

Competition and Consumer Dossier in Vietnam

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A. Anti-competitive Practices

1. Livestock Farms Accused of Price Collusion

The latest increase in livestock prices in the domestic market, which has surprised both traders and consumers, is being blamed on price manipulation by big breeding companies.

The pricing typically depends a lot on supply and demand, but the pork market is an exception, said the deputy head of the country's main livestock supplier Vissan's Market Officer, Do Minh Trung. "A new standard price is being set up in the pork market."

...However, breeders argue that the real beneficiaries of the price hike are not farmers, but livestock companies.

The high price of cattle feed has actually forced quite a few farmers to give up on animal husbandry.

The current suppliers of livestock are mostly large breeding companies, many of them foreign-invested. With their large-scale operations and advanced technologies, they have taken a majority stake in the domestic market.

...The poultry market is facing a similar situation. The market is dominated by big foreign invested companies like CP, Emivest, Japfa.

<http://vietnamnews.vnagency.com.vn/Pages/PrintView.aspx?ArticleID=212284>

<http://english.vietnamnet.vn/en/business/11248/domestic-breeders-say-foreign-enterprises-control-food-market.html>

Food for Thought

The stabilisation of the pork and the poultry market are very necessary for all consumers during their day-to-day living. If the price is a little higher or the supply is inadequate, the consequences are very far and wide-reaching.

Price collusion is essentially an arrangement between competing businesses to set, or maintain, prices at a certain level. Price collusion is a conduct prohibited in Article 8 of the Vietnam Competition Law (VCL). The practice of price collusion reduces competition by fixing, maintaining or controlling prices in a particular industry.

Whether or not there is price collusion between suppliers has not yet been investigated. But, it is a fact that there is a new standard price set up in the market and the real beneficiaries of such a price hike are big foreign-invested livestock companies. They are controlling the food market. According to the warning by Vietnamese companies, CP Vietnam, a foreign-invested enterprise alone has the productivity equal to the livestock production of farmers in five provinces in total. The enterprise's pork and chicken output accounts for eight percent of the total livestock output of the whole country. These foreign-invested companies are very likely capable of dominating the Vietnamese market in the near future, if they double the number of sows. The concern is not about dominance, but the abuse of dominance, which negatively affects competition in the market and is prohibited by the competition law. Under the VCL, collusion in fixing prices is not prohibited per se, but should be based on a rule of reason treatment (by weighing between economic benefit and loss or based on determination of combined market share).

B. Unfair Competitive Practices

1. Noodle Manufacturers' Dispute over Inaccurate Ad

According to Acecook Vietnam, Masan Food has recently launched a new advertisement program for its instant noodle, Tien Vua, with a message which Acecook Vietnam said could mislead consumers and thus affect its business.

The message, which uses strong images of two different blocks of noodles in light and dark yellow soup, suggests that the noodles that cause the soup to turn dark yellow contain colouring.

...When colouring is used, noodles may be dark yellow, but we can never say 'the dark yellow noodles prove the usage of colouring' as Masan Food claimed in its ad, he said. A director of another instant noodle firm said many other firms and manufacturers in the noodle industry also find this ad unacceptable.

As 80 percent of the noodle market is held by big manufacturers who meet the requirements of food hygiene and safety, Acecook Vietnam said Masan Food's message is causing an unnecessary worry amongst consumers about colouring used in instant noodles.

www.vneconomynews.com/2011/06/noodle-manufacturers-dispute-over.html

<http://en.baomoi.com/Info/Noodle-manufacturers-dispute-over-inaccurate-ad/5/157317.epi>

www.vietnamconsult.de/economy/5569-noodle-manufacturers-dispute-over-inaccurate-ad

<http://en.baomoi.com/Info/Noodle-producer-accused-of-false-advertising/5/160835.epi>

Food for Thought

According to the Masan Food advertisement, noodles that cause the soup to turn dark yellow contain Tartrazine E102 colouring. It claimed that E102 colouring was classified as a toxin through Japanese, US and European documentation. However, according to the latest information issued by the Vietnamese Department of Food Safety and Hygiene, the use of Tartrazine E102 is safe to consume, a position backed by the European Food Authority evidence released in 2009 that showed that no scientific evidence existed proving that E102 was unsafe for human consumption. Besides, several noodle brands of Masan itself, such as Tien Vua and Omachi, which are widely available on the market, also explicitly list Tartrazine E102 colouring as one of the ingredients on their packaging.

On the one hand, this is a case of advertising for the purpose of unfair competition. It is unlawful for enterprises to compare their goods and services directly with those of the same kind of other enterprises when promoting their goods or services. According to VCL, this practice is prohibited in Provision 1, Article 45. In this specific case, the consumers, as a whole, have no knowledge about the making of noodle food, in particular, and of products advertised, in general. That is why advertisements on mass media can direct their belief and change their purchasing behaviour. As a consequence, the wording of Masan Food will negatively affect the business of other competitors to different extents. Not only Acecook, who petitioned the case, but also other noodle producers find this ad unacceptable. According to them, every product has to undergo certain quality and safety checks before being launched in the market.

On the other hand, this is also a case of misleading representation forbidden by Provision 8, Article 10, of the Law on Protection of Consumers' Interests and the impact on consumers could be large. Consumers may understand from the advertisement that all instant noodle products

other than Masan Food's contain the unhealthy tartrazine food coloring (E102) and consequently unnecessarily worry about the use of noodle as a whole.

However, it is very hard to give proofs against Masan because the damage level to consumers is hard to prove. Even enterprises have not yet defined the economic damage that the advertisement caused. Recently, Masan has been required to change their ads but a fine has not been imposed. Nevertheless, the current regulations, which stipulate a fine of only VND5-10 million (US\$250-500) on the violated ads, are not strict enough.

C. Trade-related Competition Distortions

1. Priority: High Value-Added Sectors

Among the difficulties which foreign investors raised at the Vietnam Business Forum (VBF) before the 2011 mid-term Consultative Group (CG) meeting for Vietnam, some have been repeated for years, while some are new.

...According to Fred Burke, the chairman of the manufacturing and distribution working group of VBF, one of the problems is regulations restricting imports and non-tariff barriers. For instance, the Ministry of Industry and Trade's Announcement 197 issued in early May and effective since June 01, 2011 on the import of liquor, cosmetics and mobile phones, which will be only shipped in through three international ports. Another example is Circular 20/TT-BCT, which stipulates permission for importing automobiles with less than nine seats.

The foreign-invested enterprise community knows that these are reactions by authorities towards trade deficit, but they do not agree with the measures which were approved without any feedback from affected parties. "There's nobody to answer our questions in line with international practices," Burke complained.

...What the business community needs from the government is that high value-added sectors should be given priority, rather than short-term investment and speculative projects, according to EuroCham.

<http://english.thesaigontimes.vn/Home/business/environment/17550/>

http://www.vccinews.com/news_detail.asp?news_id=23247

Food for Thought

Circular 20/TT-BCT was promulgated on May 12 and is expected to take effect 45 days after its release. The Ministry of Industry and Trade ascribes this document mainly to drastic increases in auto import quantities and value in the first-four months, which saw adverse changes in the trade deficit. This is believed to protect consumers and not violate international agreements. However, the concern of the international community is that this is a non-tariff barrier and Vietnam makes it difficult for firms to import, which will hinder economic development in Vietnam and reduce foreign companies' confidence in the economy.

Trade barriers are government-induced restrictions on international trade. The barriers can take many forms, either as tariff or non-tariff barriers. These may help support domestic industries in the short term, but in the long term lessen foreign competition, leading to fewer product choices for consumers and lower productivity of domestic industries themselves.

In fact, Circular 20 not only burdens automobile importers with more administrative procedures such as increasing amount of papers to be submitted but also raises difficulties for foreign car

companies in Vietnam. It is believed by some foreign importers that the circular is clearly “protecting” local auto manufacturers and assemblers.

D. Consumer Protection

1. Dealers Fined for Suspending Sales before Petrol Price Hike

Authorities in the Cuu Long (Mekong) Delta provinces of Can Tho, Hau Giang, Soc Trang, Bac Lieu and Kien Giang week fined several fuel stations for suspending sales as they waited for an expected price rise.

Nguyen Van Sanh, deputy director of Market Management Bureau in Can Tho City, said several stations had stopped selling fuel illegally.

Sanh said three stations in the city’s O Mon and Thoi Lai districts were found mixing low quality petrol and selling to customers at high prices. Each of them was fined VND30 million (US\$1,440).

In Hau Giang, Soc Trang and Bac Lieu provinces, market management divisions discovered that several stations had set the maximum sale amount for one motorbike at VND30,000 (US\$1.4406) in order to reduce the number of sales and keep more fuel in reserve for an expected price hike. A motorbike's full capacity is equivalent to VND75,000-120,000 (US\$3.60144-US\$5.76230).

Kien Giang Province's market management conducted an inspection of 180 stations and fined seven stations that had stopped operation. They had also hidden their price list and set prices at a higher level than the allowed rate. Meanwhile, the Ministry of Finance in late April said fuel price hikes would not increase.

<http://news.e-khmer.com/index.php?task=comment&action=view&newsid=50392&lang=en>

Food for Thought

Suspending sales ahead of a price hike had become a common practice with the petrol stations, which creates severe inconveniences for the masses. Consumers have to walk a long distance before they can find a station which sells fuel. The reasons that owners of petrol stations give are that they are running out of fuel, but how can all of them run out of stock at the same time?

The Law on Protection of Consumers’ Interests passed by Vietnam's National Assembly on November 17, 2010, has taken effect on July 01, 2011. The Law consists of 06 Chapters and 51 Articles and replaces Ordinance No.13/1999/PL-UBTVQH10 dated 27/04/1999 on the protection of consumers’ interests. The practices of suspending sales, selling low-quality products or raising prices unreasonably are against the Law and should be dealt with. It is because consumers as a whole have to suffer. In Article 10, Chapter 1 stipulating prohibited acts, the business individuals, organisations are not either allowed to provide goods and services which are not safe and threaten to cause damages to the health, lives and property of the consumers or allowed to conduct fraudulent or misleading acts to the consumers by way of providing inaccurate, misleading, inexact information or hiding information about the goods, services which are provided by such business individuals, organisations.

However, the reason why these practices are still prevalent is that the fines are not strict enough. The fines ranging between VND10-40 million (US\$500-2000) don’t outweigh the enormous economic benefits that cheating practices bring to petrol stations.

2. New Choice Recalls DEHP-tainted Taro Jelly

A Taiwanese company in Binh Duong Province is withdrawing its taro jelly products containing toxic chemical DEHP from the market after the firm has been found to import tainted cloudy agent for its production.

The Vietnam Food Administration (VFA) under the Ministry of Health on Thursday announced on its website that New Choice Foods Co. Ltd. had recalled 3,582 boxes of taro-flavoured jelly TARO containing the food additive DEHP as of noon of June 1. Meanwhile, up to 3,688 boxes of the product were still in the market at that time.

...Previously, a source from Taiwan's health agency informed the VFA of New Choice Foods' importation of the tainted food additive from Triko Foods Co. Ltd.

New Choice Foods said that the company used the food additive for its own production only. The company announced its withdrawal of the products from its distribution systems, including 75 dealers and 307 supermarkets nationwide.

The withdrawal must be completed by June 06 and punishment will be made in accordance with legal regulations if any DEHP-tainted taro jelly of New Choice is found in the local market after then.

<http://english.thesaigontimes.vn/home/business/other/17297/>

<http://www.thanhniennews.com/2010/Pages/20110603132644.aspx>

<http://en.www.info.vn/society/more/30025-vietnam-officially-limits-dehp-after-recall.html>

<http://tuoitrenews.vn/cmlink/tuoitrenews/business/producer-recalls-taro-jellies-nationwide-1.33169>

Food for Thought

DEHP is an industrial chemical widely used in PVC with a rate of up to 50 percent for plasticising. The plasticiser is used for producing home appliances such as plastic curtains, plastic doors, rain coats, toys and medical devices, among others. When being used in food packaging, it can cause consumers great health risks such as cancer, fertility problems and kidney failure. According to Provision 8, Article 10, of the Law on Protection of Consumers' Interests, supply of such unhealthy products "which are not safe and threaten to cause damages [to] the health, lives and property of the consumers" is forbidden.

However, it is very hard for affected consumers to ask for compensation from producers. It is because DEHP is only considered the potentially cancer-causing chemical. Besides, in case of a disease, it is not easy to prove that it is a unique cause. In this specific case, though the producers have recalled their products, Vietnamese consumers have not been compensated. Consumers have no choice but to stop consuming this type of product.

In fact, another alternative which could be referred to is class action. A class action is a lawsuit brought by one or more individuals on behalf of a "class" of individuals who have similar claims to seek a legal remedy for all members of the class. According to Provision 1, Article 28, of the Law on Protection of Consumers' Interests, consumers can go through consumer associations such as the Vietnamese Standards and Consumer Protection Association, to bring their claims, as these associations are entitled to either represent consumers in lodging complaints on behalf of consumers. In Taiwan, where the production companies are based, Taiwan's Consumer Foundation has pledged to assist consumers in seeking compensation for damages or financial losses caused by the DEHP tainted food scandal. The foundation said it would seek compensation

from the companies responsible. It is also setting up a separate consumer protection fund that it hopes will be financed by corporate donations. Though the difficulties in doing so are apparent, at least consumers' rights are protected to some extent.

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