

## **DEVELOPMENT OF COMPETITION REGULATION IN VIETNAM**

Nguyen Thi Xuan Trang

University of Economics, the University of Danang, Danang, Vietnam

DOI: 10.46609/IJSSER.2022.v07i06.001 URL: <https://doi.org/10.46609/IJSSER.2022.v07i06.001>

Received: 10 June 2022 / Accepted: 21 June 2022 / Published: 30 June 2022

### **ABSTRACT**

Competition regulations play an important role in the economic development of a country. The purpose of this paper is to study the legal framework relating to competition in Vietnam, a developing country in Asia. The paper firstly presents a general overview of the economic development in Vietnam. After that, Vietnamese Competition Law No. 27/2004/QH11, the first and basic competition regulation in Vietnam, is described in details before listing other competition regulations in this country. Lastly, the paper reviews shortcomings and ambiguities in implementing the Vietnamese Competition Law 2004 from previous researchers and analyzers. It is found that several shortcomings and ambiguities in implementing this regulation were discovered by most researchers and analyzers. This may be understandable because the competition law is not only new in Vietnam but also in other nations in Southeast Asia. However, the shortcomings and ambiguities show a great necessity for Vietnamese Government to amend the Competition Law 2004 in the future. It is proposed that the Government should listen to opinions as well as suggestions from various researchers, analyzers and law consultant companies. At the same time, Vietnamese Competition Administration Agency should strengthen the propaganda of the provisions of the Competition Law and other relevant legal documents so that businesses can avoid unfortunate violations.

**Keywords:** Competition regulation, competition law, Vietnam

### **1. Introduction**

After more than 100 years for resistance wars against France and America, Vietnam officially unified the whole country in the year of 1975. From this time, Vietnam's revolutionary moved to a new phase – the period when the country went towards socialism. However, during ten years from 1976 to 1986, Vietnam faced a serious economic crisis when it followed a centrally planned

economy with the domination of state-owned enterprises and discouragement of competition. Thus, in the Sixth Congress of the Vietnamese Communist Party in December 1986, Vietnam emphasized on implementing a comprehensively renewal policy for the country, particularly in terms of the innovation in economic thinking, in order to transform the economic system from a *centrally controlled command economy* to a *socialist-oriented market economy*. The period 1986-2000 can be called as the era of Renovation (Doi Moi) of Vietnam with the its integration into the regional economy; for example it became a member of the Association of Southeast Asean Nations (ASEAN) in 1995, of the Asia-Europe Meeting (ASEM) in 1996 or of the Asia-Pacific Economic Cooperation Forum (APEC) in 1998. In this period, the Vietnamese government also passed a number of laws such as Law on Foreign Investment in 1987, Law on State Enterprises in 1995, and Law on Enterprises (for limited liability companies and joint-stock ones, partnerships and private enterprises) in 1999.

From 2000 afterwards, Vietnamese State put emphasis on building an independent and autonomic economy on the basis of mobilizing internal resources and actively integrating into the international economy, as well as on implementing industrialization and modernization of the country in the development of the socialist-oriented market economy. This content was mentioned in Resolution No. 51/2001/QH10 on amending and supplementing some articles of the Constitution of the Socialist Republic of Vietnam in 1992. While Constitution of the Socialist Republic of Vietnam in 1992 asserted the role of administration of the State in the development of economy in the 15<sup>th</sup> article, this role was not stated in the Resolution No. 51/2001/QH10. This showed that Vietnamese State really wanted to encourage competition or establish a competitive economy in the forthcoming development of the country. Until the end of the year 2005, Vietnam had diplomatic relations with 176 countries, economic and trade relations with over 200 countries and territories, of which about 80 countries and territories conducted direct investment into this country (VGP News, 2011).

Internationally economic integration in Vietnam has increased rapidly from 2005 until now. Vietnam joined the World Trade Organization (WTO) in 2007. After that, in 2008, Russell Investments added the first nine Vietnamese Stocks to Global Stock Index (Reuters News, 2008). Furthermore, in order to receive the assistance from international community, Vietnamese Government has established policies aiming at sustainable development implementation as the strategic orientation of Vietnam Agenda 21 that was promulgated in 2004. On 12<sup>th</sup> April 2012, Vietnamese Government announced the Decision No. 432/QĐ-TTg on approving sustainable development strategy in Vietnam in the period 2011-2020. Four targets related to economy for sustainable development were set up. The first target was maintaining a sustainable economic

growth, gradually implementing green growth, developing clean and renewable energy. Applying sustainable production and consumption was the second objective. The Government also stressed food security, sustainable agriculture and rural development. Lastly, it was suggested that Vietnam needs to promote sustainable development for local areas during this period.

## **2. Enactment of Vietnamese Competition Law in 2004 and other competition regulations in Vietnam**

In order to establish a competitive economy after the era of Renovation, Vietnamese National Assembly enacted Competition Law No. 27/2004/QH11 on 03<sup>rd</sup> December 2004. This law took effect from 01<sup>st</sup> July 2007 and is still valid today. It is applied to all kinds of business organizations and individuals as well as professional associations operating in Vietnam. Vietnamese Law on Competition consists of 6 chapters and 123 articles. Specific titles of six chapters are shown in the following table:

**Table 1: Six chapters of Competition Law No. 27/2004/QH11**

Chapter 1	General Provisions
Chapter 2	Control over competition restriction acts
Chapter 3	Unfair competition acts
Chapter 4	Competition-Managing Agency, Competition Council
Chapter 5	Investigating and adjudicating competition cases
Chapter 6	Implementation provisions

The Competition Law prohibits two types of competition acts: competition restriction acts and unfair competition acts. Competition Administration Agency and Competition Council were established by Vietnamese Government in order to handle and settle claims against the competition cases resulting from competition restriction acts as well as unfair competition acts.

Firstly, competition restriction acts are the acts performed by enterprises to reduce, distort and prevent competition on the market such as competition restriction agreements, abusing the dominant position on the market or abusing the monopoly position, and economic concentration.

In terms of competition restriction agreements, prohibited agreements include the agreements that prevent or restrain other enterprises from entering the market or expanding their business, the agreements that eliminate enterprises without the partnership from the market, and the agreements that enter into collusion with partners in order to make one of partners win the bid for providing goods or services. Moreover, when all the parties in the agreement have the combined share accounting for 30% or more of the total market share, it is prohibited that these parties agree to set up prices of goods or services either directly or indirectly, to divide the consuming market and sources of supplying goods or services, to control the volume of production, purchase, sale or supply of goods and services, to restrict the development of technology or make investment restrictions, or to impose conditions in signing contracts of purchase or sale of goods and services on other enterprises or force other enterprises to accept responsibilities that are unrelated to the contracts.

Regarding prohibited acts resulting from abusing the dominant position on the market from a company or a group of companies, Vietnamese National Assembly forbid them to perform the following acts: selling goods or providing services below the costs to eliminate competitors; imposing unreasonable buying or selling prices of goods and services or minimum resale prices causing damage to customers; reducing the production and distribution of goods and services, limiting the market, hindering the development of technology that are not beneficial to customers; imposing different commercial conditions in similar transactions to create inequality in the competition; compelling conditions for other companies when signing contracts of buying or selling goods and services or forcing other companies to accept obligations that are not directly related to the subjects of the contracts; and preventing new competitors from joining in the market.

Concerning prohibited acts of abusing the monopoly position, all acts that are similar to those in the case of abusing the dominant position are also prohibited. Additionally, two following banned acts were added into the Competition Law in this case: imposing unfavorable conditions for customers, and taking advantage of monopoly position to unilaterally change or cancel the signed contracts without convincing reasons.

The final competition restriction act mentioned in the Competition Law was economic concentration. The economic concentration will be prohibited if the combined market share of companies that take part in the concentration accounts for above 50 percent of the total relevant market share, except three special cases: one or several parties are in danger of being dissolve or falling into bankruptcy; the purpose of economic concentration is to expand exports or contribute

to socio-economic development and technological advances; or after the economic concentration, the companies are still small and medium-sized ones as prescribed under the law.

Secondly, unfair competition acts are enterprises' competition acts in the business process that are opposed to the usual standards of business ethics, damage or are able to damage the interests of the State, the right and the legitimate interests of other enterprises or of consumers. In Vietnamese Competition Law, the Government listed unfair competition acts such as confusing instructions, infringing upon trade secrets, making enforcement in business, detracting from other companies, disturbing business activities of other firms, advertising with the purpose of unfair competition, promotion aiming at unfair competition, discrimination from the association, illegal multi-level marketing, and other competition acts according to the determination criteria in the Clause 4, Article 3 of the Competition Law.

On the basis of the Competition Law on 03<sup>rd</sup> December 2004, a large number of competition regulations have been issued in Vietnam from 2005 until now by not only Vietnamese Government but also Vietnamese Ministers under different forms (circular, decree, decision or directive) in order to create an indeed fair competition environment in the period of international economic integration. Table 2 lists most regulations related to the competition policies in Vietnam.

**Table 2: A list of competition regulations in Vietnam (except Competition Law No. 27/2004/QH11)**

Circular / Decree / Decision / Directive	Competition regulations in Vietnam
Decree No. 116/2005/ND-CP on 15 <sup>th</sup> September 2005	Vietnamese Government's Decree on detailed regulations of implementing some articles of Competition Law.
Decree No. 06/2006/NĐ-CP on 09 <sup>th</sup> January 2006	Vietnamese Government's Decree defines functions, duties, powers and organizational structure of Vietnam Competition Administration Department (VCAD).
Decision No. 20/2006/QĐ-BTM on 17 <sup>th</sup> May 2006	Decision of the Minister of Trade on issuing the models of Decisions on adjudicating competition cases
Decision No. 27/2006/QĐ-BTM on 28 <sup>th</sup> August 2006	Decision of the Minister of Trade on establishing and regulating functions, duties and powers of the units belonging to Vietnam Competition Administration Department

Directive No. 01/2007/CT-BXD on 16 <sup>th</sup> January 2007	Directive of the Minister of Construction on a number of solutions to improve business efficiency and competitiveness of enterprises under the Ministry of Construction in the period of international economic integration
Circular No. 27/2009/TT-BCT on 25 <sup>th</sup> September 2009	Circular of Vietnamese Ministry of Industry and Trade on regulation of electricity metering in the competitive electricity market
Circular No. 11/2010/TT-BKH on 27 <sup>th</sup> May 2010	Circular of Vietnamese Ministry of Planning and Investment on detailed regulations of competitive offers
Decision No. 82/2010/QD-TTg on 15 <sup>th</sup> December 2010	Decision of Prime Minister on the compensation for members of Competition Council who are concurrently members of other organizations, and people who conduct and participate in competition procedure in the hearings.
Decree No. 119/2011/ND-CP on 16 <sup>th</sup> December 2011	Vietnamese Government's Decree on amending and supplementing the administrative procedures in Decree No. 116/2005/ND-CP on 15 <sup>th</sup> September 2005 of the Government that regulated the implementation of some articles of Competition Law in detail.
Circular No. 18/2012/TT-BCT on 29 <sup>th</sup> June 2012	Circular of Vietnamese Ministry of Industry and Trade on regulations of monitoring competitive electricity market.
Decree No. 71/2014/ND-CP on 21 <sup>st</sup> July 2014	Vietnamese Government's Decree on detailed regulations of Competition Law in handling law violations in the competition.
Decree No. 07/2015/ND-CP on 16 <sup>th</sup> January 2015	Vietnamese Government's Decree on defining the functions, tasks, powers and organizational structure of Competition Council.
Decision No. 24/2015/QD-TTg on 30 <sup>th</sup> June 2015	Decision of Vietnamese Prime Minister on promulgating organizational and operational regulations of Competition Council.

(Source: own creation based on <http://www.luatcanhtranh.com/> )

### **3. Shortcomings and ambiguities in implementing Competition Law in Vietnam**

Tu Thanh Nguyen (2012) indicated some shortcomings and ambiguities in articles of Vietnamese Law on Competition. Firstly, the shortcoming came from three articles (8-10) about eight categories of prohibited competition restriction agreements in Section 1 of Chapter II in the Competition Law. As his opinion, these articles were not appropriate because there was no clear distinction between horizontal and vertical agreements among above eight types of the

agreements; moreover, the per se illegality of agreements belonging to categories (6) and (7) would become too strict in case their anticompetitive effects were not appreciable. Thus, these provisions may prevent companies from developing procompetitive vertical agreements that can create benefits of economic development in Vietnam. In the meanwhile, cases of exemption from competition restriction agreements falling into categories (1) through (5) were so lax that enterprises can circumvent the law intentionally (Tu Thanh Nguyen, 2012).

Secondly, there were also some problems in the articles regulating abuses of a dominant position from a single enterprise or a collective dominant position from a group of enterprises on the market. According to Vietnamese Competition Law, an enterprise is considered to be in a dominant position on the market if its market share is equal to or greater than 30% of the total share of the relevant market or if it has ability to restrict competition significantly. In terms of a collective dominant position from a group of businesses, it is ascertained when two conditions are satisfied: all enterprises in the group have competition restriction acts at the same time; and one of following cases happens:

- Market share of two enterprises accounts for 50% or greater than 50% of the total share of the relevant market
- Market share of three enterprises accounts for 65% or greater than 65% of the total share of the relevant market
- Market share of four enterprises accounts for 75% or greater than 75% of the total share of the relevant market

Tu Thanh Nguyen (2012) suggested that the standard to determine a dominant position for a single company in Vietnam was too low in comparison with that in the Europe or in the United States. Vietnamese Government should consider the competitive structure of the market in which the enterprise is operating in assessing its dominant position. On the contrary, because the market share threshold for defining a collective dominant position was too high, the Government would meet a lot of difficulties in restraining abusive conduct in oligopolistic markets (Tu Thanh Nguyen, 2012).

In practice in the period 2005-2014, according to Vietnamese Competition Administration Agency, the Agency established pre-arraignment procedures for 78 cases relating to as competition restriction agreements and abusing the dominant or monopoly position, officially investigated 8 cases with near 70 associated companies, and handled 5 cases with a total fine of almost 5.5 billion VND. Regarding the economic concentration acts, the Agency consulted 54 cases and notified 23 cases. As regards unfair competition acts, the Agency received more than

300 complaints, decided to investigate 137 cases and penalized 127 cases (Thanh Nu, 2015). Among investigated cases, three remarkable cases were the competition case between Tan Hiep Phat Beverage Group (THP) and Vietnam Brewery Limited Company (VBL) in 2007, the conflict between Vietnam Air Petrol Company (Vinapco) and Pacific Airlines (PA) in 2008, and the competition restriction agreement of nineteen non-life insurance companies in 2008. Each case shows inadequacy of Vietnamese Competition Law 2004 that is extremely necessary for a consideration in amending this law in the future.

In January 2007, Tan Hiep Phat Beverage Group (THP) sued Vietnam Brewery Limited Company (VBL) for abusing the dominant position on the market that violated Clause 6 of the Article 13 in Vietnamese Competition Law. Until 21<sup>st</sup> April 2010, the Chairman of the Competition Council made a decision on establishing a new council handling this case, and one month later, this council decided to stop settling the competition case between THP and VBL according to Item a, Clause 1 of the Article 101 in the Law on Competition. As the opinion of LVN Law Company (2014), there were some controversial issues in this competition case. The first issue was difficulties in verifying whether an enterprise has a dominant position on the market or not. As stated by Vietnamese Competition Administration Agency, VBL did not have dominant position because its share was in a range from 18.2% to 22.4% in Vietnamese beer market. LVN Law Company (2014) commented that this determination was unreasonable because it is only based on the relevant geographic market. It was suggested that the Agency should determine the market share of a company in its relevant market that consisted of not only relevant geographic market but also relevant product market. The second issue was that should the acts of VBL be prohibited or should the Competition Law take account into this category of act when VBL required its partners (restaurants, pubs, grocery stores or supermarkets) to sell only products of VBL through providing yearly preferential discount for the partners in addition to the normal trade discounts. Furthermore, another divisive issue was difficulties in collecting evidences that complainants need to give to the Competition Administration Agency (LVN Law Company, 2014).

In May 2008, Vietnamese Competition Administration Agency decided to officially investigate the competition case between Vietnam Air Petrol Company (Vinapco), a sole State company offering aviation gasoline in Vietnam, and Pacific Airlines (PA). On 14<sup>th</sup> April 2009, Competition Case-Handling Council conducted a hearing to handle the incident. The council concluded that Vinapco abused its monopoly position in the aviation fuel market that violated Clauses 2 and 3 of the Article 14 in the Competition Law. Vinapco was penalized with a fine of 3,378 billion VND for violations and 100 million VND for case-handling fee (VCC news, 2011).



From this case, Nguyen Ngoc Son (2014) put a question showing the shortcoming of the Law on Competition: Should a company be prosecuted simultaneously for two violations when it committed only an act?. In the case of Vinapco, the act of stopping to supply fuel to PA was used as a basic base to define two violations: *imposing unfavorable conditions on customers* and *unilaterally modify or cancel the signed contracts without plausible reasons* as mentioned in the Clauses 2 and 3 of the Article 14 in the Competition Law. He suggested that this problem needed to be researched and discussed more in the process of amending the Law on Competition.

In a conference on 15<sup>th</sup> September 2008 in Binh Thuan Province, fifteen non-life insurance companies agreed on signing a cooperation agreement relating to vehicle insurance with unified clauses for insurance premium rates of physical damage to vehicles. After that, four other non-life insurance firms also signed the above agreement. This agreement took effect from 01<sup>st</sup> October 2008. This act of nineteen non-life insurance companies was regarded as a violation against the Article 9 of the Competition Law about prohibited competition restriction agreements and was punished with a fine of 1,807 million VND by Competition Council on 29<sup>th</sup> July 2010 (VCC News, 2010). However some non-life insurance companies argued that the Government should not apply that punishment to them because their incentive when making that agreement was to stabilize the market and they were inadvertent to break the law. This showed that not only non-life insurance companies themselves did not research and understand Vietnamese Competition Law deeply, but also the Government lacked the propagation of the provisions of the Competition Law and other related legal documents to the businesses (Duy Dong, 2010).

#### **4. Conclusion**

It can be seen that at the present, the Competition Law No. 27/2004/QH11 is the main competition regulation regulating the competition environment in Vietnam. However, several shortcomings and ambiguities in implementing this regulation were discovered by most researchers and analyzers. This calls for an amendment to the Competition Law 2004 from Vietnamese Government in the future. It is suggested that the Government should listen to opinions as well as suggestions from various researchers, analyzers and law consultant companies so as to make the proper amendments. Furthermore, because Vietnamese businesses' understanding of the competition law as well as competition regulations is still limited, the Competition Administration Agency in Vietnam should strengthen the propaganda of the provisions of the Competition Law and other relevant legal documents so that businesses operating in this country can avoid unfortunate violations.

## References

- [1] Duy Dong (2010). Lessons from the punishment in the competition case of 19 insurance companies (Bài học từ vụ 19 doanh nghiệp bảo hiểm bị phạt). *Vietstock*, viewed on 24<sup>th</sup>May 2022, <http://vietstock.vn/2010/08/bai-hoc-tu-vu-19-doanh-nghiep-bao-hiem-bi-phat-3113-162387.htm>.
- [2] LVN Law Company (2014). Looking back on the incident between Tan Hiep Phat Beverage Group and Vietnam Brewery Limited Company – Suggestions to improve Competition Law (Nhìn lại vụ việc giữa công ty Tân Hiệp Phát và công ty liên doanh bia Việt Nam – những kiến nghị hoàn thiện pháp luật về cạnh tranh). *WikiLuat*, viewed on 20<sup>th</sup>May 2022, <http://wikiluat.com/2016/05/nhin-lai-vu-viec-giua-cong-ty-tan-hiep-phat-va-cong-ty-lien-doanh-bia-viet-nam-nhung-kien-nghoan-thien-phap-luat-ve-canhh-tranh/>.
- [3] Nguyen Ngoc Son (2014). Some comments on a practice of solving a competition case relating to the competition restriction act (Một số bình luận từ thực tiễn giải quyết vụ việc về hành vi hạn chế cạnh tranh). *Journal of Legislative Studies*, 1(162), 43-51, viewed on 20<sup>th</sup>May 2022, <http://www.luatdaiviet.vn/xem-tin-tuc/mot-so-binh-luan-tu-thuc-tien-giai-quyet-vu-viec-ve-hanh-vi-han-che-canhh-tranh>.
- [4] Reuters News (2008). Russell adds Vietnam, others to global stock index, viewed on 20<sup>th</sup>May 2022, <https://www.reuters.com/article/index-russell-idUKN0129523020080701>.
- [5] Thanh Nu (2015). 10 years of Vietnamese Law on Competition: There are still many shortcomings (10 năm Luật Cạnh: Vẫn còn nhiều bất cập). *Vietstock*, viewed on 20<sup>th</sup>May 2022, <http://vietstock.vn/2015/11/10-nam-luat-canhh-tranh-van-con-nhieu-bat-cap-768-447290.htm>.
- [6] Tu Thanh Nguyen (2012). “Competition law in Vietnam: A paper or young tiger?”. *The Antitrust Bulletin*, Vol.57 No.3, pp.409-447.
- [7] VCC news (2010). A case of competition restriction agreement (Vụ việc Thỏa thuận hạn chế cạnh tranh). *Vietnam Competition Council – VCC*, viewed on 20<sup>th</sup>May 2022, <http://www.hoidongcanhtranh.gov.vn/default.aspx?page=news&do=detail&id=99>.
- [8] VCC news (2011). A competition restriction case from the abuse of monopoly position (Vụ việc hạn chế cạnh tranh lạm dụng vị trí độc quyền). *Vietnam Competition Council – VCC*, viewed on 20<sup>th</sup>May 2022, <http://www.hoidongcanhtranh.gov.vn/default.aspx?page=news&do=detail&id=97>.

[9] VGP News (2011). Some characteristics of Vietnamese economy and society (Một vài nét về kinh tế - xã hội Việt Nam). *Vietnam Government Portal*.