Competition Distortions Dossier

April-June 2016

1. CGV Accused of Impeding Local Film Distributors

Eight domestic film producers and distributors (BHD, Galaxy, Skyline, Golden Media, Saigon Media, MVP, Early Risers and VAA) sent a complaint to the Vietnam Cinema Association, mentioning that they were being hampered by the CGV theatre system, which belongs to the CGV film distributor of South Korea, because of the profit sharing ratio and form of film distribution.

According to the eight local film producers and distributors, CGV has imposed unreasonable profit sharing ratio at its cinema system (CGV currently accounts for 40 percent of the total cinemas in the country). For the Vietnamese movies distributed by CGV at other cinema systems, the profit sharing ratio is 55/45 (CGV earns 55 percent). Meanwhile, for the Vietnamese movies distributed by the local firms at CGV cinema system, the ratio is 45/55 (with 45 percent for the distributor and 55 percent for CGV in the first week of May 2016; the rate reduces by week).

The eight complainants also accused CGV of setting different commercial conditions in different transactions, which violates the Competition Law of Vietnam. These domestic film distributors said they had to accept CGV's conditions due to the large number of cinemas owned by CGV in Vietnam.

http://english.vietnamnet.vn/fms/art-entertainment/156728/vn-largest-cinema-system-cgv-accused-of-impeding-local-film-distributors.html

Food for Thought

This is not the first time CGV has been the subject of complaints by local film producers and distributors. In 2010, when CGV was still known as Megastar, some local companies lodged a complaint to the Competition Management Agency of the Ministry of Industry and Trade of Vietnam, accusing CGV, then Megastar, of imposing restrictive time slots and other conditions related to theatre and film rental. Subsequently, the local firms withdrew the complaint while CGV, then Megastar, agreed to pay VND$100mn to settle the problem and related consequences.

Ever since, CGV has successfully expanded their theatre system and now accounts for about 40 percent of the entire market. The local firms thus said they had no choice and had to accept the conditions imposed by CGV. If they did not agree with the 55/45 ratio, their films would not be shown in those theatres, resulting into some 40 percent of loss in revenues. According to the local distributors, this ratio has no precedent anywhere in the world, whereby the owners of the theatre system get bigger profits than the film producers and distributors, who spent huge money for not only producing films but also marketing and distributing them. In addition to the unfair proportion, the eight complainants also argued that CGV tends to favour foreign films, especially films produced by their country – South Korea, with better frequency and primetime shows. This means Vietnamese films run the risk of being forced to be shown in poorly patronised theatres, with restrictions on frequency and showing times.

When the competition agencies have not officially decided to start a new case yet, it seems premature to come to a definite conclusion whether there are violations of the competition law or not. However, it can easily be seen why one might hesitate before applying one or several specific provisions of the Competition Law 2004 of Vietnam, given the nature of this case.

Some experts opined that this seems to be a margin-squeeze case. According to the competition laws of more advanced jurisdictions, margin squeeze is the practice of a business which, while competing in both upstream and downstream markets, abuses its dominant

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position in the upstream market to drive up its prices in the downstream market. The profit margins of customers in the upstream market, also competitors in the downstream market, would be reduced (squeezed) due to the pressure of high input prices while having to keep up competitive output prices.

Comparing with the CGV case, we have here a business with a dominant position in the upstream market of providing cinema services, which also competes in the downstream market against other film distributors who are being dependent on its theatre system. However, it is still a long way to come to the conclusion about whether competition is being restricted on the basis of these signs. Complex economic calculations need to be worked out, the model for competitive trends in the future needs to be built up, while evidence and data on the specific business activities have to be obtained with an official investigation by the relevant State authorities.

More importantly, the Competition Law 2004 of Vietnam only prohibits restrictive business practices on the basis of specific behaviours, not paying attention to whether competition is being restricted or not. And it contains no clear provision about margin squeeze as one of the many competition-restricting acts prohibited. This might be the reason why the 2010 case, which shares many similarities, lasted for years without coming to a conclusive result.

One possible immediate solution is to apply the existing provisions of the Competition Law 2004 to subdivide and evaluate each specific elements of this case. The relevant State agencies need to adjust and act in line with Vietnam laws, while also considering international best practices, to discipline such abusive acts of monopolisation and foreclosure. In the long run, the amendment of the Competition Law cannot be further delayed, so that it is at par with international practices, as well as the practical demands of the competitive environment in Vietnam.

At present, barriers against market entry are falling down and it is getting increasingly easier for big businesses with overwhelming economic power to enter Vietnam. In this context, without constantly improving the rules of the games, and more importantly, enforcing them intransigently, we will continue face such severe cases as the CGV case, which would surely arise in the future, with more frequency and not only in the film industry.

2. Uber and Grab Drivers Struggle to Pick up Customers

The battle in Vietnam's auto transportation industry is becoming fiercer for both traditional taxi firms and new services like Uber and Grab. To attract more customers,

both Uber and Grab are applying discount programmes with prices around VND $7,000 (US$0.3) per km, while that figure in regular taxis can be over VND$10,000.

Uber and Grab have been in the Vietnamese market for two years but many local companies still view their operations as illegal because they are not controlled by any laws. Vietnam's Directorate for Road Transportation is writing a new draft decree to regulate Grab and Uber car services.

http://e.vnexpress.net/news/business/markets/uber-and-grab-drivers-struggle-to-pick-up-customers-3400024.html

Food for Thought

Although the modern taxi services, such as Uber and Grab have entered the Vietnamese market for over two years and their operations have been approved by the State, industry associations as well as traditional taxi firms still consider them as an illegal service. The fight between the modern and traditional passenger carriers will be increasingly fiercer and only those firms with good business strategy, non-stop learning path and good customer services could prevail. Besides, since the number of drivers is increasing day by day, and the traditional and modern taxi firms are competing against each other with more promotions and user-friendly services, hopefully there will be better choice and quality service, while fares would drop to competitive levels.

At present, in addition to modern taxi services, Uber and Grab are also racing to gain market share in motor services (known as UberMoto and GrabBike). Although these services have been launched just for over one year, GrabBike now has 3,000-4,000 motor drivers, while UberMoto has attracted some 300-400 drivers after only haft a month, some of them formerly being motor drivers for GrabBike.

Moreover, Lyft, the most formidable competitor of Uber, is preparing to enter the Vietnam market, which will surely result in even fiercer competition in the intra-city road passenger transportation sector. Lyft was established in June 2012 in the US. Currently, Lyft has covered more than 190 cities worldwide and has been valued at more than US$5.5bn and is a big competitor of Uber in the world. If Lyft enters Vietnam market, they will likely apply 'big' promotions for both transportation businesses and passengers as Uber and Grab. And this will push the race for domestic market share to a new level.

3. Central Group Acquires Big C Vietnam

The Casino Group announced in April 2016 the closing of the sale of Big C Vietnam to Thailand's Central Group, for an enterprise value of US$1.14bn. The proceeds will amount to US$1.04bn in total.

Casino Group has made significant investments for more than 18 years in developing its subsidiary Big C in Vietnam, so as to create a leading food retailer in Vietnam. Big C Vietnam consists of a network of 43 stores and 30 shopping malls and in 2015 recorded a turnover US$665mn excluding taxes. Big C Vietnam has built strong relationships with Vietnamese suppliers and farmers, customers, employees, and local authorities and communities, which allowed the development of modern retail in the country. Japan's Aeon, Vietnam's Masan, South Korea's Lotte Group, and Thailand's Central Group and Berli Jucker all competed to buy Big C Vietnam.

The Central Group, in partnership with the Vietnamese group Nguyen Kim, will continue with the Big C Vietnam strategy regarding the sourcing of goods produced in Vietnam for Big C stores.

http://vneconomictimes.com/article/business/central-group-acquires-big-c-vietnam

Food for Thought

Before buying Big C, Central Group also had dealings in several big commercial affairs with Nguyen Kim or the e-commerce web site Zalora. Continuously investing billions of dollars into Vietnam, it can be seen that the ambition of this Group is not small. The main reason which induced Central Group to aim for Big C is because Big C Vietnam has built a good relation with not only suppliers and customers, but also their employees, local authorities and local and international community.

This relation enabled them to easily develop and expand their network. Although merger and acquisition (M&A) is quite a common business strategy to acquire a strong foothold while entering a new market, this particular deal means that the Vietnamese retail market is gradually being dominated by Thai businesses. Thai goods are becoming increasingly popular in Vietnam. They are available in most retail chains and shops. Buying up big supermarkets seems to be the latest step to conquer the Vietnam market. Almost every big M&A deal in the market in past few years was Thai-related.

Moreover, it can be seen that Vietnamese enterprises are very small while most large M&A transaction in Vietnam are acquisitions by foreign enterprises. Vietnamese enterprises could only engage in small-scaled transactions and/or be the acquired party in other transactions. A positive note, according to statistics released by the Institute for Mergers, Acquisitions and Alliances (IMAA), is that M&As in Thailand, Malaysia, and Indonesia have been decreasing in both quantity and value in recent years, while in Vietnam, M&As have been on the increase. Therefore, in the coming period, when the policy framework is clearer and the business environment in Vietnam becomes more attractive, Vietnam could fully expect a more favourable trading trend, with increased inflow of foreign capitals through M&As.

4. Businesses Get Lost in 'Forests of Sub-licenses'

A survey by the Vietnam Chamber of Commerce and Industry (VCCI) found that businesses are operating under the regulation of 7,000 sub-licenses or 7,000 business conditions.

'Sub-license', or 'giay phep con' as called by Vietnamese means the regulations set by Ministries and mid-level State management agencies, which enterprises have to follow to be eligible for doing business. In 2015, the Ministry of Justice of Vietnam listed many sub-licenses which it found 'absurd' and 'illegal', including the ones for motorbike and bicycle repair and for goods carried by motorbikes.

https://www.vietnambreakingnews.com/2016/05/businesses-get-lost-in-forest-of-sub-licenses/

http://vietnamnews.vn/economy/298592/decrees-must-help-businesses-pm.html

Food for Thought

According to Clause 5 Article 7 on business line and conditions of the Enterprise Law 2005, Ministries, ministerial-level agencies, People's Councils and People's Committees at all levels are not allowed to prescribe conditional business lines and business conditions.

Previously, the Decree No.03/2000/ND-CP guiding the implementation of a number of articles of the Enterprise Law clearly stated that the legal document issued by Ministries, provincial branches or different levels of local administrations, which are not based on laws, ordinances or decrees concerning the lines of business subject to conditions and the business conditions of these lines shall not have implementation effect. Clause 3 Article 7 of the Investment

Law 2014 also repeated the above-mentioned provision of the Decree 03/2000/ND-CP that business conditions only are stipulated in the laws, ordinances and decrees; and cannot be stipulated in circulars issued by Ministries, and/or administrative documents issued by local authorities and other agencies. The new provision of the Investment Law 2014 is that the Prime Minister is no longer allowed to issue business conditions as before.

If the above-mentioned provisions of the Investment Law 2014 are not respected, it will be difficult to calculate how many lines of business are subject to conditions and what are the business conditions of these lines. Even when these lines and conditions are stipulated in the Investment Law, if they remain a copy of the business conditions from circulars, or decrees, or prescribe unreasonable business conditions, they will not only hinder business operations, but will also be contrary to Clause 1 Article 7 of the Investment Law.

Besides, according to the recent survey by VCCI, amongst 50 draft decrees on business conditions submitted to the Government, enterprises could only have access to nearly haft of them. This fact continues to show that sub-licenses ought to be quickly eliminated to guarantee a healthier and safer business environment in Vietnam.

Recently, to eliminate the system of sub-licenses and to prevent the issuance of more sub-licenses, the Government has asked Ministries and Ministerial-level agencies to collect and examine all the provisions on business conditions in their respective fields of State management; focus on solving difficulties, problems and urgent matters; simplify administrative procedures; remove inappropriate sub-licenses; create a favourable business environment; encourage startups, promote freedom of innovation; and mobilise all resources for the development of enterprises. All regulations regarding business conditions issued by Ministries and people's committees at all levels would also expire on July 01, 2016.

Reducing sub-licenses is synonymous with limiting the intervention of Ministries and State agencies in the market and economy. With the timely guidance of the Prime Minister, the strict prohibition against the issuance of any new business conditions, especially sub-licenses contrary to laws, etc. is helping to slowly regain the trust and confidence of the business community, providing opportunities and new incentives to enterprises to expand and develop their businesses, consequently enabling economic growth and sustainability.

5. Lien Viet Post Bank Expands across Vietnam

After getting the Central Bank's approval to open more branches and transaction offices, Lien Viet Post Bank became the first joint-stock commercial bank in Vietnam to have a transaction network covering the entire country.

Based on the approval notice, Lien Viet Post Bank would be allowed to open seven additional branches in the provinces of Phu Yen, Hung Yen, Tay Ninh and Ha Tinh, as well as Lai Chau, Son La and Binh Dinh, along with 62 transaction offices in 22 cities and provinces.

Currently, only the State-owned Bank for Agriculture and Rural Development (Agribank) and the Bank for Social Policies have a transaction network spanning all 63 cities and provinces in Vietnam. Some joint-stock commercial banks also have roughly 200-400 branches and transaction offices, but most of them are mainly based in major cities and towns, while the number of offices in remote areas remains limited.

https://www.vietnambreakingnews.com/2016/06/lienvietpostbank-expands-accross-vietnam/

Food for Thought

Previously, the Ministry of Finance of Vietnam has issued a document to allow a joint-stock commercial bank (Non-State bank) become the lender with a huge capital without incurring credit risks for electrical projects. Information about the above-mentioned bank will be officially announced soon, but this is the first time that a private bank is allowed to involve and deploy such large amount of capital to big enterprises/customers. Throughout the past years, State-owned commercial banks have been enjoying a lot of privileges, such as having access to State budgets, social insurance funds, and international funds or being allowed to implement large national financing programmes. Both these two policy developments, therefore, could be considered quite significant changes in the competitive landscape between join-stock commercial banks and State-owned commercial banks.

Recently, the Government of Vietnam has also taken some further steps to liberalise the sector. A number of governmental decrees were recently promulgated, for example, on using idle capitals from the State budget (through the State Treasury) and social insurances; and on a mechanism to allow private joint-stock commercial banks to have access to these sources of capital through deposit activities. Besides, with the conclusion of the Trans-Pacific Partnership (TPP) Agreement, commercial banks in Vietnam would have more opportunities to grow, especially in providing capitals, and other services for exporters in the future. In addition, the growth of foreign capital inflows will create favourable advantages for strengthening the banking system and increasing business opportunities.

On the other hand, in the face of the TPP and other Free Trade Agreements (FTAs), Vietnamese banks will be subject to increasing competitive pressure. Market entry barriers into the banking sector will be gradually eliminated. Foreign credit institutions can enter the Vietnamese market in many forms, such as representative offices, branches of foreign banks, joint-venture banks, banks with 100 percent foreign capital, joint-venture financial companies, financial companies with 100 percent foreign capital, etc.

In the meantime, Vietnamese commercial banks are still characterised with many limitations, such as low capitals, and low quality of asset which makes investment and expansion more difficult. Moreover, banking products and services offered in Vietnam are still not yet diversified enough, and the entry of foreign credit institutions with many new financial services would further increase the competitive pressure for Vietnamese commercial banks. To make matters worse, the domestic banking sector would now be susceptible to a multitude of external risks originated from the regional and international financial markets.

In the face of these challenges, commercial banks in Vietnam need to improve their own competitiveness, upgrade their management skills, especially risk prevention and risk management systems. The state management authorities should also improve the legal and institutional framework for the banking sector to develop the financial system in a sustainable manner, while strengthening research, forecasting and evaluation activities to support domestic commercial banks.

6. Vietnam Bans Two Soft Drinks over Excessive Lead Content

The Ministry of Health Inspectorate has decided to suspend the circulation of C2 green tea and Red Dragon energy drink, two popular drinks in Vietnam, for exceeding the lead content limit.

The Ministry specifies that the limit of lead content must not be higher than 0.05 mg per litre. Recent samples taken by Vietnam's Institute of Nutrition found a sample of C2 green tea contained 0.085 while Red Dragon recorded 0.068.

Questions concerning the levels of lead in URC's products arose at the start of May when test results of C2 and Red Dragon were leaked on social networks. Since then URC has coordinated with authorities to carry out other tests but the results have been inconsistent.

The circulation of the two drinks was officially stopped on May 20, 2016. The Ministry has also instructed Hanoi URC Limited Company, the producer of the two drinks, to recall its products and provide a detailed report by May 23, 2016.

http://e.vnexpress.net/news/news/vietnam-bans-two-soft-drinks-over-excess-lead-content-3407704.html

Food for Thought

Before this case, URC Vietnam Co. Ltd. had a series of scandals uncovered. Accordingly, in mid 2015, URC Vietnam sneakily built a factory to produce C2 in Hanoi and they were uncovered by the press. However, at that time, this case fell into silence somehow. In addition, the press continued to report that consumers repeatedly found strange substances floating inside Green Tea C2 bottles without opening them, and these bottles were all within their expiry date, leading to doubts about the safety, quality, production lines of URC Vietnam. However, in the company's press releases, the reasons stated were always that the lids of the bottles was cracked or broken during the transportation process, therefore, air could get inside the bottle, resulting in chemical reactions.

Hence, until now, URC Vietnam has only been forced to repair the conditions of their depots and recall seven batches of products. This means an enormous amount of lead-poisoning products by URC Vietnam have not been/could not be recalled, i. e. Vietnamese consumers suffered, while the company has not taken any specific action to apologise to and compensate for consumer damages till date.

Despite this conclusion made by the Ministry of Health, it might still be difficult for consumers to claim for health damages. To be able to bring URC Vietnam to court, consumers need to present invoices, receipts, contracts and other documents regarding the purchases of URC's products. These purchases usually do not come with invoices or receipts and with small retail purchases, most of the time, there is no such document. It is also not very simple to demonstrate that consumers have actually used the products, in case they can prove the purchase. Meanwhile, the damaging effects of using these lead-poisoning products are not directly shown, or if they can be, there might be many other reasons for such symptoms.

Even though Vietnam has adopted a Consumer Protection Law since 2010 and has also promulgated other legal documents to protect the legitimate rights and interests of consumers, consumer protection still proves quite challenging in similar cases, such as this one. State authorities could only impose some administrative fines on the law-infringing companies, or in worst cases, force the shut-down of the relevant businesses. There is no mechanism to assess how many consumers used the harmful products, how bad is the effect, especially on consumers' health as a result of using these harmful products, etc. As for the consumers, most are still indifferent to their interests and rights with simple thoughts, such as: "Next time, we will not use these products any more". As for the enterprises, they just pay fines and find ways to pass over quietly then put new products onto the market.

Therefore, to ensure the consumers' rights and interests, when their rights are violated, consumers should actively speak out, and fight to protect their rights. Once there are more and more consumers fighting for their rights, that would send a stronger signal of warning to the unethical businesses in the market.

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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