising-costs-shall-be-excluded-from-prices-of-milk-products-for-children-under-24-months-of-age.vlo

Food for Thought

Previously, according to the Decree No. 100/2014/ND-CP on trading and use of nutritional products, bottles and artificial nipples for infants, from March 01, 2015 advertisements of breast milk substitutes for children less than 24 months of age will be banned, which is expected to keep the prices of these products down.

However, the feasibility of such price management methods is questionable as the prices of breast milk substitutes, such as formula milk do not fall as expected by consumers. To escape the application of new regulations, a lot of firms change their packaging and reorganise the age range but keep the same formula. In the end, prices of milk products remain the same or become even higher.

According to experts, the Government should be cautious in its approach as to some extent, advertisements are necessary for marketing activities provided that they are sensible, transparent and coherent. Without proper advertisements on milk products for children less than 24 months of age, not only consumers will have less access to information but also the market will become more complex and less predictable for market participants. This will definitely become a significant barrier to investment environment in Vietnam.

In fact, the regulation follows a slew of measures that the Government has recently taken to intervene in the milk market. The Government has decided to continue to apply price ceilings on formula for children under six years of age until December 31, 2016 for the purpose of price stabilisation. However, similarly, companies also have many ways to be excluded from the application of the regulation, such as claiming higher prices of imported materials, especially in the case of import from parent companies or intermediaries overseas, or claiming higher prices of additional fees. Ultimately, consumers still suffer from higher prices. In many cases, customs declaration reflects no fluctuation in the costs of dairy raw materials, which are actually on the decline on the world market.

To conclude, those Government interventions should only be considered temporary measures in the short run. The most important thing in the long run is to create conditions for fair competition on the market of formula milk products. Besides, there should be also incentives on the part of the Government to boost domestic production in order to meet consumer demands and expectations in terms of quality, which will ultimately bring prices into balance.

3. Prime Minister against Illegal Business

Prime Minister of Vietnam Nguyen Tan Dung has conveyed to the Ministries and local authorities to stop regulating conditional business sectors and setting business conditions.

Business conditions imposed by Ministries and local authorities have reportedly become rampant though people are allowed to do business in the areas that are not banned by laws as clarified by the 2013 Constitution. The revised Investment Law clarifies six forbidden and 267 conditional business areas, which are much lower than nearly 400 conditional business sectors as regulated in many legal documents earlier.

The Investment Law states that the business and investment conditions should be listed in laws, ordinances, decrees and international treaties to which Vietnam is a signatory. Ministries, local authorities and individuals are not permitted to issue investment and business conditions.

http://www.vietmaz.com/2015/04/pm-acts-against-illegal-business-conditions/

Food for Thought

According to noted economists, obviously when the Investment Law takes effect, business conditions that are against the law or set by Ministries, sectors and local authorities will naturally become invalid. It is also stipulated in Item 2 of Article 14 of the 2013 Constitution that business conditions must be provided in laws and the freedom to do business is a basic right of citizens.

Simplifying business conditions is the greatest challenge in the course of implementing the amended Investment Law. Actually, business conditions are significant barriers to market entry due to their consequences of higher entry costs as well as cumbersome and time-consuming administrative procedures. They will eventually harm competition and injure all market players, especially small and medium-sized enterprises. It is a fact that recently, in the context of economic slowdown, the number of private enterprises going bankrupt has greatly outweighed that of State-owned enterprises and (Foreign Direct Investment) FDI enterprises. Undoubtedly, private enterprises, including small and medium-sized ones, which can hardly get into preferential access in terms of taxes, fees, land, natural resources compare would find it difficult to develop and prosper if these business conditions are imposed on them.

In a nutshell, with the enactment of the Investment Law, the removal of redundant and unnecessary business conditions would help to reduce the burdens imposed on enterprises. It is also believed to play a crucial role in creating a more favourable business environment for all market players, whether they are State or non-State ones.

C. SECTORAL REFORM

4. Restructuring of Sea Transport Strategy

Vietnam's Ministry of Transport has recently invited interested parties to a meeting to finalise the restructuring scheme for its sea transport strategy.

The Government is reportedly seeking US$1.98bn of private sector investment to develop 19 port projects across the country as part of an ambitious strategy that covers 42 planned maritime projects and aims to improve the lackluster performance of Vietnam's port and maritime industries.

The increased importance of private finance in port development represents a change for the sector, which has been traditionally dominated by Government and State-owned firms.

http://www.portfinanceinternational.com/categories/emerging-economies/item/2035-vietnam-to-finalise-restructuring-of-sea-transport-strategy

http://3.bp.blogspot.com

Food for Thought

In response to the Vietnamese Government's call for investment, a number of both foreign investors and domestic investors have asked to buy sea ports. Notably, Vingroup sought to acquire shares in Sai Gon Port and Hai Phong Port while T&T Group was ready to buy a 98.02 percent stake in Vietnam National Shipping Lines (Vinalines) at Quang Ninh Port. Besides, VOI, a joint venture between the Vietnam's State Capital Investment Corporation (SCIC) and Oman's State General Reserve Fund (SGRF) also revealed their plan to buy Hai Phong Port.

It could be observed that the investors are becoming increasingly interested in seaport deals as a result of a change in Government policies, which significantly reduces the State's ownership ratio at ports. Previously, in 2014, investors were ignorant at Government's call for investment because they were told that the State would still hold 75 percent of the shares. Recently, the Government has agreed to reduce the State's ownership ratio to a minimum of 51 percent at four major ports including Hai Phong, Quang Ninh, Da Nang and Sai Gon and 49 percent or more at other ports in Can Tho, Nghe Tinh, Cam Ranh.

For a long time, seaport investment, management and operation is mostly based on State budget, which makes the industry development become stagnant and fail to adapt to the changing environment in the era of global and regional integration. Hence, such port deals will help to mobilise a huge capital from non-State investors for the seaport system.

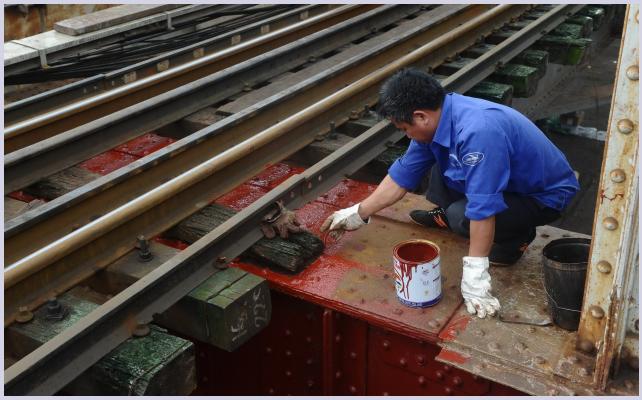
However, these deals are supposed to be subject to further consideration regarding various aspects. The Vingroup wants to acquire of 80 percent of State capital in both Hai Phong port and Sai Gon port while as previously mentioned, the rate of State ownership in these ports would be not less than 51 percent. There are also concerns as to whether the transfer of rights might result in private monopoly instead of State monopoly, which can distort the competitive process and undermine consumers' interests. Another concern is that if the Government decides not to transfer the operation right to foreign investors, it will be against the level playing field for both foreign and domestic investors even on the grounds of national security and safety. A suggestion worth noting is that both foreign and domestic investors should be engaged in certain parts of the seaport projects depending on their capacity.

For all reasons above, it is highly recommended that a legal framework must be in place to avoid monopolies and other problems that could crop up when the Government is not in charge of operations.

5. Private Investment in Railways

The Vietnam Railways Corporation (VRC) has recently put forward a proposal to allow private investors to build logistic facilities and offer associated services in three railway projects under the public private partnership (PPP) model in a meeting on implementing the PPP in railway infrastructure in Hanoi.

Under the PPP mechanism, VRC will be responsible for setting up transport infrastructure like unloading equipment, train stabling facilities, and warehouses at three stations Yen Vien (Hanoi), Dong Dang (Lang Son Province in the north), and Song Than (Binh Duong Province



in the south). Meanwhile private firms will be allowed to invest in facilities to serve the transport of goods by rail, focussing on cargo yards, storage, cargo-handling equipment, and warehouse management systems.

http://tuoitrenews.vn/business/27656/vietnam-to-open-doors-for-private-investment-in-railway-infrastructure

Food for Thought

Railway, a major means of passenger and freight transport in Vietnam, is in dire need of investment due to its very slow development. Numerous big investors have indicated their interest in joining national railway projects. The Build-Operate-Transfer (BOT)project for Yen Vien logistics railway centre, presented by ITL Railway Logistics – a joint venture between ITL Indo Trans Logistics and State-run VRC, is regarded as one of the first projects opening its door for private investors to step into railway infrastructure development.

Actually, investment in the industry will take a long time for capital recovery and the project will involve a large fund of trillions of dongs. Therefore, implementing railway projects, under the Built Operate Transfer (BOT) format will no longer be attractive to investors. At this particular point of time, PPP schemes, which utilise both State and private funding, represent a unique investment opportunity for improved infrastructure and enhanced service quality.

However, it is certain that PPP is not the magic wand to tackle all bottlenecks in the industry. In fact, it is not a new model in Vietnam. In the railroad industry, investors other than VRC do exist (such as concession contracts for tourist train on the Hanoi-Sapa route have been struck) but so far they have resulted in unclear effects and play no major role in transforming the industry. Railroad services remain very poor at expensive fares.

Therefore, it should be recognised that only when VRC's management right is detached from the operation rights of other businesses, the rail-road industry will stage a real change. Besides, a clear-cut separation between enterprises operating infrastructure and those offering transport must be in place in order to ensure a fair ground for competition, with no favouritism and encouraging investors to participate in railway transport.

D. CONSUMER PROTECTION LAW

6. Consumer Helpline Launched

The Vietnam Competition Authority has recently launched a free-of-charge helpline at 1800 6838 to receive consumer complaints with the aim of protecting consumer rights.

The helpline service will be advising the consumers if they have any complaints about goods and services, or if they want to report violations of consumer rights across the country.

In 2014, the Authority, under the Industry and Trade Ministry, handled more than 1,000 complaints, 4.6 times higher than the number in the previous years.

http://en.vietnamplus.vn/Home/Consumer-helpline-launched/20153/62364.vnplus

Food for Thought

According to the Organisation of Economic Cooperation and Development (OECD), "Consumer protection policy and competition policy are largely interdependent instruments of

economic policy; both aimed serving a common purpose of enhancing the efficiency with which markets work". Therefore, the hotline, which provides timely advice and counsel as to how to best resolve consumer issues will also help to obtain certain competition objectives. When consumer protection could be ensured, information asymmetries between providers and consumers could be reduced, which can have a significant impact on the nature and degree of competition in the market. Besides, any enterprises, while undertaking any competitive or anti-competitive practices must take into account their consequential consumer protection issues.

E. ANTICOMPETITIVE PRACTICES

7. FDI Firms Accused of Animal Feed 'Monopoly'

The Ministry of Industry and Trade have called on domestic companies to take measures to break the dominance of foreign-invested firms over the local husbandry sector.

According to a recent study by the Agricultural Alliance, a coalition for the interests of farmers and agricultural efficiency founded by a group of Vietnamese researchers, the Vietnamese animal feed market is currently being

controlled by several foreign invested firms. These firms hold a large share and 'unhealthily'compete with the local companies by jointly fixing prices, and using exclusive distributors and huge discounts. These facts attributed to the Vietnamese animal feed prices to be 20 percent higher than those of other the Southeast Asian countries.

Agricultural experts have warned that the more foreign invested firms develop monopolistic positions, the bigger losses the Vietnamese economy will suffer. In addition, local husbandry firms and farmers are facing high risk of bankruptcy due to high input costs and lack of competitiveness. The number of farms going out of business will continue rising if the claimed monopoly in the animal feed market is not stopped.

Food for Thought

This situation arises from the fact that there has been unequal competition between local and foreign feed producers. According to statistics in 2012, local firms had to bear annual interest rates of 18-24 percent on bank loans while foreign competitors enjoyed lending rates of 1-4 percent per annum. Furthermore, the investment policy of Vietnam inadvertently exempted foreign investors from paying value-added tax and land rents if they signed processing contracts with local livestock farms. This is not to mention that while local animal feed produces are in a more disadvantageous position in terms of lack of capital, technology and managerial skills foreign firms are racing to expand business networks to fully exploit the potentials of the domestic market.

Therefore, it has been stressed that if the Government did not adopt appropriate policies to assist local animal feed makers, local firms would definitely lose more market share to foreign competitors. According to recent statistics, animal husbandry plays an important economic role in agriculture production in Vietnam but locally-produced feeds only meet some 40 percent of the domestic demand. Vietnam has to import a huge amount of feed materials every year, with the import volumes rising year-after-year.

Stronger competition would be unavoidable in the context of ASEAN integration and TPP negotiations being concluded. Without proper preparedness, local feed producers, which are mostly small-sized ones will be particularly vulnerable. In that context, it is highly advisable these local producers in the livestock industry join forces and link together in a supply chain to act as a counterpoise against foreign giants.

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