

The Competition Law 2004 and Consumer Protection in Vietnam

There is a convergence between the objectives of consumer protection policy and competition policy. The main objective of competition policy and law is to preserve and promote competition as a means to ensure efficient allocation of resources in an economy, resulting in:

- the best possible choice of quality,
- the lowest possible prices, and
- adequate supplies to consumers.

To put it differently, ensuring competition is just a means to achieve the above-stated objectives. Obviously maximising of consumer welfare becomes a predominant concern. Competition policy makes market work and protects consumers from deception. These are also the two important goals of consumer protection.

Thus, the end objectives of both the policies are essentially the same. However, competition policy is more of a proactive policy that *inter alia* attempts to promote consumer interest in the marketplace, whereas consumer protection policy puts forward mainly a reactive agenda to protect the interests of the consumers, and provide access to redressal against abuses. Of course, consumer protection policy also has some proactive elements. In this regard there is a strong complementarity between the two policies in that consumer welfare is a common goal.

Overview on Competition Law 2004 of Vietnam

On December 03, 2004, the XIth National Assembly of Vietnam, in its 6th session, passed a Law on Competition. The law came into effect in July 2005, and has been administered since then by the Ministry of Trade of Vietnam (now referred as Ministry of Industry and Trade).

The Law applies to all business enterprises and professional and trade associations in Vietnam; overseas enterprises and associations registered in Vietnam; public utilities and state monopoly enterprises; and State administrative bodies. It has superseding power over all other enacted laws of Vietnam regarding restrictive business practice and unfair trade practices.

Two State authorities are to be established for the law's implementation – the Competition Administration Department (with investigative power), within the Ministry of Trade of Vietnam, and the Competition Council (with adjudicative power).

The Law prohibits five broad types of anticompetitive practices:

- **Agreements that substantially restrict competition:** include price fixing, market sharing, restricting output, blocking investment or technological development; imposing coercive contracting conditions on other enterprises; restricting entries; excluding/foreclosing non-members from the market; and bid rigging.
- **Abuse of dominant or monopoly position:** The Law provides for a collective market dominant position of firms having a total market share of 50 percent (for two business entities); 65 percent (for three); and 75 percent (for four) of the relevant market. A dominant market position would apply to firms holding at least a 30 percent market share, or firms that are 'capable of substantially restricting competition'. A monopoly market position would be deemed to apply to a firm if it has no competitors for goods it trades or for services it provides. Dominant firms and monopoly position are prohibited from undertaking predatory behaviours with the intent of driving out competitors, discriminating amongst different firms for the same transaction, blocking entry, and engaging in 'other practices' in restraint of competition such as unilaterally rescinding or replacing a contract with legitimate reasons.

- **Concentrations of economic power that substantially restrict competition**, all concentration cases in which the combined market share of the relevant firms would be 50 percent or more are prohibited except where, (1) the result is still a small or medium-sized enterprise (a concept not defined in the law) or (2) the Prime Minister grants an exemption. A 30-day notification to the competition authorities is mandatory where the participating parties would have a combined market share of 30-50 percent.
- **Anticompetitive behaviour/decisions** by officials or State administrative agencies, taking advantage of their authority.

How are Vietnamese consumers protected?

In 1999, the Standing Committee of the National Assembly of Vietnam promulgated the Ordinance on the Protection of Consumer Interests, which provides for the rights and obligations of consumers and business entity as well as complaint and denunciation rights of consumers. Furthermore, the Decree No. 69/2001/ND-CP was issued by the Government of Vietnam for detailed guidelines on the implementation of the Ordinance, then the Decree No. 29/2004/ND-CP authorised the Ministry of Trade of Vietnam to take charge of State management of consumer protection issues as stipulated by law. In addition, Vietnamese consumers are protected by regulations in legal documents such as the Civil Code, the Criminal Code, the Commercial Law, the Law on Public Health Protection, the Law on Environmental Protection, the Ordinance on Goods Quality, the Ordinance on Measurement, the Ordinance on Food Hygiene and Safety, etc... Most recently, the legal corridor for consumer protection has been improved with the provisions of the Competition Law 2004 and the Decree No.55/2008/ND-CP, which has superseding power over the Decree No. 69/2001 for detailed guidelines on the Ordinance 1999.

According to the Competition Law 2004, there are two business practices which could have direct negative effects on Vietnamese consumers. They are practices of misleading representation and pyramid schemes.

Misleading advertising refers to any false or misleading representation that is made to the public by a person in the course of business. The representation may be about the nature, character or performance of a product, such as size, type of contents or weight. It also includes warranties, statements, or guarantees that are not based on adequate and proper tests.

A clear example of misleading advertising is an advertisement, which describes a pair of shoes, which was "Made in Taiwan" as "English Handmade". Through the use of an expression associated with a long history of quality shoes, the merchant had made a misrepresentation as to the type of shoe that was being sold. Another example of misleading advertising occurs when a merchant makes a promise to a consumer to deliver an item in a certain number of days and does not fulfil this promise. Failure to disclose information, which is material to the consumer's purchasing decision, will also amount to misleading advertising.

Misleading advertising is prohibited under Article 45 of the Competition Law 2004 of Vietnam, together with comparative advertising and imitation of others' advertising products. Hopefully, when the Law is fully enforced, it will help to eradicate such practices, which are quite prevalent in Vietnam. For instance, many consumers in Vietnam complained about their sad experiences with a shampoo brand called CLEAR, which is certified by some ELIDA Institute (Paris) to be able to eliminate dandruff within 7 times of shampooing, according to the advertisement, though of course, this miracle does not happen in real life, though CLEAR does help a bit in dandruff controlling.

Pyramid schemes, or also referred to as "chain referral", "binary compensation" or "matrix marketing" schemes, is a non-sustainable business model that involves the exchange of money primarily for enrolling other people into the scheme, usually without any product or service really being delivered.

There are other commercial models using cross-selling such as multi-level marketing (MLM), which are perfectly legal and sustainable. Most pyramid schemes take advantage of confusion between genuine businesses and complicated but convincing moneymaking scams. The essence of a pyramid scheme is that the profit of the business comes from the sale of franchises, not the sale of products either because there are no products or the products are not saleable at a price that would make the investment in the franchise profitable. The reason they are called pyramid schemes is that at the beginning the first levels of franchisees can and do make money because in addition to selling some products, they are also able to sell 10 franchises to friends. In order for these ten franchisees to make money they will each have to sell ten franchises (or a total of a hundred). For those hundred to make money they will have to sell a thousand franchises. And those thousand will have to sell 10,000 franchises, and so on.

The evil is not the sale of the franchise or even the payment of a finder's fee to the franchisee who signs up new franchisees. The evil is that information about the profitability of the sale of the basic product is misleading. At no level is the sale of this product profitable. The business seems to be profitable to prospective franchise buyers because the person selling them the franchises are making money from the sale of new franchises. But as the numbers above illustrate the numbers of new buyers of franchises quickly escalates to impossibly large numbers. This would be clear if the originators of the franchise showed how many products had to be sold to make the franchise profitable and what the likelihood is of being able to make that many sales.

In Vietnam, the Competition Law 2004 (Art. 48) and its subordinate Decree No. 110/2005/ND-CP explains in details the differences between multi-level marketing and pyramid selling, and sets out the responsibilities for operators and participants in these types of plans. Multi-level marketing, when it operates within the limits set by the law, is a legal business activity, while pyramid selling is a multi-level marketing plan that incorporates various deceptive marketing practices, making it a serious offence.

It is illegal to:

- Request those who wish to participate in the marketing scheme to pay a deposit, buy an initial volume of goods or pay a sum of money for the right to participate in the multi-level sale network;
- Not commit to buy back goods at 90 percent at least of the price at which the goods were sold to participants for re-sale;
- Give participants commissions, bonuses or other economic benefits which are gained mostly from the enticement of other people to participate in the multi-level sale network;
- Supply false information on the benefits of the participation in the multi-level sale network, false information on the nature and utilities of goods in order to entice the participation of other people.

Be an active consumer, proactively protecting yourself and the public

In addition to the direct regulations above, other anti-competitive practices, abuse of dominance, economic concentration, and other unfair competitive practices stipulated by the Competition Law 2004 of Vietnam also have large effects upon the Vietnamese consumer interests.

For example, one cannot deny that consumers are directly affected by price fixing, market allocation or customer sharing arrangements. These agreements prevent consumer from benefiting from fair competitive practices, which ultimately result in lower price, higher quality, and better variety of goods and services. Abuses of dominance and monopoly position such as imposing unreasonably high price, resale price maintenance, exclusive dealing or tied selling will also victimise the consumers. Even though those who suffer direct loss caused by these practices are firms, the burden of losses caused by the unfair competitive practices will be transferred to consumers through higher prices, output and distribution restrictions.

Economic concentrations (mostly mergers and acquisitions – M&As) are transactions among firms. However, to the extent that M&As might result in the parties becoming dominant enterprises and/or monopolies in the relevant markets, there is a great potential that they would abuse their newly acquired market power to the detriment of consumers.

Another business practice that seems to be good on the surface but is harmful to consumers in the long run is predatory pricing. Predatory pricing occurs when a dominant firm temporarily charges particularly low prices in an attempt to eliminate existing competitors, or create a barrier to entry into the market for potential new competitors. The predator will incur temporary losses during its low pricing policy period with the intention of raising prices in the future to recoup losses and gain further profits. Besides, a substantial lessening of the number of competitors in the market may put consumers at a disadvantage, since there would be no opportunity for them to choose the suppliers or products ore suited to their taste, demand and affordability.

In general, it can be said that the promulgation and effective enforcement of the Competition Law 2004 of Vietnam have the potential to bring direct or indirect benefits to Vietnamese consumers in the time being and the long run. In return, competition authorities also require the support from consumers and consumer protection organisations and associations.

Consumers might proactively protect themselves and the public by being a vigilant watchdog of business practices in the market, lodging complaints or providing information to competition authorities, acting as a witness before courts and in the hearing on competition as a party with relevant rights and interests.

Consumers might also proactively publicise information on the media or boycott firms that engage in unfair competitive practices or anticompetitive practices or relevant products or services.

Consumer associations should undertake research and advocacy activities on unfair competitive practices or anticompetitive practices to inform their members, the public or relevant authorities.

Be an active and informed consumer! Let's proactively protect your own interests and those of the public as well as contribute to the society! The Competition Law 2004 of Vietnam shall be an effective tool supporting you to achieve that goal.

We would like to hear from you: Please send information and feedbacks on unfair and anti-competitive practices to vinastas@fpt.vn (Vietnam Standard and Consumer Association) or hanoi@cuts.org (Consumer Unity & Trust Society – Hanoi Resource Centre), or qlct@moit.gov.vn (Vietnam Competition Administration Department – Ministry of Industry and Trade).