

# Competition and Consumer Dossier in Vietnam

(October-December 2011)

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## A. LAWS & POLICIES

### 1. Price Law to Help Balance Out Vietnam's Economic Outlook

National Assembly deputies were discussing the need to promulgate a new Law on Prices to create a legal corridor for price competition in line with the market economy and to help the country's integration into the global economy.

Deputy Than Duc Nam said price registration with the government authorities was a necessary control for certain businesses. Nam, however, suggested that price registration should be placed on only a selection of essential goods that had a great effect on the economy and society, such as petrol, rice and power. This would avoid interfering too much in the trading freedom of enterprises.

Deputy Duong Hoang Huong said that the draft law on prices needed additional provisions to allow for periodical inspections on strategic items, such as petrol and electricity that had a direct impact on daily life.

Deputy Nguyen Thanh Phuong suggested that the establishment of a Price Stabilisation Fund should be further considered because not everyone would benefit.

<http://en.baomoi.com/Info/Price-law-to-help-balance-out-Viet-Nams-economic-outlook/3/205223.epi>

<http://nhandan.com.vn/cmlink/nhandan-online/homepage/politics/domestic/price-law-to-help-balance-out-vietnam-s-economic-outlook-1.321951?mode=print#uA11xCKcdrcC>

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

*The draft Price Law consisting of 5 chapters and 51 provisions is intended to replace the Ordinance on Price which has many shortcomings. In comparison with the Ordinance, the draft Price Law provides new definitions and additional provisions relating to public announcement of price information, price appraisal, settlement of violations on price and price appraisal activities. It also contains additional obligations and a list of prohibited acts for enterprises.*

*Nevertheless, according to many analysts, it is not a significantly positive evolution in bringing the Ordinance to a higher level status (the Law). The draft still shows numerous limitations as it has not yet been able to provide a solution for problems arising in the price field. Other controversial issues such as pricing in industries where there exist monopolies or dominant businesses, price manipulation, irregular price hikes, etc. are not clearly stipulated in the draft Law. In addition, many provisions are too sketchy and would prove hard to be put into implementation. For example, the draft Law requires enterprises to register their prices, a provision which would require immense resources from the government to administer.*

*In addition, the draft Law focuses on the State's intervention onto the autonomy of enterprises in their business operations. It mainly reflects the perspectives of sellers, enterprises and management agencies. There is no provision in the draft Law aiming at protecting consumers' legitimate rights, which is in contrast to the fact that consumers are the most relevant stakeholders and ultimate beneficiaries when it comes to price management. For example, during the past few years, the Consumer Price Index (CPI) in Vietnam has increased remarkably, causing difficulties to consumers, especially low-incomes ones but such problems have not been dealt with in the draft Law.*

*Besides, price stabilisation fund often does not work well in practice. Many industries such as power, health, and petrol claim the need to set up a price stabilisation fund, from which consumers never gain any benefit. For example, distributors and supermarkets are granted low-*

*interest loans thanks to a price stabilisation fund in essential consumption goods. Or the petrol stabilisation fund is more likely to encourage the subsidy mechanism in the petrol and oil industry. Meanwhile, consumers still have to bear the effects of high prices.*

*In general, it is not quite desirable to draft a Price Law in a market economy. Although it is necessary that the State still maintains certain regulatory power over the market, including over the pricing of certain items, a Price Law should be aimed towards gradually reducing the State intervention and increasing price self-regulation according to market rules. Otherwise, price controls will be no more than another administrative measure which bring us back to a bureaucratic State-controlled economy.*

## **2. Central Bank Unveils Draft Decree on Gold Trading Management**

The State Bank of Vietnam announced the official draft decree on gold trading management, with some additional clauses intended to dispel certain rumors which have been raising public concerns recently.

Under the bill, a business is required to have a registered capital of at least US\$24mn, and have at least 25 percent market share in the last three years, to be eligible to produce gold bullions. Businesses and gold trading shops have six months to renew their licenses to trade gold bullions as of December 01, 2011 when the decree is expected to take effect. After that time, all gold bullion trading activities can only take place at businesses and credit institutions that are licensed by the Central Bank.

It also states that although the decree can eliminate some gold bullion processors from the market, all [gold bullion] brand names that are currently licensed by the Central Bank will remain eligible for circulation after the decree takes effect. Gold traders said this statement can help stop the recent unprecedented phenomenon in the gold trading market, with some gold bullion producers selling their products lower than the rate of the Saigon Jewelry Co, the country's largest gold trader.

<http://english.vietnamnet.vn/en/business/15714/central-bank-unveils-draft-decree-on-gold-trading-management.html>

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

*Tightening gold manufacturing and trading activities by reducing the number of gold manufacturers is a restrictive business practice. Many analysts have pointed out that the above-mentioned criteria such as a required charter capital of US\$24mn and having a 25 percent market share for three consecutive years are too high for most local gold traders. Hence, these too stringent requirements may lead to monopoly. In fact, SJC is the only company that satisfies the demand because it currently holds a 90 percent market share in gold-bullion production.*

*Eventually, the new decree, when coming into effect, may result in more red-tape and time-consuming procedures. Besides, approximately 12,000 gold trading shops in the Vietnamese market will have no choice but to cease their operations and/or accrue big losses as they are no longer qualified to produce gold bars. But consumers are likely to suffer the most. Vietnamese people have the habit of keeping gold as safe haven asset and their demand of gold trading is served by the presence of gold shops in every village and commune, not of banks and big traders. Hence, squeezing the liquidity of gold is against their legitimate demands. Of course, regulations are needed but to infuse dynamic efficiency in a marketplace and enhance consumer welfare.*

## B. Cases

### I. Anticompetitive Practices

#### 1. Viettel to Take Over EVN Telecom

The Vietnamese government has agreed in principle that cash-trapped EVN Telecom be transferred to the Viettel Corporation, according to a Ministry of Information and Communications source.

EVN Telecom, a unit of State utility EVN, has reported significant losses and debts due to connection fees and frequency charges.

In October and November 2011, Hanoi Telecom sent proposals to the government saying it was ready to buy EVN Telecom's 3G broadband and network infrastructure.

In the proposals, Hanoi Telecom stated its view that if Viettel is allowed to take over EVN Telecom, the result would be a monopolised telecom market as Viettel is a leading company in the market, and that would breach the country's Competition Law.

However, Vu Dinh Anh from the Institute for Research on Markets and Prices, under the Ministry of Finance, is of the view that Viettel currently shows "no monopoly" but is only "dominating the market." Viettel is now like MobiFone or VinaPhone before, he says.

<http://english.vietnamnet.vn/en/science-technology/16119/viettel-to-take-over-evn-telecom.html>

<http://www.saigon-gpdaily.com.vn/Business/2011/12/98712/>

<http://vietnambusiness.asia/viettel-will-take-over-evn-telecom/>

#### *Food for Thought*

*Hanoi Telecom's claim that the acquisition of EVN Telecom by Viettel might be in violation of Vietnam Competition Law does have certain grounds as follows:*

*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". If the acquisition takes place, Viettel will hold more than half of the country's total 3G frequency resources.*

*According to Article 11, section 2, Vietnam Competition Law 27/2004/QH11, "enterprises shall be considered to hold the dominant position on the market if they have market shares of 30 percent or more on the relevant market or are capable of restricting competition considerably". Currently, Viettel holds nearly 37 percent of the mobile market share in Vietnam and the acquisition is likely to give it a monopolistic status on the Vietnam telecommunications market.*

*However, it has been argued that holding more than half of the country's total 3G frequency resources doesn't mean that Viettel accounts for over 50 percent of 3G frequency resources on the market as it has to shoulder EVN Telecom's bad debts as well. Besides, Viettel, MobiFone and VinaPhone are now the main three mobile network operators holding the dominant position on the telecom market so Viettel cannot have a monopolistic status as Hanoi Telecom claimed.*

*Looking at the context of a sluggish world economy in general and Vietnam in particular, M&A activities are inevitable and sometimes should be at the heart of growth strategies for companies. In this specific case, EVN Telecom has not been efficient and has wasted State resources for a long time. Therefore, the merger with Viettel is the most reasonable solution for a faltering EVN Telecom as Viettel has enough resources, people and experiences to revive the good management of EVN.*

*Besides, VNPT, which includes Mobiphone and Vinaphone mobile phone network, stills accounts for 50 percent of mobile subscribers in the market. Hence, the merger will not largely affect the market. It is certain that this merger is detrimental to small enterprises such as Hanoi Telecom especially when Hanoi Telecom and EVN Telecom share the same 3G license and use the same frequency bandwidth. But to some extent, the merger may lead to more vigorous competition on the market, compelling other enterprises to restructure their business models and improve investment efficiency to increase its competitiveness.*

*However, it should be noted that telecommunication network operators in Vietnam are mostly State-owned so mergers or break-ups, beside market rules, largely depends on the State's will. The Viettel-EVN Telecom merger is not exceptional. It is still a question whether it is the best solution to be made if capitals, assets, debts are transferred between State-owned enterprises. The State has to suffer losses; which also means that losses are equally divided among 84 million Vietnamese people. Therefore, more thoughts should be given to how to increase telecommunication enterprises' competitiveness without consumers bearing its brunt.*

## **2. Jetstar Pacific not to be Merged with Vietnam Airlines**

Allaying to the rumours that Jetstar Pacific carrier may be merged into Vietnam Airlines (VNA), Australia's Qantas Group confirmed that 27 percent of their ownership capital in Vietnam's first low-cost air firm would be unchanged, the local newswire VnExpress reported.

The confirmation was made in Jetstar Group's press release on December 08, 2011. The Qantas Group also refused all rumours on a merger.

The rumours came from reports on the exchange of ownership right between the State Capital Investment Corp (SCIC) and Vietnam Airlines because SCIC holds majority stake of Jetstar Pacific and 27 percent belongs to the Qantas Group.

"27 percent of Qantas Group as the parent company of Jetstar air firm will not be affected by the SCIC's transfer", the press release confirmed. "Actually there has been no official agreement on the ownership right exchange and the ownership right of Jetstar Pacific is unmoved".

<http://www.stockbiz.vn/NewsTools/Print.aspx?newsid=257696>

<http://www.en.www.info.vn/tennis/44572.html>

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

*It is too soon to know whether Jestar Pacific can be merged with VNA or not, since such a merger has been in the spotlight recently and rearranging and restructuring of Jestar Pacific is deemed to be necessary, due to its inefficient business operation and long overdue debts. Anyhow, the merger, if realised, will raise a lot of concerns both in terms of regulatory aspects and on account of the market.*

*From the regulatory perspective, despite Qantas group agreeing or disagreeing to transfer 27 percent share of Jetstar, with the consent of SCIC, VNA's market share will increase from 80 to 97 percent of the local aviation market. In this case, this merger is categorised as prohibited economic concentration according to the Vietnam's Competition Law (Article 18 and 19). It is because Jetstar Pacific is not "in danger of dissolution or bankruptcy" and the merger is not likely to "expand export or contribute to social-economic development, technical and technological advance". In contrast, Jetstar's separate existence is beneficial for socio-economic development.*



*Regarding the market, with 97 percent market share of the local aviation market, VNA nearly monopolises the market. The most immediate consequence is its power in setting the fares (high) which are not necessarily in accordance with increasing quality. In fact, airfare increased twice last year despite a price cap has already been in place. Such price hikes will not only affect the interests of individual passengers but will also raise other enterprises' expenses which will be ultimately transferred to consumers. In other words, monopoly regulation measures as of now do not bring as good results as expected and in any case, giving VNA a higher monopoly status only makes the situation far worse.*

## **II. Unfair Competitive Practices**

### **1. Regulators Halt Commissions on Bank Deposits**

The State Bank of Vietnam has showed a more determined attitude to enforce the deposit interest rate cap by banning payments of commission for deposit-related brokerage activities.

Late October, the Central Bank issued the Document No 8376 which bans credit institutions and branches of foreign banks from paying commissions to individuals or firms that facilitate the placement of investor deposits.

To ensure transparency, credit organisations and branches of foreign banks in the country are also required by the Central Bank to establish interest rates on Vietnamese dong and US dollar deposits that do not exceed the regulated interest-rate caps, even including bonuses from promotions.

Credit organisations will also be required to report their promotional programmes to the Central Bank so that the latter can monitor these activities. This will ensure that the programmes are carried out in line with current regulations.

<http://vietnamnews.vnagency.com.vn/Economy/217438/regulators-halt-commissions-on-bank-deposits.html>

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

*In the past few years, too many banks have been set up, some without sound financial and good management capacity. These banks have to compete fiercely with each other to exist, which has resulted in an interest rate war in which deposit interest rates have been pushed up day by day. Such a war is likely to result in a crisis of the banking system which would negatively affect the whole economy. It is also an act of unfair competition under the disguise of sale promotion, prohibited according to Article 39, Section III of the Vietnam Competition Law.*

*The application of a common deposit interest cap (14 percent) to all institutions is deemed to help to bring banking activities back into normalcy. However, the question is whether the policy can tackle the roots of the problem when it has favored the larger institutions and penalised the smaller ones. Now that rates are similar, people would prefer depositing their savings at large banks. Consequently, small banks would suffer from losses and eventually have to merge. In fact, banking mergers or restructuring can be a positive step to some extents; it will help to increase economies of scale, reinforce prestige and reduce expenses. It will also be much easier for State monitoring and supervision. In practice, the first merger in the banking system in Vietnam took place on December 06, 2011 between Ficombank, TinNghiaBank and Saigon Commercial Bank, expected to create a new, stronger financial institution with a more extensive network of branches. The legitimate interests of depositors will be protected as the Bank for Industrial Development of Vietnam (BIDV), a big State-owned bank, has been chosen to ensure sufficient*

*liquidity for these cash-trapped banks due to their strong corporate governance and banking services.*

*However, from a different perspective, the agreement on interest rate is made by a group of 12 biggest banks which accounts for 85 percent of the market share. The more stringent the State policy is, the more they would benefit. With the advantages of long-lasting brand names, a nationwide network, large capital and a large number of consumers, they have more chances to draw money from potential customers. Eventually, not only the strict enforcement of a common deposit interest cap but higher interbank rates (which may increase up to 18-19 percent) also hurt small banks as these often have to borrow from big banks. On a larger scope, it will be more difficult to keep urgently-needed assets within the banking system since savers are choosing other profitable investment alternatives over depositing money into banks due to the interest rate cap.*

## **2. Big Network Operators More “Indocile”**

The State management agency has the right to “blow its whistle” asking network operators to stop the activities that it believes to be the signs of unhealthy competition. However, in some cases, State actions have no effect, if the network operators are the “big cheeses”.

Meanwhile, small mobile network operators had to stop their sale promotion campaigns immediately when they were instructed to do that.

Three months ago, Beeline launched the “billionaire service package”, offering low charges in an effort to attract more users. Under the sale promotion campaign, when people bought a SIM card priced at US\$1, they would have US\$1 in their main account. Besides, Beeline would give US\$13 more to the users’ account every day. As such, people only need to pay US\$1 and they would have US\$48000 in their mobile account for use for the next 10 years. However, the US\$48000 could be used only to make calls to other users of the same network.

However, the super-cheap package is no longer available on the market, after the Ministry of Information and Communication instructed Beeline to stop providing the package. The ministry said that it can see the signs of dumping the mobile call charges which will affect the market’s operation.

Meanwhile, right after Beeline’s programme stopped, some big guys on the telecom market have also launched attractive service packages with very low charges. As predicted by experts, the telecom market is now witnessing a new mobile call charges competition when the big guys jump on the bandwagon.

<http://english.vietnamnet.vn/en/science-technology/16384/big-network-operators-prove-to-be-more--indocile-.html>

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

*The rapidly growing mobile telecommunication market has been mainly a playground for big mobile service suppliers in recent years and competition has become increasingly aggressive between them. The biggest are VinaPhone, MobiFone and Viettel which account for 90.3 percent of total market share. They participate in a race to lower charges, provide value added services and easy purchase of SIM cards. However, the competition has shown negative sides as it results in lower service quality and more difficulties for relevant authorities to control and monitor the market. In addition, it may harm small enterprises as these lack such advantages as network, capital and brand names. Though the relevant agencies have issued numerous decisions to stop these unfair competition acts, these big suppliers still find various ways to lower charges through promotion programmes.*

*However, if the offender is not one of the big guys on the market, it may not be the case. Beeline was required to stop the package immediately by the Ministry of Information and Communication as this promotion is deemed to cause harm to other competitors and the market as a whole. However, it should be more carefully considered whether the “billionaire service package” of Beeline is an unfair competition act prohibited by the Vietnam Competition Law and Commercial Law. Beeline joined the market at the time when the market has nearly become saturated. For such new comers as Beeline, launching competitive packages is an efficient measure to develop the number of subscribers and consumers benefit the most from these packages. Many experts believe that the promotion campaign can hardly make any changes in the market where VinaPhone, MobiFone and Viettel are the three giants. If it can be proved that the above-mentioned package is only a method of lowering charges to attract customers without excluding other competitors, it will not be a violation of Competition Law and Commercial Law.*

*Therefore, it is important that the relevant management agency, the Ministry of Information and Communications in this case, has to decide how to ensure legal compliance in the mobile telecommunication market but not punishing small service providers and eventually harming competition.*

### **III. Consumer Protection Issues**

#### **1. Residents Oppose Sky-High Service Fees**

Hundreds of households living in a tower in Hanoi’s Keangnam apartment complex, the highest building in Vietnam, are in an uproar over their service fees.

On December 03, residents in the 48-storey A Tower of Keangnam were banned from using the elevators if they did not pay the required fees. The complex’s management board required a service fee of 89 US cents per square metre per month.

The residents are arguing for a US\$ 0.19 per square metre per month service charge based on the regulation set by the Hanoi People’s Committee that specifies limits of charges based on provision of services such as elevators.

The residents are already in a long-term dispute with the block’s service provider over the poor quality of services, and the dispute has further added to the bitterness.

In response, the building’s investor, the Keangnam Vina Company, sent a document on November 21 to the residents warning them that they would face a suspension of services, including use of the elevators if they refused to pay.

At noon on December 3, the lifts for hundreds of residents stopped operation.

Hundreds of well-to-do residents gathered in front of the building to call for the company to see sense.

<http://www.dtinews.vn/en/news/024/19673/residents-in-vietnam-s-highest-building-oppose-sky-high-service-fees.html>

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

*A house is a special product and house buyers are consumers. Vietnamese people consider a house one’s lifetime investment, which provides not only shelter but also a hedge against inflation and an inheritance for their offspring. These consumers need protection as despite the great expense of a home, most of them make the purchase without the ability to evaluate its structural*



*soundness or the condition of the mechanical, electrical, and plumbing system. Especially, in this case people have to pay billions dongs to own an apartment in famous Keangnam building which perfect quality and services were widely advertised.*

*By law, Keangnam is a building in the Vietnam territory so its activities have to be in line with Vietnamese law. In any circumstances, it is not allowed to apply service fees exceeding the fees prescribed by the Hanoi People's Committee. If the building management board wants to apply higher services fees to cover their value added services, it has to enter an agreement with clients in advance. Otherwise, a unilateral suspension of services is against the Consumer Protection Law as it violates consumers' rights. Besides, it is claimed by residents that the service quality is not worth their money when a number of issues such as broken elevators, irresponsible guards, etc were there. As a recent update, the conflicts between Keangnam's building management board and its residents still continue. The board even began to cut electricity and water supply explaining that those households had failed to pay electricity, water and management fees according to the building's regulations.*

*Through this case, it can be seen that the management and monitoring of high buildings in the city is not in accordance with reality. Builders themselves do not know how to collect fees according to general regulations as they provide value added services. Perhaps when prescribing the regulation on services fees to apartment buildings, the relevant State authorities do not take this into account, which lead to the legitimate rights of residents being affected. But anyhow, if such a case is not reasonably handled, how can consumers have confidence?*

*In general, the problem is that investors ask for a high fee whilst providing a worse-than-expected service, which is mostly seen in newly-operated apartment buildings. Relevant laws and regulations such as the Law on Housing (2005) and Decision No.08 dated August 25, 2008, of the Ministry of Construction on the Regulations regarding the use and administration of apartment buildings do not provide for any dispute settlement mechanism or any remedy, so that consumers could use to protect their right. Consumers could resort to private litigations but these often take a long time and cost a lot of money for litigation fees. It is much hoped that when the Law on Protection of Consumer Interest is already in place, the consumer dispute settlement agencies would be the ideal venue for settling such claims like these. Besides, the role of consumer associations such as the Vietnam Standards and Consumer Association is supposed to be enhanced so that consumers' legitimate rights would be protected at most.*

## **2. More Motorbike Fires, but Official Agencies Clueless**

More motorbikes have seen fire scares on Vietnam's roads and users are alarmed while official agencies are busy shifting the blame on each other. People have become wary.

Vu Thi Bach Nga, head of the Consumer Protection Agency at the Vietnam Competition Authority, told Youth newspaper that her agency had asked Honda if the fires were related to product quality. On December 13, 2011, the Japanese company, commenting on the fires, said it had not detected any fault in its products that could account for them. While motorbike fires have been a recent phenomenon, cars made by Hyundai, Daewoo, BMW, Mercedes, Ford, Mazda, Mitsubishi, Kia, and Toyota have all been hit by blazes in the last 12 months. It is not known yet why the fires are occurring, and no official agency has come up with answers.

Do Huu Duc, deputy head of the Ministry of Transport's Registry Department, said his agency would inspect all motorbike manufacturers and assemblers without specifying when. Commenting on the fires, he said since there were no official investigation results, it was unclear if they had occurred due to production faults or unsafe operation.

Drivers have to protect themselves until the police identify the cause, he said.

<http://www.thanhniennews.com/2010/pages/20111223-more-motorbike-fires--but-official-agencies-clueless.aspx>

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

*According to the Law on Protection of Consumer Interests of Vietnam, consumers have “the right to complain” and the right “on compensation of damages caused by the goods or services supplied not in proper standards, quality, quantity, functions, utility, in price or in other details as already declared and committed by a business individual, organization”. In addition, it is also stipulated by the Law that enterprises “have the obligation to compensate damages caused by their defective product with regard to lives, health, and assets of consumers”.*

*However, these rights cannot be exercised when the cause of recent motorbike fires is still not found yet. Under normal circumstances, when it comes to the quality of a given product, relevant stakeholders such as State management agencies (the Ministry of Industry and Trade, the Ministry of Transport), the Vietnam Standards and Consumer Association, enterprises, insurance companies should take responsibility. However, most of them have been waiting for the official investigations results before taking any action. Even VINASTAS said that they have not received direct complaints from the victims of the fires yet. The fires are still being under investigation by the police which has taken quite a long time. One of the most likely reasons for the fires was reported to have been sub-standard petrol.*

*Recently, at least two agencies (the Ministry of Science and Technology, and the Ministry of Transport) claims to take responsibility. However, no concrete action has been made. Meanwhile, more motorbike and car fires happen and the victims have to bear the losses themselves. The majority of consumers are watching the cases with wary eyes. Vietnamese consumers are essentially characterised by a lack of knowledge, information and self-protection especially with regard to technical-related problems. In that case, what can consumers rely on to protect themselves?*

*Disclaimer: This information has been collected through secondary research and CUTS Hanoi Resource Centre is not responsible for any errors in the same. The press clippings used here have been suitably adapted/summarised to convey their essence to the reader without any distortion of content.*