

# Competition and Consumer Dossier in Vietnam

(July-September 2012)

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## **A. LAWS & POLICIES**

### **1. Individuals must carry out price registration from early 2013**

This is a price stabilisation measure provided under the Law on Price No. 11/2012/QH13 promulgated by the National Assembly of Vietnam.

Specifically, manufacturing and trading organisations and individuals have to register prices of goods or services which are under the price stabilisation list, including petrol and diesel; electricity; milk for children under six years old; paddy, ordinary rice; and drugs for human disease prevention and treatment in the list of essential medicines to be used at medical establishments. Price stabilisation measures would be imposed in the following cases: when prices of goods or services show irregular changes and when the level of price changes affects socio-economic stability.

Moreover, in order to stabilise the market and protect the rights and interests of manufacturing or trading organisations and individuals, as well as consumers, the State will determine the prices of air transportation services, telecommunications services; electricity transmission; auxiliary services for electricity system; and electricity trading.

This law will take effect from January 1, 2013.

[http://dangcongsan.vn/cpv/Modules/News\\_English/News\\_Detail\\_E.aspx?CN\\_ID=534293&CO\\_ID=30105](http://dangcongsan.vn/cpv/Modules/News_English/News_Detail_E.aspx?CN_ID=534293&CO_ID=30105)

#### ***Food for Thought***

*The objective of drafting a Law on Price is to create a transparent legal framework suited to the development of a socialist-oriented market economy and at the same time to create a legal basis for effective price management by the State. Hence, the law not only stipulates the rights and responsibilities of enterprises and individuals in setting prices but also allows State intervention for price management. However, irregular changes, the most important conditions for State intervention, are not specifically defined in the law which may make it difficult to determine whether and when State intervention should apply.*

*In any case, State intervention is supposed not to restrict competition. Such measures as removing barriers and reducing transaction costs for businesses will encourage healthy competition in the market. Consumers will benefit from lower-priced goods and services due to strong competition between manufacturers and suppliers. In contrast, direct intervention through administrative measures such as setting prices or price brackets for goods and services, if not carefully executed, will only result in administrative burdens for enterprises as in a State-controlled economy. Thus, it is essential that the law enforcement be performed carefully and selectively to balance between the market economy conditions and requirements for State intervention.*

*In terms of State intervention in the electricity sector in particular, the Government will regulate the price brackets for power generation and power wholesaling and set the average retail power price. Specific retail power prices will be up to the enterprises to determine. This is supposedly in accordance with the Electricity Law currently under revision and the development of a competitive power market. However, it should be noted that electricity is still a State-dominated utility and Electricity of Vietnam (EVN) has long held a monopoly*

*over the power market. If specific retail prices are to be set by EVN, it is very likely that consumer interests will not be taken into due account.*

## **2. Ministry mulls over amending fuel trading law**

The Ministry of Finance has sought permission from the Government to amend Decree No 84 on the management of the fuel trading activities, in a bid to increase the transparency of wholesalers' financial status and reducing disadvantages for consumers.

The adjustments focus on changing the cost price calculation, commission granting and the deduction for the price stabilisation fund in a way that matches the real market development, the Ministry said.

It is thus necessary that the 'fixed profit' be removed from the fuel cost price calculation to increase the transparency of the losses and profitable status of fuel wholesalers.

While fuel retail prices are currently adjusted based on average import prices within 30 days, the Ministry said it is seeking to cut the period down to 10 days, to make sure domestic prices will not lag behind world trends too much.

With regard to the fuel price stabilisation fund, the Ministry demanded that the fund be kept in the State Treasury, rather than being put in the hands of wholesalers as the current regulation. This is to avoid the fund from being misused by fuel companies, the Ministry explained.

<http://tuoitrenews.vn/cmmlink/tuoitrenews/business/ministry-mulls-amending-fuel-trading-law-1.79756>

### ***Food for Thought***

*The 10-day basis, instead of 30-day basis, is aimed to ensure that domestic prices of fuel would be more in line with world price fluctuations. However, it is still a concern that this new basis may be only defined on paper. Reality shows that upon a world price hike, domestic prices are adjusted upward immediately and sufficiently. In contrast, when the world prices go down, domestic prices are pulled down little by little with all kinds of excuses given by traders. Ultimately, consumers always suffer from higher prices of goods or services and will not benefit from lower fuel prices. The underlying reason is that in many cases, management agencies still use administrative orders to regulate prices. For a long time in the past, to make sure that price fluctuations did not affect consumers, the State kept on restraining enterprises from raising the prices in spite of surging global prices.*

*The fund being transferred to State Treasury instead of wholesalers/businesses is an attempt to properly manage the fuel price stabilisation fund. Many economists observe that the root of issues surrounding the fund is the so-called 'ask-give' mechanism. Enterprises are empowered to set their own retail price but their regulation is still subject to the approval of management agencies. Due to such mechanism, there is always a lack of competition in the market with power shared by three dominating companies including Petrolimex, PV Oil and Saigon Petro (holding 80 percent of the total market). Relevant State agencies such as the Ministry of Industry and Trade and the Ministry of Finance often tend to protect these companies as these are all State-owned ones.*

### 3. New rule dictates tough fines against false ads

The new decree for the Advertisement Law taking effect early next year will impose tough fines on those running false ads, with the heaviest fine expected to rise five times from the current level of VND40 million to VND200 million.

The stronger punitive sanctions are expected to prevent false and misleading advertisements that do much harm to consumers, officials said at a seminar held in HCMC the week before to disseminate information about the new law.

The Advertisement Law, approved by the National Assembly on June 21 this year, will officially become effective in January 1 next year to replace an ordinance on advertisement issued earlier by the National Assembly Standing Committee.

The Advertisement Law provides that many products and services be banned from advertisement such as cigarettes, spirits with an alcohol volume of over 15 percent, milk products for under-24-month-old babies and nutritious food for under six-month-old babies.

However, the law also abolishes certain procedures under prevailing regulations. For example, advertising agencies will no longer have to ask for licences or permits to run ads on banners or to issue advertising supplements for newspapers. Instead, they will only have to send notices to competent agencies for approval.

<http://english.thesaigontimes.vn/Home/business/other/25034/>

<http://talkvietnam.com/2012/08/new-rule-dictates-tough-fines-against-false-ads/#.UHJQCE3MiOw>

#### ***Food for Thought***

*The past 10 years have witnessed rapid growth of a vast advertising industry to match the speed and diversity of the expanding consumer market in Vietnam. It is also a fact that without strict control from relevant State agencies, consumers are regularly affected by advertising pieces with wrong information. The punishments on violators are often not heavy enough to have any deterrent effect on businesses to stop them from wrongdoings. Therefore, the new fine, which is 5 times higher than the currently applied fine level is, hopefully, high enough to settle the chaos in the market.*

*Nevertheless, with the passing of the Advertisement Law, a lot of questions remain unanswered. How can consumers protect themselves from products which are publicly and often over-advertised in terms of quality? Which agencies would come forward to examine and confirm the quality and safety of products? Who will protect consumers from misleading advertisements? In the intermediate time, in order to protect themselves, consumers need to “get smart” themselves instead of waiting for the law to take its course.*

## **B. CASES**

### **I. Anticompetitive Practices**

#### **1. Telcos warn telecom market marching toward the monopoly**

The recent happenings in the telecom market recently have raised the worries that monopoly would return and frustrate the current competitive market.

Monopoly has returned to some telecom market segments. The transmission channel leasing market once witnessed the existence of three enterprises. However, after EVN Telecom was merged into Viettel, only two big guys remained to dominate the market, namely the Vietnam Post and Telecommunication Group (VNPT) and Viettel. Some telcos have recently denounced VNPT of colluding with Viettel to raise the channel leasing fees.

The worries about monopoly's return to the telecom market are also the reason that has prompted economists to stay against the proposed plan to merge MobiFone and VinaPhone – the two biggest mobile networks now in Vietnam.

At present, both the mobile networks belong to the VNPT, which comes contrary to the Telecommunication Law. Therefore, VNPT has been told to restructure the mobile networks.

Since both VinaPhone and MobiFone are the big bread-earners for VNPT, the telecom giant cannot decide which mobile network to keep and what to give up. In an effort to retain the two, VNPT has proposed to merged VinaPhone and MobiFone.

However, the plan has been facing disagreements from economists, who believe that the merger, if occurs, would be a step back in the process of restructuring enterprises.

<http://english.vietnamnet.vn/fms/science-it/48165/telcos-warn-telecom-market-marching-toward-the-monopoly.html>

#### ***Food for Thought***

*The merger should be looked into from both legal and social aspects. First of all, the decision to merge the two telecom giants follows a new Decree (Decree 25/2011/ND-CP of April 06, 2011 detailing and guiding the implementation of a number of articles of the Telecommunications Law) which stipulates that “an institution or individual that owns more than 20 percent of the charter capital or stake in one telecoms operator, may not hold more than 20 percent of another firm operating in the same market”. VNPT proposed either to privatise Vinaphone and Mobiphone or merge the two companies. However, the proposed merger of MobiFone and Vinaphone would be in breach of the Competition Law. According to Article 18, section 3, Vietnam Competition Law 27/2004/QH11, “economic concentration shall be prohibited if the combined market shares of enterprises participating in economic concentration account for over 50 percent on the relevant market”. Meanwhile, statistics show that Viettel, MobiFone and VinaFone which are the main three mobile network operators accounted for 36.72 percent, 29.11 percent and 28.71 percent of the market respectively in 2011.*

*Second, from the social aspects, the proposed merger will not do any good towards Vietnam's social, economic or technological development at all. In contrast, it goes against the government's strategy to speed up the restructuring of State-owned enterprises. Consumers will also suffer. If there are only two major service providers in the market; i.e*

*Viettel and VNPT it may be the case that consumers no longer benefit from lower charges and promotional packages due to less competition. In addition, it would push other existing mobile operators into further difficulties.*

*It is only until late 2012 that there will be official decision of the Ministry of Information and Communications on the fate of the two enterprises. Of course, it is incorrect to say that keeping the current market structure with the three big operators can ensure competition. But whatever decision may be taken, consumer and State interests should be adequately safeguarded. With regard to the other option, which is to privatise Vinaphone and Mobiphone, it can help companies improve their management capacity and create new services. This is also a way to create competitive pressures.*

## **II. Consumer Protection Issues**

### **1. ATM fees to be investigated**

The State Bank of Viet Nam will check on ATM fees across Viet Nam after many commercial banks recently not only increased fees for inter-bank (extranet) services, but also started charging for the usually free intranet transactions.

This was allegedly done in secret by the banks who did not notify their card-holders of the changes, said the State Bank's deputy head of inspections, Nguyen Cong Duong.

Duong said the SBV and its branches were working hard to oversee if commercial banks had obeyed recent orders not to charge for intranet services - or adjust extranet fees, even if they want to lower them.

He said some banks not only appeared to be doing what they wanted but were also charging clients too many varieties of service charges.

Ngo Ngoc Dong, CEO of Viet Nam National Financial Switching JSC, or Banknet, said that many banks complained of the high expenses of investing in ATM systems.

However, the central bank's view remains firm: fees can only be collected under the road map it has developed. This is to ensure a balance of interests between customers and the banks.

<http://vietnamnews.vn/Economy/227593/atm-fees-to-be-investigated.html>

### ***Food for Thought***

*Given that finance and banking services have developed at a rapid rate in recent years and banks are continuously diversifying their products and services to boost competition, consumer protection in this field should be taken into serious account. This case is related to ATM transactions, in which more and more Vietnamese people tend to be involved today. The first point in question is that whether ATM fees (including intranet and extranet transaction fees) should be collected. Banks claim that they have made a huge investment in their ATM network system and as a matter of fact, they reserve the right to collect fees. However, from the viewpoint of ATM cardholders, the poor quality of most banks' ATM services did not merit their collecting additional charges. Many of them consider discontinuing the service if fees are charged. As a recent update, the State Bank has given a green light for banks to collect intranet fees and increase extranet fees next year and banks are required to report on*

*their investment in their ATMs. However, there are still arguments that without collecting fees, banks still made fat profits from ATMs. Some of their gains from transactions without cash may be less direct transaction costs with consumers, account balance taken advantage of with lowest interest rate.*

*The other noteworthy point relates to how the fees should be collected. Undoubtedly, the unilateral decision of banks to raise fees without notifying consumers violates consumers' right. As stipulated in Article 8, the Law on Protection of Consumer Interest, consumers are entitled not only to provided with accurate and sufficient information about "details of transactions" but also to "choose the business individuals, organisations for supplying services and goods" and to "freely consider whether or not to participate in a transaction". In this case, consumers are not informed about the fees collected so they cannot choose the banks they want to do trading transactions with.*

*The last point is how to deal with ATM fees which have been collected. According to the Law on Protection of Consumer Interests of Vietnam, a business organisation "has the obligation to compensate damages caused by their defective product with regard to lives, health and assets of consumers". As of now, many options have been considered such as recovery of all undertaken transactions or transfer the fees to a consumer protection fund. In any case, it is essential that relevant authorities take appropriate actions to force banks to directly or indirectly return to consumers what have been lost.*

*In sum, ATM fees should be collected according to pre-defined schedule by the State bank and should not go against the Government policy in payment without cash. The fees should be reasonably calculated so that even students and low-income workers can afford the service. The time of collecting fees is also very important. Finally, banks' competition on charges should be encouraged so that it's up to consumers to choose the banks they want to do transactions with.*

## **2. Chinese fruits still come in great quantity, despite warning about safety**

The Plant Protection Agency under the Ministry of Agriculture and Rural Development (MARD), has stated that it has found the preservative residues in the Chinese fruit samples (2 samples of grapes, one pomegranate, one plum) exceeding by 3-5 times than the allowed levels.

However, The Labourer newspaper has reported that despite the information, the Than Thanh border gate in Lang Son province, considered the biggest fruit import locality, still puts hundreds of trucks of fruits through every day.

Nguyen Van Chuong, head of the Tan Thanh border gate's customs agency, said under the current regulations, fruits bear the import tariff of zero percent. Therefore, Chinese fruit imports have been going to Vietnam through the official channel, while in the past, they were smuggled into Vietnam.

Under the current laws, all the farm produce, including fruits, must have quarantined at the Tan Thanh plant quarantine station, before the goods owners can follow procedures to import the products to Vietnam.

However, Nguyen Quang Bach from the Tan Thanh Customs Agency said that in many cases, the quality of the products is uncontrollable. These are mainly the products traded by Vietnamese and Chinese merchants through “verbal contracts,” not the imports under commercial contracts.

<http://english.vietnamnet.vn/fms/business/48832/chinese-fruits-still-come-in-great-quantity--despite-warning-about-safety.html>

### ***Food for Thought***

*According to Article 8 of the Law on Protection of Consumer Interests, the consumers “have the right to be ensured their safety in terms of their lives, health, assets and other legitimate rights and interests when they are involved in consumption transactions and when they use goods, services provided by the business individuals, organisations” and “have the right to be provided with accurate and sufficient information about the business individuals, organisations, details of transactions, goods, services and other necessary information”. These two rights are seriously violated in this specific case.*

*In fact, the story of harmful Chinese products including farm produce is nothing new to consumers. The majority of farm produce including fruits on the market is from China. However, it is very difficult for ordinary people to differentiate between Chinese fruits and fruits of other origins (including Vietnamese origin) as they look exactly alike. Chinese fruits are even widely sold in large and prestigious supermarkets. Hence, consumers have no alternative but to ignore the possible adverse effects that these can bring into their lives.*

*Only when the quality control and monitoring of imported goods from China are strictly enforced can the problem be solved. One of the initiatives can be that all the fruits sold on the market have information of origins and certificate of quality issued by customs agencies.*