

Competition and Consumer Dossier in Vietnam

No.5, October 2012-March 2013

A. LAWS & POLICIES

1. Food vendors must obtain health certificate: New rule

Under a new Health Ministry circular, food hawkers must obtain a health certificate, in addition to meeting many other conditions for their business.

Under Circular 30/2012 specifying regulations on food safety for food services and street food establishments, anyone involved in the street food business must have a medical examination and obtain a certificate of health eligibility.

The medical examination and issuance of a certificate will be carried out by health authorities from the local district or equivalent level.

In addition, street food vendors must train in food safety and obtain a certificate confirming that they have done so.

The new circular will affect a large number of food peddlers. Hanoi currently has 26,000-30,000 street food establishments, and the figure for the entire country runs into the millions.

<http://tuoitrenews.vn/society/6491/food-vendors-must-obtain-health-certificate-new-rule>



Food for Thought

Street food is widely consumed in Vietnam especially in big cities given their advantages of convenience and low price. According to the Vietnam Food Administration (VFA), there are around 400,000 establishments selling street food. This is not to mention a countless number of ambulant vendors hawking their wares on the streets. However, this type of food also carries a high risk of food poisoning and food-related diseases. The number of food poisoning cases taken into hospitals reportedly experienced a rising trend, and street food is the main reason. That explains why street food safety is taken seriously by relevant authorities. This Circular, together with the Food Safety Law, is aimed to establish a basic regulatory framework so that consumers' safety can be more protected.

In fact, the management of street food has been specifically stipulated in previous regulations. In 2000, the Ministry of Health set out 10 criteria to assess street food safety. In 2005, Decision 41 was promulgated to set conditions for doing business in street food. However, not many changes have been done. Circular 30 is mainly based on these regulations but more specific and simple with fewer provisions. However, it is a wide concern whether this Circular would come into oblivion when there are so many challenges reducing its feasibility.

The first challenge relates to the characteristics of this type of business. Typically, vendors move places from time to time which will definitely create difficulties for relevant authorities overseeing them. Besides, given the density of street food hawkers in every street, it would require a significant number of resources to take care of all stages from licencing, training and inspection. The inspection quality is also a matter of concern due to the lack of necessary equipment and expertise in this specific field. It is observed by many economic experts that some criteria, such as vendors attending training courses on food safety, having a food certificate and regular medical check-ups are too ambitious and hardly unattainable. As the size of this business is often very small, vendors would rather move around or change jobs or commit 'bribery' than obey these strict regulations.

Another important challenge is the lack of awareness of both vendors and consumers. Though the Circular has come into effect for several months, most vendors do not know

CONTENTS

A. LAWS & POLICIES

1. Food vendors must obtain health certificate: new rule 1
2. Banks start charging ATM transaction fees 2
3. SBV issues Circular on gold bullion trading in domestic market 2

B. CASES

- I. Anti-competitive practices 3
 1. Shell Gas leaves Vietnam's cooking gas market 3
- II. Consumer protection issues 4
 1. Consumers speak out on milk scandal 4
 2. Vietnam firm receives puny fine for selling personal information 5

about its existence. Many of them still chose to put profit over consumer safety. Moreover, given the popularity of a deep-rooted 'street food' culture in Vietnam, consumers themselves have become familiar with this type of food regardless of risks that it may bring.

It will take a long time for this Circular to be effectively implemented and this needs a strong will from the relevant authorities. Ensuring street food safety should also be considered a long process requiring coordinated efforts of not only authorities but also businesses and consumers.

2. Banks start charging ATM transaction fees

On January 01, 2013 the State Bank of Viet Nam issued Circular No. 35/2012/TT-NHNN on service fees charged to debit cards, formulating the legal framework for fees charged by the banks on debit card holders, especially for ATM transactions.

The goal of the Circular, which took effect on March 01, 2013 includes relating fees to services and transactions, thus regulating service fees for debit cards to help banks finance part of their investment and operations and to improve service quality.



Fees can be up to VND1,000 per transaction in 2013, VND2,000 in 2014 and VND3,000 from 2015. It is up to banks to set their fees. Vietcombank, which now holds the largest share of the domestic card market, and Seabank began collecting VND1,000 and VND550 on cash withdrawals from ATM networks on March 01, 2013.

Meanwhile, many banks have delayed the collection of fees and some are proposing fees lower than the maximum in order to keep clients.

<http://english.vietnamnet.vn/fms/business/67807/banks-start-charging-atm-transaction-fees.html>

Food for Thought

The Circular has formally allowed banks to charge ATM cash withdrawals from customers who take money out of their accounts from their own banks' ATM machine. The reason for it is that it will create conditions for banks to expand investment and maintenance. The banks themselves have been claiming losses due to high ATM costs, such as site rental, security guards, etc. Why this reluctance to follow the Circular?

Undoubtedly, it is due to the fear that they will suffer high losses as consumers are likely to reduce ATM

transactions or worse, bring cash home instead of depositing at banks. This fear is totally well-grounded. In fact, ATM cardholders are already burdened by a number of fees, such as issuance and, annual membership, card management fees etc. Though this new fee may cost only VND3,000 per transaction, it may be a huge sum if there are several withdrawals a month which may sadden low-income cardholders, such as workers and students. In fact, as pointed out by many economists, banks have really benefited from ATM services rather than incurred losses. Banks have taken advantage of the huge amount of money stored in accounts with a low interest of only two percent a year. Banks have also enjoyed charges from companies paying their employees via ATM accounts. Without ATM cards, banks would have assigned a huge number of resources taking care of customers' withdrawal demands every day. Meanwhile, companies that pay salaries via ATM accounts enjoy simple procedures for payment, especially those with thousands of employees.

From a macro economic perspective, the decision would go against the world trend to provide card service users with more advantages. On the contrary, it would force people to stay away from ATMs and return to using cash or withdraw their money at the banks' transaction office.

However, the real issue seems to be the poor quality of ATM services. The quality which has not improved much in the past several years makes ATM charges unacceptable to consumers. There are a number of cases when people have to stand in a long queue to withdraw money from ATM booths especially in pay days or holidays or when ATM machines do not work properly or run out of money. Given the impact of the economic crisis with rising prices and falling incomes, the new charges would add to customers' woes.

After all, it should be acknowledged that fee collection is inevitable given the investment that banks have to make in ATMs. However, the question is how and when. Besides, certain measures should be applied to reduce the disadvantages of consumers. Specific regulations should be drafted by the central bank to regulate ATM fee usage and improvement of ATM services. Banks should increase cash withdrawal limits so that customers have to pay less in fees. The fee should also be reasonably calculated to make it acceptable to customers. If their rights can be secured, undoubtedly customers will be willing to pay to use ATM services.

3. SBV issues Circular on gold bullion trading in domestic market

The Governor of the State Bank of Vietnam (SBV) issued Circular No. 06/2013/TT-NHNN on March 12, 2013 to guide the gold bullion trading of the SBV in the domestic market (hereinafter called as "Circular 06/2013/TT-NHNN"). Circular 06/2013/TT-NHNN aims at guiding the rules of gold bullion trading in accordance with Decision No. 16/2013/QĐ-TTg of the Prime Minister dated March 04, 2013 on gold bullion trading of the SBV in the domestic market.

Circular 06/2013/TT-NHNN governs credit institutions,



enterprises with gold bullion trading licence, organisations and individuals related to gold bullion trading of the SBV.

Circular 06/2013/TT-NHNN took effect on March 13, 2013.

www.sbv.gov.vn/wps/portal/!ut/p/c4/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gDFxNLczdTEwN_Uw9TA09_cxPDUE9_w-Awl_2CbEdFAL4-9xg!/?WCM_GLOBAL_CONTEXT=/wps/wcm/connect/sbv_en/sbv_en/en.sbv.news/sbv.en.news.7/9a771f004ee283ebb066b170f6db719c

Food for Thought

The ban on gold bullion trading according to Decision 16/2013/QĐ-TTg and Circular 06/2013/TT-NHNN is a downward step in giving business freedom to people. It is expected that when Vietnam joins the WTO, it will build a fair competitive environment which is based on rules rather than administrative orders. However, against that expectation, from 12,000 transactions sites, there are now only 2,500 ones which are basically operated by 22 banks and 16 enterprises. Competition is, without doubt, restricted. Ultimately, it is not hard to predict there will be a distorted gold bullion market in which many illegal practices are likely to occur in an effort to escape the decree. Actually, in reaction to the new policies many small gold shops are turning into pawn shops though their gold transactions remain the same. Businesses are making gold rings which have the characteristics of bullion gold.

From the consumers' perspective, the Circular has raised several concerns as well since the consumers may not know where to buy gold bullions legally in case their familiar trading spots are no longer licenced to sell it. Besides, it is a fact that most of licenced sites are located in big cities, such as Hanoi and Ho Chi Minh. Especially in provinces, it would be harder for people to find places to buy gold. The result may be that consumers will engage in 'black' market dominated by speculators and likely to suffer from lower selling price and higher purchase price. Non-SJC gold owners also face loss as a result of the State Bank's ruling to trade in SJC gold only. Reportedly, there are cases that non-SJC gold was being sold for prices which are up to 6 million dongs lower than that of SJC gold.

Taking into account these facts, proper moves should be required to implement the Circular without causing harm to the economy, gold shops and consumers. Besides, it should

be noted that Vietnam has more than 80 million people, three quarters of which have the habit of keeping a certain amount of gold for safe haven. Therefore, it would not be feasible to restrict their demand to keep, purchase and buy gold. Instead, so as to carry out the government's policy to mobilise gold from the public, transparent policies, an efficient system to mobilise gold, and strict supervision and inspection schemes should be in place.

B. CASES

I. Anti-competitive practices

1. Shell Gas leaves Vietnam's cooking gas market

Royal Dutch Shell Group has sold its entire stakes in two cooking gas suppliers in Vietnam to a Thai company, saying it will focus on gasoline trade.

Industry insiders say that the firm's decision might have been prompted by large-scale fraud in Vietnam's gas market, which has inflicted huge losses on the firm over the last three years.

The Shell Group said its sale of roughly 80 percent stake in the joint-venture, Shell Gas Hai Phong in the north and 100 percent in Ho Chi Minh City-based Shell Gas Vietnam to Siam Gas is in keeping with its next business strategy, which aims to invest in petrol and lubricant oil.

Le Thi Anh Man, Deputy Chairman, Vietnam Gas Association said illegal refilling of fake gas cylinders has not been controlled yet, even after the government said that enterprises must have a business licence to refill gas into their cylinders.



The fake cylinders have caused a great deal of difficulties for foreign cooking gas suppliers competing in the domestic market. The country's gas shops have not been managed properly.

<http://en.baomoi.com/Info/Shell-Gas-leaves-Vietnams-cooking-gas-market/5/311421.epi>

Food for Thought

It would be good news if domestic enterprises are strong enough to beat foreign ones out of competition in their home market place. However, unfortunately this is not the case. The leaving of the giant Shell group from Vietnam, despite

their own excuses, has been largely attributed to unhealthy competition practices in Vietnam, where illegal gas trading of low quality products cannot be controlled.

In October 2010, the Decree No. 107 on gas trade management took effect, requiring enterprises to have a business licence to refill gas into their cylinders. However, the gas market remains chaotic with rampant, uncontrolled phenomenon of illegally extracting gas. It was surprising to know that some 40 percent of the cooking gas cylinders on the market are fake and low in quality.

This has resulted in not only the pulling out of foreign brand names, such as Shellgas, Mobil Unique Gas and BP Gas but also the discouragement of authentic Vietnamese enterprises. Due to unfair competition, Petrolimex has to suffer a loss of 30 percent in terms of output annually. More importantly, their brand name is affected as imitation of Petrolimex gas will make consumers misunderstand about their products' quality. Besides, fake cylinders are likely to lead to explosions. This raises great concerns about consumer safety given the gas market has been growing in both quantity and scale.

According to Decree No. 105/2011/ND-CP of November 16, 2011 took effect in 2011, prescribing sanctions for administrative violations of liquefied petroleum gas business, fines for falsifying certificates of qualified gas cylinders are from VND40-50mn while a fake certificate will be confiscated.

Under a draft Decree on the trade and use of gas and fuel which is expected to replace Decree 105, the fines are higher which may reach up to VND80-100mn. For illegal gas extracting be prevented efficiently, violators of these gas-related regulations are supposed to be more strictly inspected and punished by relevant State agencies. Especially, if administrative penalties alone are not enough, criminal sanctions should be added to stop violations, especially vis-à-vis cases with large damages.

II. Consumer protection issues

1. Consumers speak out on milk scandal

In mid-February, one mother in Ha Noi started posting her suspicions about Danlait baby milk in online forums for young parents.

According to her, after drinking Danlait milk for two months, her then-six-month-old baby started losing weight and experiencing slow teething. The milk was advertised

in Vietnam as a product from one of Europe's top milk companies.

However, when she consulted friends and relatives in France, she found that they had never heard of Danlait milk.

An investigation revealed that the local importer declared the price of each can of Danlait milk to customs officials as about VND80,000 per can. But the milk is sold in Vietnam for nearly VND450,000 per can.

And while the Food Administration of Vietnam only certified the product as a supplementary food, it is still marketed and sold as milk for babies.

<http://english.vietnamnet.vn/fms/society/67550/consumers-speak-out-on-milk-scandal.html>

<http://english.vov.vn/Economy/Crackdown-on-counterfeit-goods-urged/250968.vov>

Food for Thought

According to the latest investigation by the Hanoi Market Management Team, Manh Cam Co, which imported and distributed the Danlait Milk nationwide has seriously violated state regulations. First, the milk is sold at VND400,000 per 400-gram can while it costs only VND115,000 a can. Second, Danlait milk contains only 11 to 20 percent protein, which falls far behind Vietnamese standards. Third, Danlait products of Manh Cam Company are supplementary food (as in the business license issued by the Department of Food Safety and Hygiene) rather than goat milk for babies as advertised. As the most recent update, in a quality inspection of goat milk Danlait 1 (for 0-12 month old babies) carried out by Pasteur Institute in Ho Chi Minh City, the result is even worse. The milk only contains 4.13 percent which is equal to the amount of protein in cattle feed. Besides, the content of kali and natri far exceeds Codex's standards.

Though there are still arguments regarding the inspection results issued by Pasteur Institute, the case turned out that authorities are still not doing enough to monitor the quality of baby food, either domestic or imported, not to mention the transparency of local importers. It should have been the Department of Food Safety and Hygiene which should collect milk sample for inspection right after concerns about Danlait milk were first raised. Though the Department of Market Management is assumed to have carried out that inspection, the results have not been published so far.

That is the reason why thousands of consumers even those who have not bought the milk have joined efforts to find and share information about the milk. They join a Facebook group and contribute money to cover the inspection cost. They continuously provide sound evidences to make accusations against the distributor. Though the case has not come to an end, it can be seen that consumers, who are more knowledgeable, are fully capable of supervision of product origin and quality and once they are connected, they are able to bring fraudulent enterprises to light.

On a related issue, similarly to Manh Cam company, many milk distributors and importers have changed 'milk powder for children under 6 months of age' into 'supplementary



nutrients' in order to escape price stabilisation according to the Price Law which took effect at the beginning of 2013. Therefore, they are only required to submit a price announcement and relevant authorities cannot intervene in their price adjustments. However, at agents, there products are known as 'milk' by both sellers and consumers and subject to price hikes. This requires a standardisation of names of nutritious products so that this type of milk is also included in price stabilisation.

2. Vietnam firm receives puny fine for selling personal information

A company in Ho Chi Minh City was fined VND5mn (US\$240) recently for obtaining billions of dong by illegally providing individuals' personal information to businesses.

Datanium JSC in District 1 was fined under the Information Technology Law, for 'providing people's personal information to the third parties via the Internet



without their consent'.

Nguyen Duc Tho, Deputy Chief Inspector of the City's Information Bureau, said "the penalty is not enough to be effective as a deterrent."

Tho said the company had gained a large sum of money from the crime but that regulations only call for fines between VND2mn and VND5mn. Higher penalties, of tens of millions of dong, are imposed on Internet service providers or managers.

Early in 2013, information security officers from the Vietnam Ministry of Public Security discovered similar syndicates in the city, Hanoi, and other places across the country.

<http://thevietnamvisa.org/vietnam-visa-vietnam-firm-receives-puny-fine-for-selling-personal-information.html>

Food for Thought

Not only under the Information Technology Law, under the Law on Protection of Consumer Rights of Vietnam, trading of personal information is illegal. It is said that consumers' information is "protected in entering transactions of purchase, use of goods or services, unless authorised agencies make requirement" (Article 6, provision 1). Besides, "business individuals, organisations can only transfer the received information to the third party after obtaining the consent of the concerned consumers except in cases provided by law" (Article 6, provision 2). In the Government Decree 19/2012/ND-CP on administrative sanctions to protect consumer rights that took effect from May 01, 2012, those who provide consumers' information to a third party without permission will be fined VND10-20mn.

The sale of personal information without consumers' consent is becoming widespread causing great nuisances to consumers. Consumers complain about spam messages or unexpected phones calls from companies. Marketing of personal information is rampant on the Internet with a great number of websites offering this service. However, it is sad to know that this case is among very few cases that people are accused of illegally trading personal information. This is attributed to the fact that the fine is not heavy enough compared to potential gains from illegal sale of personal information.

Besides, Article 5 of the Decree 19 only stipulates fines against individuals and corporations, such as telecommunication corporations and supermarkets which have consumers' information through their own business operations. Intermediaries who engage in practices are exempted from its application. This creates a loophole that is mostly likely to be taken advantage of to do illegal practices. This is not to mention the lack of public awareness regarding relevant regulations. Even the offenders do not know that collecting personal information of others for sale is illegal. Hence, it is important that protection of personal information be taken into more serious account and a solid and efficient regime for that protection be established.

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

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