

Competition and Consumer Dossier in Vietnam

A. COMPETITION DISTORTIONS

I. Laws and Policies

1. Ministry tightens control on multi-level marketing firms

The Ministry of Industry and Trade (MOIT) has completed a Draft Decree on multi-level marketing (MLM) to replace the old one dated 2005.

The new Draft Decree prohibits many illegal acts of MLM including running MLM businesses with additional services (unless otherwise permitted by law), signing many contracts with one person and inciting employees to perform unlawful behaviour.

In addition, the Ministry has also proposed the Government to stop allowing Municipal Departments of Industry and Trade to license MLM firms. Every MLM company that wants to join the market must gain approval directly from the MOIT.

<http://tuoitrenews.vn/business/12294/ministry-tightens-control-on-multilevel-marketing-firms>



Food for Thought

According to the statistics given by the MOIT, the total number of people engaged in MLM, in Vietnam comes approximately up to one million Vietnamese Dong (VND). This is not a small number, especially given that a lot of fraudulent practices of MLM companies have recently been revealed. MLM is an advanced and modern sales form permitted in many countries in the world. However, on entering Vietnam, it has become an unfair Competition Act undertaken by some unscrupulous people. To be more competitive on the market, instead of encouraging the participants or agents to sell products for distributors and earn money based on Commission, they entice as many people as possible to join the programme by providing false information on the benefits of participation as well as the utilities of goods. Profits or rather economic rents, thus are not gained through selling any product or service but by recruiting more people into the network. In many cases, agents are also required to obtain a huge sales volume by themselves and pay high commissions.

From the legal perspective, all the mentioned Acts are strictly forbidden, according to the Competition Law 2004 of Vietnam and the Decree 110/2005/ND-CP regulating MLM companies and networks. Moreover, it is a fact that this business model is not well regulated in the country. For example, most of these companies are licensed by Municipal Departments of Industry and Trade but their major areas of operation are big cities. The required deposit of one billion VND at authorised State agencies is not even adequate for the huge profits companies could obtain through dishonest practices.

With a vision to tackle the issue, the new Draft Decree with such provisions as to strengthen the strict regulation of the Ministry of Industry and Trade by timebound licenses or raising the deposit of one billion VND to five billion VND or requiring regular reports from MLM companies is much hoped to be able to limit possible frauds, which may adversely affect the community. Above all, it is advisable for the MOIT not only to tighten policies but also intensify monitoring and supervision, so as to direct the model into the right way for the ultimate sake of consumers.

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2. Fines up to VND 200 million on acts of violations on business competition regulations in telecommunications

The Government has recently issued Decree No.174/2013/ND-CP regulating and handling administrative violations in the domain of post, telecommunications, technology and radio frequency bands.



This Decree comprises eight sections, 104 articles providing for violations, sanctions, fines, remedies and the authority to report and to handle administrative violations in the areas of post, telecommunications, technology and radio frequency bands.

This Decree has been effective from January 15, 2014.

<http://aasc.com.vn/web/index.php/en/bao-cao-nghien-cuu-2/telecommunication/item/291-fines-up-to-vnd-200-million-on-acts-of-violations-on-regulations-of-business-competition-in-telecommunications>

Food for Thought

A noteworthy point in the new Decree is that telecom businesses are obliged to pay a fine of 20 million to 30 million VND if they are found to provide the essential or extra services without the consent of the subscribers. This regulation is important given that a large Vietnamese mobile service providers have recently been found to play 'tricks' with the consumers. Several value-added applications like Viettel with Viettel Plus, MobiFone with SuperSim and LiveInfo, VinaPhone with Information on Demand (IOD) are pre-installed on SIM cards to automatically download the information and charge the subscribers. However, the applications do not send any warning messages to let users know that they will be charged or to confirm whether they want to use the service or not. These hidden apps have been a large revenue source for these operators. Specifically, during a year only from June 2012 to June 2013, Vinaphone reportedly earned more than VND20 billion (US\$943,396) worth profit from its IOD app, while the SuperSim and LiveInfo apps reportedly brought in more than VND150 billion for MobiFone.

It can be observed that the fines stipulated by the Decree are likely to be negligible as compared to the huge profits to be made by those above mentioned scams. However, at least for the first time, such act of cheating the consumers is forbidden and penalised by law. More importantly, during the implementation of the Decree, consumers will be

informed and they themselves will decide, which services suit their needs and income best and which providers will they prefer.

3. Price stabilisation list of milk products

On October 04, 2013, the Ministry of Health issued Circular No.30/2013/TT-BYT concerning the price stabilisation list of milk products for children, under six years.

The Ministry of Finance shall use this list to avoid arbitrary price increase and control the price of milk products in Vietnam.

This Circular came into effect on November 20, 2013.

<http://www.atim.com.vn/price-stabilization-list-milk-products>

Food for Thought

Both Competition Laws and price control mechanisms share the objective of keeping prices in the market at competitive level and free from the control of any individual or enterprise. However, while Competition Laws aim to achieve the objective by monitoring competition in the market, ensuring that enterprises compete with each other equally and legally. (by offering the lowest possible prices, providing best choice with highest possible quality). In other words, the approach by Competition Laws could help guarantee the legitimate interests of the consumers while respecting the autonomy and at the same time, doing business through the enterprises. In the mean time, price control mechanisms aim to ensure that prices do not fluctuate too much, are free from private control and are at the lowest possible level, especially regarding the prices of essential goods and services, through the use of administrative measures. This approach could work in the short run, for example, in case of emergency, natural or epidemic disasters or as a temporary measure to control inflation. In the long run, if a price control mechanism is maintained for too long, it would only lead to self-



satisfaction and dependency by the consumers who would not plan their expenses reasonably while reducing the incentive for business development by the enterprises, resulting in reduced economic efficiency. Such price control mechanism should only be used in cases of emergencies or natural disasters and epidemics and thereby should gradually be removed in line with the general trend in the world of using Competition Laws and other sectoral regulatory

frameworks as more effective tools to regulate the market. If the governments want to support the poor to enhance their access to essential commodities and services, such support should be designed with appropriate objectives and should be target-specific, so as not to affect their other commitments of market opening, trade liberalisations, and encouraging the participation of the private sector in the overall development of the economy.

Prices in the market for milk products for children, under six years old have always been a hot topic in Vietnam due to the extremely high number of media reports and news items, which all feature consumer outcries about the frequency of price hikes or how the products are becoming unaffordable etc. There were also numerous complaints that the price control measures that the government has been putting in place to address this problem have not been effective at all and thus demanding more efforts. This Circular seems to be just another desperate attempt to respond to these complaints. While the merits of price control in general or price control of this specific product group here are not being discussed, since that requires much time and space; one question worth raising is that why the competition authorities of the country never pointed out anything regarding the matter? If it is such a competitive market and price hikes are not the manifestations of abuse of dominant position or market power then perhaps it is the legitimate right of businesses to do so? At the end of the day, the economic freedom of business (to manage their own enterprises and to set prices in accordance with demand and supply etc.) needs to be respected too, well balanced with the consumer interests, doesn't it?

4. Distribution market to be re-mapped after FIEs given the right to join



It is expected that from the year 2014, foreign invested enterprises (FIEs) would be able to, step by step, distribute important goods that they have been prohibited, until now.

The commitment, Vietnam made while joining the World Trade Organisation (WTO), since January 1, 2009 is that it has absolutely to open its market doors to foreign investors who came to set up distribution companies on the domestic market.

The Draft Circular while allowing FIEs to distribute medicine in general, (not including non-drug nutritional products) restricts the products that FIEs can distribute.

FIEs also cannot distribute veterinary drugs, biological products and raw materials for making animal and aquatic feed.

<http://m.english.vietnamnet.vn/fms/business/89485/distribution-market-to-be-re-mapped-once-fies-given-right-to-join-market.html>

Food for Thought

As compared to the Decision No 10/2007/QĐ-BTM publicising roadmaps for goods trading and directly related activities, a significant change in the Draft Circular, which will come into effect in 2014 is that some items including rice, sugar, pharmacy, tobacco, crude oil, books and newspapers, precious stones etc. are included in the list that FIEs can directly distribute. The new move taken by the Government is an opportunity for Vietnam to improve its market economy as the presence of foreign players will promote competition in the industries where monopoly has existed for a long time.

However, the question is whether this opportunity is real given current legal restrictions in Vietnam. At present, there is a wide range of regulations that FDI companies have to face, so as to really expand their market share in Vietnam. For example, in petrol and oil sector, petrol trading mechanism is 'based on market mechanism, according to state regulation' and the Decree No 84/2009/ND-CP on trading petrol, which is being revised at the moment, appears to protect domestic wholesalers only. Therefore, it would be hard for FIEs to penetrate the currently 'oligopolistic' fuel market. In the pharmaceutical sector, FIEs are allowed to distribute drugs, according to the draft Circular whereas the list of drugs allowed does not include the drugs, which are the strengths of foreign the manufacturers.

In a nutshell, for the distribution market to be really open, the role of the Government should be enhanced. On one hand, the government should be serious about infusing competition into the market by loosening regulations. Whereas on the other hand, it should take appropriate steps to improve the effectiveness of domestic enterprises without violating the principles of the WTO. In the context of healthy competition, competitive domestic enterprises may face difficulties in the short term but in the long term, there is a great potential for them to survive and prosper.

B. CASES

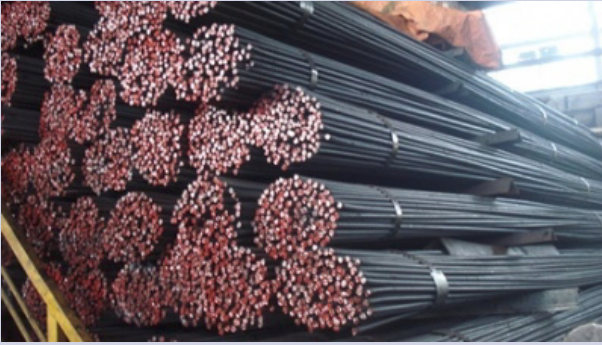
1. Anti-competitive Practices

1. VSA: Steel price-slash wars badly damaging the market predatory pricing

The Vietnam Steel Association (VSA) required steel makers to stop reducing the selling price of their products to make the local steel market healthier.

The Association said that the local steel makers slashed their selling price by \$100,000-200,000 VND per tonne while a few producers even cut the price by \$1 million VND though the rate was already lower than production cost.

That created an unhealthy steel market, said Nguyen Tien Nghi, VSA Deputy Chairman.



The producers have new products and they cut selling prices to attract the customers. The association called on the producers to stop reducing their selling price to fight for market share because reduction in the selling price creates loss and then they did not have the capital for sustained production.

<http://www.vcsc.com.vn/Shared/Views/Web/MessagesDetail.aspx?menuid=4&id=124466&catid=1219&tab=&title=Detail&lang=en-us>

Food for Thought

Steel producers are facing a hard time as the demand for consumption and investment is reducing whereas the real estate market remains stagnant. High level of inventory, increasing material costs together with fierce competition from cheap Chinese products are some of the key factors to be blamed for this. However, in any case, the act of steel producers reducing steel price lower than the production cost is not justifiable. Actually, it is rather an unfair Competition Act that could distort the market as local competitors are eliminating each other and putting themselves into further losses.

Since 2014, when Vietnam reduced the import tariff down to 5 percent, according to WTO accession commitments, the steel industry will have to face up against bigger challenges. In that context, the most advisable measures for the Vietnamese steel industry to overcome short-term crisis and achieve long-term development is to increase its competitiveness. This not only requires efforts of only the steel manufacturing enterprises but also that of the steel association and the government. The steel manufacturing enterprises should cut unreasonable costs and apply more open, transparent and effective management mechanisms. The steel association should take an action to instruct steel manufacturers and consumers to use quality steel. Last but not the least, the State is supposed to support steel enterprises and associations to develop R&D and human resource development.

2. 3G fee hikes criticised, anti-competitive practices suspected

While users are venting their anger at the 3G fee hikes by MobiFone, Viettel and VinaPhone, the three major mobile carriers are being alleged of carrying out anti-competitive practices of price collusion.

After these telecom companies simultaneously increased the average fee by 20 percent and the fee for unlimited packages by 40 percent, following the Ministry of Information and Communications' approval, lots of

users have shown their displeasure with the reason behind the rise in fee.

The MIU package of MobiFone has risen from VND50,000 a month to VND70,000, with its free data volume escalating to 600MB from 400MB. Similarly, the MiMax package risen up to VND70,000 a month from the current VND50,000 at Viettel and the fee for the Dmax package is adjusted up to VND120,000 from VND100,000 with 1.5 GB of free data.

VinaPhone also announced to increase 3G fees, with the unlimited MAX and MAXS' packages adjusted up by VND20,000 and VND15,000 a month respectively, while their free data volume upturned from 400MB to 600MB.

The 3G service users have raised their voice asking the Competition Administration Department (VCA) to investigate and clarify whether the three service providers colluded with each other to raise the fees or not.

<http://english.thesaigontimes.vn/Home/business/ict/31525/3G-fee-hikes-criticized-anti-competitive-practices-suspected.html>

Food for Thought

Recently, the Competition Administration Department of the Ministry of Industry and Trade concluded their investigation and publicly announced that the three mobile service providers do not violate regulations on tariff increase with their 3G fee hike on October 16, putting an end to the long public debate. Despite that, the case left many things to ponder about the telecom market.

It is not doubtful that the recent 3G charge increase stems from the deeprooted monopoly in the local telecom market. Before 2004, there were only two companies, which were MobiFone and VinaFone. At that time, the service charge was very high as they were the only ones. But the monopoly became more bustling, since the penetration of various foreign investors, such as Comvik, SK Telecom, VimpelCom or Hutichison Hong. However, foreign investors took turns to leave the Vietnamese market and the market previously having seven players have presently only three players: Vinaphone, MobiFone and Viettel - who together clinch an overwhelming market share of 95 percent. Among various reasons, the underlying cause is that State policies do not really support newcomers in the market. The happenings in the telecom market signifies a backward move in terms of



competition. The 3G fee increase undoubtedly causes harm to consumers' interests given that the price does not commensurate with the quality of the service. Moreover, relevant industries also suffer due to this. In the transport

sector, thousands of bus and truck drivers – who are required to use 3G to record their operations but cannot afford the higher fees – are at risk of having their licenses revoked.

In any case, it is important that a truly competitive telecom market should be developed. Some of the solutions to be considered are to accelerate the flotation of telecommunication companies, so as to better manage State assets or to set up an independent management unit, which helps the telecom market run smoothly based on the interests of consumers. Above all, it is highly recommended for the government to adopt appropriate measures to monitor and regulate the companies effectively. At the same time, any price decision should bring alongside higher quality and better services.

II. Consumer Protection Issues

1. About 75 percent of Vietnamese *pho* samples found toxic: food tests

More than 80 percent of the Vietnamese rice vermicelli samples taken for toxicity tests in Ho Chi Minh City have been found to contain a banned and cancer-causing chemical, according to the report of a recent food safety inspection.

The shocking result was announced last week by the inspector, Centre for Study and Consultation on Consumerism (CESCON), which collected 30 samples of six types of Vietnamese rice noodles, including *pho*, *bun*, *banh canh*, *banh hoi*, *banh cuon*, and *banh uot* between June 15 to 25 for tests. The ingredient *pho* is used to make *pho*, a popular food for foreigners.

<http://tuoitrenews.vn/business/11723/75-of-vietnamese-pho-samples-found-toxic-food-tests>

Food for Thought

Noodle is a daily consumer product for Vietnamese people. Therefore, the consequences of the case are undoubtedly widespread and far-reaching, especially when food safety is a growing issue of concern nationwide. It is understood that consumers start boycotting not only the fresh noodles but also all rice-made products regardless of the fact whether they contain harmful tinopal (an optical brightening agent) or not. This shows that when consumers are informed,



they can join hands together and make fraudulent producers bear the grunt of losses caused by their own practices.

The case also highlights the increasing role of Vietnam Standards and Consumer Association (VINASTAS), as a consumer protection association. Despite lack of facilities and resources, VINASTAS, on its own initiative, made products tested and informed the consumers, for the first time. It also indicates that with sufficient funding and knowledge, VINASTAS is totally capable of improving consumer protection in Vietnam.

However, unfortunately, the effect of the case did not last long. As mentioned above, noodle is an essential food of Vietnamese people. Therefore, people can easily go back to their old habit of consumption and it seems that the government has not taken serious actions to drastically resolve the issue. It should also be noted that noodle is just one of the food for safety concerns of the consumers. Other food items that can be mentioned are rice, fruits and vegetables. It is advisable that for similar cases, there should be more effective collaboration between the government and civil society organisations (CSOs) in which the government will rely on proven evidence provided by CSOs to take appropriate actions accordingly.

2. Parents worried over toxic milk products in Vietnam



In response to the information that Fonterra's Karicare Infant Formula and Similac Gain Plus Eye-Q, dairy products are tainted with Clostridium Botulinum, the Vietnam Food Administration (VFA) has asked the importers to withdraw all such products across the country. However, parents are worried over toxic products as their infants have already been fed with the milk before the announcement.

Similac Gain Plus Eye-Q powder products are no longer displayed in shelves in supermarkets in Hanoi and by the agents of Abbott Company.

Moreover, parents have returned the products to agents and have received refunds. Some parents have raised the concern that their infants have already been fed with the milk before the announcement.

According to VFA, the Abbott Company reported that by August 05, 2013 total retracted containers of Clostridium Botulinum contaminated Similac Gain Plus Eye-Q were 10,135, while it had released 12,927 containers in the market, so far.

However, after careful examinations, it has been announced that Karicare Infant Formula, Similac Gain Plus Eye-Q dairy products made using whey protein from Fonterra, the world's biggest dairy exporter are not tainted with Clostridium Botulinum and these products are safe with children.

<http://talkvietnam.com/2013/08/parents-worried-over-toxic-milk-products-in-vietnam/#.UnHc1VPJSm4>

<http://english.vietnamnet.vn/fms/society/81130/new-zealand-milk-formula-scares-mums.html>

Food for Thought

Despite the fact that consumers can be relieved when their children's health is refrained from the harm of food poisoning, the case also necessitates stricter monitoring and supervision on the side of the government regarding the quality of imported food products into Vietnam.

Recently, Vietnam Customs have taken tougher measures to control the import and export of dairy products. The move aims to ensure food hygiene and safety, prevent the import of unqualified milk, which may cause harm to consumers' health. Strict regulation will be imposed on imported dairy products, especially those shipped from New Zealand, which is believed to have contained Clostridium Botulinum. Meanwhile, the Ministry of Industry and Trade (MOIT)'s Import Export Department and the Health Ministry's Food Hygiene and Safety Department have received warnings from many countries that some batches of imported milk do not meet food quality standards.

As per the latest development, according to Circular 28/2013/TT-BTC, dated November 06, 2013, on the "Regulation on State Inspection of Food Safety for Imported Food Products, under MOIT's management", milk is among the goods that have to undergo inspection before entering Vietnam.

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. For earlier issues, please visit: www.cuts-hrc.org/en/competition-dossier/competition-dossier

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