CUTS International

Competition Distortions Dossier

October-December, 2017

1. Only Locals can Open Homestays

The Hoi An Authorities' decision that only local people can provide homestay services, has stirred a lot of controversies. Under the new regulation, the owners of homestays must be Hoi An residents whose spouses are not foreigners. At least two generations of the families must be living in the same houses that serve as homestays.

The regulation, as explained by Hoi An Authorities, aims to preserve and promote the local culture, traditions and values. The decision has been applauded by locals but criticised by tourism experts.

Local people point out that hotels and resorts can be developed by investors from different localities, but homestays must be developed by locals with families living there. They argue that if local people do not live with tourists in the same houses, these must not be called 'homestays'.

http://english.vietnamnet.vn/fms/business/191516/hoi-an-authorities-say-only-locals-can-open-homestays.html

Food for Thought

Hoi An welcomes about three million visitors per year. At present, Hoi An has 842 registered tourist accommodation establistments with 13,212 rooms. Out of this total number, only 479 lodging establistments with 7,878 rooms are currently in operation. The rest have not started receiving tourists yet. As for homestay, currently there are 322 facilities with 1,274 rooms, out of which 1,011 rooms are in operation.

This means that on an average, each room, whether in a registered tourist accommodation establishment, such as hotels, resorts, motels, etc.) else in a homestay establishment, would have to serve around 337 tourists' stayout of 365 days per year, not to mention peak seasons where demand for room is bound to be much higher than supply.

Serious shortage of accommodation for tourists is a natural result, which would undountedly act as a serious constraint for the tourism industry of Hoi An, affecting many other adjacent/related services and trades.

Therefore, in its strategy to develop the tourist industry till 2020, Hoi An prioritises the development of accommodation establishments, especially the homestay model in villages and trade villages, with a view of preserving, bringing into play and embellishing the traditional and cultural heritage of Hoi An.

Against this background, the issuance of this new regulation by the Hoi An authorities seems perplexing. Not only does it not help to promote the development of local accommodation establishments, it might have the unintended effect of discouraging investment, due to its discriminative nature.

CONTENTS

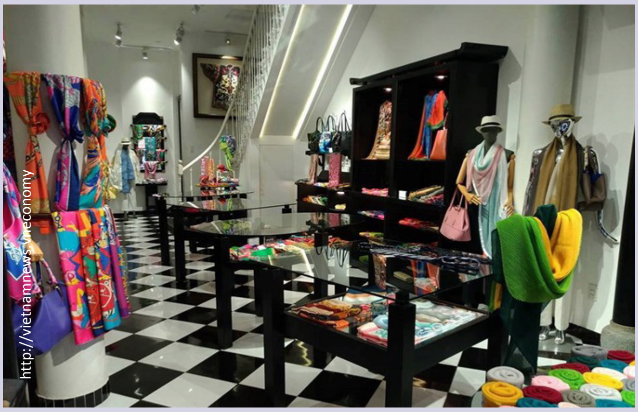
While the requirement that the owner(s) of the home(s) have to stay/live in the same house as tourists to make it a truly 'homestay' experience still sounds reasonable, the requirements about Hoi An residency of the owners, Vietnamese residency of their spouse, and the number of family generations living in the home(s) bear no direct linkages to the nature of a 'homestay' experience for tourists.

Some of whom might have selected this method not only for its cultural and traditional values but also because of their relative cost-effectiveness or simple lack of feasible option (in view of the room shortage above). The regulation thus would discriminate against foreign investors, and Vietnamese investors with foreign partners, and have the unintended effect of chilling foreign direct investment (FDI) into the locality.

2. MoIT Initiates Probe into Khaisilk Fraud

The Minister of Industry and Trade, Tran Tuan Anh has asked the Department of Market Watch to look into the origin of products sold by the Khaisilk Group — a top Vietnamese silk brand — following a complaint that the group was selling products of Chinese origins. He also asked the Department to clarify any signs of law violations regarding product origin and trade fraud in the scandal.

The Khaisilk Group Chairman, Hoang Khai, said that half of the silk used by Khaisilk came from China, while the rest came from Vietnamese craft villages. However, he insisted that the company only uses high-quality material although not all of its products are made in Vietnam, as having been advertised for years.



Khai said there has been a shortage of domestic silk from handicraft villages while market demand saw diverse requirements. For this reason, they imported silk from China without noting the origin of the products. He was convinced that this was a common practice, saying such brands as Zara and H&M also source products from China and sell under their own brand names to customers world-wide. He claimed that the practice is ethical as long as product quality is guaranteed.

http://vietnamnews.vn/economy/416366/moit-initiates-probe-into-khaisilk-fraud.html#YlEW3JizoOoWlVRO.97

Food for Thought

Amid widespread public backlash and a raft of looming investigations, the once-posh Vietnamese garment brand Khaisilk is currently facing criminal charges after the inspection conducted by the Ministry of Industry and Trade (MoIT) found that it has ticketed products from other marketers and sold these to customers.

The MOIT finalised a one-and-half month inspection on December 11, 2017 on Khaisilk, a renowned high-end brand with a history of over 30 years and famed for its supposedly high-quality 'Made in Vietnam' products.

During the 2006-2009 period, the company imported fashion products from China and Thailand but then ceased to do so until October 15, 2017, according to the General Department of Vietnam Customs. From 2012, it also did not conduct any manufacturing or outsourcing activities with local businesses, instead mainly acquiring products from other local marketers, and ticketed those under one of its three 'high quality' product lines to sell to customers.

Inspectors concluded that the company infringed criminal laws by selling fake products, with some of its 100 percent silk products found to have no silk whatsoever. The group also exhibited signs of tax and product label violations, according the Trade Ministry, as it failed to provide invoices for products during the inspections.

There were also signs of dishonesty, as the company misled customers with false product information, selling products of unknown origin. Consumer's right to information, including about products and product origins, is recognised and protected by the Consumer Protection Law 2010 of Vietnam.

Accordingly, "the consumers have the right to be provided with accurate and complete information about the business individuals, organisations, details of transactions, goods, services and other necessary information [Article 8(2)]".

Furthermore, "business individuals and organisations are prohibited from conducting fraudulent or misleading acts to the consumers by way of providing inaccurate, misleading, inaccurate information or hiding information about (…) the goods, services which are provided by such business individuals and organisations [Article 10(1a)]".

In this case, more than the monetary damages that were done to consumers for so many years, the worst harm comes from the forsaken trust and confidence for national brands, which might undermine the position of Vietnamese products right on the home ground.

3. Competition Agency Authorises Mobile World Acquisition of Tran Anh

The Vietnam Competition and Consumer Protection Authority (VCCA) — under the Ministry of Industry and Trade has just announced its approval of Mobile World JSC (Mobile World)'s acquisition of

Tran Anh Digital World JSC (Tran Anh) despite some concerns that this acquisition would reduce the number of competitors in the retail market for IT products.

According to the announcement, Mobile World plans to purchase 100 percent of stake from Tran Anh's existing shareholders. After the acquisition, Mobile World will become Tran Anh's parent company to directly manage and operate all of Tran Anh's business activities.

Mobile World is leading the retail market specializing in IT products (accounting for over 30 percent of market shares). A report issued by the VCCA stated that the economic concentration between Mobile World and Tran Anh in the acquisition form, is not prohibited as stipulated in Article 18 of the Competition Law. Therefore, Mobile World can acquire Tran Anh in accordance with regulations without violating the Competition Law.

http://e.theleader.vn/competition-agency-authorizes-mobile-world-acquisition-of-tran-anh-20171212151435212.htm

Food for Thought

Although the VCCA has concluded that the above acquistion did not violate the Competition Law 2004 of Vietnam, the deal did increase the market power of Moblie World, and as a result, significantly affect the structure of the retail market for IT products as well as that of other adjacent markets. Therefore, it might be necessary for the competition authority to closely monitor the competitive behaviours of the acquiring company, Mobile World, in the future.

Mobile World Investment Corporation was established in 2004, as an E-commerce company specialised in selling digital products online at <www.thegioididong.com>. The company has had impressive organic growths since then and is now a big retailer (on and offline), with a large network of retail shops strategically situated in many big cities in Vietnam. Mobile World also owns Green Electronics (www.dienmayxanh.com), which is a network of retail shops selling (again both online and offline) electronics and electrical products, 292 Green Department Stores (www.bachhoaxanh.com). Moreover, a newly-lauched B2C e-commerce site called Vui Vui (www.vuivui.com) selling all types of products sourced from Mobile World, Green Electronics and Green Department Stores.

Green Electronics is currently holding more than 16 percent of the retail market for electronics and electrical products nationwide. Approximately, 35 percent of this market belongs to traditional retailers, while the remaining 49 percent belongs to other electronics retail chains. Besides, according to a report by the Ho Chi Minh City Securities Corporation (HSC), Tran Anh Digital World is the leading IT product retailer in the North, and has about 14 percent of market share nationwide. Other chains such as Nguyen Kim and Media Mart accounted for about 35 percent of market shares.

Already a big player in the IT product retail industry and now electronics and electricals market, Green Electronics of Mobile World is still a relatively small chain in the North, especially in Hanoi. Its late entry into the market here means there are lesser possibilities for expansion, because most favourable locations in the city centre have already been *occupied. Green Electronics are left with only disadvantageous locations to open retail stores.*

Therefore, the acquisition of Tran Anh by Mobile World not only leads to a reduction in the number of competitors in the retail market for household electronic devices and IT products, but also signigficantly increases the market share of Green Electronics in this area. This move is clearly quicker and wiser than building a chain of retail stores from the beginning with the expectation of breakthrough when entering a fiercely competitive market.

4. Bidding Expected to Cut Medicine Prices

Deputy Prime Minister Vuong Đinh Hue has asked the Ministry of Finance (MoF) and the Ministry of Health (MoH) to work together to

organise bidding for medicines covered by health insurance so the mechanism can be put in place by 2018.

The bidding mechanism aims to reduce medicine prices by 10-15 percent, especially medicines whose patents have expired. The Vietnam Social Security (VSS) is the State agency in charge of organising the actual bidding process.

In July 2017, the MoH sent VSS a list of drug categories subject to centralised procurement. Since then, VSS has been helping localities to compile lists of drugs they need as well as organising bidding sessions.

The Drug Administration of Vietnam (DAV) said the MoH has already begun negotiations with suppliers to carry out tendering for 100 generic drugs, a move expected to reduce their currently exorbitant costs.

http://vietnamnews.vn/politics-laws/392190/bidding-expected-to-cut-medicine-prices.html#8tuBRF5f174kuVh6.97

Food for Thought

The objective of a national bidding mechanism for medicines is to select high-quality drugs and to reduce the price of drugs for patients. It will also reduce the burden on the social security system and also is expected to help patients to afford their health insurance. Therefore, if the bidding mechanism is successfully deployed, the shortcomings when organising individual packages as in the past and the cost of organising several bidding packages will be reduced.

Contractors will not have to spend too much time, human resource and cost to participate in hundreds of nation-wide packages. Meanwhile, the amount of bid-winning medicines will be larger, and the contract period will be longer than individual bids, which means contractors could have long-term production plans, and thus more opportunities to cut costs and reduce prices.

Moreover, medicine procurement through centralized bidding will help nationwide health facilities to avoid organising individual tenders, thereby saving time and financial and human resources. Specialised procurement units could also increase their professionalism in bidding, leading to increased economic efficiency, thus further lowering the price of bid-winning drugs due to economies of scale and scope.

In addition, this form of bidding will also substantially reduce the currently existing price gaps between health facilities in different provinces.

However, several experts have expressed their misgivings about what they see as an excessive focus on cost-cutting that could compromise the quality of healthcare provided to insurance card holders.

Nguyen Duy Thuan, Deputy Director of HCM City's Health Economic Research and Hospital Administration Institute, said that when people care mostly about how prices of bid-winning drugs can be reduced, things can get one-sided. "Doctors have another view. They care more about how effective treatment is", he added.

For instance, if the price of a drug was lower, but the treatment time is longer, the economic benefit would be limited. "If the prices of drugs are higher, but they take less time to heal, will the total healthcare cost for the society reduce or increase", he asked.

This would be, especially true for expensive new generation drugs. Thuan felt that the current selection criteria for bid-winning drugs focussed only on drug prices and not on the total social costs for a patient. "Social cost includes health checks, payment for doctors and nurses, medical machines, hospital *stay... Drugs cost would only account for 10 percent of all these charges", he added.*

While the MoH representatives have repeatedly assured that bid-winning drugs always meet quality criteria, National Assembly deputy Pham Khanh Phong Lan was not fully convinced. Lan, who used to be the Deputy Director of the HCM City's Health Department, said all technical criteria in current documents on bidding for drugs were too general.

She felt that the quality requirements were not strict enough. "The most important criterion, which is treatment effectiveness, is often ignored", she said. Lan agreed that a centralised bidding mechanism was essential for proper management of drugs prices, but technical requirements and quality criteria must be clearly and strictly stated, she said.

5. Vietnam may Make Amendments to Competition Law

Vietnam may develop a code on competition which is in line with international norms and best practices by mid 2018. This was stated by Nguyen Phuong Nam, Deputy Director of the Vietnam Competition Agency under the Ministry of Industry and Trade.

Nam said at a workshop reviewing the Law on Competition of Vietnam which was held recently in Hanoi in which it was decided that it was necessary to develop a transparent framework on competition to ensure healthy competition among businesses and better control over monopoly.

The Law on Competition, after more than 10 years in force, has revealed several limitations, especially with regards to human resources and institutional structure while competition-related violations were getting more and more sophisticated.

http://english.vietnamnet.vn/fms/government/166554/vietnam-may-make-amendments-to-competition-law.html

Food for Thought

In 2004, Vietnam adopted a comprehensive competition law in connection with (but not required by) its accession to the World Trade Organisation (WTO). The primary purpose of adopting a competition law seemed to be to demonstrate to the world that Vietnam was committed to a market-based economic system that is interconnected internationally.

The Competition Law 2004 of Vietnam, since then, has made important contributions to the evolution of the Vietnamese economy. These contributions include advocating for competition-friendly policies within other parts of government and competition-friendly behaviours by businesses. However, a number of features of the current system have significantly constrained, curtailed and slowed the contributions that the law and its implementation could have made to the economy.

One partial indicator of the system's effectiveness is the number and nature of law enforcement

decisions, and in that respect, statistics can be telling. The number of concluded cases concerning the enforcement of the core competition law provisions has been lower than expected.

In 12 years, while initial investigations have been conducted in more than 80 competition cases, only eight were officially investigated, six reached the stage of a formal decision, and only one abuse of dominance case and one cartel case resulted in a final decision with sanctions imposed. That very limited enforcement record is highly unlikely to operate as a meaningful deterrent against anticompetitive behaviours.

In short periods of time, other rapidly developing countries' economies have been able to make leaps forward without a strong system of competition law and policy.

However, in the journey of any country's economic development there comes a point at which the economy cannot further progress without a fully effective competition law and policy. Vietnam has now reached that point.

An effective national competition policy and law is essential for all economic actors to be included in the economy and have the chance to compete equally, be it a small and medium-sized enterprise (SME), a foreign investor, or a private Vietnamese company. A competition law that sets out key norms of economic behaviour that are compatible with, and transcend the details of, other laws should operate like a constitution for the market economy.

A 5th draft of the Amended Competition Law of Vietnam was recently published on the National Assembly Office's web portal for public review and comments. The same draft is being reviewed and debated by the National Assembly and is expected to be passed in May 2018.

Important changes proposed to the current system include clearer distinctions between horizontal and vertical anticompetitive agreements, the introduction of a significant anticompetitive effect test, more modern and flexible merger control thresholds, extra-territorial jurisdiction of the law, increased transparency with the publication of competition case decisions, and most importantly a unified National Competition Authority (instead of the current bifurcated system) under the purview of the MoIT.

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.

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

CUTS International

CUTS Hanoi Resource Centre

C/O: Ms. Pham Thi Que Anh, No. 12/98 Kham Thien Street, Dong Da District, Hanoi, Vietnam

Tel: +84 24 62 76 36 00, Web: www.cuts-hrc.org; E-mail: hanoi@cuts.org

Also at Jaipur, Delhi, Calcutta and Chittorgarh (India); Lusaka (Zambia); Nairobi (Kenya); Accra (Ghana); and Geneva (Switzerland).