

# COMPETITION SCENARIO IN VIETNAM\*

## Introduction

Until the late 1980s, the Vietnam economy was essentially characterised as centrally planned. Development of a capital-intensive industrial base was the major goal for the whole nation. Private entrepreneurial activities only happened to a limited extent, mostly in the tertiary sector. Capital, production, inputs and labour allocated to enterprises, which were mostly state-owned, were administratively decided. All key prices, including wages and interest rate were also decided by the government, which meant they were maintained at a very low level, or even negative in real terms, having little influence on production decisions. The goals of enterprises were set in terms of quantitative production targets; and SOEs did not have to be accountable for any inefficiency or unprofitability, as long as the quantitative targets were met. Foreign trade was under State monopoly, and almost no foreign investment projects were in existence, except a few from other countries of the communist bloc.

This irrational and administratively forced industrialisation policy only led to lower industrial growth and to an inefficiently structured economy. As a result, by the late 1970s, the country was facing a major economic crisis, with acute shortages of food, basic consumer goods, and inputs to agriculture and industry. Economic stagnation led to pressures for change. The '*Doi Moi*' process, a radical and comprehensive economic reforms programme, was thus initiated, first in 1986, later becoming full-fledged in 1989, and aimed at stabilising and opening up the economy, enhancing freedom of choice for economic units and competition, so as to change fundamentally the economic management system in the country.

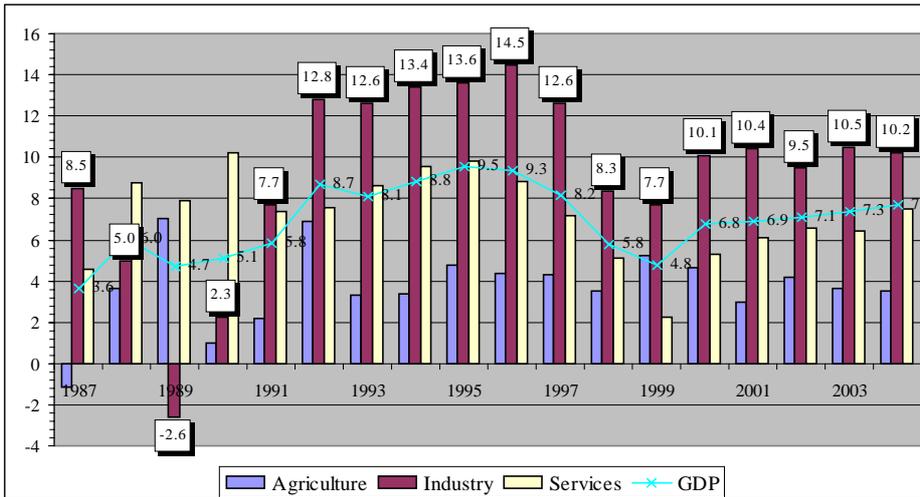
The reform process changed the face of the Vietnam economy completely. The role of the private sector in economic development is now recognised and government intervention is confined to its regulatory role of the market. Market institutions have been gradually established and developed. Consumers' and producers' rights (autonomy) are recognised and promoted. A comprehensive legal and regulatory framework for the economy is in the process of being completed. More intensive reform measures are also forthcoming on the country's agenda, since Vietnam is bidding for its accession to the WTO.

Competition policy and law emerges against this backdrop as a new challenge for Vietnam as it attempts to deepen ongoing reforms, and to further integrate into the regional and the world economy. The adoption of the Competition Law by the Vietnam National Assembly in December 2004 was a major step towards this direction. This policy instrument is considered to be of utmost importance by not only the polity, but also by the wider research and academic circles of the country. On the one hand, it is expected to protect the competitive business environment in the country, prevent rent-seeking behaviours by both enterprises and regulators, promote economic efficiency, fairness and consumer welfare. On the other hand, it might undermine the grip of the State over the national economy and contradict the overall ideological commitments that Vietnam follows. Besides, its implementation is highly technical and complex, and may be easily nullified by several ways.

This chapter presents the competition scenario in Vietnam as part of a bigger research agenda covering Lao, Vietnam, Cambodia, India, Nepal, and Bangladesh, undertaken under the 7Up2 Project (Advocacy and Capacity Building on Competition Policy and Law in Asia).

The development background for the competition regime in Vietnam is presented in Section Two, with the country's major economic policies and their implications on the competitive environment. Section Three compiles the data available on market structure in some major industries in Vietnam, as well as the nature of competition in such markets. Section Four reviews the regulatory framework in some key sectors in Vietnam, such as electricity, telecommunications, and financial services, taking note of the significant interface between sectoral policies and competition policy and law. Section Five looks at the policy for consumer protection in the country, with a focus on the unfair trade practices prevalent on the Vietnam markets, their impacts on consumer welfare and concurrent measures for handling them. Major anti-competitive practices are listed in Section Six, with illustrative examples from Vietnam, while perspectives on competition policy, drawn on the results of a field survey undertaken within the framework of the 7Up2 project, are presented in Section Seven. The Competition Law 2004 of Vietnam

Figure 4.1: Vietnam Economy's Growth Rate 1987-2003



are analysed in Section Eight, followed by the conclusion, providing some food for thought and further discussion.

## The Development Background

### Overview of the Economy

From 1990, Vietnam achieved around eight percent annual GDP growth, which only slowed down in 1996 and the two subsequent years due to the Asian financial crisis. Even then, the country's GDP growth peaked again at around 7-8 percent from 2000 to 2004, making Vietnam one of the world's fastest growing economies. (See Figure 4.1)

The macroeconomic environment is relatively stable. In the beginning of the economic reform process, the inflation rate was very high due to the removal of price control over the majority of products. The fiscal deficit stays at a level less than five percent of the GDP. The external debt is controlled at a level of about 40 percent of the GDP.

Industry was the leading sector of the Vietnam economy during this period. From 1992 to 1997, the growth of this sector was four to five percentage points

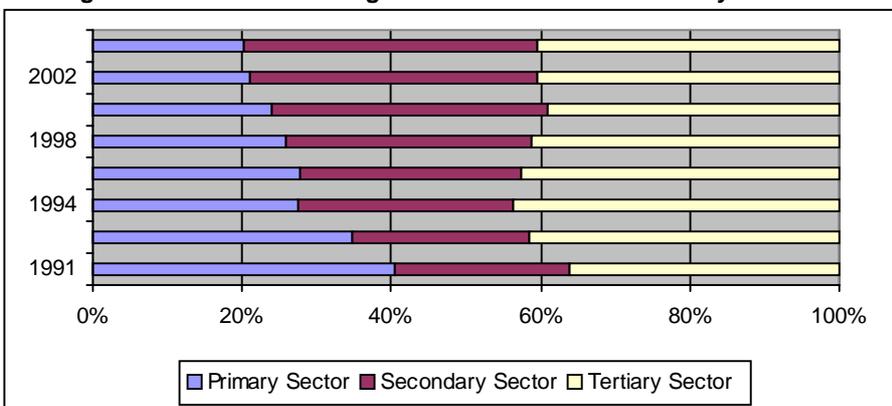
In terms of ownership structure, before *Doi Moi*, the economy was dominated by three types of firms: SOEs (national ownership), co-operatives (collective ownership) and household units of production or service. Co-operatives were seen mainly in agriculture, and to a lesser extent, in traditional handicrafts and services. With *Doi Moi*, other types of enterprises, i.e., private enterprises, foreign-invested enterprises (FIEs), have emerged, but until the 1990s, such firms were small in number.

FDI flows started in 1988, but a substantial amount of disbursement was recorded only from 1992 onwards. Table 4.1 records the share of each of five types of firms in the 1990s. This table shows that the share of household companies is quite large and has been kept constant at about one-third of the GDP. FIEs show an increasing share, but the share of private firms has remained unchanged at a low level.

Another important feature of Vietnam's economic reform process has been the increasing importance of international trade. Throughout the 1990s, exports expanded significantly, growing by as much as 20-30 percent in some years. In 1999, exports accounted for 40 percent of the GDP, an impressive performance in a recovering Asia. Vietnam's export growth was led

by impressive growth in light manufactured exports (like footwear, textile, and garment), which was supported by the significant influx of FDI into these industries, due to the relaxed trade and taxation regimes. Also remarkable is the strong rise in the value of agricultural exports, mainly reflecting the spectacular take-off in rice and coffee production and exports. In only a few years, Vietnam turned from being a

Figure 4.2: Structural Changes in the Vietnamese Economy 1986-2004



net rice importer into the world's second-largest exporter, after only Thailand.

The participation of Vietnam in the ASEAN, the ASEAN Free Trade Area (AFTA), the Asia-Europe Meeting (ASEM), the Asia-Pacific Economic Cooperation (APEC) and the Vietnam-US Bilateral Trade Agreement (BTA) was an important landmark for the country's active integration process into the regional and world economy. The country is currently negotiating its accession into the WTO and expects to become a member by the end of 2006.

## Major Economic Policies and their Implications on Competition

Vietnam does not have an integrated competition policy to oversee competition related issues in all industries, sectors and segments of the economy. Besides, as mentioned in the introduction section, it was only until the end of 2004 did Vietnam promulgate a competition law to regulate anti-competitive practices in the market. However, the role of competition in the economic development process has been recognised by the Government of Vietnam in recent times, and competition principles have been increasingly embodied in various policies, laws and regulations related to the socio-economic development strategies of the country.

The right of all players in the economy to compete equally and fairly under the law is clearly recognised by many important State documents, and so is the role of market forces and competition, though the 'socialist orientation' is still emphasised as the leading principle. Article 16 of the 1992 Constitution (Amended, 2001) of Vietnam reads: "*All economic sectors are important components of the socialist-oriented market economy. Organisations and individuals of all economic sectors may conduct production and business activities not prohibited by law, striving for long-term development, co-operation, equality and competition under law*".

## An industrial policy heavily weighs in favour of the State sector

Nonetheless, it is still being widely commented that, after nearly two decades of reforms, many of the interventionist policies of the old command system have not yet totally been eradicated. The pre-*Doi Moi* ideas of undertaking a mass industrialisation programme, bringing the country to the level of being self-supplied, self-reliant, still prevails in Vietnam. Vietnam's industrial policy, therefore, remains stuck to a significant degree in strategies based on import substitution and continued State dominance of all but the peripheral small firms and those controlled or managed by foreign investors<sup>2</sup>. Besides, a clear emphasis is also put on the "rapid development of industries which can make the best use of [Vietnam's] competitive advantages" as well as "selective construction of some heavy-industry manufacturing units".<sup>3</sup>

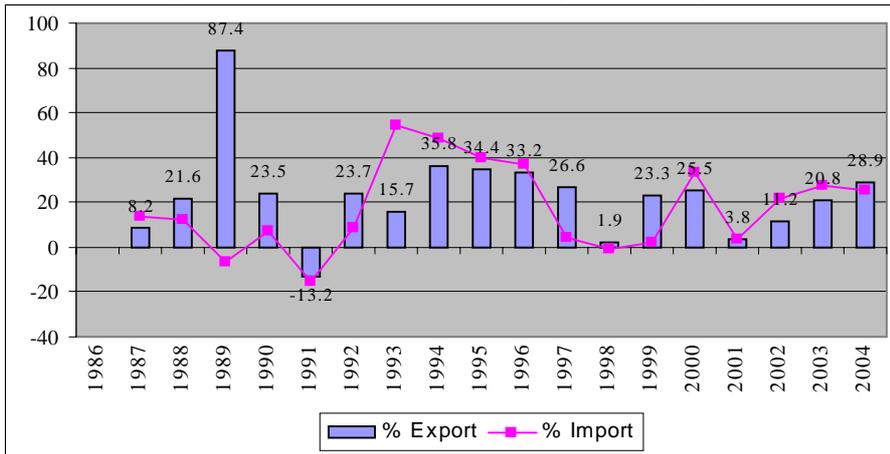
In the 1990s, faced with increasing competition from the international markets, as well as foreign-invested companies inside the country, the government decided to promote powerful state-owned conglomerates as a response. In 1994, the Prime Minister issued Decision 90/TTg and Decision 91/TTg to group about half of the SOEs under a number of large-size umbrella companies known as General Corporations (GC). Decision 90 (issued on March 7, 1994) created 76 GCs, usually called GC90, each with at least five voluntary members and minimum legal capital of VND100bn. Decision 91 called for much larger corporations, with at least seven SOE members and a minimum capital of VND1000bn, which resulted in only 17 GCs, which are called GC91. All the 17 GC91 and 76 GC90 currently have a total membership of 1,392 smaller enterprises, accounting for 24 percent of all the SOEs in terms of numbers and 66 and 55 percent in terms of capital and employees, respectively<sup>4</sup>.

These general corporations can transfer the capital they receive from the government to member enterprises, and adjust and allocate resources among

**Table 4.1: GDP Structure in Current Price by Type of Ownership (In Percentage)**

	1995	1996	1997	1998	1999	2000	2001	2002	Prel. 2003
Total	100	100	100	100	100	100	100	100	100
By Ownership									
State	40.2	39.9	40.5	40.0	38.7	38.5	38.4	38.4	39.1
Collective	10.1	10.0	8.9	8.9	8.8	8.6	8.1	8.0	7.5
Private	7.4	7.4	7.2	7.2	7.3	7.3	7.9	8.3	8.2
Household	36.0	35.3	34.3	33.8	32.9	32.3	31.8	31.6	30.7
Foreign Investment Sector	6.3	7.4	9.1	10.0	12.2	13.3	13.8	13.8	14.5

Figure 4.3: Annual Growth Rate of Exports and Imports



them as necessary. Consequently, the general corporations also divide markets among firm members, and decide for them the ceiling prices for imports and floor prices for exports. Since the general corporations are very resource-intensive and more favoured by the government, their market arrangements constitute effective barriers against competition from non-members.

Despite a lot of favourable conditions being given to the state sector, since end-1997, the SOEs' performance has deteriorated: inventories have built up due to the plunge in domestic as well as foreign demand; their contributions to the state budget have decreased; default bank loans have risen to an alarmingly high level. In 2000, only 76 of all SOEs in Vietnam managed to make some profits; while out of 17 conglomerates (GC 91), 12 made losses or broke even; the remaining five profit-making conglomerates were those that either exploited natural resources or enjoyed a varying degree of monopoly over price-setting (except the Rubber and Shipping conglomerates).<sup>5</sup>

The government, however, continues to provide import-substitution policy to protect these SOEs, which are mostly capital-intensive, especially in such sectors as steel, motorcycle, and the manufacture of industrial equipments. Indirectly, investment is poured into this sector, instead of moving towards developing a stronger private sector. This conundrum was further entrenched by foreign investment, since foreign investors felt assured that they can enjoy more incentives, as long as they just set up joint ventures with SOEs.

The other focal point of Vietnam's industrial policy, as mentioned above, is the promotion of import-substitution industries and heavy industries. Remarkable achievements have been reported of Vietnam's successful outward orientation, especially in light manufactured exports like footwear, travel bags, textile, etc. However, it should also be noted that

these same industries are protected in the domestic market by quite sizeable tariffs. These tariffs, together with the very low import duties on raw material, provide effective protection for domestic market production. There are, however, unintended effects of such policies on economic efficiency and consumer welfare, which need to be balanced. High tariffs, import restrictions, and non-tariff barriers against imports are intended to protect domestic

producers of similar products. But protection is also a form of subsidy whose costs are borne by domestic consumers. When protection is given to industrial goods, for example steel, cement or plastics, the price is paid by other down-stream producers, which makes protection self-defeating.

### Maintaining the Balance in Trade Policy to Promote Competition

The *Doi Moi* process, with the extensive reform measures it brought along, since 1989, has greatly improved the ways in which domestic and external trading activities are undertaken in Vietnam. Domestic prices, instead of being subject to administrative decisions and linked with strict rations, are liberalised and left to the market to decide on the basis of supply and demand. The State only reserves the right to regulate the price and supply of those goods typically viewed as natural monopoly (such as electricity, air fare, railway fare and so on) and of some strategic goods (such as gasoline, steel, cement, and paper). The state monopoly on trade is abolished and the participation of the private sector in both intra and inter-provincial trade is allowed. The number<sup>6</sup> of trading entities has increased, helping avoid price distortions due to the anti-competitive behaviours of state monopolist traders or quantitative restrictions.

Foreign trade was also substantially liberalised. In 1988, a breakthrough had been made in abolishing government monopoly in trade. Customs tariff was, for the first time, introduced and the private sector was officially recognised. Further, trade reforms had proceeded by removing quotas on all, except on certain export and import commodities. The coverage and the rates of export duties were reduced considerably, the foreign exchange system was unified and producers were allowed to sell to any licensed foreign trade company.

The reform was rapidly undertaken during the early 1990s. Private firms were allowed to participate in

foreign trade, tariff exemptions were introduced for inputs used in the production of exports, and NTBs were reduced. During 1991-1997, just before the Asian financial crises, the average rate of export growth was particularly high at 28 percent. During the late 1990s, progress was made in a number of areas, including reductions in maximum import tariff rates, the implementation of tariff reductions associated with the membership of the AFTA, etc.

Vietnam's trade policy can be described as a mixture of import substitution and export promotion. Vietnam tends to protect agricultural and some labour-intensive products such as textiles, garments, furniture, and some technology-intensive products such as automobiles. Maximum tariff levels have been imposed on alcohol, petroleum products, automobiles, motorcycles, cosmetics, and glass and glass products. Low, or minimum tariff rates have been imposed on raw material inputs, machinery, and equipment; especially those, which are presently not manufactured in Vietnam.

Products like sugar, petroleum products, cement and clinker, some common chemicals, chemical fertiliser, paint, tubes and tyres, paper, silk, construction ceramic, construction glass, construction steel, some types of engines, automobiles, motorcycles, bicycles and parts, and ships and vessels are still subject to quantitative restrictions on imports. Export promotion measures have been undertaken, such as allowing private rice exports, auctioning of garment export quotas, provision of financial incentives to exporters, removal of restrictions on FIEs to export, elimination of many export taxes, etc.

Trade reforms help the private sector to get access to imported inputs and export outlets, which, in turn, boosts market participation and increases competition of all kinds. Competition between Vietnam's private sector market players and the state sector in exports, competition between domestic and imported products has resulted in better prices and wider range of products for consumers, etc. Liberalised trade, as well as easier domestic and foreign private entry, also help increase trade interactions, so that resource allocation is made in an efficient manner. Obviously, trade reform

not only increases competition, but also raises the returns to exports and encourages investors to move into new modern industries that are in line with the country's comparative advantage<sup>7</sup>.

### A Level Playing Field for both Domestic and Foreign Players

Until now, the government has made lots of efforts to improve the investment environment in Vietnam. However, the investment policy in Vietnam has clearly exposed the discrimination between the domestic and foreign investors. The first and foremost evidence is the dual existence of the law on FDI and the law on domestic investment promotion. Furthermore, the dual price system, the discrimination in land-use rights and taxation, and access to credit are also clear examples that indicate the unequal treatment between foreign and domestic investors. Even amongst domestic investors, there remain discriminatory treatments between investors from the private sector and the state sector. Investors in both the state and private sectors are entitled to enjoy the preferential treatment specified in the Law on Domestic Investment Promotion. However, in practice, a large share of capital investment under the preferential treatment has been given to SOEs. (See Table 4.2)

Vietnam has committed itself to the elimination of investment licensing for most sectors and is shifting towards an investment registration regime. In this direction, the Government Decree 27/2003/ND-CP, dated March 19, 2003, was issued, amending the foreign investment regulations prescribed by the Government Decree 24/2000/ND-CP, dated July 31, 2000. The conditions for investment registration are specified in Article 105 of Decree 24 (Amended). Despite many reforms made to improve the investment environment, there are still some significant restrictions, such as business sector restriction, ceiling restriction, and management restriction. Presently, both domestic and foreign investors are awaiting a Common Investment Law, the draft of which was prepared in April 2004. To support the Common Investment Law, a Unified Enterprise Law will also be drafted at the same time.

**Table 4.2: Capital Investment under the Preferential Treatment**

	Realised Capital Investment with Preferential Treatment		Jobs Created	
	Total Number (Billion VND)	Share	Total Number	share
In the Whole Country	42,001	100	331,354	100
In the SOE Sector	25,757	61.3	96,365	29.1
In the Private Sector	16,244	38.7	234,989	70.9

Source: Ministry of Planning and Investment of Vietnam.

<b>Table 4.3: Vietnam Enterprises at a Glance</b>			
	<b>1/1/2001</b>	<b>1/1/2002</b>	<b>1/1/2003</b>
<b>Total Number of Enterprises in the Whole Economy</b>	<b>39,762</b>	<b>51,057</b>	<b>62,892</b>
<b>1. Number of Enterprise by Type of Ownership</b>			
- SOEs	5,531	5,067	5,033
- Private Sector Enterprises	32,702	43,933	55,555
+ Co-operatives	3,187	3,614	4,112
+ Single-owner Enterprises	18,226	22,554	24,818
+ Limited Liability Companies	10,489	16,189	23,578
+ Share-holding Companies	800	1,636	3,038
+ Foreign Invested Enterprises (FIEs)	1,529	1,997	2,304
<b>2. Number of Enterprises Sector-wide</b>			
- Agriculture, Forestry and Fishery	891	3,424	3,376
- Manufacturing	10,946	12,951	15,818
- Construction	3,984	5,588	7,814
- Trading, Hotel and Restaurant Services	19,289	22,849	27,633
- Transportation and Telecommunications	1,789	2,535	3,251
- Other sectors	2,871	3,710	5,000
<b>3. Enterprise Composition Categorised by Size</b>			
- By Size of Workforce			
+ Enterprises with < 10 employees			50
+ Enterprises with 10- < 50 employees			27
+ Enterprises with 50- < 200 employees			14
+ Enterprises with 200- <500 employees			5.4
+ Enterprises with ≥ 500 employees			3.6
- By Size of Capital			
+ Enterprises capitalised at < VND1bn			52
+ Enterprises capitalised at VND1bn to < VND5bn			26
+ Enterprises capitalised at VND5bn to < VND10bn			7
+ Enterprises capitalised at ≥ VND10bn			15
<i>Source: General Statistical Office, 2004</i>			

## Market Structure and Competition

The Vietnamese economy is characterised by a large number of small and medium size enterprises (SMEs), with little capital. However, while around 90 percent of all enterprises in Vietnam can be categorised as SMEs<sup>8</sup>, total SME capital accounts for just 20 percent of the total business capital value of all enterprises. A small number of SOEs holds most of the capital of the whole country (See Table 4.3). More importantly, the SOEs are dominant players in most of the important sectors – those that the GoV has deemed ‘strategic’ – such as cement, petroleum products, steel, sugar, fertiliser, rice, telecommunications, aviation, financial services, importing, distribution, and others.

Most markets can be said to be rather concentrated, or dominated by giant state players, which are often vertically integrated groups controlling everything, ranging from material imports, manufacture, to marketing and distribution channels. Indeed, in 2003, the state corporations<sup>9</sup> produced and supplied 100 percent of petroleum output, 50 percent of petroleum sale, 98 percent of electricity output, 97 percent of coal output, 90 percent of chemical fertilisers, 99 percent of basic chemicals, 70 percent of paper, 69 percent of rubber, 55 percent of cement, 52 percent of steel, for the whole economy; and transported 100 percent of cargo and passengers by railway, 90 percent of cargo and passengers by air, in Vietnam.

## Market Structure and Competition in Some Sectors

Vietnam, like other developing countries in the early stage of the market reform process, does not maintain any official market share database for any sector or industry in its whole economy. Certain statistics are available either with the line ministries, which are in charge of specific sectors, or with the tax departments at both provincial and central levels<sup>10</sup>, or from other private sources such as market research firms. However, even these data are not easily retrievable. They are also inconsistent and there is no system to double-check their accuracy.

This part is compiled on the basis of information gathered from various sources to give an idea of the market structure in some sectors of the Vietnam economy. Since data is scarce and not quite reliable, quantitative measurement is not a focus. Indeed, the main point is to bring out and analyse the nature of competition in each of these sectors/industries.

After a stage of economic stagnation during 1998-2000, due to the effects of the Asian financial crisis and weak internal management policies, Vietnam is once again heading towards more robust economic growth. Markets are developing fast, partly under the effect of new economic policies, which focus more on the role of the private sector as well as the domestic market; partly due to the competitive pressures from imports and possible foreign entrants and partly due to the demand push created by a new consumerism, shaped by better living conditions and higher levels of disposable income. The number of private enterprises, both domestic and foreign invested, in particular SMEs, has never risen so high and this trend is expected to continue in the wake of the long-awaited Uniform Enterprise Law and Uniform Investment Law, by end 2005 and early 2006. Costs reductions and efficiency increases are the centre of any firm's restructuring agenda.

The biggest restructuring trends remain with big state-owned general corporations (GCs), which have been given the leading role in the community of SOEs. Currently, in Vietnam, there are 97 GCs, which have 1,476 subsidiaries, having a total legal capital of VND129000bn (US\$8.2bn) and a working capital of VND252000bn (US\$16bn), accounting for 68.2 percent of state capital and 62.4 percent of total working capital in the state sector. So far, six GCs, including Vinaplast, Leaprodexim, Viglaceglass, Machinoimport, and VietGoldgem have been liquidated; the Vietnam National Alcohol-Beer-Soft Drink Corporation has been restructured; and the Vietnam National Gem and Gold Corporation has been merged into the Vietnam National Minerals Corporation.

In parallel, there is also a plan of establishing a series of powerful economic groups with international competitiveness. The concept is for major GCs, like Electricity of Vietnam (EVN), Vietnam Post and Telecommunications (VNPT), Vietnam Airlines, Vietnam Shipping Lines (VinaLines), Petrol Vietnam and so forth, to become 'economic groups' on a trial basis. After 2004, other corporations will undergo a similar 'up-grading'. The economic groups would develop based on the model of 'holding companies', which means one parent company and several subsidiaries. Parent companies would contribute capital to their subsidiaries. The transferral is expected to make the corporations stronger and more competitive, because the relationship between parent companies and their subsidiaries would become that of business partners rather than the current administrative relationship. This is part of the government's continued commitment to gradually removing the current monopoly mechanism in a wide range of sectors, such as electricity and telecommunications, by permitting enterprises of various kinds to become involved.

## Barriers to Competition

There remains a great deal of potential barriers to competition in Vietnam: (i) Institutional barriers to competition, such as government regulations in product and factor markets, which deter firm entry, exit and growth; including barriers to entry and exit; barriers to international trade; barriers to factor markets (barriers to investment, employment and land, etc); barriers to research and development (barriers to entrepreneurship and innovation and barriers to the efficient use of this knowledge); barriers to price adjustment, etc; (ii) Private barriers to competition, which include various types of anti-competitive behaviours like abuse of dominance, monopolisation, market allocation and price-fixing arrangements, concerted refusal to deal, etc. Private barriers to competition will be dealt with separately in subsequent parts of this chapter, while this section will mainly bring out and analyse some most common institutional barriers to competition currently prevalent in Vietnam.

As mentioned earlier, the legacy of the centrally planned economic system is still quite strong in Vietnam, hence the prevalence of many government regulations, or decisions, which might have an adverse effect on competition in the market. Take a very simple example. Since 2000, during the implementation of the Enterprise Law, about 200 types of business licences have been abolished. Unfortunately, during this same period, the same amounts of business licences<sup>11</sup> have been created. According to the statistical data collected by the Vietnam Chamber of Commerce and Industry (VCCI), by December 31, 2004, there were 298 effective

business licences, issued by several state agencies, ministries, sectoral regulators, and in some cases, even incumbent SOEs. Instead of moving towards simplification, the licensing regime in Vietnam seems to get more and more complicated and cumbersome with each passing day. The total time needed to start a business in Vietnam is 63 days, also according to the VCCI, while the same process takes only two days in Australia and 46 days in China. The government's project to promulgate the Unified Enterprise Law, hopefully, will help resolve this problem.

The deep-rooted command and control system also results in quite a few interventionist regulations, imposing ceiling or floor levels of price/expense that businesses can apply/spend, which should have been left to the market to decide, for instance the inappropriate provisions on controlling Internet connection fees, or the ceiling limitations on promotion expenses.

Under Decision 480/2002/QĐ-TCBD, dated June 13, 2002, issued by the General Department of Posts and Telecommunications (GDPT, now the Ministry of Posts and Telecommunications – MOPT), the State controls Internet connection fee *via* public telephone by provision of fee frame. Internet connection service providers are obliged to apply such a unified Internet fee frame and not permitted to offer lower or higher fee than the minimum and maximum levels, respectively. This, ultimately, means that the Internet access service providers cannot determine the fee themselves upon the supply-demand balance in the market and increase their competitiveness in the market. Price competition is thereby eliminated and Internet users have to bear higher Internet service fees and low connecting speed in comparison to other countries in the same region.

The cost of doing business in Vietnam is listed among the highest in the region, which not only hinders competition but also market growth and business development in general. High transportation cost, an antiquated tax system, steep legal fees and troublesome arbitrary amounts of customs clearance fees levied by officials tend to scare new business and significantly reduce the scope for new market participation.

The Vietnam Business Forum's Tax Working Group, at its Mid-term Consultative Group Meeting in June 2005, reported on the substantial burden imposed on taxpayers by various administrative problems with the tax system, for instance, additional documentary requirements, late issuance of circulars with retrospective effect which complicate completion of tax filings, the unduly tight filing deadlines and the lack of distinction between fraudulent behaviour and genuine errors (for example, due to unclear regulations) when imposing penalties. In some cases,

these problems have become worse in recent times – in particular, the processing of double tax treaty claims and additional requirements for notarisation and legalisation of documents are a major concern. The group also expressed frustration at the slow progress in resolving long-standing issues, including the failure to apply zero rating VAT treatment to exported services, the 10 percent cap on advertising/marketing expenses imposed by the State regulations and the inability to deduct legitimate business expenses, all of which reduced the competitiveness of companies operating in Vietnam.<sup>12</sup>

The incomprehensive and, at the same time, overlapping nature of the legal framework regulating economic activities also acts as significant barrier for business expansion and competition. The complicated structure of the administrative system also adds up to the problem. In some cases, subordinate documents arbitrarily issued by provincial local authorities to protect their localities have set down more restrictions and/or requirements to business activities of enterprises. Representative of the Hanoi branch of Hoang Long Transportation Company, for instance, complained that the company was in a dilemma when the Hanoi General Department of Transportation and Public Infrastructure stopped all their buses from getting passengers at the city's high-quality bus stations. Interestingly, when the company sought approval for purchasing ten high-quality 35-seat buses (the investment amounts to VND10bn, which now would be difficult to retrieve), no relevant authority made even the slightest of objections, or any indication of the policy changes.

The discriminatory treatment between state-owned enterprises and private enterprises is another significant aspect of the Vietnam economy, where competition is hampered by State regulations, or arbitrary administrative decisions. According to the Law on Mineral Resources of Vietnam, only SOEs are permitted institutional access to the national mines. Enterprises from the non-state can only gain access to these mines through contracts with SOEs, which is totally in contradiction with the principle of non-discriminatory/fair treatment in competition. What's more, private cement producers in Vietnam have to get the approval of the General Cement Corporation (their very own competitors) on their allocated quota to import clinkers for producing their own finished products – an authority which has been bestowed by the Ministry of Industry on its *protégé* SOE.

A most obvious and absurd example recently is a Dispatch by the Ministry of Construction (MoC) (Dispatch 1124/BXD-KHTK dated July 1, 2003, signed by Tong Van Nga, Vice Minister) to all enterprises belonging to the Ministry of Industry and the Ministry of Transportation, which asked all these enterprises and others working in the same industries

**Table 4.4: Market Structure and Competition in Some Manufacturing Industries**

Industry	Market structure	Imports	Competition in the market	Data sources
<p><b>1. Plastics</b></p>	<ul style="list-style-type: none"> <li>Incumbent SOE (VINAPLAST, which comprises of 19 smaller companies) — 23% share of the total market</li> <li>80 SMEs — 45% of the total capital invested, SOEs — 20%, and FIEs — 35%</li> </ul>	<ul style="list-style-type: none"> <li>Currently supplying for approx. 90% of the industry demand and 10% of the market for household plastics</li> </ul>	<p>Local producers benefit from competitively priced raw materials, which are free of import duties and are not restricted by quotas or NTBs.</p> <ul style="list-style-type: none"> <li>Competition among the numerous domestic producers of most basic consumer products results in market prices, which are far below the world price, plus tariff.</li> </ul>	<p>Based on figures from Industry Sector Analysis on the Plastics Industry of Vietnam made by STAT-USA, 2004</p>
<p><b>2. Automobiles</b></p>	<ul style="list-style-type: none"> <li>The local assembly industry is dominated by 11 foreign-invested joint ventures (JVs), led by Toyota (29.4% share of the market by sales in 2001, 22.8% in 2004), Vietnam Daewoo Motor (14.9% in 2001, and 12.7% in 2004), and Ford Vietnam (9.8% in 2001, and 14% in 2004)</li> <li>The current sales volume by all the JVs is only around 30% of their registered production capacity</li> </ul>	<ul style="list-style-type: none"> <li>At end 2003 there were an estimated 530,000 vehicles on the road in Vietnam, of which around 75% were imported as completely built-up (CBU) units</li> </ul>	<ul style="list-style-type: none"> <li>The current sales volume by JVs is only around 30 % of their registered production capacity, which led to high production costs and high prices.</li> <li>Domestic production is encouraged through many protectionist measures such as imposition of top-rate import tariff on CBUs, and double value-added tax on such units, and introduction of heavy cut on the special consumption tax breaks applied to locally assembled cars, as compared to those applied to imported CBUs.</li> </ul>	<p>Figures are based on International Market Insights on the Automobiles Industry of Vietnam prepared by STAT-USA, 2002 and the Economist Intelligence Unit's Executive Briefing on Vietnam, 2005.</p>
<p><b>3. Motorcycles</b></p>	<ul style="list-style-type: none"> <li>Motorcycle producers in Vietnam can be divided into two groups: foreign-invested JVs on the one hand, and Vietnamese domestic makers, on the other.</li> </ul>	<ul style="list-style-type: none"> <li>Imports of low-priced Chinese motorcycles started in 1998, peaked at a share of more than 75% of the markets in 2000 and 2001, and then levelled at around 35% in 2003</li> </ul>	<ul style="list-style-type: none"> <li>There was a dramatic price decline, from about US\$2,200 on average in 1998 to US\$630 in 2001, caused by the entry of low-priced motorcycles assembled from Chinese components.</li> </ul>	<p>Various sources</p>

	<p>Amongst the top five market leaders (Honda, 'Chinese', VMEP, Yamaha, and Suzuki), Honda has been having the largest share of the markets, which stood at 83 % in 1995, and diminished to only 34% in 2003.</p>		<ul style="list-style-type: none"> <li>In the rapidly expanding Vietnamese market, FDI and domestic companies have competed fiercely and their relative market shares have fluctuated greatly.</li> </ul>	
<b>4. Garment and Textile</b>	<ul style="list-style-type: none"> <li>The sector consists of over 1100 enterprises – 187 state-owned (70 textile enterprises and 117 garment enterprises), nearly 800 private, joint-stock and limited liability (nearly 600 garment units and 200 textile units) and approx. 180 JVs and wholly foreign-invested.</li> <li>Individual tailors and small enterprises currently serve much of the domestic garment market.</li> </ul>	<ul style="list-style-type: none"> <li>Approx 10-15% of all imports are 'grey imports', mainly from China, as compared to around 5% for legally imported garments from Hong Kong, Korea, EU/US or Singapore.</li> <li>Around 5-10% of the market is supplied by second-hand clothing; while 10-15% are export-oriented products made locally sold.</li> </ul>	<ul style="list-style-type: none"> <li>The industry is dominated by VINATEX, a corporation of 60 SOEs that takes up over one-third of all textile and garment exports of the country. A significant component of VINATEX's member firms are vertically integrated, from spinning and weaving to final garment production, which is not seen in the private or FDI segments of the Vietnam's textile and garment industry.</li> </ul>	<p>MPDF, <i>Vietnam's Garment Industry: Moving Up the Value Chain</i>, Private Sector Discussion Paper No. 7, 2000.</p>
<b>5. Cement</b>	<ul style="list-style-type: none"> <li>Local factories supply about 70-75% of the local market.</li> <li>The incumbent Vietnam Cement General Corporation (VNCC) produce approx. 50% of Vietnam cement outputs</li> <li>05 JVs accounts for 30% share of the market;</li> </ul>	<ul style="list-style-type: none"> <li>55 local SOEs, army enterprises and domestic private enterprises account for 20% of the market. - Cement imports have been actually coming to an end since 1999. After that, there has not been any cement import recorded. But, clinker imports are flourishing on the quotas provided by the Ministry of Commerce to some SOEs under its management.</li> </ul>	<ul style="list-style-type: none"> <li>The VNCC has a clear predominant position in the cement market, with its large market share and its exclusive network of filiales, subcontracted distributors, and shops in the major cities.</li> </ul>	<p>Various sources</p>

<p><b>6. Fertilisers</b></p>	<ul style="list-style-type: none"> <li>• The state sector is still in a dominant position in the production of chemical fertilisers (with a market share of 98.1-100% during 1995-2003). The main producer of chemical fertilisers in Vietnam is the state-owned General Corporation for Chemicals VINACHEM. It produces 75% of the total domestic fertiliser production and 95% of the domestically produced urea and phosphate production.</li> </ul>	<ul style="list-style-type: none"> <li>• Vietnam is highly dependent on imports to cover the domestic demands. In 2004, Vietnam had to import annually around 2 millions tonnes of urea, 0.3-0.4 millions tonnes of diammonium phosphate (DAP) fertiliser and 0.2-0.3 millions tonnes of potassium fertiliser.</li> </ul>	<ul style="list-style-type: none"> <li>• Vietnam's domestic fertiliser production is improving gradually, but still fails to meet the planned target set by the government. Moreover, the local demand is much higher than the domestic production.</li> <li>• Domestic fertiliser prices continue to depend hugely on world prices. Fertiliser import tax currently stays at five percent.</li> </ul>	<p>Ministry of Trade, 2003</p>
<p><b>7. Steel</b></p>	<ul style="list-style-type: none"> <li>• The Vietnam Steel Corporation (VSC) (wholly owning 06 factories), which has a total registered capacity of 760,000 tons/year and holds a current market share of 40% in 2004;</li> <li>• 12 JVs, with a total registered capacity of 850,000 tonnes/year;</li> </ul>	<ul style="list-style-type: none"> <li>• Some 50 private businesses with a total capacity of 400,000 tones/year. Vietnam's steel industry still falls short of covering the local demand. It continues to have an imbalance between the upstream (crude steel production) and the downstream (rolled steel production) and is currently 80% dependent on imported billets.</li> </ul>	<ul style="list-style-type: none"> <li>• The steel market seems to have a competitive balance between the state sector and foreign-invested sector.</li> <li>• As of now, there is still much room for more market participation, particularly new producers' entry.</li> <li>• Domestic prices continue to be strongly affected by world prices.</li> </ul>	<p>Ministry of Finance</p>
<p><b>8. Soft drinks, beverages, wines, spirits and coffee</b></p>	<ul style="list-style-type: none"> <li>• The state-owned beverages company Vinabeco controls a large share of the beer market, with the largest breweries under its control. In 2004, the state-owned sector accounted for around 63%, with the foreign-invested sector accounting for around 26%. Cheap brandless</li> </ul>	<p>Not available</p>	<p>Prices are quite competitive</p>	<p>Various sources</p>

	<p>fresh beer is estimated to account for around 20-25% of the market and is consumed by the low-income sector.</p> <ul style="list-style-type: none"> <li>• The soft drink market is mainly focused on carbonated drinks. The dominant player is Coca-Cola Indochine, which controls about 65% of the carbonated soft-drink segment.</li> <li>• The state-owned Vietnam Dairy Company (Vinamilk) is the largest milk producer and controls around 75% of the market.</li> </ul>			
<b>9. Cigarettes</b>	<ul style="list-style-type: none"> <li>• The Vietnam National Tobacco Corporation (Vinataba) is the largest cigarette manufacturer in the country, with a market share of 55%. A number of foreign cigarette manufacturers are also present in the domestic market, through co-operation agreements or JVs with Vinataba, and these accounts for nearly 20% of the market.</li> <li>• British American Tobacco (BAT) of the UK has a market share of more than 10%, mainly with its 555 brand.</li> </ul>	Vietnam is a net importer of tobacco and tobacco products. Almost 60 percent of the demand for tobacco is met through imports and, in 2003, imports of cigarette materials totalled more than US\$165mn.	Prices are competitive	Various sources
<b>10. Drugs</b>	<ul style="list-style-type: none"> <li>• 20 big SOEs, 08 JVs and 16 wholly foreign-invested projects with a total registered capital of US\$172mn, are in operation in the sector.</li> <li>• The SOEs account for around 65% of domestic production of pharmaceuticals, followed by the JVs (20%) and then FIEs (15%).</li> </ul>	Imports of drugs remain high, accounting for around 64% of the medicines consumed, on average. In 2003, imports stood at US\$366.82bn, amounting to 60.3% of the total market.	<ul style="list-style-type: none"> <li>• Competition in the pharmaceutical sector has increased in line with the influx of foreign-owned companies.</li> <li>• The prices of pharmaceutical products have increased sharply in recent years, rising by around 30% a year in 2003 and by nearly 10% in 2004.</li> </ul>	Various sources

**Table 4.5: Market Structure and Competition in Some Service Industries in Vietnam**

Industry	Market structure	Imports	Competition in the market	Data sources
<b>1. Electricity</b>	<ul style="list-style-type: none"> <li>The electricity sector in Vietnam is solely managed by the Electricity Corporation of Vietnam (EVN), a state-owned monopoly (including transmission and distribution)</li> <li>There are 46 power plants in Vietnam, 14 under the EVN. EVN's share in the total installed generation capacity is around 85%</li> </ul>	Vietnam imports a small volume of electricity from China (about 40000 MW)	<ul style="list-style-type: none"> <li>Foreign companies are forbidden by law from establishing their own distribution networks in Vietnam, but they can engage in the power generation sector.</li> <li>EVN has been the only buyer and end-user in the power generation sector, which made the procurement less transparent, open, and competitive.</li> </ul>	Various sources
<b>2. Telecoms</b>				Various sources
<b>Network and Fixed Line Services</b>	<ul style="list-style-type: none"> <li>Before 1995, Vietnam Post &amp; Telecommunications (VNPT) was the only network and fixed line operator in Vietnam.</li> <li>Till 2001, five more telecom enterprises have been allowed to run telecom networks.</li> <li>By end 2003, there were only two enterprises providing fixed line services: VNPT with nearly 3.4 million subscribers and SPT with only 24,000 subscribers.</li> </ul>		<ul style="list-style-type: none"> <li>Three of six current network carriers are permitted to construct and run the national backbone and international gates for long distance and international calls and the other three only to build the local networks.</li> <li>As the new entrants remain in the early stage of network construction, there is no real direct competition in the fixed line services at present.</li> </ul>	
<b>Mobile Network and Services</b>	<ul style="list-style-type: none"> <li>Until recently, there were only two major mobile networks in operation in Vietnam and both of them belong to VNPT: Mobiphone and Vinaphone</li> <li>Four more enterprises have been allowed to provide mobile phone services subsequently: Citiphone (2002), S-Fone (2003), and Viettel (2004)</li> <li>At end 2004, Mobifone and Vinaphone still dominated the market for mobile services with the number of subscribers of around 2.2 million and 2.5 million, respectively.</li> </ul>		<ul style="list-style-type: none"> <li>Competition existed primarily between Mobiphone and VinaPhone.</li> <li>Although competition did result in a reduction of connection fees and more new services, there was no real competition as both companies belong to VNPT.</li> <li>The new market entrants possess only marginal market shares and suffered from great competition from the two incumbents Vinaphone and Mobiphone, who sometimes used anti-competitive practices</li> </ul>	

<b>Internet Services</b>	<ul style="list-style-type: none"> <li>• Presently, there are six Internet exchange providers (IXPs), 15 Internet services providers (ISPs) and 12 online services providers (OSPs) in Vietnam. Among them, VNPT is a major supplier, with a market share of 48.57 percent, followed by FPT, with a market share of 28.56 percent in 2004.</li> <li>• As of January 2004, the total international Internet connection capacity is 1,038 Mbps, of which VNPT accounts for 905 Mbps, FPT 89 Mbps, Viettel 38 Mbps, SPT 4 Mbps and ETC 2 Mbps.</li> </ul>			
<b>3. Transport</b>				
<b>Road Transport</b>	<ul style="list-style-type: none"> <li>• There are about 1,050 enterprises registered in road transport business, of which 16 are SOEs, 233 limited liability companies, 350 private companies, 450 joint stock companies and very few foreign-invested companies.</li> <li>• Besides, there are tens of thousands of individual household businesses that also operate in passenger and cargo transport service.</li> </ul>		<ul style="list-style-type: none"> <li>• Most of the road transport companies are of small and medium scale</li> <li>• SOEs in road transport face a lot of competitive pressure due to their declining number of vehicles, and poor performance.</li> </ul>	Various sources
<b>Railway Transport</b>	State monopoly			
<b>Maritime Transport</b>	<ul style="list-style-type: none"> <li>• The biggest company is the state-owned Marine Transport Corporation, with 38 member companies.</li> <li>• Besides, there are hundreds of other enterprises, including SOEs, FIEs and private enterprises that also provide maritime transport and supporting services, creating a competitive environment among different service providers.</li> </ul>			Vietnam's fleets are on a small scale, and not very efficient

<b>Air Transport</b>	<ul style="list-style-type: none"> <li>• Air passenger transport in Vietnam is handled by two companies Vietnam Airlines and Pacific Airlines</li> <li>• In 2002, in terms of revenue, Vietnam Airlines accounted for 89.95% of market share and Pacific Airlines accounted for 10.05%.</li> </ul>			
<b>4. Financial Services</b>				Various sources
<b>Banking Services</b>	<p>Vietnam's banking system includes four stated-owned commercial banks, 46 joint stock banks, five joint venture banks and 26 branches of foreign banks.</p> <ul style="list-style-type: none"> <li>• The state sector continues to dominate lending. Their total share usually levels at 70-80% of all lending activities till 2004, while the local joint stock banks account for around only 15% of total lending.</li> </ul>		<ul style="list-style-type: none"> <li>• Vietnam also has a system of credit fund, with one Central People's Credit Fund, and 906 branches around the country. Besides, there are four leasing companies and six securities companies.</li> </ul>	
<b>Insurance and other Financial Services</b>	<ul style="list-style-type: none"> <li>• As of 2004, there are 26 insurance companies operating in Vietnam (five SOEs, seven shareholding companies, seven JVs and seven wholly foreign-owned enterprises).</li> <li>• The market share of SOEs in 2004 declined from 55.3% (2003) to 52.9%, the share of shareholding companies increased from 5.3% (2003) to 7.4% and the share of foreign-invested companies rose from 39.4% (2003) to 39.7%.</li> <li>• In the non-life insurance segment, there are 14 enterprises. The concentration of the market reduced but was still at a high level. The three biggest insurance enterprises accounted for 85% of the total insurance premium. They were Bao Viet (52%), Bao Minh (20.3%) and PJICO (12.4%).</li> </ul>		<ul style="list-style-type: none"> <li>• Monopolistic situation remains, mainly in some industrial insurance markets, such as oil and gas, gasoline and telecoms, while competition is more popular in other lines of insurance.</li> <li>• The non-life insurance enterprises strongly compete with each other, mainly through reducing insurance premium and increasing commission. The problem is that the extent of these changes is so high that they become unfair competition practices.</li> <li>• Many enterprises reduced their insurance premium below the reinsurance fees for many insurance lines.</li> </ul>	

to give priority to purchasing and utilising products produced/supplied by enterprises belonging to the Ministry of Construction. The mentioned Dispatch also prohibited all private construction and investment consultancy firms to recommend the use of any type of materials, or equipments, supplied by other private producers in common construction projects. Enclosed with the Dispatch was a list of main products produced, or to be marketed, by the MoC enterprises, which were recommended for use. Such practice not only discriminates between state and non-state players, but also discriminates between domestic and foreign products.

Such institutional barriers to competition need to be eliminated soon. Otherwise, the fruits of the liberalisation and reform process will be negated and the competitive environment in Vietnam will be further distorted. If the government wants business entities not to resort to any anti-competitive practices, they should set the paradigm by withholding from those practices that negate competition.

## Sectoral Regulation and Competition

Vietnam's multi-faceted problems in its market reform process, like many other developing and transition economies, have been most interestingly reflected in its efforts to liberalise basic infrastructure industries such as transportation (air, rail, truck, shipping, etc.), telecommunications, financial services, and energy, which have long been protected from competition as state-owned or controlled monopolies. The response of the GoV to the effects of regional and global integration and the need for the Vietnamese economy to increase its competitiveness and to attract FDI has been to remove state monopolies and to open up these protected sectors to competitive forces. It is well understood that requiring firms to compete with each other will foster innovation, reduce production costs, increase economic efficiency and, consequently, enhance the competitiveness of the economy and improve consumer welfare; since greater competition also allows consumers to choose from a wider range of products and services at lower prices. However, when it comes to putting the idea into real practice, many a time, the government has faced not just one but several predicaments.

There is always a possibility, or rather a threat, that opening such sectors without caution may simply mean transforming a public monopoly into a private monopoly, or even worse, a foreign-controlled monopoly. Private participation, or competition, may also mean opening the gate for private anti-competitive conduct to flood in those sectors where price control and administrative measures used to be a common practice. On top of that, there is also the problem of institutional restraints. Even in the most advanced industrialised countries, institutional restraints continue to have a far greater aggregate distorting

impact on competition than all private restraints combined. As already discussed in the preceding parts, in Vietnam, distortions of competition, or barriers to competition, brought about by laws, regulations, licensing regimes, administrative measures, other institutional restraints and 'red tape' typically exist in markets accounting for a substantial proportion of overall economic activities in the economy, especially utilities and services industries.

## Electricity

The Resolution adopted in October 2003 by the Ninth<sup>th</sup> CPV Congress and the Development Strategy for Vietnam's Electricity Sector during the period 2004-2010 and toward 2020 state the general principles for the development of a competitive electricity market:

*"There will be gradual formation of a domestic competitive power market, diversifying the forms of investment and business in electricity, encouraging all sectors of the economy to participate, but without changing State monopoly into an enterprise monopoly. The State shall only retain its monopoly at the stages of transmission, construction and operation of large hydro-electricity plants; and the State shall take the initiative in linking Vietnam's electricity network to networks of other regional countries and in the purchase and sale of electricity as between regional countries.*

*"Electricity services must be quality services at competitive prices. Setting electricity prices must achieve the objective of encouraging investment to develop the electricity industry, and make prices more competitive with those in other countries in the region, especially the price of electricity servicing manufacturing industries, and removing the element of social policy from electricity prices but with an appropriate policy for use of electricity in rural and mountainous areas".*

Among the principles, the most profound was the adoption of a gradual approach, which has been legislated in the Electricity Law 2004 of Vietnam.

The focus of the Law is to build and develop a competitive electricity market, a task said by many as likely to be time-consuming and resource-intensive, looking at the current situation of Vietnam's electricity sector. It is expected that it could take five years to achieve a competitive electricity generation market, 10-15 years for a competitive wholesale market and another 10-15 years for the third phase – a competitive retail market. In total, the three-phase process requires about 30 years to be completed.

The first step towards creating a competitive electricity market in Vietnam had been undertaken in July 2004, when EVN launched an 'internal electricity market' in which its affiliated electricity generators must compete with each other to sell their products to the

mother company. This internal market is planned to be open to the unaffiliated generators in 2005 and will be developed to its highest level, with the participation of the Electricity Transaction Centre and the control of the Electricity Regulator.

## Telecommunications

The telecom sector development policy of Vietnam is centred upon shifting from a monopolistic to competitive. The general approach of liberalisation is to expand a competitive market parallel with strengthening the dominant role of the SOEs, to allow the qualified domestic enterprises, mainly SOEs, to provide basic as well as value added services and then to open up the telecom market to foreign players, in accordance with international commitments.

A most recent significant landmark in the development of a regulatory framework for the telecom sector in Vietnam was the ratification of Ordinance No 43/2002 on Posts and Telecommunications in May 2002, which took effect on October 1, 2002, and replaced the Decree No.109/1997/ND-CP dated November 12, 1997, on network and telecom services. The Ordinance aims at encouraging enterprises from all economic sectors to engage in telecom activities in a fair, transparent, and competitive environment, in order to facilitate the application and promotion of telecom technology and enhance the standard of living.

Though the state monopoly over the telecom network infrastructures is thereby abolished, network

infrastructure provider status is limited to only SOEs or enterprises in which the State holds controlling shares. Licensed network infrastructure providers can establish a public telecom network to provide directly, or re-sell, telecom services in accordance with their licences. On the other hand, enterprises from all economic sectors can provide telecom services to the public and several different types of licences are described. Licensed service providers can establish telecom equipment systems within the scope of their establishments and public service points and provide Internet access services and re-sell telecom services, as prescribed in their licence.

An open interconnection regime is set up by the Ordinance. All telecom network operators are entitled to interconnect with all other telecom networks on 'fair and reasonable' conditions. Particular obligations are placed on parties who are in a dominant position in respect of provision of interconnect and who control 'essential facilities' (though this key term is left undefined). These obligations provide for good faith negotiations and prohibit refusal to interconnect.

Interconnection is to be governed by regulations issued by the regulator – the MPT – and interconnect agreements must be registered with the regulator, at which point they take effect. Time limits are to be prescribed for the conclusion of interconnection negotiations, failing which, the regulator has the power to first arrange mediation between the parties and, if that fails, to intercede and determine an outcome.

### Box 4.1: State Control over Internet Connection Fee

In late 2001, the GDPT, for the first time ever, sought opinions of Internet Service Providers (ISPs) on the way of managing the Internet connection fee. At that time, Internet connection fee was controlled at both the ceiling and floor levels. According to its Dispatch 1549/TCBD-KTKH dated December 31, 2001 sent to various ISPs, the GDPT proposed to opt for either (i) retaining control of Internet connection fee, but only at floor level; (ii) or Internet connection fee shall be floated up to ISPs. All the ISPs in the market at the time widely welcomed such goodwill of the GDPT and made two main opinions in response to this consultation.

Truong Dinh Anh, Director of FPT Internet Centre, who preferred the floating Internet connection fee, said: "The thing most important to customers is their pocket, meanwhile their incomes are very low. We can see that in the first three years, the State has adjusted and reduced Internet connection fee several times, but the fee level still remains rather high and it, therefore, does not encourage customers to use Internet services. Furthermore, the development of each ISP is much different, the way to calculate expenses, price and

service quality of each ISP are also different. We should not put all ISPs into one bag. If we do so, consumers shall not be satisfied, as there are many different kinds of consumers". In consensus with FPT, the Vietnam Data-Communication Company (VDC) expressed its wish to be able to self-manage its own Internet connection fee.

On the other hand, Netnam, Saigonnet and Viettel – small ISPs with modest market shares in comparison with VDC and FPT – have expressed their serious concerns, if the GDPT allows ISPs to decide Internet connection fees on their own. They have strongly requested the GDPT to keep up controlling the fee at floor level to protect them from aggressive price competition of giant ISPs.

After six months of intermittent discussion with ISPs, completely contrary to its suggestions and ISPs' hopes, and with the release of Decision 480/2002/QD-TCBD dated June 13, 2002, the GDPT decided to maintain the same regime of State control over Internet connection fee. Only a small change was affected; that the GDPT would decrease both the ceiling and floor fee levels.

Source: [www.vnpost.dgpt.gov.vn](http://www.vnpost.dgpt.gov.vn).

### Box 4.2 : State-imposed Cap on Marketing Expenses Restrict Competition

According to the State regulations in Vietnam, a business's expenses for advertisement, marketing, sales promotion, commissions, etc., must not exceed 10 percent of the total allowable expenses. Due to this limitation, all business entities must limit their expenses on advertisement and promotion. This, subsequently, entails limitation in the use of advertisement and promotion services, which leads to a situation where domestic enterprises face great difficulties in building up their images because of the limit on expenses, as compared to large FIEs.

Although foreign companies also operate under the same restriction, their total expenses are much higher than their Vietnamese counterparts. Therefore, their advertising budgets are higher. Furthermore, foreign companies' marketing campaigns are usually backed

by their international branding expertise. Such competitive edges have been used effectively by many foreign TNCs in gaining market dominance in Vietnam, such as the case of Coca Cola and Pepsi Cola against Saigon Tribeco (a Vietnam joint stock company in Ho Chi Minh City producing soft drinks). Saigon Tribeco, whose soft drink products used to be quite popular before the year 2000, lost the competition and was reduced to selling only soybean milk due to the aggressive advertisement and promotion strategies of the former.

After lots of objections and recommendations from the business community, this regulation has been removed by Decree No. 199/2005 of the Ministry of Finance (MoF). The business community has expressed their strong support for this move of the government.

Sources: *VietnamNet* ([www.vnn.vn](http://www.vnn.vn)) and *Vietnam Business Forum* (<http://vibforum.vcci.com.vn>).

the Ordinance also prescribes a threshold for presumed market dominance, which is 30 percent market share in respect of one type of service in a licensed geographical area. Market dominance is determined by the telecom regulator and will attract specific restrictions, for instance, a requirement for separate accounting and 'supervision and surveillance' of market share, tariffs, etc.

Tariffs remain subject to stringent regulation, in accordance with both the Ordinance and the Ordinance on Pricing.

The Prime Minister has full discretion to determine tariffs for important telecom services that affect various sectors and socio-economic development – a very wide category, the precise interpretation of which remains to be determined.

The 'State Management Authority', or the regulator (the MPT), has the authority to determine tariffs for services provided for community service purposes and for those services provided by enterprises that are in dominant positions in the relevant market. The basic principle is that retail tariffs should be determined on a cost basis, with regard to contributions that may need to be made to universal service and development goals.

Enterprises may decide its own tariffs for all services other than those listed as being subject to regulation. Calculation of interconnection charges will be based on cost. However, actual interconnection charges will be determined by adding a contribution for community service obligations (CSOs), which will be determined precisely by the regulator, to that of cost-based charge.

### Consumer Policy

The complementarity between competition and consumer protection is no longer a new and debatable issue in any discussion pertaining to competition policy and law, but rather, a settled one. Competition presses producers to offer the most attractive prices and quality options. In competitive markets, producers must gain new sales and new clientele, by satisfying consumer needs and by increasing the range of choices available, since/because, if consumers dislike the offerings of one seller, they may turn to others. This is because the availability of substitutable goods at acceptable prices in competitive markets enables consumers to shift purchase preferences, which imposes a rigorous discipline on each seller to satisfy consumer preferences.

Further than increasing the choices available to consumers, in competitive markets, long-term competitive strategies make it imperative for producers to provide correct and useful information about their products, fulfil promises concerning price, quality and other terms of sales and, thus, improve their images to the consumers. Producers also need to make innovation a continuous practice, if they do not want to be left behind in the race to satisfy the changing demand. Thus, in its mandate of ensuring that markets function competitively, competition policy and law becomes an effective tool to promote consumer welfare, which is also the objective of consumer protection policy.

However, since markets are not always competitive, naturally, or as a consequence of private intentions and since market failures have become an inevitable by-product of any liberalised and open market, producers are not always punished for their

dishonesty or deterred from committing frauds. Information asymmetry and limited awareness, besides, also make consumers vulnerable to cheating, frauds or scams. While competition policy and law regulates firms' competitive behaviours, prevents abuses of the monopolists and dominant businesses, and punishes cartels, it might somehow overlook the smaller grief of the common man – the consumers. The merits of competition are negated before reaching the final goal – consumer welfare.

Consumer protection policy has a vital role to play in addressing these types of problems. It ensures that consumers can make well-informed decisions about their choices and that sellers will fulfil their promises about the products they offer. In other words, consumer protection policy prevents producers from engaging in unfair practices, while seeking to increase their sales.

UTPs not only harm the consumers, they also harm other market players in the process and, more importantly, they harm the market, as a whole.. Revelations that they are cheated by a producer, a group of businesses might lead the consumers to distrust an entire industry or market, which, in turn, will affect sales in that market negatively. In a way, while preventing and punishing unfair trade practices, consumer protection policy does more than safeguarding the interests of the consumers or promoting consumer welfare, it comes back to facilitate competition.

The most important legal instrument to protect the consumer in Vietnam to date has been the Ordinance on the Protection of Consumers' Interests of Vietnam (No 13/1999/PL-UBTVQH10), which was adopted by the Standing Committee of the National Assembly in April 1999, taking effect from October 1999.

The Ordinance, though still deficient in many aspects and rather inclined to defining general principles rather than providing for any specific measures, has pointed out, to some extent, the consumers' problems in Vietnam, highlighted the responsibility of the whole society in the protection of consumers and provided for a state agency to take charge of issues related to consumer protection in the country. It defines the general principles in consumer protection, in accordance with the eight consumer rights framed by the United Nations<sup>13</sup> (Art. 8 – Art. 13, Chapter 2 – Rights and Responsibilities of the Consumers). It also specifically prohibits some acts in contravention of such rights (Art. 7), such as:

- (i) Production and doing business of prohibited and fake goods;
- (ii) Producing, doing business in and consuming goods and services which severely contaminate the environment, cause damages to the life and

- health of the people; and which is contrary to the good customs and traditions of the people;
- (iii) Provision of untruthful information and misleading advertising; and
- (iv) All other acts which aim to cheat the consumers.

Accordingly, any organisation or individual undertaking production and/or business activities (having business registration) shall have to register and declare the standards and quality applicable to their goods and services. They also have to ensure exact and true information and advertisement of their goods and services; make public the price of goods and services; and declare the conditions, duration and location of warranty and provide clear instructions relating to the use of goods and services to the consumer (Art. 15). They shall be responsible for resolving the complaints of the consumer regarding their goods and services, which do not comply with the declared standards, quality, quantity, price or the contract signed; and shall be responsible for providing warranty for their goods and services to customers (Art. 16). In addition, they shall be responsible for gathering, studying and considering the feedback of consumers; and shall be responsible for refunding and compensating for the damage to the consumer, in accordance with the law (Art. 17).

Consumers can lodge complaints on abuses in contravention of the Ordinance to the state agency responsible for protection of consumer interests, who will consider and resolve the disputes, first through mediation/conciliation and, if not successful, through administrative measures. Consumers also have the right to bring such disputes to the court of law for resolution (Art. 23). Breaches of the laws and regulations on protecting consumers' interests, depending on the gravity and extent, shall be subject to disciplinary action, administrative fine or prosecution for criminal liabilities. The violators shall also have to compensate the consumer for the damages caused (Art. 26).

Detailed guidance for implementation of the Ordinance is prescribed in the Government Decree 69/2001/ND-CP of the Government (Decree 69), which governs all organisations and individuals producing and trading in goods and services (producers and traders) and all purchasers and users of goods and services for consumption for living purposes and work requirements (consumers), expressly excluding purchasers and users of goods and services with the aim of production and trading. The Ministry of Science, Technology and Environment (MOSTE) is assigned to take charge of state management of consumer protection, with the assistance of the General Department of Standards, Weights, Measurements, and Quality. At the provincial level, the provincial Department of Standards, Weights, Measurements, and Quality are

### Box 4.3: Vietnam's Electricity Law 2004 – Towards a Modern Regulatory Regime

Vietnam's Electricity Law was passed in November 2004, expected to come into effect on July 1, 2005. The Law governs all entities involved in electricity-related activities, which include planning and investment in electricity development, generation, transmission, distribution, wholesale, and retail electricity sales and stipulates the monitoring and regulation of Vietnam's electricity market. It aims to stimulate growth and diversify forms of investment in the electricity sector, encourage economical use of electricity, preserve the country's electricity infrastructure and develop a competitive electricity market.

On its way towards becoming a fully competitive market, the Vietnamese electricity market will operate in accordance with the following principles: (a) ensuring access to information, equality, healthy competition and non-discrimination between participants in the market; (b) respecting the right of participants in the sale and purchase of electricity in the market to choose with whom to conduct transactions and what form these transactions should take, provided these choices are in line with the relevant regulations for each phase of market development; and (c) regulation by the state to ensure development of a sustainable electricity system and a safe, stable, and efficient electricity supply.

The State will maintain its monopoly over electricity transmission, regulation of the national electricity system and the construction and operation of large power plants, which are significant for socio-economic or national defence and security reasons.

In all the other segments of the industry, electricity markets will be established and developed in stages. The rights and obligations of the electricity entities, in particular, the choice of contractual partner and trading method, will be in line with the stages of market development as follows:

- (1) *Competitive Electricity Generation Market* – at this stage, electricity generators will have the right to sell electricity under a definite-term contract or to offer to sell electricity on a spot basis. Electricity wholesalers and major end users (i.e., entities that consume a relatively high quantity of electricity) will have the right to buy electricity from electricity generators under a definite-term

contract or by spot trading.

- (2) *Competitive Electricity Wholesale Market* – electricity wholesalers will be able to sell electricity to retailers at any price, provided it is within the tariff range set for wholesale transactions.
- (3) *Competitive Electricity Retail Market* – electricity retailers will have the right to determine the price to sell electricity to end users, provided the price is within the approved tariffs. End users will have the right to choose from which electricity retailer to purchase the electricity from.

Electricity retail tariffs will be prepared by the MOI, with the assistance of the Electricity Regulator and approved by the Prime Minister. Electricity generation and wholesale tariffs, fees for electricity transmission and distribution and auxiliary services will be proposed by the entities involved in the relevant electricity activities and will be evaluated by the Electricity Regulator and approved by the Minister of Industry. One of the underlying principle in electricity pricing, as set by the Law, is “to ensure the right of entities purchasing and selling electricity in the market and to make their own decisions on the price of purchase and sale of electricity within the electricity tariff stipulated in the state regulations”.

Under the Law, the MOI will be responsible for administering electricity activities and use and the People's Committees will manage electricity activities and use within their jurisdiction. The MOI will issue licences for electricity wholesalers and retailers and entities involved in electricity generation, transmission, and distribution activities connected to the national electricity network. The provincial People's Committees will issue licences for organisations and entities operating electricity activities on a smaller scale within the provinces, in accordance with guidance from the MOI.

The Law also provides for the establishment of a new authority in the electricity sector, the Electricity Regulator, to assist the MOI in various tasks, including issuing, amending, and revoking electricity licences; preparing electricity retail tariffs; and settling complaints and disputes in the electricity market, etc. The Prime Minister will provide for the organisation, powers, and tasks of the Electricity Regulator in further regulations.

responsible for undertaking state management of consumer protection within their localities.

The Decree also provides for the legal framework for establishing and developing a consumer protection organisation in Vietnam, which must (i) be an organisation representing consumers; (ii) not be connected with the commercial expansion of any producer or trader; (iii) not advertise for any commercial purpose during its activities; (iv) not exploit any information or guidance to consumers

aimed at business purposes; (v) not be influenced by or be dependent on the receipt of aid from either domestic or foreign organisations and individuals during its activities. Consumer protection organisations may receive consumers' complaints and organise conciliation between consumers and producers and traders; and, where requested by consumers, guide and assist consumers or their representatives to bring complaints before the relevant State authorities for resolution.

In addition to the Ordinance on the Protection of Consumers' Interests, other prevailing legislations, which are also pertaining to the issue of consumer protection in Vietnam, include the Ordinance on Food Hygiene and Safety No 12/2003/PL-UBTVQH11, the Ordinance on Goods Quality No 18/1999/PL-UBTVQH10, the Ordinance on Measurement No 16/1999/PL-UBTVQH10, the Ordinance on Prices No 40/2002/PL-UBTVQH10 and Commercial Law 1997.

The Ordinance on Prices 2002, for example, deals with the issue of consumer interests by providing that "The State shall take necessary measures to stabilise prices and to protect the legitimate rights and interests of manufacturing or business organisations and individuals, and the *interests of the consumers* and the State" (Section 2 – Art. 2).

The Commercial Law 1997, on the other hand, allows traders (being individuals, legal persons [or entities], co-operatives and family households holding valid business registration certificates) to engage in lawful competition in conducting their businesses (Art. 8). However, it prohibits such acts as: acts harming Vietnam's national interests; speculation for the purpose of manipulating the market; dumping the prices of goods to prevent competition; defaming other traders; obstructing, enticing, bribing or threatening the employees and/or customers of other traders; infringing trademark rights and other industrial (intellectual) property rights of other traders; and other acts of unlawful competition. Besides, Article 9 of the Law provides that: (i) traders must provide true and accurate information about the goods and services they supply; (ii) traders must ensure that the goods they are selling are lawful; (iii) consumers may establish organisations to protect their legitimate legal rights and, if their rights are violated, may complain to an authorised State body or take legal action; (iv) traders are prohibited from increasing or reducing prices to cause damage to producers and consumers, deceiving or misleading customers, selling imitation goods, selling goods that do not meet the quality and specifications of registered goods by mixing them with goods that have been registered for their quality; using misleading advertisements; and conducting unlawful sales promotions.

## Prevalent Consumer Concerns

Under the centrally planned economic system, where the society's consumption patterns were decided by the State, and goods and services were distributed through a system of rations and coupons, there was no concept of 'the consumer', nor any activity to protect consumers. It was only after the launching of the *Doi Moi* process, when Vietnam's economy started feeling the forces of the market mechanism that the problem of consumers' interest emerged and the issue of consumer protection began to take shape. Since then,

the body of legal instruments for protecting consumers' rights have been gradually built up, becoming rather progressive as compared to other developing countries at the same level of development. In addition, a strong consumer movement is in the rising, while the media has also been very supportive – alert and ready to denounce any consumer abuse openly.

However, despite all these combined efforts, consumer abuses are still quite prevalent, especially together with the development of markets and the increased sophistication of business activities in the country. One of the fields where unfair trade practices are quite apparent is that of advertisement and promotion. Such practices as untruthful advertising, comparative advertisement for one product by showing that the product in point is superior than 'others of the same type and price', in order to mislead the consumers, untruthful promotions, etc., prop up almost on a day-to-day basis, going beyond the control of the relevant authorities (See Box 4.2). For instance, many consumers in Vietnam complained about their unsatisfactory experiences with a shampoo brand called CLEAR, which is certified by the ELIDA Institute, Paris (the existence and credibility of which nobody was sure about) to be able to eliminate dandruff within seven times of shampooing, according to the advertisement. There are also many large promotional programmes with awards for lucky winners amounting to billions of Vietnamese *dongs*, where there was no winner reported, or all big winners turned out not to be in conformity with the prescribed conditions<sup>14</sup>.

The basic right of the consumers to make informed choices is violated in many cases, when businesses meet to conspire to force their products or services on the consumers (See Box 4.5). A big case, which happened recently, was the foreclosing tactics used by giant brewery companies (Tiger, Heineken and Bivina – a product of the Vietnam Beer JV) to force customers away from a new brand, Laser. The case led to a lawsuit at the Ho Chi Minh City People's Court, which decided that a beer shop named 'Cay Dua' would not advertise, sell or allow Laser marketing staff at its site for a specific period, in accordance with an exclusive contract signed between the shop and the Vietnam Beer JV.<sup>15</sup> While the case was more about exclusive dealing, as an anti-competitive practice, it has another subtler implication on consumer welfare – the exclusive contract in point has significantly limited the right to choose between different products and services of the consumers.

The owner of the 'Cay Dua' beer shop made a minor point in this regard before the Court and explain why he wanted to terminate the contract: many customers would ask for another brand of beer, rather than only Tiger, Heineken and Bivina, whereas the exclusive

contract prevented him from providing the customer with diversified options. Sadly enough, this point was not considered seriously by the Court, despite the established presence of various legislations on consumer protection, and the 'Cay Dua' beer shop lost the case, since the Court ruled on the basis of the laws on economic contracts, not competition (which up till now has not been effective) or consumer protection. *Laser* was, thereafter, foreclosed from the market and the consumers were deprived of a new competitive product.

Equally alarming in this regard is the abuse of professional disposition to violate the right of the consumers to make an informed and voluntary choice. Tied-selling of uniforms at schools is so popular a practice that almost nobody would question its legitimacy. Doctors, a profession most credited with professional ethics, commit abuses on several occasions, and consequently consumers no longer have faith in them: hospitals become a nightmare for the people not only because they are associated with illnesses which might be deadly, but also because they have become exceedingly expensive – a constraint on the medium income consumers.

Doctors were, very often, found to direct the patients to purchase prescribed medicines from the hospital pharmacies, or some certain pharmacies working in tandem with the hospital, which sell medicines at a much higher price than usual. Or, the doctors might prescribe some expensive types of medicines, even though low-cost medicines would be equally effective, because the doctors have received handsome commissions from big pharmaceutical firms to recommend their products. There was even a reported case in a large state-owned hospital (in Bac Ninh province), where the Board instructed the doctors to carry out laboratory tests on every patient, no matter whether such tests were needed or not, in order to increase the turnover of the hospital<sup>16</sup>.

Counterfeit goods, fake goods or unsafe and below-standard products and services are overwhelming the market, at a great expense to consumers. Vietnamese enterprises very often complain that unfair competition (low-quality, cheap-priced products) from Chinese products has been driving them all out of business. The problem with consumer protection, however, lies in the fact that, while the consumers are perfectly satisfied with Chinese products, knowing the expected quality already, provided that the prices are relatively acceptable and that the products are presented to them as Chinese products. They would be outraged to find that many Vietnamese businesses (street hawkers, or small shops) are selling Chinese products at high prices, under the deception that the products are not made in China. It is all the more disturbing is when products made by reputed Vietnamese enterprises and sold at high prices are

found to be below the standards expected or claimed. There have been publicised cases of canned foods, produced by domestic companies like Halong, Sotico, Cholimex, etc., falling short of the weights printed on their labels, or milk cans, produced by Vietnam Dutch Lady Co. having insecticides' label.

It is felt that consumer protection legislations need to be revised to accommodate the latest changes in the markets and producers'/traders' behaviours. Besides, they need to be strengthened with more teeth to provide the necessary deterrent effects against potential abuses in the future. The consumers, besides, also need to be properly educated so that they can guard themselves against these abuses, so as to reduce the burdens on honest businesses and law enforcers, as well as to eliminate health risks and any unnecessary loss of property.

## Anti-competitive Practices

Anti-competitive practices comprise of a wide range of business practices in which a firm or group of firms may engage in order to restrict inter-firm competition to maintain or increase their relative market position and profits, without necessarily providing goods and services at a lower cost or of higher quality. These practices include price-fixing and other cartel arrangements, abuses of a dominant position or monopolisation, M&As that restrict competition and vertical agreements that foreclose markets to new competitors.

Anti-competitive practices are quite prevalent in Vietnam. Many of them have been reported by the local media, though no effort has been made to address them in a systematic manner or in a single study for common reference. The findings, however, have generated considerable attention and awareness among the public. Unfortunately, due to the absence of a competition law, until recently in the country, and the shortcomings in the conceptual understanding of the issues, these anti-competitive practices have been regulated under many different laws and regulations and not treated with the just and necessary level of scrutiny. Many cases have escaped legal punishment by the State and continue to harm the society as well as the overall economy.

## Horizontal Arrangements

Horizontal arrangements in restraint of competition are concerted actions among entities in actual or potential competition with one another in the relevant market. Horizontal competition restraints have traditionally been considered the most serious of all anti-competitive practices and constitute that category of violations most susceptible to criminal penalties in many jurisdictions in the world. The reason for such harsh treatment is plain: competition law means to

promote a competitive marketplace in which rival firms compete with respect to prices, products and services. Any arrangement, which runs counter to this axiomatic conduct among competitive entities, is accordingly suspect.

### Price-fixing

“Price fixing is the term generically applied to a wide variety of concerted actions taken by competitors having a direct effect on prices. The simplest form is an agreement on the price or prices to be charged from some or all customers.

**Example 1:** The case of taxi companies in Ho Chi Minh City can be taken as a typical example of agreements to fix uniform tariffs, hurting the consumers.

On March 25, 2000, Sao Viet Co-operative gave a rude shock to the 14-member Taxi Association of Ho Chi Minh City by announcing a new level of tariff – VND10000 for the first two kilometres and VND5000 for each subsequent kilometre, while other Taxi Association member companies charged VND12000 for the first two kilometres. At a later internal meeting, another shocking decision was made by Sao Viet when this company voted for a new tariff of VND8000 for the first two kilometres and VND4500 for each subsequent kilometre. The success of Sao Viet and the confidence of the people in Sao Viet were proved by the fact that their number of cars increased from less than 100 at the initial stage to 216. .

Surprisingly, while trying to reduce the tariff and obviously benefiting the consumers, Sao Viet faced an unexpectedly severe reaction from the Taxi Association of Ho Chi Minh City. This is because at the time of the Association’s establishment, before Sao Viet’s price-reducing move, the 14-member companies in the Taxi Association had agreed to concertedly fix their tariff at VND12000 for the first two kilometres and VND5000 for each subsequent kilometre. Thus, with the entry of Sao Viet, the monopoly of the Taxi Association was threatened, hence the strong reaction from the Taxi Association.

**Example 2:** Since 1990, with structural reforms undertaken in the financial sector of Vietnam, joint stock commercial banks, joint venture banks, and branches of foreign banks have been allowed to do business in Vietnam. The stated-owned commercial banks, which altogether possess a market share of about 75 percent, however, have tried to maintain their market power through various collusive agreements among themselves. In particular, they made

agreements on setting the lending and borrowing interest rates in the financial markets.

Price-fixing behaviours will be regulated under Article 13, Clause 2 of the Vietnamese Competition Law 2004, when the same comes into effect in July 2005.

### Market Allocating and Customer Sharing Arrangements

“Agreements among competitors dividing markets by territory or by customers are patently anti-competitive and, hence, illegal *per se*. If anything, such arrangements are even more restrictive than the most formal price-fixing agreements, since they leave no room for competition of any kind.

Thus, competing firms may not divide among themselves the geographical areas in which they sell, nor may they distribute customers or allocate the available market. All such understandings, whether direct or indirect, are unlawful”.

This practice is covered under Article 8, Clause 2 of the Vietnamese Competition Law 2004.

### Refusal to Deal

“Here firms that are at the same level of the production-supply chain enter into agreement whereby they agree among themselves not to sell or buy from certain customers. In other words, they agree to refuse to deal with any third party, normally a competitor of one of them. Though this may be a fair marketing strategy for optimum profit, sometimes, such practices may reduce competition in the market and consequently could be restrictive in nature”.

This practice is covered under Article 8, Clause 6 of the Vietnamese Competition Law 2004.

**Example 3:** For a long time, only Vinaphone and Mobiphone were the two mobile service providers in Vietnam. Both these two mobile service providers use the Global System for Mobile Communication (GSM) technology and share the mobile service market in Vietnam. Competition began with the participation of three other mobile service providers: SPT, Viettel, and Hanoi Telecom. SPT launched its S-phone network, using the Code Division Multiple Access (CDMA) technology. The connection between GSM and CDMA networks is used in many countries. However, for a long time in Vietnam, the S-phone users could not send messages to the Vinaphone and Mobiphone users and *vice versa*. Vinaphone and Mobiphone quoted many technical pretexts for the problem and the delay in providing interconnection facilities to the new market players; while the practice was, indeed, a form of refusal to deal.

Source: Trinh Thi Thanh Thuy et al, (2004), *Scientific Background for Determining the Degree of Competitive Restrictive Agreements and Exemption Criteria in the Competition Law*, Conference Report, MOT, Research Project 2003-78-009.

### Agreement to Output Restriction

“Under this agreement, firms producing/supplying the same products/services agree to limit their supplies to a lower proportion of their previous sales. The ultimate objective of limiting supplies is to create scarcity in the market and, subsequently, raise the prices of products/services”.

This behaviour may fall under the consideration of Article 8, Clause 3 of the Vietnamese Competition Law 2004.

**Example 4:** In the beginning of February 2003, the Vietnam Floating Glass Company (VFG) decided to break over 1 million m<sup>2</sup> of finished glass, explaining, “the supply is exceeding the demand”.

VFG is a joint venture with a total capital investment of US\$126mn between the Japanese Bridge Building Company (contributing 70 percent of the total investment) and the Vietnamese Glassware and Construction Ceramic Corporation (contributing 30 percent). In mid-1999, VFG came into operation with the production capacity of 28 million m<sup>2</sup> a year. Till 2002, VFG had been a dominant player in the domestic relevant markets with a market share of 60 percent.

At the time of the incidence mentioned above, as estimated by the Vietnamese Glassware and Construction Ceramic Corporation, based on the current growth rate of construction, Vietnam still runs short of construction glass. In other words, the supply of construction glass still ran short of the demand.

**Example 5:** In 2003, selling sugar in Vietnam became difficult due to the increased competition and abundance of choice available in the market. The competition turned stiffer since many sugar mills decided to sell out all their stock at reduced prices to recover the investment capital. In the face of this situation, eight sugar enterprises in the Southern part of the country, in a meeting summoned by the General Director of Bien Hoa Sugar Joint Stock Company, decided to stop selling sugar from June 1, 2003 onwards. This agreement caused the increase in price of sugar in early June 2003.

### Bid-rigging

“Bid rigging is an agreement between parties in which a competitor will win a tender, often from government agencies. This agreement may be accomplished by one or more bidders agreeing to refrain from submitting bids, or by the bidders agreeing on a lower bidder and then bidding above that firm’s intended (inflated) price. The tendering process is designed to promote fairness and ensure that the lowest possible prices are received. Bid-rigging subverts this competitive process”.

This practice is regulated under Article 8, Clause 8 of the Vietnamese Competition Law 2004.

**Example 6:** Bid-rigging in Vietnam was discovered in many projects funded by the state budget. For instance, in the Van Lam-Son Hai II Road Construction project, there were four companies participating in the tendering process. Company 98 was selected as the winner. The interesting aspect of the story, however, was that all the four participants in the tendering process were the same, in the sense that three other companies were used by Company 98 to participate in ‘tendering’ just to create a ‘competitive’ image for the whole episode. These three ‘ghost’ companies offered the prices higher than the price of the tendering package and ‘accepted’ being losers so that Company 98 could be awarded as a winner. Having arranged ‘in advance’, Company 98 was awarded as winner at the price of VND1.5609bn, as compared to the price of VND1560900141 of the tendering package, which was less than by only 141 VND.

Source: “*Tendering in Construction: Real Competition or not?*” - Ninh Thuan Newspaper, 17/12/2002.

Under the current regulations<sup>17</sup>, in Vietnam, contractors are selected in one of the seven following methods: (1) open tendering; (2) limited tendering; (3) direct appointment; (4) competitive offering; (5) direct procurement; (6) self-implementing; and (7) special procurement. Only the first three are, to some extent, of competitive significance. Indeed, only the method of open tendering can be considered as fair and transparent competition. The last four tendering methods can be referred to as the direct appointment, because the winning contractors are designated before the bids are considered.

### Vertical Arrangements

Vertical arrangements involve businesses at different levels of the supply/distribution chain in one industry. Simply put, in a vertical arrangement, for example bilateral, one party is the supplier of inputs to the other party’s business activity. Vertical

#### Box 4.4: Promotional Cell Phones or Robbing the Consumer

Anh Tu Co. Ltd is a Vietnamese company specialising in hardware and electronics. Anh Tu started its 'special' promotional programme since January 20, 2005. According to the promotional programme, any customer who made a new purchase at any Anh Tu distribution outlet would be given a coupon which rewarded him with a CDMA Motorola C131 mobile phone, provided that the customer agreed to subscribe for a Free 1 post-paid service package offered by S-

Fone, with a subscription charge of VND200, 000 per package.

A total of 3,200 customers were cheated by this promotional programme (which made the total amount of money Anh Tu appropriated amount to VND640mn), not knowing that from January 11-30, S-Fone – the CDMA network service provider – was giving one such mobile phone to any new user of the Free 1 package free of the VND200, 000 subscription charge.

arrangements, not being among direct competitors, are, generally speaking, treated less severely than horizontal restraints, although, to be sure, certain vertical restraints have been uniformly condemned.

#### Tied-Selling

“Tied-selling means forcing customers to buy other products along with the desired product. Here the supplier sells a product (tying), which is dependent on the purchase of some other, usually a slow-selling one (tied). This tie-in arrangement is such that even if the customer does not want to buy the tied product, he has to buy it in order to get the desired product.

However, such behaviour should not be considered abusive if the firm does not have market power in the tying goods”.

**Example 7:** In 2002, when the demand of the motorcycle labelled “Wave @” was high, in Vietnam, tied-selling occurred in many shops in such a way that the motorcycle was sold tied to a helmet. In many cases, especially under the centrally planned economic mechanism, when the supply usually fell short of the demand, the tied-selling practice was very popular.

Sources: <http://vnexpress.net/Vietnam/Kinh-doanh/2002/02/3B9B9479/>

**Example 8:** In mid-March 2004, the Informatics and Telecom Company in Ho Chi Minh City (NetSoft) forced all of its agents in HCM City to sign contracts under conditions that each Internet agent must register for selling pre-paid Internet cards, in addition to other services that they wish to register for and the revenue for selling such cards must reach at least VND400000 per month.

Source: Trinh Thi Thanh Thuy *et al.*, (2004), *Scientific Background for Determining the Degree of Competitive Restrictive Agreements and Exemption Criteria in the Competition Law*, Conference Report, MOT, Research Project 2003-78-009.

‘Tied-selling’ behaviour is currently not regulated by the Vietnamese Competition Law 2004.

#### Exclusive Dealing

“Exclusive dealing is the practice whereby a manufacturer or supplier of goods restrains his distributors from dealing in competing products and requires them to deal exclusively in the products manufactured and supplied by him. This dealing arrangement can act as a barrier for new entrants and, hence, affects competition adversely”.

This practice is mentioned in Article 13, Clause 5 of the Vietnamese Competition Law 2004.

**Example 9:** In recent years, before each academic year, by the agreements between Bao Viet and with Provincial Departments of Education, or even with the Ministry of Training and Education, every primary and secondary school has had to buy life insurance from Bao Viet only. Particularly, the Kien Giang’s Life Insurance Company sent an official letter to the Kien Giang’s Party Committee with the proposal that all officials, including the retired ones, would not deal with foreign insurance companies. Subsequently, many other provinces also followed this behaviour.

#### Resale Price Maintenance

“Here the producer dictates the resale price of goods that would be charged by the retailers. Sometimes, price floors and ceilings are imposed. When resale price maintenance is imposed, the price of goods becomes uniform at all points of resale, irrespective of the difference in location, character and quality of the services provided. This practice, however, need not always be anti-competitive”.

While price floors and ceilings are still widely used in Vietnam, the above-mentioned behaviour is still not regulated by any law, including the Competition Law 2004.

#### Box 4.5: Apartment Buildings – A Monopolistic Telecom Market

In Hanoi, at present, there are around 45 apartment building projects being undertaken, out of which 20 have already been completed and put into use. It was, however, reported that in all these apartment buildings, consumers do not have a choice as regards cable television, Internet or telephone connection. They are forced to use the services provided by only one specific service provider.

Ms. Thu Hoa, who stays at one of the apartment building – KT4-Dinh Cong – said her family was forced to use the fixed line service provided by the Hanoi Post, and the Internet service provided by the Vietnam Data-communication Company (VDC), even though the service charges are higher than those offered by other companies. Besides, while cable television is popular all over the city of Hanoi, people who stay in apartment buildings in Dinh Cong cannot get the connection by any means.

In the Trung Hoa-Nhan Chinh area, Viettel is the only service provider available to 1,768 apartments. Though the consumers in these apartments were provided with all basic telecom services, they were unable to avail of any new service available in the market, until Viettel was able to provide it. Thanh Kim, one of the residents in the area, informed that, though her family frequently used the Internet to

contact family members abroad, they could not get ASDL connection, because this service was not available with Viettel at the time. Therefore, they had to use the dial-up connection, which was expensive, and very slow.

Any complaint from the residents in these apartment buildings elicits the same response from the Management Board of the buildings: any service provider who wants to do business in these buildings needs to enter into contracts with the investors, from the start. After the buildings are put into use, no service provider can participate in the market any longer.

A Board member of the Hanoi Post said, “We normally start talking to the investors even when the project is still being drafted. Since providing services in these apartment buildings is a very profitable business, all telecom providers would want to do business here. To be selected by the investors, the telecom service providers would have to pay some palm-money”. He also revealed that each telecom provider would have long-term business relations with one or a number of investing companies, so that they can get hold of service provision contracts whenever there is a new apartment building project. For example, Hanoi Post has a very close business relationship with the Housing and Urban Development Corporation (HUD).

### Abuse of Dominance, and Other Structural Offences and Competition-restricting M&As

#### Price Discrimination

“When a manufacture or a supplier of goods charge, for the same or similar product, a higher price from one dealer and a lower price from another, the practice is referred to as price discrimination. The discrimination in price can be made either through fixing or charging different prices from different buyers or classes of buyers or by granting discount, commission, allowance or rebate at different rates to different buyers or class of buyers”. Price discrimination can only be effectively exerted by businesses only when they are in dominant positions or have considerable market power in the relevant product or geographical markets. Thus, it is considered a type of abuse of dominance.

The dual price system and the discrimination in land-use rights and taxation and in the access to credit between domestic and foreign enterprises can be taken as an example of price discrimination. However, this behaviour is still not regulated in the Competition Law 2004 of Vietnam.

#### Predatory Pricing

“Predatory pricing is pricing of the product below the cost of production, with the intention to drive out competitors from the market. Predatory pricing is something difficult to prove against any firm”.

This behaviour may fall under the consideration of Article 13, Clause 1 of the Vietnamese Competition Law 2004.

**Example 10:** The Beverage Coca-Cola Company and the International Beverage Company (IBC), with Pepsi as a major product, together possess 70-80 percent of the total market share of beverage products. Using their dominant position as leverage, in 1998, these companies reduced the prices of their products substantially (from VND26000 to VND17000 per box) to wipe out all other competing soft drinks in the market. When all other beverage producers were driven out of the market, these companies again increased the prices of their products. For instance, the price of Coca-Cola was increased to VND46000 per box.

Source: Trinh Thi Thanh Thuy et al, (2004), *Scientific Background for Determining the Degree of Competitive Restrictive Agreements and Exemption Criteria in the Competition Law*, Conference Report, MOT, Research Project 2003-78-009.

## Anti-competitive M&As

The problems that have been dealt with so far concern what may be deemed behavioural offences – certain types of anti-competitive conduct, which competition laws forbid. Competition, however, is also concerned with market structure and it prohibits structural phenomena likely to lessen competition substantially or is likely to amount to monopolisation. Competition law and policy are premised on the belief that a competitive economy can best be achieved by maintaining markets with a significant number of sellers. Hence, to a considerable extent, the structural aspect of the law focuses on avoiding or remedying the concentration of market power in a few firms with large market shares. Several economic concentration activities of firms such as mergers, consolidation, acquisitions of enterprises, joint ventures between enterprises, and so on, fall under this category of competition offences. These M&As of firms will require the scrutiny of competition authorities, if they result in high concentration in the relevant markets and are likely to restrict competition in the relevant markets.

The concept of ‘relevant markets’ refers to the line of commerce in which competition has been restrained and to the geographic area involved, defined to include all reasonably substitutable products or services and all nearby competitors to which consumers could turn to in the near future, if the restraint or abuse raised prices by a not insignificant amount<sup>18</sup>. In simple terms, relevant market identifies the particular product/service or class of products produced or services rendered by an enterprise(s) in a given geographic area. Identification also includes identification of enterprises that compete to supply those products or services.

According to the Vietnam Competition Law 2004, economic concentration activities shall be prohibited if the combined market shares<sup>19</sup> of enterprises participating in economic concentration account for over 50 percent of the relevant market,<sup>20</sup> except for the following cases:<sup>21</sup>

- (i) One or more of the participants in economic concentration is/are in danger of dissolution or bankruptcy;<sup>22</sup>
- (ii) The economic concentration case has an effect of expanding export or contributing to socio-economic development, technical and technological advance; and
- (iii) Enterprises, after undertaking economic concentration, are still of small or medium size as prescribed by Vietnam law.<sup>23</sup>

## Public Perspectives on Market Competition, Policy and Law

The effectiveness of any law in a country depends on the extent to which the law has actually evolved in

tandem with socio-economic and historical developments, in that country. It is also necessary that there be some amount of acceptability and ownership of the law among the stakeholders. This is possible only if their expectations are taken into consideration while the law is being adopted, and during the implementation process. These were the reasons why it was decided that a questionnaire survey should be undertaken within the framework of this project for each project country, in order to take stock of the existing regulatory framework therein, capture the expectations of the national stakeholders, as well as collect more first-hand information about anti-competitive practices in the project countries.

The survey targets three types of stakeholders: individual consumers, enterprises, and officials.

- The individual consumers here are defined as persons who answer the interview questions from the consumer perspectives, rather than from their employment positions. In other words, the individual consumers are expected to respond to the questions on the basis of their understanding of the elements affecting their own buying decisions regarding consumer goods.
- Enterprises are defined as any institution engaged in business and their answers to the questions is based on the institution or business activities’ perspectives.
- Officials are people who are working in the state sector and their daily activities are, directly or indirectly, related to competition issues.

Because of limited manpower and time constraints, the survey was conducted only in the Hanoi area. Therefore, the extrapolation of the survey results should be cautious. The enterprises were selected randomly from the list of enterprises in the Business Directory 2003 published by the Vietnam Chamber Commercial and Industry. The officials were selected from the database of the Central Institute for Economic Management, on the basis of the relevance of the areas of their work to competition issues. The individual consumers were selected ‘straight’ from among the people on the street. The number of enterprises and individual consumers engaged in the surveys were 50 each. For the officials, opinions from 20 experts were collected.

The results of the interviews suggest that, many concepts pertaining to the issue of competition policy and law are new to a transition economy like Vietnam, where, for a very long time, ‘competition’ was suppressed as a ‘capitalistic element’. This is despite the fact that the questionnaires were prepared in Vietnamese and direct interviews were carried out in Vietnamese. Many respondents, for example, were confusing the concept of ‘predatory pricing’ with the concept of ‘dumping’, or were of the view that price-fixing or market sharing is not anti-competitive

practice, since they have been legally used in Vietnam for long, until recently.

In general, a majority of the respondents showed concerns over the existence and, in quite a few cases, the prevalence of unfair competition practices in many industrial and business sectors. Many pointed out that a level playing field for all is only on paper. The respondents also confirmed the prevalence of anti-competitive practices in Vietnam. Many respondents, especially the enterprises and consumers, mentioned the existence of anti-competitive practices. To some extent, they felt the harmful effects of these anti-competitive practices on their own interests, but they didn't know how to assess or measure the harmful effects of these behaviours. In some cases, many customers could name the anti-competitive practices, but they could not describe them in detail<sup>24</sup>. A majority of the respondents, especially the officials and enterprises, said that competition policy and law alone could not solve the unfair aspects in doing business in Vietnam.

Almost all enterprises (92 percent) mentioned that the prices of utilities, such as electricity, telecommunication services and transportation, strongly affected their production costs, while only a small proportion thought that these input prices had moderate (6 percent) and weak (2 percent) impacts on their costs. This implies that reduction in the prices of utilities will significantly decrease the enterprises' production costs.

Almost 82 percent of enterprises said they had to accept higher prices of raw materials and equipments in recent years. A high proportion of raw materials and equipments are imported ones and, therefore, their prices are strongly affected by the world prices.

Pricing decisions made by enterprises are based on production costs (98 percent of surveyed enterprises), market competition (90 percent) and, to a much lesser extent, on regulation (3 percent). These results suggest that almost all the enterprises surveyed have the autonomy to make pricing decisions. The problem of aggressive competition through below-cost prices ('predatory pricing') was not faced by many enterprises (10 percent), but had a strong impact on the affected companies' business activities, in terms of reduced market shares and, consequently, low profits.

Enterprises also claimed that their business difficulties were caused by the prices for several reasons: existence of monopoly in some public utilities (88 percent of enterprises); lack of competition regulation and poor implementation of current competition legislation (64 percent); and strong price fluctuations in the world markets (48 percent).

Meanwhile, a large portion of the surveyed officials (84 percent) was of the view that, as a result of price liberalisation since 1989, the prices of most goods and services are now determined by the markets, rather than administrative decisions. As price competition became a common incidence in Vietnam, the prices of goods and services are more closely related to the production costs. All the surveyed officials share the view that some goods and services are overpriced, especially in comparison with regional countries.

Almost 90 percent of the officials also said that the quality of public utilities (electricity, telecom services, transportation, etc.) have been improved in recent years, because of huge investment and the introduction of competition into these network industries. The officials also referred to the fact that the prices of electricity, water, postal, railways, and airways had been increased, while the telecom tariffs gradually declined. They gave various reasons for the unreasonably high prices, which can be divided into the following groups:

- High tariffs imposed on the imported goods;
- Price cross-subsidy policies – High prices are imposed on products in high demand, in order to subsidise the below-cost prices charged on the products sold in some special locations or groups of people (e.g., high mobile and international call tariffs for subsidising the local fixed lines to achieve the goal of universal service);
- Monopoly – Monopoly occurs not only at the production stage but also in the distribution system. The case of medicines is an obvious example of how monopolistic power in the distribution channels for medicines adversely affects the prices in the markets.<sup>25</sup> Similar is the situation in the cement, steel, etc., sectors;
- Speculation; and
- Temporary shortage of supply due to various reasons.

In response to the enquiry made as regards the government's pricing policy, the officials interviewed mentioned some basic elements of the pricing policy. The three price determination principles mentioned by the officials are: (i) market orientation (90 percent); (ii) cost-based (95 percent), and (iii) non-discrimination among different economic ownership sectors (95 percent). A majority of the officials (85 percent) argued that the price subsidisation policy should be gradually eliminated and a lower percentage (70 percent) thought that the cross-subsidy policy should be only applied to very few industries (telecom) and for a limited time period. A high percentage of the responding officials (70 percent) thought that the government should stabilise the prices of very sensitive products that are major inputs for many industries and only intervene when there is large fluctuations in these prices. They were also

supportive of the ideas that the government should reduce and eliminate subsidies through prices; and provide enterprises with more autonomy in determining the prices of some products, which are currently under price control.

The consumers' perspectives on the prices are more diversified. In comparison with the general income levels and production costs, 22 percent of the individuals interviewed perceived the prices of many goods and services as too high, while 84 percent of them thought that only some types of goods and services were overpriced. Compared with imported goods, 92 percent of consumers thought that domestic goods and services are priced better (lower) than imported goods. A large proportion of the consumers (76 percent) thought that most of the goods and services were priced reasonably.

Furthermore, 78 percent of the consumers surveyed saw no major price differences between different trademarks for similar goods. They also indicated the following as the main reasons behind the very high prices of some goods and services:

- (1) High tariff rates imposed on imported goods (electronics, automobiles, cosmetics, etc.);
- (2) Monopoly (telecom services, electricity, etc.)
- (3) Flawed distribution system, resulting in thriving monopolistic and collusive behaviours (medicine, cement, steel, etc.);
- (4) Unregulated price-quoting system;
- (5) The culture of bargaining;
- (6) Trading facilities; and
- (7) Competition from low-priced counterfeit goods.

Regarding the prevalence of some specific anti-competitive practices in Vietnam, most of the enterprises and consumers surveyed thought, for example, that tied-selling is not a common practice. Only few of them face tied sales in some special situations such as in school books, school uniforms or beer sold in restaurants. In addition, no surveyed enterprises reported that they faced any exclusive dealing practice in their daily business. However, in fact, exclusive dealing practices are much involved in corruption cases. For some very profitable contracts, especially the ones funded by the State, it is not easy for all enterprises to participate because of lack of information or other 'artificial' barriers.

In Vietnam, there are certain regulations regarding commercial advertisements. However, the regulations on the contents of advertisements mainly deal with preventing advertising contents that are harmful or contradictory to the national cultural values. The unfair competition contents of advertisements have not been given due justice. As a result, a high percentage of the surveyed enterprises (90 percent) reported that they face unfair advertising practices.

The most common unfair practice is that many advertisements still contain direct or indirect comparative information about rivals (comparative advertisement).

Many responding consumers (54 percent) said that advertisements provided them with information for making purchase decisions. However, they did not believe totally in what was advertised, as most of the impressive advertising is done by well-known enterprises or brands. However, there were no serious problems caused by misleading advertisements (though this practice was acknowledged to have happened). The problems mainly arose from sales promotional schemes of bonus. The main reasons behind these problems were the unclear or misleading statements of the criteria and the procedures for getting bonus.

Bidding collusion is a sensitive question in point. Therefore, the response to this question was low. However, according to unofficial sources, many collusive bidding practices have been undertaken during the bidding process for several State-funded projects. The bidders make arrangements for the one among them to be a winner. Bidding collusion also occurred because of the involvement of some enterprises with the concerned ministries in the bidding process or the bidders were strongly influenced by several persons.

A high proportion of the surveyed enterprises (70 percent) are the members of professional or industrial associations. The main functions of these associations are to provide members with information, mainly the economic policies and a forum to express their views on the government policies. None of the surveyed enterprises said that their associations made any concerted arrangements on prices or markets/customers. However, according to other information sources, some associations did make decisions on prices (for example the taxi association in the past). Some enterprises reported that their associations provided information on prices and market development. A moderate percentage of the enterprises (34 percent) felt they have been treated with discrimination in their associations, especially with those regarding access to sensitive information.

Only some consumers (20 percent) knew about the existence and operations of any consumer association. The consumers relied on their own measures, rather than on consumer associations, to solve problems in buying products or seek redressal. The regulations protecting the consumers' interests were thought to be rather inadequate and there was a lack of effective mechanism to solve the consumers' queries.

One question designed particularly for the enterprise interviewees was the difficulties caused by unfair

competition practices that enterprises faced, since the inception of their business. The enterprises were asked whether they faced any of the four following difficulties:

- (i) Not getting access to customers and the distribution system:  
Most of the enterprises (96 percent) have established their own distribution system. One of the major problems was the enterprises' capacity to control their distribution channel at the lower level. Consequently, they could not control and ensure that the sales representatives sold authentic products with the right prices;
- (ii) Deals being refused without appropriate reasons:  
Explicitly, few enterprises (10 percent) refused to engage in certain business. However, implicitly, this situation happened quite a lot, especially in the very profitable business areas. To remove this problem, many enterprises are required to publicise information and state clear criteria for doing business;
- (iii) Competition from the low-priced goods:  
Competing with imported goods, especially the very low-priced goods from China, was problematic for 20 percent of the surveyed enterprises. However, other sources of information suggested that, presently, many domestic goods could compete successfully with Chinese products in Vietnam. The prices of domestic products, in many cases, are higher than the Chinese ones, but the domestic ones are still favoured because of their higher quality. Competition against low-priced products remained a serious problem in the low-income segment of the society;
- (iv) Pressure from big or dominant companies:  
Only 20 percent of the surveyed non-state enterprises said that they are adversely affected by the operations of large state-owned enterprises and foreign-invested enterprises in their business area. In fact, private enterprises felt it was very hard to compete with the SOEs, which were usually in a more advantageous position in the same market;

Regarding the Competition Law 2004 of Vietnam, all surveyed officials, almost all of the surveyed enterprises (98 percent), and a moderate proportion of the consumers (62 percent) knew about its existence. Furthermore, almost all the officials, 90 percent of the enterprises and 60 percent of the consumers interviewed appreciated the new Competition Law as a very important legislation for economic development and consumer welfare. The remaining ones regarded the Law as important.

The importance of the new Competition Law was valued by all the surveyed enterprises and officials from different aspects. Firstly, the Competition Law was said to be necessary because:

- (i) It provides the most basic and important principles to regulate the market economy.
- (ii) It meets the need of controlling monopoly, especially in the context of international economic integration.
- (iii) It meets the need of creating and maintaining an equal business environment among all types of enterprises.
- (iv) It prevents anti-competitive practices, especially the "big fishes eat small fishes" situation.

Secondly, the main contents of the Law were said to show its own importance because:

- (i) It ensures and encourages competition among enterprises within a common regulatory framework.
- (ii) It controls the process of creating market dominant and monopolistic positions.
- (iii) It prevents practices that restrict competition as well as anti-competitive practices.

However, in general, many interviewees do not know the provisions of the Competition Law in detail, as reflected in the very response rate to each question concerning the specific contents of the Competition Law. Therefore, more attention should be paid to the content of answers than its statistical importance.

Regarding the desired impacts of the new Competition Law, consumers hoped that the Law would solve the problems of unfair competition, monopoly and, especially, provide effective mechanism to protect the interests of individual consumers and prevent counterfeit products.

Generally, almost all the enterprises (96 percent) expressed high expectations from the Competition Law. They expected that the Law would promote fair competition among the enterprises from different economic ownership sectors within the same industries. These enterprises also expressed support to the fact that the Law provided regulations prohibiting the abuses of dominant and monopolistic positions. According to their views, such regulation is the most important one and has been awaited for a long time.

The officials with more understanding of the Law have given more expected results of the implementation of the Competition Law, such as the following :

- (i) Providing measures against unfair competition conducts;
- (ii) Providing measures to control monopolies;
- (iii) Creating an equal playing field for all various economic ownership sectors; and
- (iv) Protecting the interests of consumers.

According to high-ranking officials, who are directly in charge of the Competition Law, the Competition Law would create new challenges for the enterprises because:

- (i) It exerts pressures on enterprises to have more healthy and strategic competitive practices and there is no room for anti-competitive behaviour.
- (ii) The large-size enterprises will be more careful in making business decisions, as their decisions would significantly impact the market situation and are strictly controlled by the authorities.
- (iii) The enterprises will be challenged by the severe penalties stated in the Law, which have the first reference to the competition matters.
- (iv) The state-owned enterprises in the state monopoly sectors should also be careful, as the Law will be applied, to some extent, to these sectors.

The interviewees were also asked to make some recommendations for the implementation of the Competition Law. These recommendations are mainly from the enterprises and officials and emphasise the Competition Authority and the unfair competition practices mentioned in the Competition Law.

Regarding the Competition Authority, the opinions focused on two aspects: the administrative level of authority and the functions. The basic arguments for considering the administrative level of the Competition Authority are mainly its independence and feasibility (in terms of current administrative reforms, the operation cost and the real situation in Vietnam). Viewpoints on this issue can be divided into three groups:

- (i) The Competition Authority is set up at the ministerial level and is under the government (mainly for reasons of independence and objectivity of decisions).
- (ii) The Competition Authority is set up as an inter-ministerial committee with representatives from relevant ministries appointed by the Prime Minister.
- (iii) The Competition Authority is set up as a part of the Ministry of Trade, with special regulations to ensure its independence and objectivity (to reduce operational cost and to increase the feasibility).

Despite this difference in viewpoints, there was a common understanding that the establishment of the Competition Authority at the ministerial level would ensure its independence and should be followed in the long run.

Two major functions were raised that should be taken by the Competition Authority: investigative and adjudicative. The interviewees were of the opinions that (i) the Competition Authority should take both investigative and adjudicative functions or (ii) the Competition Authority should take only the investigative function and leave the adjudicative

function to the courts. Additionally, the interviewees thought that the Competition Authority should play a significant role in protecting consumers. Therefore, within its organisational structure, there should be units responsible for collecting the opinions of and information from individual consumers and investigating consumer complaints.

Finally, according to the respondents, the following policies are, normally, claimed to be restricting competition in the markets:

- (i) Industrial policies protecting domestic industries;
- (ii) High tariff rates for some imported products;
- (iii) Licensing policies without sound reasons; and
- (iv) Unclear conditions for entering some markets.

## The Competition Law of Vietnam

Passed in December 2004 by the National Assembly of Vietnam, the Competition Law of Vietnam is a result of a four-year drafting process, with reference to the statutes of nine nation-states and territories; and the model laws promoted by international institutions like UNCTAD and the World Bank; as well as enforcement practices and experiences of other countries. It has been notified on July 1, 2005.

The Law applies to all business enterprises and professional and trade associations in Vietnam; overseas enterprises and associations registered in Vietnam; public utilities and state monopoly enterprises; and State administrative bodies. It has supremacy over all other enacted laws of Vietnam regarding restrictive business practice and unfair trade practices.

The establishment of two State authorities is provided for the law's implementation – the Competition Administration Department (with investigative powers), within the Ministry of Trade of Vietnam, and the Competition Council (with adjudicative powers). The Law prohibits five broad types of anti-competitive practices: (1) agreements that substantially restrict competition; (2) abuse of dominant or monopoly position; (3) 'concentrations of economic power' that substantially restrict competition; (4) acts of unhealthy competition; and (5) anti-competitive behaviour/decisions by officials or State administrative agencies, taking advantage of their authority.

Anti-competitive agreements include price fixing; market sharing; output restrictions; withholding of investment or technical development; imposition of coercive conditions on other enterprises for entering into contracts; restrictions on market entry by other enterprises; agreements to exclude/foreclose non-members from the market; and collusion to award a tender to a specific party. Except for the last three, which are considered to be *per se* violations, other agreements may be deemed as anti-competitive, and

are thereby prohibited if the parties to the agreements hold a combined market share of at least 30 percent of the relevant market.

The competition authorities will have the discretionary power to grant exemptions where they consider that an anti-competitive agreement's harm to the economy and competition is outweighed by one or more of the following considerations: (1) corporate restructuring; (2) promotion of technical progress and improved quality of goods and services; (3) promotion of uniform product variety or quality standards; (4) unification of conditions of trade, delivery or payment without affecting pricing; (5) increases in the competitiveness of SMEs; and (6) increases in the competitiveness of Vietnamese firms in international markets. Exemptions may be granted only for a definite duration.

A dominant market position would apply to firms holding at least a 30 percent market share, or firms that are 'capable of substantially restricting competition'. The Law also provides for a collective market dominant position of firms having a total market share of 50 percent (for two business entities); 65 percent (for three); and 75 percent (for four) of the relevant market. Dominant firms are prohibited from selling goods below costs to restrict a competitor; fixing an unreasonable selling or purchase price or restricting production, distribution, markets or technical development in ways that harm consumers; applying dissimilar commercial conditions to different firms for the same transaction; imposing conditions on other firms in sale-purchase contracts or imposing conditions unrelated to the transaction; preventing market entry by new competitors; and engaging in 'other practices' in restraint of competition as stipulated by law.

A monopoly market position would be deemed to apply to a firm if it has no competitors for goods it trades or for services it provides. Monopoly firms are prevented from undertaking any of the activities listed in the previous paragraph pertaining to dominant firms, as well as the following four practices: imposing disadvantageous conditions on consumers; unilaterally rescinding or replacing a contract with legitimate reasons; refusing to transact with or discriminating against a customer without legitimate reason; and any other prohibited practice stipulated by law.

No exemptions are available for competition abuses by either dominant-market or monopoly firms.

Economic concentration activities are defined as any conduct by a firm that aims to govern the activities of other enterprises, including, but not limited to, mergers, acquisitions and consolidations that have this aim.

All concentration cases in which the combined market share of the relevant firms would be 50 percent or more are prohibited except where, (1) the result is still a small or medium-sized enterprise (a concept not defined in the law) or (2) the Prime Minister grants an exemption.

A 30-day notification to the competition authorities is mandatory where the participating parties would have a combined market share of 30-50 percent. Divestiture measures are provided, but only as an *ex post* remedy to unlawful concentration cases.

As regard acts of unhealthy competition, the Law prohibits: falsification of commercial instructions; infringement of business secrets; acts of bribery, inducement or coercion; defamation of other enterprises; disrupting the lawful business practices of other firms; advertisements and promotions aimed at unhealthy competition; discrimination within or by an industry association; and illegal multi-level (pyramid) selling of goods.

The Law also stipulates detailed rules and procedures governing complaints, investigations, interim orders by the competition authorities, consideration of alleged abuses, and penalties thereof. Either an affected party or the Competition Administration Department can initiate complaints, and where the Department determines that it has jurisdiction over an external complaint (within seven days from receipt of complaint), it must begin an investigation.

An *ad hoc* five-member Competition Council is appointed for each case by the head of the competition authority, and this *ad hoc* Council rules on the evidence produced by the investigation and submitted by the affected parties, as well as any expert opinions. In proven cases of breach of the law, the competition authority can impose fines of up to 10 percent of turnover; issue warnings; revoke legal permits or certificates; confiscate physical proof or means used to carry out the breach; require restructuring of firms or contracts; or take any other coercive measures to remedy the inflicted harm.

## Conclusion

As mentioned at the beginning, Vietnam is yet to have a comprehensive policy framework, which co-ordinates the competition aspects of all other laws, and regulations, as well as oversees all sectors and industries in the economy. In other words, the country is yet to have a formalised competition policy. Besides, the administrative government structure of Vietnam also falls short of ensuring a certain degree of consistency and co-ordination during the policy-making and implementation process. Several policies and laws, which have significant implications on the market structure, or the competitive process in various

industries, are aiming at cross or conflicting objectives. This, together with some other factors, such as the low level of the public awareness on competition issues, the weak legal compliance capacity of enterprises, as well as the legacy of the old economic mechanism may make the building of an effective competition regime in Vietnam a highly challenging task.

The adoption of the Competition Law 2004 of Vietnam may be regarded as a turning point in the transition process into the market-oriented economy. However, as stated above, it is still early to say how this law can improve the competition situation and how efficiently it can be implemented. Besides, it is also still early to see how the competition authority of Vietnam, with a small staff and with too many functions, not mentioning the political pressure, can fulfil its task successfully. The market realities are getting more and more complex; anti-competitive and unfair trade practices are significantly prevalent. Hopefully, this law can work consistently with other laws, to establish really effective market institutions for Vietnam.

All over the world, many countries have adopted a competition law but have never quite managed to successfully enforce it. For example, Thailand enacted its first law in 1979, which was never implemented, even the enforcement records of the new law promulgated in 1999 were extremely poor; Egypt took

almost a decade to enact a competition law since the first draft made in 1995, and even after adoption, there was no certainty that the law could be implemented effectively. More or less, similar situations can be found in countries like Indonesia, Pakistan, Sri Lanka, and Malawi. However, this is not to say that challenges for Vietnam should be insurmountable. In all countries with long traditions in implementing competition laws, the process has been very dynamic. Laws have been substantially amended or scrapped and new ones have been adopted to meet the current needs and the new political economy of the country. Thus, a long-term and dynamic vision should be adopted for Vietnam *vis-à-vis* the implementation of this new Competition Law 2004.

As stated by the economic Nobel laureate Joseph Stiglitz,<sup>26</sup> a “*strong competition policy is not just a luxury to be enjoyed by rich countries, but a real necessity for those striving to create democratic market economies*”. In the context, the development of competition law in Vietnam should not be a goal to itself and the law should not become just a decorative tool, its enforcement should aim to bring about increased economic efficiency and improved public welfare. Towards this end, strong public awareness and support should be considered a strategic element, which should be ensured and promoted by the competition authority, if any healthy competition culture is to prosper in Vietnam.

## Notes:

- \* This chapter has been researched and written by Hoang Van Thanh and Pham Hoang Ha of the Central Institute for Economic Management (CIEM), Vietnam. The authors acknowledge the support received from Nitya Nanda and Alice Pham of CUTS C-CIER in designing the study and their comments and suggestions on the draft. Comments and suggestions were also received from the members of the Project Advisory Committee.
- 1 Commonly, an economy is composed of three sectors: (1) Primary Sector, which includes activities which extract products from the natural environment, like agriculture; (2) Secondary Sector - (manufacturing), which includes activities which transform material resources into goods or products; and (3) Tertiary Sector - (service) which includes activities that produce services rather than goods.
  - 2 Perkins, Dwight H., “Industrial and Financial Policy in China and Vietnam: A New Model or a Replay of the East Asian Experience?”, Chapter 6 - Rethinking the East Asia Miracle, edited by Joseph Stiglitz and Shahid Yusuf, World Bank 2001.
  - 3 Supra note 2
  - 4 Kinh te va du bao (Economics and Forecasts), March 1999.
  - 5 Tran Binh Nam, State Owned Enterprises Reform and Doi Moi Mark II, Asian Analysis Newsletter Nov 2002, ASEAN Focus Group, Australian National University.
  - 6 The number of enterprises allowed to engage in foreign trade, for example, increased from about 30 in 1989 to over 1200 by the end of 1994 and 16200 in 2001.
  - 7 Ngo Trinh Ha, Catching-up Industrial Development of East Asian Economies and its Application to Vietnam, Doctoral Course, Graduate School of Asia-Pacific Studies Waseda University, 2004.
  - 8 As per the definition by the Ministry of Planning and Investment of Vietnam, “SME is organisation with legal capital which is not over US\$700,000 or number of employees is not over 300”.
  - 9 Report on the three-year implementation of the 3rd Central Party Committee presented at the National Meeting for SOE Reform 3/2004.

- 10 However, statistics kept by the tax departments are confidential by law in Vietnam and cannot be disclosed to the public.
- 11 Business licences, in this context, are understood to be those papers that enterprises should get to satisfy the business conditions issued by government agencies in term of licenses, certificates, approvals, and decisions, and so on.
- 12 See <http://www.vietnambusinessforum.org/whatsnew.asp> for more details.
- 13 The UN Guidelines for Consumer Protection, adopted by the General Assembly in 1985, are an internationally agreed statement of laws necessary for consumer protection for good practices in their implementation and of other action needed to promote consumer rights – for example, through education and provision of consumer information. Fully implemented, they provide a basic framework of protection, advice and support to enable consumers to operate confidently and effectively in a market economy. According to the Guidelines, the consumers have: (i) the right to safety; (ii) the right to be informed; (iii) the right to choose; (iv) the right to be heard; (v) the right to satisfaction of basic needs; (vi) the right to redress; (vii) the right to education; and (viii) the right to a healthy environment.
- 14 See <http://vnexpress.net/Vietnam/Kinh-doanh/2005/01/3B9DADF3/> for more details.
- 15 See <http://www.cuts-international.org/E-NewsletterVol1.htm#pro> for more details on the case.
- 16 See [www.vnn.vn/xahoi/doesong/2005/05/422151/](http://www.vnn.vn/xahoi/doesong/2005/05/422151/) for more details.
- 17 CIEM (2003), Tendering management: The status and measures for improving the efficiency of the investment projects and of public procurement in Vietnam, a ministerial research project, headed by Dr. Ngo Minh Hai.
- 18 UNCTAD (1994), Continued Work on the Elaboration of a Model Law or Laws on Restrictive Business Practices, TD/B/RBP/81/Rev.3 – Geneva.
- 19 According to Clause 5, Article 3 of the Competition Law 2004, an enterprise's market share of a certain kind of goods or service means the percentage between sales turnover of this enterprise and aggregate turnover of all enterprises dealing in such kind of goods or service in the relevant market or the percentage between purchase turnover of this enterprise and aggregate purchase turnover of all enterprises dealing in such kinds of goods or service on the relevant market on a monthly, quarterly or yearly basis.
- 20 Art. 18, Vietnam Competition Law 2004
- 21 Art. 19, Vietnam Competition Law 2004
- 22 According to the Bankruptcy Law 2004 of Vietnam, any business, which is unable to pay its due debts on demand by a creditor, shall be deemed to have become insolvent.
- 23 The Government of Vietnam provides a formal definition of small and medium-sized enterprises (SMEs) in 2001 in the Decree No.91/2001/CP-ND. According to this decree, SMEs 'are independent business entities, which have registered their business in accordance with the prevailing laws, with registered capital of not more than VND10bn (approx. US\$637,000) or the annual average number of labour of not more than 300 people.' The decree encompasses enterprises registered under the Enterprise Law, State-owned Enterprise Law, co-operatives registered under the Co-operative Laws and household businesses, if they meet these requirements.
- 24 For example, in the case of tied-selling, many respondents were able to name such cases as the school uniforms and textbooks. Some parents complained that they have to buy the school uniforms or textbooks for their younger children, even though they didn't need them because their older children could give these things to their younger ones.
- 25 For more details, see CUTS 7Up2 E-News Vol II, "Rising drug prices left consumers reeling – Who to blame?" at <http://www.cuts-international.org/7up2E-newsletter2-2.htm#v1>.
- 26 Stiglitz, J. (2001), Competing over Competition Policy, Project Syndicate, August