



The Socialist Republic of Vietnam is located in the Indochina peninsula, bordering China, Laos, Cambodia, the Gulf of Thailand, the Gulf of Tonkin, and the South China Sea.

Like its neighbours, the country was under French rule from 1883 to 1945, when it declared independence. This unfortunately was followed by two long drawn wars with France (from 1945 to 1954) and then with the US. The hostilities stopped in 1975, after the US withdrew its armed forces, having given up against a resolute local population.

Economy

Vietnam achieved around eight percent average annual GDP growth from 1990 to 1997. The growth rate started to slow down in 1996 and two subsequent years as a consequence of the Asian financial crisis; then peaked again at around seven-eight percent from 2000 to 2004, making Vietnam one of the world's fastest growing economies. In the last few years, due to the world economic crisis, the growth rate of Vietnam has decreased. Specifically, GDP growth rates in 2009, 2010 and 2011 were 5.32, 6.78 and 5.89 percent respectively. Until now, Vietnam remains a middle-income country with a GDP per capita of US\$1,300 in 2011. Although the average income level has been improved, it remains low in comparison with other countries in the region.

Industry and services have been the leading sectors of the Vietnam economy in recent times. From 1992 to 1997, growth of this sector was four to five percentage points higher than that of the total GDP. As a result, the GDP structure has changed remarkably with the expanding share of the secondary and tertiary sectors, at the expense of the primary sector¹.

Vietnam became a full member of the World Trade Organisation since 2006 and this membership has quite a large effect on the regulatory and market reform process within the country, as evident in subsequent sections.

| PROFILE | |
|---|--|
| Population: | 88.26 million** |
| GDP (Current US\$): | 119 billion*** |
| Per Capita Income: (Current US\$) | 1,061 (Atlas method)** 2,948 (at PPP)** |
| Surface Area: | 331.7 thousand sq. km |
| Life Expectancy: | 75 years* |
| Literacy (%): | 93 (of ages 15 and above) |
| HDI Rank: | 128* |
| <i>Sources:</i> | |
| - World Development Indicators Database, World Bank, 2010 | |
| - Human Development Report, UNDP, 2009 | |
| - Economist Intelligence Unit, 2011 | |
| (*) For the year 2009 | |
| (**) For the year 2010 | |
| (***) For the year 2011 | |

Competition Evolution and Environment

Prior to 1986, Vietnam had been following a centrally planned, socialist economic system. Its salient feature was the policy of subsidising SoEs, regardless of the cost; with the expectation that those enterprises would play the leading role, helping to cater to the demand of the whole nation.

Formal regulations governing SoEs were promulgated in 1977. The enterprises were obliged to fulfill the compulsory targets ordered by the State. The State also worked out plans for production, marketing, and pricing; as well as salaries and bonuses, distribution and utilisation of their funds. Hence, the scope for initiative at the enterprise level was very limited. Consequently, these enterprises did not perform well and generated huge losses.

By late 1970s, Vietnam was facing a major economic crisis, with acute shortages of food, basic consumer goods, and inputs to agriculture and industry; and a growing external

❖ Original paper submitted in 2006-07. Updated in February 2013

debt. Almost all consumer goods were strictly rationed. Money and prices did not play a determining role in the allocation of resources; official prices were low and had little influence on production decisions. Partial reforms, introduced from 1979 to 1982, could not address key issues of pricing; financial discipline; and reform of the bureaucratic administrative structures. Instability reached its peak in 1986, leading to social pressures for comprehensive reforms. Thus, the *Doi Moi* (reform) process was initiated in 1986.

This reform process has changed the face of the Vietnam economy completely. The role of the private sector in economic development is 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, and the approval of the Competition Law by the Vietnam National Assembly in December 2004 is a major step in this direction.

Competition Law – Institutions, Competencies and Anticompetitive Business Practices

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 01, 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 (RBPs) and unfair trade practices (UTPs).

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 anticompetitive 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) anticompetitive behaviour/decisions by officials or State administrative agencies, taking advantage of their authority.

Anticompetitive agreements include price fixing; market sharing; output restrictions; with holding of investment or technical development; imposition of coercive conditions 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 anticompetitive, 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 anticompetitive 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 it or the parties solicit. 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.

Prior to the passage of the Law, a Competition Administration Department has already been created within the Ministry of Trade. This Department, therefore, has been built into the Competition Administration Agency for Vietnam, and takes charge of drafting all the implementation guidelines for the Law. Until now, the Law has become into effect for more than seven years. Although public awareness has been improved and many cases related to anticompetitive (3 decisions so far) or UTPs (94 cases resolved till the end of 2011) have been dealt with, the law is not regarded as very effective. There are now talks in the country about a possible amendment of the law in the near future.

Box 1: Aviation Fuel Supply dispute between VINAPCO and Pacific Airlines

Vietnam Air Petrol Company (VINAPCO), a VNA subsidiary, functions as a distributor of aviation fuel to all airliners operating in Vietnam. VINAPCO holds a monopoly position in the provision of aviation fuel because it is the only company authorised to import and provide JET A1 oil for aircraft.

In March 2008, a proposal for raising its pumping fee was released by VINAPCO. This proposal was not accepted by PA on the ground that VNA, its major competitor, continued to be charged at the old rate. PA argued this proposal should apply equally to both carriers and the fact that PA had to pay a higher fee than VNA was unacceptable. It also argued that this unfair treatment would force PA to raise airfares, thus reducing its competitiveness while it was undergoing a restructuring process.

In early April 2008, VINAPCO unilaterally disrupted fuel supply to PA, causing damage to its finances and reputation. After an urgent official letter by PA was submitted to the MoT, the Ministry sent a dispatch ordering VNA to instruct VINAPCO to resume supplying fuel to PA and apply the same price to both airlines. The case was then submitted to the Competition Administration Department (VCAD).

The dispute between VINAPCO and Jetstar Pacific Airlines (JPA), the successor of PA, was finally handled by the Vietnam Competition Council (VCC) on April 14, 2009. VCC considered VINAPCO had abused its monopoly position when it unilaterally stopped pumping aviation oil for PA in April 2008, which caused the delay of flights run by this airline. The VCC then held that VINAPCO's behavior constituted a breach of Article 14(2) and (3) of the Competition Law 2004 – abusing dominant and monopoly position. A fine of \$3.37 bn VND (equivalent to approx. US\$168,000) was imposed on VINAPCO, together with a recommendation to separate VINAPCO from its parent company (VNA).

Long, T.T & Walker, G. (2012) - Abuse of market dominance by State monopolies in Vietnam, Houston Journal of International Law (June 2012)

Sectoral Regulation

Telecommunications Sector

Until 1997, the Vietnam Post and Telecommunication Corporation (VNPT) was both a regulator and service provider in the telecom sector. Following the contemporary institutional model adopted in the world, the General Department of Post and Telecom (GDPT), now the Ministry of Information and Communications (MIC), was established on the basis of splitting off the policy and regulatory functions from the operational functions of VNPT.

The MIC now plays the role of regulator, whilst VNPT is an incumbent operator providing both telecom networks and services in Vietnam. However, MIC is still involved in the management of VNPT, through its roles as representative of State capital in VNPT, especially through senior personnel appointment. Though the State monopoly over the telecom network infrastructures is thereby abolished, the network infrastructure provider status can only be granted to SoEs or enterprises in which the State holds controlling shares, whereas enterprises from all economic sectors can be licensed as telecom service providers. Licensed service providers can establish telecom equipment systems within the scope of their establishments and public service points, and can provide Internet access services and re-sale telecom services, as prescribed in their licences.

On December 04, 2009, the Law on Telecommunications was adopted, taking effect from July 01, 2010. In addition to those anti-competitive and UTPs already prohibited in the Competition Law, this Law prohibits parties that are in a dominant position (holding 30 percent market share or more in respect of one type of service in a licensed geographical area) or control essential facilities from undertaking one of the following practices or more:

- Cross compensation of telecommunications services for unfair competition;
- Utilising advantages of telecommunications networks, essential facilities to impede market entry, limit or causing difficulties for providing telecommunications services of other enterprises;
- Using information obtained from other telecommunications enterprises for unfair competition;
- Not providing technical information about essential facilities and relevant trade information needed to other telecommunications enterprises to supply telecommunications services.

Electricity Sector

Under the old centrally planned economic system, Vietnam's power sector was run by three regional State-owned Power Companies (PC1, PC2, and PC3), which are in fact extensions of the former Ministry of Energy, responding mainly to the administrative needs rather than business requirements.

In an attempt to reduce the direct intervention of the Ministry in the daily operations of power companies; build up a corporate culture within the sector to replace the old bureaucratic atmosphere; and develop large and internationally competitiveness business unit, the Electricity Corporation of Vietnam (EVN) has been established in 1995, through the merger of all three regional monopoly power companies. EVN hitherto has been operating in the form of a 'conglomerate' or national electricity monopoly, whereas the re-organised power sector is regulated by the newly established Ministry of Industry and Trade (MoIT). The MoIT is responsible for approving all pricing policies and capital investment decisions, as well as selecting the board of directors of EVN and its CEO. An Electricity Law was passed in 2004, setting the new regulatory framework for the whole sector.

Vietnam's Electricity Law 2004 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 the 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. According to the Law, the State maintains 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 other segments of the industry, competitive markets will be established and developed in stages, starting from electricity generation to wholesale market and retail market. 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.

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

The Law also provides for the establishment of a new authority in the electricity sector, the Electricity Regulator. 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.

Consumer Protection

A major piece of legislation on consumer protection to date in Vietnam is the Law on the Protection of Consumer Interests of Vietnam adopted on November 17, 2010, taking effect from July 01, 2011.

The Law highlighted the responsibility of the whole society in the protection of consumer interests, and provided for a State agency – Vietnam Competition Administration Department - to take charge of issues related to consumer protection in the country.

It defines the general principles in consumer protection in accordance with the 08 consumer rights framed by the United Nations² (Art. 8, Chapter 1 – Rights of the consumers). It also specifically prohibits some acts in contravention of such rights (Art. 10), such as:

“1. *Providing deceptive or misleading goods, services to consumers through advertising or hiding, providing incomplete, wrong information about one of the following contents:*

- *Goods, services that those organisations, individuals provide;*
- *Prestige, business capacity, goods/service supplying capacity of the organizations, individuals trading in goods/services.*
- *Contents, features of transactions between consumers and organisations/ individuals trading goods/ services.*

2. *Disturbing consumers by marketing goods, services in contrary with consumers’ needs for twice and more or undertaking other activities that impede, affect consumers’ jobs or normal life.*

3. *Forcing consumers by one of these following actions:*

- *Using forces, threat to use forces or other measures that cause damage to life, health, honor, prestige, dignity or property of consumers;*
- *Taking advantage of consumers’ difficulties or taking advantage of natural disasters, epidemic diseases to force transaction.*

4. *Implementing trade promotion activities, propose direct transaction with those who have no capacity for civil acts or have lost their civil act capacity.*

5. *Requiring consumers to pay for goods, services provided without prior agreement with consumers.*

6. *Taking advantages of consumer protection to infringe upon State interests, legitimate rights and interests of other organisations, individuals.*

7. *Taking advantage of consumers’ difficulties or taking advantage of natural disasters, epidemic diseases to supply unguaranteed goods, services.*

8. *Trading in unguaranteed goods/services that cause damages to consumers’ life, health or property.”*

Accordingly, any organisation or individual undertaking production and/or business activities (having business registration) shall have to label goods; publicise the price of goods, services at business places; provide warning about the possibility of goods, services causing harms to consumers’ health, life, or property and take preventive measures; provide information about the capacity to supply spare parts; provide instructions for use; provide information on the conditions, time, place and procedures for warranty in case the goods have warranty; provide full, exact information to consumers about contract forms, conditions of transaction before making transactions (Art. 12).

They shall also be responsible for providing evidence of transactions, providing warranty for goods, supplying spare parts and accessories, recalling defective goods and compensating for damages caused by defective goods (Art 20 – 23).

Consumers and consumers organisations can lodge complaints on abuses in contravention of the Law to the State agency responsible for protection of consumer interests (including the VCAD), who will consider and resolve the disputes, first through mediation/reconciliation, and if unsuccessful, through administrative measures. Consumers also have the right to bring such disputes to the court of law for resolution. Violations of the law, if proven, can result in fines and imprisonment, and compensation to the consumer.

The MoIT is in charge of consumer protection, with the assistance of the General Department of Standards, Weights & Measures and Quality, and its provincial offices.

In addition to the Law on the Protection of Consumer Interests, other prevailing legislations, which are also pertaining to the issue of consumer protection in Vietnam, include the Law on Food Hygiene and Safety 2010; the Law on Goods & Product Quality 2007; the Law on Measurement 2011; the Price Law 2012; and the Commercial Law 1997.

Concluding Observations and Future Scenario

The passage of the Law on Competition, though being a major step, is just a milestone on the long and winding road that Vietnam has to travel to establish and develop effective market institutions serving economic development.

Box 2: Consumers at the Mercy of Pharma Monopolistic Suppliers

Rising drug prices left consumers reeling in Vietnam where 63 percent of the population lives on less than US\$2 a day and where per capita expenditure on health is US\$130 a year, according to figures in the UNDP's Human Development Report (HDR) 2003.

When Vietnam's Ministry of Health carried out a survey of pharmacies, they found that the prices of almost 800 drugs had been marked up, some by more than double. More than 60 percent of the drugs that bore the higher price tags, the survey also found, are imported. According to the Ministry, this was because the government could not control the exact price of imported drugs, and foreign pharmaceutical companies in Vietnam, therefore, have pushed prices to their highest levels.

Pharmaceutical companies and distributors, however, attributed the need to increase prices to fluctuations in the exchange rate between the Vietnamese *dong* (VND) and the euro. A 10 percent hike in import tariffs and the rise in the price of oil were also blamed for the price rise.

The Vietnamese health inspectors pointed to the monopolistic nature of the system for importing, distributing and pricing of drugs in the country. Their data showed that, whilst there were about 4,500 branded

foreign drugs available in pharmacies, about 1,000 were handled by sole distributors.

With a local company being the sole representative of an international pharmaceutical company, it could lobby the Health Ministry for the right to import its principal products and negotiate quantities. Monitoring transaction prices between exporters and Vietnamese importers was not under the Ministry's purview, and consequently the local company can tweak margins toward increasing profits.

Analysts held out the abolition of the sole representative system as the best method to keep drug prices low and affordable. They also recommended 'parallel imports' – which allows several firms to import the same drug from different sources – as a mechanism to limit and prevent price hikes and speculation.

However, whether such policies would reach the market quickly enough to provide relief to Vietnamese consumers was not clear. In the meanwhile, experts called for the State to manage the issue of drug pricing more cohesively. At the moment, whilst the Ministry of Health regulates import licences and quotas, the Ministry of Finance had in place a policy that allows city wards to set their own price bands, which add to the pricing confusion.

Source: Tran Dinh Thanh Lam - Vietnamese feel the pinch of rising drug prices, Asia Times Online 16 July 2003 at http://www.atimes.com/atimes/Southeast_Asia/EG16Ae03.html

With the market realities being rather complex in this transition phase, and emerging issues outpacing the development of the regulatory framework, a standalone competition law will not go anywhere. The adoption of new regulatory laws, as well as constant revisions, is required.

Even in the competition law itself, there is much scope for further amendment and improvement. Moreover, implementation guidelines are to be clear and consistent; the competition authority is to be staffed with qualified manpower; relations and collaboration mechanisms with other line ministries need to be defined; State regulators are to be set up, etc, to ensure effective implementation.

Endnotes

- 1 Commonly, an economy is composed of three sectors:
 - Primary Sector, which includes activities which extract products from the natural environment, like agriculture;
 - Secondary Sector- (manufacturing) which includes activities which transform material resources into goods or products; and
 - Tertiary Sector- (service) which includes activities that produce services rather than goods.
- 2 The UN Guidelines on Consumer Protection, adopted by the General Assembly in 1985, are an internationally agreed statement of laws necessary for consumer protection, of good practice in their implementation, and of other action needed to promote consumer rights - for example, through education and the 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, 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.

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