CUTS International

Competition Distortions Dossier

April -June 2017

1. Anh Duong to Pay Settlement Fee in Anticompetition Case

The Vietnam Competition Council (VCC) has asked HCMC-based production, trading, service and import-export firm Anh Duong to pay a VND50mn settlement fee for a case in which the company was accused of anticompetitive practices in tourism services.

In 2013, AB Tours in Khanh Hoa Province petitioned the competition authorities to look into Anh Duong's practices to force its partner hotels to refuse guests from Russia, Ukraine and other Commonwealth of Independent States (CIS) who were joining tours arranged by the complainant and other firms though there were still vacant guest rooms.

However, as Anh Duong voluntarily stopped its unhealthy competition practice and removed the anticompetitive contract terms, AB Tours withdrew its complaint.

The Chairman of the Vietnam Competition Council issued a decision setting up a Commission to handle the case on March 31, 2016 and Anh Duong was ordered to pay the settlement fee on December 30, 2016.

http://english.thesaigontimes.vn/52522/Anh-Duong-told-to-pay-settlement-fee-in-anti-competition-case.html

Food for Thought

In April 2014, the Vietnam Competition Authority (VCA) received a complaint from Trading Tourism Co., Ltd. (ABTours). ABTours claimed that Anh Duong Manufacturing Trading Services Import and Export Co., Ltd. (Anh Duong) was abusing its dominant position in relation to organised tours from Russia, Ukraine and other Commonwealth of Independent States (CIS).

According to the complaint, Anh Duong, a partner of Pegas Touristik Group (a company with its registered address at 21 Hannover street, London, UK) had signed exclusive contracts with hotels in Nha Trang, Phan Thiet, Phan Rang and Phu Quoc Island, which prevented its competitors from being able to book rooms in these hotels. Under these contracts, the hotels were obliged to only accept bookings for CIS tourists from Anh Duong and had refused such bookings from ABTours and other companies despite having vacancies.

On 05 May, 2014, based on the complaint, the VCA commenced a preliminary investigation (Case No 14 KN HCT 01) and on June 17, 2014, it escalated the matter to an official investigation.

The VCA completed its investigation in 2015 and submitted its dossier and conclusions to the Vietnam Competition Council (VCC) on March 28, 2016. On March 31, 2016, a case handling sub-committee

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was formed to handle this investigation and Decision 10/QD-HDCT was issued on December 30, 2016.

The VCC determined that the relevant market is the travel service market for CIS tourists entering Vietnam at all tourist destinations across the country. The VCC further determined that Anh Duong's market share was 51.6 percent at the time of the investigation. The basis for these determinations were not made public so it is not clear how the VCC distinguished this market from more broadly defined tourist markets.

According to Article 11(1) of the Competition Law 2004 of Vietnam, a firm is considered dominant if it has a relevant market share of 30 percent or more, or is capable of substantially restraining competition. Given the determined relevant market share, the VCC found that Anh Duong had a dominant position in the defined market.

According to Article 13 of the Competition Law 2004, dominant firms are prohibited from "imposing conditions in contracts for purchase and sale or forcing other enterprises to agree to obligations, which are not related in a direct way to the subject matter of the contract", and 'preventing market participation by new competitors' inter alia.

The VCC determined that Anh Duong had forced hotels to accept unrelated obligations including forcing hotels to publish online prices at least 15-20 percent higher than the contract prices and to not recommend, sell or allow other parties to sell tours to Anh Duong booked guests. The VCC also determined that Anh Duong had acted to prevent entry by placing restrictions on hotels in dealing with non-Anh Duong booked CIS tourists and on certain flights to Cam Ranh.

The VCC also noted that Anh Duong had voluntarily terminated this conduct and had eliminated the relevant contractual provisions, which led ABTours to withdraw its complaint. Given these circumstances, the VCC decided to stay a resolution and demanded that Anh Duong pay a settlement fee of $50mnVND (approximately US$2,200).

What is notable about this case, besides all the debatable technicalities, as similar in all of the anitrust cases handled by the Vietnam competition authorities till date, is the fact that the decisions of the agencies, factual details of the cases, as well as the relevant reasonings were never made public. This lack of transparency made the implementation of the Competition Law in Vietnam highly abirtrary, affecting the confidence of investors. Hopefully, this problem would be resolved in the future, now that Vietnam is in the process of amending its law to bring the same in line with international norms and standards.

2. Rice Exports Need a New 'Operating System'

The Ministry of Industry and Trade is coordinating with other Ministries, sectors and localities to review the implementation of Governmental Decree 109/2010/ND-CP (Decree 109) regarding rice exports to

prepare for the drafting of a new decree to be submitted to the government for approval.

The Vietnamese rice sector is facing numerous challenges, which include not only declines in output and export value in recent years, but also the adverse impacts of climate change, sea level rise, and internal weaknesses of domestic rice value chains.

The unreasonable conditions set for rice exporters should be amended to facilitate rice exports in the new context.

http://ven.vn/rice-exports-need-a-new-operating-system-27357.html

Food for Thought

In the current context, when the rice industry of Vietnam is struggling with low competitiveness and declining output, it is necessary to eliminate procedures that make it difficult for Vietnamese enterprises to export. What is further required is the creation of business opportunities for enterprises to help them to get better access to the domestic as well as overseas markets. Therefore, the amendment of the Decree No. 109/2010/ND-CP on rice export business is a timely move.

Currently, applying for rice export licence is troublesome and costs no less than US$20,000. This is not to mention when exporting, enterprises have to declare quantities, and inventories, etc. to the Ministry of Industry and Trade (MOIT). This means exporters ought to spend more unnecessary resources. Therefore, even though many enterprises are fully qualified, they still choose the option of consignment export rather than applying directly for an export licence. However, those cumbersome *conditions for exporting rice could be eliminated, more enterprises will enter the market, boosting competition.*

Currently, State-owned rice exporters still account for a large proportion of the sector, mainly due to governmental contracts or centralised contracts. These contracts are usually assigned to the Vietnam Food Asscociation (VFA) for management and distribustion to their members. This enables VFA to maintain an 'administrative' monopoly position in rice exports and creates barriers to healthy competition between rice exporters.

Relevant State authorities should consider allowing small enterprises to export their high-quality rice of Vietnam including in small quantities, so that they can penetrate difficult markets and create niche market. Furthermore, it is also necessary to equitise State-owned enterprises in the rice sector and remove the administrative powers of the VFA, to the benefits of fair competition and a more competitive rice sector of Vietnam.

3. Farmers in Need as Pork Prices Plummet

In recent days, pork prices have dipped to a record low and also the lowest in the world. Whole pigs are being sold at VND25,000-VND28,000 (US$1.11-1.24) per kg.

The situation is blamed by market observers on the oversupply of pork. The Ministry of Industry and Trade estimates the country will have a surplus of 200,000 tonne of pork this year. If the glut is not addressed, many pig breeders, including large farms,

are likely to go bankrupt, and animal feed, veterinary care, and slaughter and pork trading businesses will suffer badly.

The Ministry of Agriculture and Rural Development (MARD) has sent officials to China to solicit buying. Some food processing firms have already suspended imports and increased local purchases to aid pig farmers.

Analysts said Vietnamese farmers often suffer despite bumper crops since prices collapse. The rescue measures are only temporary solutions and could not address the oversupply problem completely, and so the problem is being repeated year after year.

http://english.vietnamnet.vn/fms/business/178477/farmers-in-need-as-pork-prices-plummet.html

Food for Thought

Before being sold to the end consumers, a pig has to go through several intermediaries, such as traders, abattoirs, etc., bearing 51 kinds of fees. Other fees added by retailers and supermarkets like coding fee, shelves fee, etc. further pushed the price of pork up more than $100,000VND per kg. All these fees are added along the supply chain, resulting in low farm gate prices for farmers as compared to much higher prices for consumers. These asymetries in the distribution system should be identified, and measures being applied to correct them. Pork is only the latest in a series of such mishaps, which happened to watermelon, potato, and purple onion in the past.

In the short run, the government should focus on supporting and solving diffulties for farmers in the consumption of pork. In particular, the government needs to call upon enterprises to lend a hand by putting in more orders, and preserving the meat in cold storage. In the long run, the agriculture sector needs some serious restructuring and better planning, to avoid the problem of oversupply.

Currently, there are about 3 million small pig-breeding households in Vietnam, and not many large-scale farms, so production is all scattered and unorganised. Therefore, the Ministry of Agriculture and Rural Development (MARD) should put in place a better market forecast system providing regular market information to farmers.

In addition to provision of market information, training and guidance for farmers about breeding techniques for livestocks have to be carried out to ensure food safety. This would help consumers to develop trust and thus help consumption to increase.

At the same time, State management authorities should closely monitor the production and marketing of pork, as well as other agricultural produce, and impose severe penalties on those who intentionally violate the law on food safety causing harms to consumers. Consumers are willing to support farmers but they do not accept those who harm their health.

4. Fertiliser Enterprises Propose for Protection of Domestic Production

On April 13, 2017, the Vietnam Competition Authority (VCA) – under the Ministry of Industry and Trade issued a document to confirm the validity of some enterprises'application dossiers to apply the provisions of the law on safeguards.

In early April 2017, the VCA received a number of enterprises' application dossiers to request for protection of domestic production using safeguard measures for a number of imported fertilisers products with HS code: 3105.10.10, 3105.10.20, 3105.10.90, 3105.20.00, 3105.30.00, 3105.40.00, 3105.51.00, 3105.59.00 and 3105.90.00.

Accordingly, the goods to be investigated include all inorganic or complex inorganic fertilisers with a major constituent of nitrogen and phosphorus (P_2O_5), with a nitrogen content of at least 7 percent and a P_2O_5 content of 30 percent or more.

The addition of other elements, such as Magnesium (Mg), Calcium (Ca), Sulphur (S), Potassium (K) or other trace elements shall not change the physical and chemical characteristics as well as the purpose of the products. The addition of micronutrients is appropriate for each soil type and crop group. In addition, imported goods are investigated regardless of colour.

http://customsnews.vn/fertilizer-enterprises-propose-for-protection-of-domestic-production-3246.html

Food for Thought

Since the Law No. 71/2014/QH13 on taxes was issued, farmers are entitled to a 5 percent reduction on Value Added Tax (VAT) when purchasing fertilisers, while fertiliser producers are not given this preference. Therefore, companies have to add on to the price, leading to higher fertiliser price. The corollary of this situation is that foreign fertilisers continue to be imported en mass into Vietnam and in the last five years, Vietnam has always been a fertiliser importer.

According to statistics of the General Department of Customs of Vietnam, in 2016, the import volume of fertilisers increased relatively in comparison with the domestic production to 36.3 percent. This is also the year that domestic fertiliser enterprises are said to face many difficulties in the market due to fake and low-quality fertilisers as well as increasing international competitive pressures and imbalanced VAT policies. Meanwhile, inventories have been rising steadily since 2014, with sales down by more than 40 percent in 2016 as compared to 2015.

According to the regulations on trade defence measures by the World Trade Organisation (WTO) and those of Vietnam, in order to have basis for initiating investigations into the application of trade remedies for fertilisers, it is necessary to follow and analyse the import volume in 2017. At the same time, further research into the viability of dumping behaviour by Chinese producers should be made because China is the main source imports of Vietnam.

Therefore, in the short term, the relevant State authorities should strengthen coordination with the Vietnam Fertiliser Association and fertiliser producers, traders in providing information on organisations or individual producing and trading in fake and low-quality fertilisers to serve the inspection and handling of law violations in the production and trading of fertilisers.

5. Photos Required for Phone Subscriptions

According to the amended Decree No. 49/2017, new mobile phone subscribers must submit a photograph when registering for a new account. Existing account holder must submit a photo within 12 months from April 24, 2017 or their account will only receive calls for 15 days and then could neither receive nor make calls 15 days later.

Telecommunications enterprises have 12 months to inform customers and synchorise all subscriber data and will be fined if false information is detected. The move is aimed at improving mobile subscription management and preventing spam messages, according to the Ministry of Information and Communications.

There are millions of spam messages distributed every day in Vietnam, primarily from junk SIMs or pre-paid mobile subscribers who gave incorrect information when registering. Many people

purchased these SIMs to send anonymous messages and commit fraud. For this reason, the regulator has strengthened the management of pre-paid mobile subscriptions with ongoing campaigns since the end of 2016.

http://vneconomictimes.com/article/society/photos-required-for-phone-subscriptions

Food for Thought

Currently, there are three main telecommunication enterprises in Vietnam including Viettel, VinaPhone and MobiPhone. The quality of services and the level of customer services of these suppliers are different. Consumers have the right and the option to choose the supplier having the best quality services, and most affordable prices. An individual can own several different SIMs at the same time and/or subsequently, and s/he cannot submit a photo each and every time registering a new SIM.

In addition, subscribers can be the elderly, children, the disabled or even the blind. With these subscribers, the registration of personal information to use the SIM, including submission of photo, would be extremely difficult.

At the same time, some validly asked whether the photos of the subscribers would be kept safe and secure? Or in case the photo is illegally used, harming the honour and integrity of the subscriber, who will be responsible? Or what will happen with the photo when the subscriber does not continue to use the SIM. Not to mention the current common situation that an individual registers a SIM and it will be used by another one. Until now, there is no specific measure to solve this situation.

Besides, compliance with this regulation will cause great inconvenience and waste of resources. The nature of the legal relationship in this case is the contractual relation between the service provider and user. Before the law, this relation is completely voluntary and equal. Hence, the provision of any further personal information, such as photo beside information about the necessary personal identity are entirely dependent on the willingness of the subscriber, as provided by the constitution and by law.

In addition, this regulation could also cause difficulties for telecommunication enterprises with the preparation of technical infrastructure, human resources and time to convince their customers. With millions of old subscribers, contacting and asking them to send their photos or taking directly photos are extremely difficult.

Moreover, agents have to invest photographic equipment and transmission device. They must also upgrade and/or invest in data systems to store their customers' photos. These changes cost a lot of money, human resoures and time.

Overall, the good will behind this policy move is welcome. However, one should probably think more carefully about the costs and benefits of implementing such a regulation, so as not to overburden the enterprises, and create distrusts and inconvenience for consumers.

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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