

Practices by trade associations prohibited under the Competition Law of Vietnam

Around 2008 end, 16 insurance companies¹ in Vietnam together signed an agreement about increasing standard insurance premium for cars. According to the agreement, from the beginning of October 2008, the standard premium for cars, or the minimum premium in contracts signed with customers, would be increased from 1.3% to 1.56% p.a (exclusive of 10% value-added tax). According to a document sent by the Secretary General of Vietnam Insurance Association to its non-life insurance member enterprises, raising up premiums was the result of signing a cooperation agreement among association members at the 6th non-life insurance CEO Meeting (held in September 2008). “In order to limit fierce competition in the context of high compensation rate, and increasing inflation, insurance businesses appear to generate no profit or no significant profit”. Some members that have not signed this agreement have been reminded by the General Secretary of Vietnam Insurance Association Phung Dac Loc.

This is one example of a prohibited practice as it runs against the foremost principle of competition rules in the world, which is happening in Vietnam at the moment: horizontal price-fixing agreement between competitors, or ‘cartel’. Accordingly, those 16 companies of the Insurance Association could be fined heavily (up to 10% of the previous fiscal year’s turnover) if they are proved to have violated Article 9 of the Vietnam Competition Law 2004.² In other instances, in 2008 there were similar agreements among members of the Banking Association (to fix the ceiling interest rate) and among members of the Vietnam Steel Association (to stop reducing selling price). Both, after being strongly objected by the public and under investigation by the Vietnam Competition Authority (VCA), were stopped.

Trade associations, in spite of not having direct business activities, are organizations that bring together many entrepreneurs who are competitors (because they produce, trade in one or many particular products, or in the same region(s) – in the same relevant product or geographical markets). Therefore, this is one place where agreements between entrepreneurs are more likely to happen. These agreements, when not in line with the association’s objectives like R&D cooperation, or aimed at increasing efficiency, etc, and when related to price-fixing, market or customer allocation, or when meant to push/foreclose one or more enterprises that are not members of the association out of the market, will be fall under the purview of the competition law.³ For example, Vietnamese media used to mention a case in which 14 taxi businesses in Ho Chi Minh City, right after establishing an Association in 1997, agreed to increase their fares from 6,000VND for the first kilometre to 12,000VND and

¹ Those companies include: Bao Viet, Petrolimex Insurance (Pjico); Petro Vietnam gas Insurance (PVI); SamsungVina; Global; Vietnam International Joint-Venture Assurance; BIDV Insurance Co. (BIC); Bao Long; Bao Ngan, Bao Minh; Bao Tin; AAA; Military Joint-Stock Insurance Co. (MIC); Post and Telecommuting Insurance (PTI) and Agribank Insurance Co.

² According to Article 9 VLOC, those agreements will be prohibited if the participating parties have combined market share on the relevant market from 30% and over.

³ See Article 13 of VLOC, forbidding enterprises, groups of enterprises having dominant market position selling goods, supplying services at the total prices to push competitors out of the market, or prevent market entry of new competitors.

5,000VND for the next. They also mentioned the incidence when one taxi enterprise (V20) decided to go against the current in 2001. This V20 taxi did not participate in the taxi association, and charged favorable prices for customers. So a rather powerful taxi enterprise in the association used transmitting devices to disturb the communication radio of V20, which made customers unable to call V20's coordinating centre. In these circumstances, the Association became the mask for competition restriction and unfair competition activities.

This is the reason why trade associations are subject to the regulations by the Vietnam Law of Competition (VLOC)⁴, and in the world. Along with the above practices, according to the regulation of Article 47 VLOC, trade associations are also forbidden to have discriminatory activities towards enterprises. Discriminatory activities of trade associations are in some of the following forms:

- Refusing enterprises having enough capacity to enter or exit the association if that refusal is discriminatory and makes the subject enterprises lose their competitiveness;
- Restricting business activities or other activities relating to business of the member enterprises unreasonably.

According to the regulation in Article 37 of Decree No 120/ND-CP about dealing with competition violations, trade associations exercising one of forbidden discriminatory activities mentioned above will be fined from 15 to 25 million VND. The trade association will be fined from 30 up to 50 million VND if it (i) executes discriminatory activities to one enterprise many times; (ii) executes discriminatory activities to many enterprises at the same time; and (iii) having unreasonable restriction to force member enterprise(s) to exit the association.

Until 2006, an association of 48 publishing houses in Vietnam was coordinating the output of bloc calendars for a decade, when they fell apart. Bloc calendars are the every day tear-off calendar, and produced and sold around the time of a new year. In 2005, the association had agreed to produce a total amount of 13.5 million bloc calendars to cater to the demand for the 2006 New Year of the whole country. These calendars were then produced and kept in stock with the Vietnam Book General Corporation, ready for distribution. Towards the end of 2005, however, the National University Publishing House of Ho Chi Minh City (NUPH-HCM) suddenly withdrew their participation from the association and at the same time, announced that they would produce and market, all by themselves, a total amount of 2 million bloc calendars. The association and its other members were very agitated with this sudden move. Since the NUPH-HCM was supposed to produce only 200,000 calendars, the amount of calendars they then produced would overwhelm the market. The association, therefore, lodged a complaint with the General Department of Publication (Ministry of Culture and Information). However, due to the introduction of the Law on Publication 2004 and a document No. 1187 on opening up the publishing business, the General Department could neither find any fault with the decision of the NUPH-HCM, nor forced them to rejoin the

⁴ See section 2, Article 2 VLOC

association. While the old association accused the NUPH-HCM of not honouring their commitment, which caused supply to exceed demand, creating loss for all, the latter argued that they were only following the spirit of liberalising the publishing sector. On the other hand, the NUPH-HCM accused the association of output restricting, and fixing prices at a level higher than should be, causing loss to the consumers.

So in reality, there are many competition issues, or activities regulated by VLOC, which are related to association activities. However, not every association has good understanding about their rights and obligations related to their own members' activities. Before the competition law was passed, there was an opinion that fining associations was impossible, as the associations did not conduct business activities, and survive on small amount of association fees from members. Therefore, they did not have budget for fines, and had no "fiscal year" to determine fine level. Meanwhile, according to legal reality, in some nations in the world, CEOs or association leaders, may be sued for criminal liability and be jailed if they participate in hard-core cartel activities.

Recently, in the context of opening the market, with more and more competition pressure, it is more likely that enterprises, intentionally or unintentionally, cause competition restrictions or commit unfair competition activities. Associations need to study more on the competition law, in order not to be the mask for these activities, as well as not discriminate, impose competitive disadvantages, to the healthy and vibrant competitive environment within Vietnam.