

**Promoting Competition
Policy & Law in Vietnam**
A Civil Society Perspective

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Promoting Competition Policy & Law in Vietnam

A Civil Society Perspective

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1

Introduction

The Socialist Republic of Vietnam occupies an area of 330,991 square kilometres on the Indochina peninsula, bordering China, Laos, Cambodia, the Gulf of Thailand, the Gulf of Tonkin, and the South China Sea.

VIETNAM PROFILE	
Population	81.3 million ***
GDP (Current US\$)	35.1 billion US\$**
Per Capita Income (Current US\$)	430.0 (Atlas method)** 3,380 (at PPP)**
Land Area	331.7 thousand sq. km
Life Expectancy	69.7 years **
Literacy	97.7 (of ages 15 and above)**
<i>Sources:</i> - World Development Indicators Database, World Bank, 2004 - Economist Intelligence Unit, June 2003 (*) For the year 2001 (**) For the year 2002 (***) For the year 2003	

Vietnam, in 2005, ranked 108th out of 177 countries in the United Nations Development Programme (UNDP) Human Development Index (HDI). The country has been following a centrally planned economic mechanism until 1986, when it embarked on a comprehensive reforms process to develop a market-oriented economy.

Vietnam's experiences so far have proved that market processes and competition are crucial for successful economic development. However, the advantages of competition have not yet been fully exploited in the country, because some necessary institutions and regulations for the smooth operation of the markets

remain absent and others have not been completed. Monopolistic structures still exist in some key sectors, while restrictive and unfair competition practices are getting increasingly rampant and yet being effectively dealt with. An effective competition policy and law is needed for Vietnam.

The recent adoption of the Competition Law of Vietnam in 2004, together with other related laws and regulations, has shown the commitments of the Government of Vietnam (GOV) to ensure a fair and competitive trading environment in the economy. However, the challenges are still lying ahead, beyond the enormously difficult task of putting the Law into actual implementation.

The 7Up2 Project

The 7Up2 project, whose full name is ‘Advocacy and Capacity Building on Competition Policy and Law in Asia’, is a multi-stakeholder initiative, implemented by Consumer Unity & Trust Society (CUTS), with the support from the State Secretariat for Economic Affairs, Switzerland (SECO), the Swiss Competition Commission (COMCO), and the Department for International Development (DFID), UK, aimed at accelerating the process towards a functional competition policy and law for selected countries in Asia and advancing an enabling environment for the law and policy to be better enforced. Lao PDR is one of the project countries, besides Vietnam, Cambodia, Bangladesh, Nepal, and India. The Central Institute for Economic Management (CIEM) is the local research partner in Vietnam of the project.

The 7Up2 project is an action-orientated programme that aims to promote, through research based advocacy and capacity building activities:

- Structures and actors able to advocate effectively for competition legislation;
- Developments/changes in national competition policies and laws where they exist;
- Training facilities in the countries on competition issues; and
- Meaningful dialogue between civil society and government officials.

As part of the 7Up2 project, in sequence to a bigger, more comprehensive Country Report on the Competition Scenario in Vietnam, this Advocacy Document aims to be a simple and concise publication that will provide a synopsis of the competition scenario in the country (as summary of the research findings presented in the Country Report), and put across key recommendations to carry forward the national agenda on competition policy and law in the country.

The rest of the document is constructed into four parts. Chapter 2 summarises the main findings regarding market structure and competitive practices. Chapter 3 analyses the current legal and institutional regime on competition. Chapter 4 presents some results about the survey on the understanding and awareness of stakeholders. Chapter 5 suggests the agenda for action on the basis of the analyses in the earlier sections.

2

The Vietnam Economy and Its Major Reform Policies

Vietnam has maintained a relatively good macroeconomic performance over the past 15 years. Gross Domestic Product (GDP) has expanded at a high and stable rate, averaged at around seven percent per annum, making the country one of the fastest growing economies in the world. The economic structure recently experienced a positive shift towards the manufacturing industries and

GDP Growth (%)	7.7
Agriculture (% GDP)	21.8
Industry (% GDP)	40.1
Services (% GDP)	38.1
Gross Domestic Investment (% GDP)	36.3
Inflation Rate	7.7
Overall Fiscal Deficit (% GDP)	4.9
Export Growth (%)	28.9
Import Growth (%)	25.0
Current Account Deficit (% GDP)	4.8
External Debt (% GDP)	36.0
Per Capita GDP (US\$)	549
Poverty Rate (%)	24.1

Source: General Statistics Office of Vietnam (2004)

services. High economic growth has been accompanied by macroeconomic stability in terms of low inflation, small budget deficit, sound credit growth, and manageable external debts. International trade values have increased rapidly and Vietnam's trade-GDP-ratio is now among the highest in the world. The current deficit is at the controllable level and is financed by a considerable increase in capital inflows, especially the foreign direct investment (FDI), and, as a result, there has been no strong fluctuation in the exchange rate. The achievements in economic performance helped in implementing the social objectives and Vietnam has made considerable progress toward many Millennium Development Goals (MDGs).

The above achievements are attributed to the comprehensive programme of economic reforms that were launched in 1986, as mentioned in the preceding chapter. Prior to this landmark, Vietnam followed the developmental model of a centrally planned economy, which was characterised by a significant level of State intervention into the operations of the market. The State made decisions as to what products were produced, what prices these products sold at and where these products were distributed. The production units had almost no autonomy in their daily management, and the State-owned enterprises (SOEs) and co-operatives were two main types of production establishments in the economy. In such a setting, markets were underdeveloped and the concept of 'competition' was not even officially accepted. The economic reforms programme started in 1986 introduced a series of stabilising and restructuring policies for transforming the economy from being centrally planned to one based on market process and competitive principles.

Some of the major reform policies that have had a strong bearing on the developments of the markets and the promotion of competition include:

Development of a Multi-ownership Structured Economy: This is a key policy of the economic reform process in Vietnam. Accordingly, all enterprises and citizens are entitled to invest in business in the forms stipulated by the laws, and all business establishments from different ownership forms are encouraged to develop, co-operate, and compete equally. The State sector continues to play the leading role and the SOEs assume key positions in the economy.

SOEs Reform. The policy of SOEs reform includes:

- (i) Rationalisation or consolidation of SOEs through equitising those enterprises in which the State does not need to hold 100 percent capital; transferring, selling, contracting, or leasing small ones; and merging, dissolving or declaring the remaining ones;

- (ii) Abolishment of the State mechanism of enterprise subsidies and imposition of hard budget constraint on the SOEs; and
- (iii) Ensuring full autonomy and accountability for the SOEs in undertaking their production and business activities by making changes in the management mechanism of SOEs, such as transforming them into limited liability or shareholding companies.

Private Sector Development: Developing the non-State economic sector is a key policy to mobilise investment capital for national economic development. It also helps to increase dynamism and efficiency in the economy, since the monopolistic positions of SOEs are trimmed, and they are to compete with enterprises from the non-State sector. This policy includes the following integrated elements:

- (i) Encouragement of the non-State sector entry into the markets through measures such as applying business registration for the domestic private sector, simplifying the licensing and administrative procedures for foreign invested enterprises (FIEs), and removing or modifying other unnecessary licensing procedures; and
- (ii) Creation of a level playing field for all enterprises regardless of types of ownership.

Price Liberalisation: The radical liberalisation of prices eliminates State control on consumer goods and only maintains that control on a few strategic or sensitive items. Business establishments have the autonomy in determining the prices at which they want to offer their products or services. Hence, the prices of almost all goods and services are now determined by the market conditions rather than by administrative decisions. Market price has become a signal for business establishments to allocate their resources, and price competition has become a common practice in Vietnam.

Trade Liberalisation: Trade liberalisation has increased the openness and outward orientation of the economy. Trading rights being open for all individuals and enterprises, instead of being reserved only for the State-sector enterprises have resulted in a significant increase in the number of private trading enterprises, and weakened the monopoly position of SOEs. Quantitative restrictions have been eliminated and most tariffs reduced – being stated clearly and specifically in the trade policy roadmap – thus helping to build a more transparent and predictable trading environment. Vietnam has fulfilled most of its commitments under the ASEAN Free Trade Area (AFTA) and implements the Vietnam-United States Bilateral Trade Agreement, which covers a wide range of issues in conformity with the World Trade Organisation (WTO) principles.

3

The Vietnam Market

Presently, there are more than 72,000 enterprises of different types of ownership operating in Vietnam, most of them being private, small, and medium, recently established and mainly engaged in commercial and trading activities rather than manufacturing. It can be said that market participation in the country has improved significantly, which more or less helps to promote competition in the various sectors and industries.

However, it should also be noted that most of the new enterprises do not possess any significant market power and are not evenly distributed across industries. They, therefore, do not have a strong influence on the current monopolistic structure of the economy in many cases. A small number of SOEs still holds most of the capital of the whole country and are dominant players in the sectors deemed 'strategic', such as cement, petroleum products, steel, sugar, fertiliser, rice, telecoms, aviation, financial services, importing, distribution, and others. In fact, a long-time industrial policy in Vietnam has been to build up conglomerates of international competitiveness to be the flag-carriers of the economy. 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 State General Corporations (SGCs). Decision 90 (issued on March 7, 1994) created 76 SGCs, usually called SGC90, each with at least five voluntary members and minimum legal capital of VND100bn, and Decision 91 called for much larger corporations with at least seven SOEs members and a minimum capital of VND1000bn, resulted in only 17 SGCs, which are called SGC91. All 17 SGC91 and 76 SGC90 combined have a total membership of 1,392 SOEs, accounting for 24 of all the SOEs in terms of number, and 66 and 55 in terms of capital and employees, respectively.

Most markets in Vietnam, therefore, can be said to be rather concentrated, or dominated by giant State players, which are often vertically integrated groups controlling all from material imports, manufacture, to marketing and distribution

channels. Table 2 shows the market share of these SGCs in some selected product and service markets.

Table 2: Market Share of State General Corporations in Selected Industries	
Industries	Market share (%)
<i>Mining and Quarries</i>	
Coal	97
Oil and Gas	100
<i>Utilities and Services</i>	
Electricity Generation	98
Water	100
Railway (Cargo and passengers)	100
Air (Cargo and passengers)	90
Mobile	95
Fixed Lines	99.5
Internet Services	49
Commercial Banking (04 state-owned banks)	70-80
Non-life Insurance	52
Life Insurance	40
<i>Manufacturing</i>	
Chemical Fertilisers	90
Basic Chemicals	99
Paper	70
Rubber	69
Cement	55
Steel	52
Plastics	23
Cigarettes	55

There remains a great deal of potential barriers to competition in Vietnam. They are:

- (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, 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; and
- (ii) Private barriers to competition, which include various types of restrictive or unfair competition practices like abuse of dominance, monopolisation, market allocation and price-fixing arrangements, concerted refusal to deal, etc.

Policy-induced Barriers to Competition

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 licenses have been abolished. Unfortunately, during this same period, the same amount of business licenses has also been created. The government project to promulgate the Unified Enterprise Law will hopefully 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/expenditure that businesses can apply/spend, which should have been left to the market to decide, for instance, an inappropriate legal provision on controlling Internet connection fees, or the ceiling limitations of promotion expenses.

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 overall. High transportation costs, an antiquated tax system, steep legal fees, and the arbitrary amounts of customs clearance fees levied by officials tend to scare away new businesses and reduce significantly the scope for new market participation.

Other problems include the substantial burden imposed on taxpayers, a fallout of various administrative problems with the tax system. The burdens range from 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; – of particular concern are the processing of double tax treaty claims and additional requirements for notarisation and legalisation of documents.

Besides, the incomprehensive, and at the same time, overlapping nature of the legal framework regulating economic activities also acts as a significant barrier to business expansion and competition. 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.

The discriminatory treatment between SOEs and private enterprises is another significant aspect of the Vietnam economy, where competition is hampered by State regulations or arbitrary administrative decisions. For instance, 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 a contract with the SOEs; which is totally in contradiction with the principle of non-discriminatory/fair treatment in competition.

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

Anti-competitive Practices and Consumer Concerns

Anti-competitive practices comprise of a wide range of business practices in which a firm or group of firms may engage in, 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. Anti-competitive practice can be classified into three categories: horizontal arrangements, vertical arrangements, and structural offences. Anti-competitive practices are quite rampant in Vietnam and the media has reported several cases. However, due to the nascent stage of the Competition Law implementation *inter alia*, these cases have not been dealt with appropriately.

Horizontal Arrangements

Horizontal arrangements in restraint of competition are concerted actions among entities in actual or potential competing positions to restrict competition in the market in pursuit of excessive economic rent. Horizontal competition restraints have traditionally been considered the most serious of all anti-competitive practices and constitute a category of violations most susceptible to criminal penalties in many jurisdictions in the world.

- (i) **Price Fixing:** The term generically applies to a wide variety of concerted actions taken by competitors having a direct effect on price. The simplest form is an agreement on the price or prices to be charged on some or all customers. The agreements between taxi firms to fix uniform tariffs in Ho Chi Minh City and agreements among banks on setting the lending and borrowing interest rates in the financial markets are typical examples of price fixing.
- (ii) **Output Restriction:** This refers to the situation where firms frequently agree to limit supplies to a proportion of their previous sales to maintain or drive up market prices. This type of restriction has occurred in Vietnam. For example, in 2003, the Vietnam Floating Glass Company decided to break up over one million squares meters of finished glass with the reason of exceed supply. Yet another instance is of the eight sugar enterprises in the South, which in a meeting decided to stop selling sugar for a certain period from June 2003 onwards.
- (iii) **Bid rigging:** This is a practice most prevalent in the construction and/or supply sector, where contractors or suppliers sit down together and decide the price at which one contractor or supplier will receive the contract. It is decided beforehand who would be winning the contract and the norm is that the winner has to be from within their group. Then, the person/firm that receives the contract compensates the other contractors/suppliers. For instance, in the Van Lam-Son Hai II Road Construction project, there were four (04) companies participating in the tendering process. Company 98 was selected and awarded as winner. It was, however, discovered later that all the four bidders were the same, in the sense that the 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 prices higher than the price of the tendering package and 'accepted' being losers so that Company 98 could be awarded as winner. Having arranged 'in advance', Company 98 was awarded as winner at the price of VND1,560,900,000 as compared to the price of VND1,560,900,141 of the tendering package, which was less than by only 141 VND.
- (iv) **Refusal to Deal:** It means 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 or refuse to deal with any third party, normally a competitor of one of them. For example, recently, the requests for interconnection by the two new mobile service providers of S-Fone and Viettel to the networks of the two existing providers of Vinaphone and Mobiphone were repeatedly delayed or stood regretted.

Vertical Arrangements

Vertical arrangements involve businesses, not being direct competitors, at different levels of the supply/distribution chain in one industry. Generally, vertical arrangements are treated less severely than horizontal restraints. Most common vertical arrangements include tied selling, exclusive dealing, and resale price maintenance.

- (i) ***Tied Selling:*** It means forcing customers to buy other products along with the desired one. The supplier sells a product (a ‘tying’ one), which is dependent upon the purchase of another, usually a ‘slowing’ product (the tied one). The tied selling occurred in many motorcycle shops in a manner where the motorcycle was sold tied to a helmet.
- (ii) ***Exclusive Dealing:*** It is the practice, whereby a manufacturer or supplier of goods restraints his distributors from dealing in any competitive product and requires them to deal exclusively in the goods manufactured and supplied by him. An example of this behaviour is the contract between Vietnam’s Beer Factory and the owner of ‘Cay Dua’ restaurant. According to the contract, the restaurant owner had to commit to Vietnam’s Beer Factory for exclusive selling, sale promotion, advertising, and the selling of only brands like Tiger, Heineken, and Bivina. Due to this, a new market entrant – Laser Beer by Tan Hiep Phat Co., was completely foreclosed from the retailing market.
- (iii) ***Resale Price Maintenance:*** It means 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, prices of goods become uniform at all points of resale irrespective of the difference in location, character, and quality of the services provided.

Structural Offences

Structural offences refer to abusive conducts related to dominant and monopolistic positions, unlawful maintenance of monopoly or monopolisation, mergers and acquisitions that may restrict competition in the market, etc. A highly concentrated or monopolistic market structure may induce the incumbent enterprises, which face no effective competition, to charge higher prices and produce less, or lower quality output. The consumers, having no viable alternatives, will therefore be exploited unjustly by anti-competitive behaviour. Another remarkable feature of structural offences in the Vietnam market is the use of exclusive distribution channels or sole representative status to mark up prices, such as the practice used recently by the pharmaceutical companies. Some other more subtle forms of abuses of dominance include the following:

- (i) **Price Discrimination** happens when a manufacturer or a supplier of goods or services charge, for the same or similar product and service, a higher price from one dealer and a lower price from another. 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 a different rate to different buyers or types of buyers.
- (ii) **Predatory Pricing** is the practice of pricing products or services below the cost of production with the intention to drive out competitors from the market. For example, the beverage, Coca-Cola and the International Beverage Company (IBC) abused their dominant position to reduce the price of products in order to drive out smaller competitors from the market. The rigorous price reductions and promotion schemes recently exercised by Viettel in the mobile service market were also argued by some analysts to be a case of predatory pricing.

4

The Current Legal and Institutional Framework

The policy framework for economic development in Vietnam is characterised by the mixed features of a transition economy. It entails, on the one hand, several elements that are meant to promote competition in the markets, while, on the other, hand, still insists to retain the dominant and leading position of SOEs. Typically, the Socio-Economic Development Strategy for the 2001-2010 Period endorsed by the Ninth Congress of the Communist Party of Vietnam (CPV) and by the National Assembly has identified the following policy directions *vis-à-vis* competition:

- Entitling all enterprises and citizens to invest in business in conformity with the laws;
- Encouraging all business units of different types of ownership to compete equally;
- Establishing a legal and institutional framework for the markets to operate dynamically, efficiently, and in a orderly manner, in a healthy, open and transparent environment;
- Restricting and controlling over business monopoly;
- Adopting effective measures to fight smuggling and trade fraud; and
- Developing the SOEs present in important sectors and ensuring their key position in the economy.

The above policy orientations have been reflected in the sectoral development strategies and legalised in various regulatory documents such as the Competition Law, the Price Ordinance, the Consumer Protection Ordinance, the Post and Telecommunications Ordinance, and the Electricity Law, etc.

Competition Law 2004

The Competition Law was passed in December 2004 and came into effect 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 Law prohibits five broad types of anti-competitive practices: (i) competition restriction agreements, (ii) abuse of monopoly position, (iii) anti-competitive concentrations of economic power; (iv) acts of unhealthy competition; and (v) anti-competitive behaviours/decisions by officials or State administrative agencies.

Anti-competitive Agreements: The Competition Law of Vietnam explicitly provides an exclusive list of competition restriction agreements, and therefore, might have narrowed the scope of concerted actions that are likely to harm competition.

The competition restriction agreements listed in the Law include concerted actions to:

- (1) Directly or indirectly fixing the prices of goods or services;
- (2) Divide outlets, sources of supply of goods, provision of services;
- (3) Restrict or control the production, purchase or sale quantities or volumes of goods or services;
- (4) Restrict technical and technological development and investments;
- (5) Coerce other enterprises, upon signing of goods or services purchase or sale contracts, to accept obligations which have no direct connection with the subject of such contracts;
- (6) Prevent, restrain, disallow other enterprises to enter the market or develop their business;
- (7) Eliminate market participation of enterprises not a party to an agreement; and
- (8) Collude to enable one or all of the parties of the agreement to win bids for supply of goods or provision of services.

Among this list, the agreements (6), (7), and (8) concerning restriction of market access, elimination of participants from the market, and bid rigging are *per se* violations, while the remaining agreements are not forbidden if the parties to the agreements have combined market share of less than 30 percent in the relevant market. This market share 'safe harbour' is used in many jurisdictions,

but with different levels. The combined market share of 30 percent that Vietnam applies is quite high according to international practices. This also means narrowing the scope of enforcement as compared with international practices. Another difference is that in many jurisdictions, the ‘safe harbour’ levels are different among the horizontal and vertical agreements, while in Vietnam this level is applied equally.

Besides, the agreements (1)-(5) are also not prohibited in some exceptional cases where the negative impacts on consumers’ benefits are less than the positive impacts. This block exemption is used widely in many jurisdictions. In Vietnam, the exemption applied to the following cases: (i) rationalising the organisational structure, business model, raising business efficiency; (ii) promoting technical and technological advances, raising goods and service quality; (iii) promoting the uniform application of quality standards and technical norms of products of different kinds; (iv) harmonising business, goods delivery, and payment conditions, which have no connection with prices and price factors; (v) enhancing the competitiveness of SMEs; and (vi) enhancing the competitiveness of Vietnamese enterprises on the international market.

Recommendations:

The above analysis indicates that the current provisions of the Competition Law might restrict its scope of enforcement. In order to ensure effective law enforcement, some long-run changes in the Competition Law are required in this regard, including:

- Reducing the market share ‘safe harbour’;
- Treating differently, the horizontal and vertical agreements with more severe application for the horizontal agreements; and
- Specifying the exception and exemption cases.

Abuse of Dominant or Monopoly Position: The Law provides the criteria, based upon which enterprises are considered as holding dominant or monopoly positions. A firm with a market share equal to 30 percent or more, or being capable of considerably restricting competition, is deemed to be dominant. A group of firms is considered to hold the dominant position if they have a collective market share of 50 percent (for two firms), 65 percent (for three), and 75 percent (for four) or more. A monopoly status applies to a firm having no competitor *vis-à-vis* the goods or services they deal in.

An exclusive list of prohibited abuses of dominant or monopoly positions are also specified in the Law, including:

- Selling goods and services at prices below the costs to eliminate competitors;
- Imposing unreasonable buying or selling prices or fixing minimum re-selling prices;
- Restricting production, distribution, markets or technical development in ways that harm consumers;
- Applying dissimilar commercial conditions in similar transactions in order to create inequality in competition;
- Imposing conditions on firms in sale-purchase contracts or imposing conditions unrelated to the transaction; and
- Preventing new competitors from entering the market.

Monopoly firms are forbidden, in addition to above acts, from undertaking such practices as:

- Imposing disadvantageous conditions on consumers; and
- Unilaterally modifying or cancelling the contracts already signed without plausible reasons.

No exemptions are available for prohibited abuses by either dominant or monopoly firms.

Recommendations:

It can be said that the prohibited acts mentioned above are the ones commonly stated in the other jurisdictions. What makes the Vietnamese legislation different from the common international practices is the way of defining these abusive acts. The international good practices normally provide a general definition or a non-exclusive illustrative list of prohibited abuses in order to apply the legislation widely. Likewise, in the case of anti-competitive agreements, Vietnam provides no general definition but an exclusive list of prohibited acts, limiting the scope for enforcement. The recommendation here is to apply, in the long run, the approach of using general definition or a non-exclusive list to specify the abuse acts.

Economic Concentration: The Law specifies various types of economic concentration: merger, consolidation, acquisition, joint venture, and other structural combinations. It states clearly that, economic concentration cases, in which the combined market share of relevant firms would be 50 percent or more, are prohibited. The exemptions are available for cases in which: (i) the result is still a SME; (ii) one or more of the participants is (are) in danger of dissolution or bankruptcy; or (iii) the combination will contribute to export promotion or socio-economic development, technical, and technological

advance. The merging firms are required to submit exemption application dossiers and the Prime Minister will consider and decide on the exemption.

Pre-merger notification and approval are required for large economic concentration cases where the participating parties would have a combined market share of 30 – 50 percent. Notification is not required for small concentration cases where the combined market shares of participating firms are lower than 30 percent or, if after economic concentration, the firm is still of small or medium size.

Unfair Competition Acts: As regards 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.

Anti-competitive Decisions by State Agencies: Similar to many other transition economies, the Competition Law of Vietnam specifies a non-exclusive list of actions and decisions made by State agencies, which are prohibited. They mainly comprise of those restricting the autonomy of market players, creating discriminatory conditions, and eliminating competition, and in particular, the actions and decisions to:

- Force enterprises, organisations or individuals to buy, sell goods, provide services to enterprises which are designated by these agencies, except for goods and services in the State-monopolised sectors or in emergency cases as prescribed by laws;
- Discriminate between enterprises; and
- Force professional associations or enterprises to align with one another with a view to foreclosing, restricting or preventing other enterprises from competing on the market.

Competition Authorities

In Vietnam, the competition authority system, as prescribed by the Competition Law 2004, consists of a Competition Council and a Competition Administration Agency (CAA). The Competition Council is responsible for the handling and settlement of complaints about competition cases involving competition-restricting acts and making decisions on competition cases, while the CAA, on the other hand, is in charge of investigation and prosecution.

The essential question is, what is the extent of independence of these agencies in Vietnam. Looking at the provisions of the Law, the independence of these

agencies appear limited. Firstly because both the CAA and the Competition Council are parts of the Ministry of Trade, and the Prime Minister decides their establishment, organisation, and apparatus. Compared with international practices, this type of model is one where the independence of the competition agencies is the weakest.

Secondly, the head of the CAA, chairman and members of the Competition Council are appointed or dismissed by the Prime Minister on the basis of the Minister of Trade's nomination. International experience shows that this strong ministerial influence on appointment usually means less independence for the competition agencies. Furthermore, the selection criteria for members of the Competition Council are not transparent, especially those concerning the good, ethical qualities of honesty, impartiality, having a sense of protecting socialist legality, and the capacity of fulfilling the assigned tasks – all of which could be a suggestion of an indirect control from the Ministry of Trade.

Other Competition-related Legislations

Ordinance on Price 2002

The Ordinance on Price of Vietnam was passed in 2002, consolidating a number of legislations on price and price control. According to the Ordinance, the State regulates price in the following cases:

- (i) Stabilising the prices of important and essential goods and services by using such measures as influencing the demand-supply relations of domestically produced and imported goods, selling or increasing the stocked goods, controlling inventories, applying ceiling, floor or frame price, controlling production costs, providing price subsidies to agricultural goods;
- (ii) Determining the prices of land, water surface and important natural resources, state owned assets to be sold or leased out, monopolistic goods or services, and goods and services significant for national welfare and people's livelihood. The State determines prices in the forms of specific prices, reference prices, price frames, and ceiling and floor prices;
- (iii) Evaluating the prices of state owned assets;
- (iv) Controlling monopoly prices;
- (v) Controlling price monopoly co-operation (price-fixing); and
- (vi) Prohibiting dumping.

The implementation regulations of the Ordinance limit the definition of 'price monopoly co-operation' to price-fixing agreements between businesses aimed at dominating the market in excess of the market share stipulated by laws. It

expressly prohibits the following conducts deemed to be price monopoly co-operation:

- (i) Agreement between businesses to fix prices, control prices, change prices for the sale of goods and services aimed at restraining competition, infringing the legal interests of other businesses or of consumers;
- (ii) A sudden sale of one (identical or similar) type of goods or services at one uniform price by several businesses at one particular point of time;
- (iii) Agreement between businesses to create scarcity of goods by way of limiting production, distribution, transportation, sale of goods or supply of services; destroying or damaging goods; or taking advantage to speculate and increase prices;
- (iv) Agreement between businesses to apply conditions of sale or purchase of goods and supply of after-sale services, which affect prices of goods and services; and
- (v) Agreement between businesses to change prices of sale and purchase of goods and services in order to eliminate or force other enterprises to co-operate with them or become their affiliates.

Trade Remedies Against Unfair Trade Practices

Safeguard Measures: Regulations and procedures on trade remedies through safeguards are governed by the Ordinance on Self-Protection in Imports of Foreign Goods into Vietnam issued in 2002 and its implementation regulations. This Ordinance allows Vietnam to take protective measures in order to safeguard its domestic manufacturing industries against serious losses in circumstances where there is a sudden increase in import of goods ‘beyond the levels’, which is defined as ‘the import of goods in a volume, quantity or at a value which increases in an absolute or relative way in comparison to the volume, quantity or cost of equivalent goods or of directly competitive goods, which are manufactured domestically’ (Article 4.1).

Anti-Dumping Measures: The Ordinance on Anti-dumping of Imported Goods in Vietnam issued in 2004 aims at limiting the adverse impact on domestic Vietnamese manufacturing industries caused by dumping of imported goods into Vietnam. Imported goods will be deemed dumped, when they are sold at a price lower than the normal market value of such goods in the exporting country. The Ordinance prescribes a range of measures, which may be applied to prevent dumping, and the investigations that must be undertaken to apply such measures.

Anti-Subsidy Measures: The Ordinance on Measures Against Subsidised Goods Imported into Vietnam issued in 2004 creates a legal framework for

application of measures to protect domestic manufacturing industries, when importation of subsidised foreign goods into Vietnam causes, or threatens to cause substantial loss to a domestic manufacturing industry.

The Competition Administration Department (which is the CAA mentioned before), under the Ministry of Trade is assigned as the State agency responsible for implementation of these regulations regarding safeguard, anti-dumping, and anti-subsidy measures.

Commerce Law

The Commerce Law promulgated in 1997 regulates some competition aspects of commercial activities undertaken in Vietnam. The Law recognises the legitimate rights of businesses of all forms and types of ownership to compete fairly and legally in all commercial activities, and prohibits the following acts: (i) speculating for the purpose of disrupting the markets; (ii) selling at dumping price for competing purposes; (iii) disparaging, soliciting, buying off and/or threatening the staff or customers of other businesses; (iv) infringing upon trademark rights and other rights relating to industrial property; and (v) other acts of unlawful competition. The Law also specifies prohibited types of sale promotions that are not truthful or are misleading in order to deceive customers. Furthermore, the Law prohibits commercial advertisements which are harmful to the interests of the State, individuals and other businesses and usage of comparisons between one's goods and services with those of the same kind of another business or imitating advertised products of other businesses, causing confusion to customers and causing damages to other businesses.

Intellectual Property Rights (IPRs)

IPRs-related competition abuses constitute an important field of competition law. The Competition Law of Vietnam does mention and prohibit unfair competition acts related to IPRs such as falsification of commercial instructions; infringement of business secrets. However, it fails to deal with abuses of IPRs and IPRs licensing agreements to restrict competition in the market.

Protection of IPRs is aimed at rewarding the owners by providing them with relative and temporary monopoly rights so that they can extract their legitimate profits out of these intellectual properties. Theoretically, private monopoly over IPRs is in contradiction with a basic competition principle, which is to allow the society to use the intellectual properties for development. While in fact, this monopoly right is instrumental in promoting innovation, which is an essential element for ensuring dynamic efficiency in the long run. However, in certain cases, the use of competition law is needed to delineate the above

interface, especially when IP owners abuse their monopoly rights to ‘leverage’ into other markets, restricting the flows of trade and competition in the market.

Vietnam’s laws and regulations do prohibit the use of certain provisions in an IP licensing contract which may restrict competition, such as: provisions which restrict the licensees’ autonomy in purchases of materials, equipments or in hiring labour; provisions which impose on the licensees specific limitations regarding production, scale, and quantity, resale prices, selection of retail agents, and relationship between the licensees and these agents, etc (Art. 13, Section 1-7 Ordinance No. 45/1998/ND-CP on Technology Transfer Activities in Vietnam). In order to control monopolistic licensing agreements, Vietnam laws and regulations also provide for compulsory licensing mechanism (Art. 802, Civil Code 1995).

Recommendations:

The major problem with these provisions is that they are scattered over several different legal normative documents, and mainly provide for general principles, without specifying any enforceable details. The real enforcement has never been effective, and therefore has never been able to prevent and deal with restrictive business practices and unfair trade practices related to IPRs. The long-term revision of the Competition Law 2004 of Vietnam should take this into account.

Sectoral Regulatory Framework

Electricity Sector

The electricity sector in Vietnam is regulated by the Ministry of Industry (MOI). The MOI is responsible for approving all pricing policies and capital investment decisions, as well as selecting the board of directors and the chief executive officer (CEO) of the Electricity Corporation of Vietnam, the state-owned monopoly operating in the sector. 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 country’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 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, competitive markets will be established and developed in stages, starting from electricity generation market, 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 MOI 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 MOI 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 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. The Prime Minister will provide for the organisation, powers, and tasks of the Electricity Regulator in further regulations.

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 MOI. One of the underlying principles in electricity pricing, as set by the Law, is “to ensure the right of entities purchasing and selling electricity in the market to make their own decisions on the price of purchase and sale of electricity within the electricity tariff stipulated in the State regulations”.

Telecommunications Sector

Until 1997, the Vietnam Post and Telecommunications 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 Telecoms (GDPT), now the Ministry of Post and Telematics (MPT), was established on the basis of splitting off the policy and regulatory functions

from the operational functions of VNPT. The MPT now plays the role of regulator, whilst VNPT is the incumbent operator providing both telecom networks and services in Vietnam. However, MPT is still involved in the management of VNPT, through its roles as representative of State capital in VNPT, especially through senior personnel appointment.

A most recent landmark in the development of a regulatory framework for the telecom sector in Vietnam was the ratification of the Ordinance No 43/2002 on Posts and Telecommunications in May 2002 on the network and telecom services. The Ordinance aims at encouraging enterprises from all economic sectors to operate telecom services in a fair, transparent, and competitive environment, in order to facilitate the application and promotion of telecom technology, and to enhance the standard of living.

Though the State monopoly over the telecom network infrastructures is thereby abolished, 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.

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

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.

Financial Services

Banking Services: The GOV embarked on a comprehensive banking sector reforms programme in 2001. The goals of this reforms programme are to ensure the stability of the banking system, to expand banking services, and to rationalise

domestic resource allocation. The reforms programme focuses on three main areas: (i) restructuring the joint-stock banks; (ii) restructuring and commercialising the State-owned commercial banks; and (iii) improving the regulatory framework and enhancing transparency. Furthermore, the Central Bank has removed the cap on interest rates for loans in VND, thereby giving commercial banks more freedom of manoeuvre and enabling them to deal with short-term changes in the liquidity market.

Banking services in Vietnam are governed by the Law on Credit Institutions issued in 1997 and amended in 2004. Under the amended Law on Credit Institutions, the forms in which foreign commercial banks are permitted to establish a commercial presence in Vietnam have been expanded from joint venture banks (with foreign capital contribution not exceeding 50 percent of chartered capital), foreign bank branches and representative offices to also include 100 percent foreign owned banks. Under the Law, foreign credit institutions are allowed to contribute capital contribution and to purchase shares of banks operating in Vietnam.

The Government Decree in 2002 on Organisation and Operation of Finance Leasing Companies provides for the establishment and operation of finance companies in Vietnam, including joint venture and 100 percent foreign owned finance companies, with no distinction between the scope of activities of foreign invested and domestic finance companies. A 'finance company' is defined as a non-banking credit institution which uses its own capital or raises capital to conduct lending and investment and provides financial and monetary consultancy services, but which is not permitted to provide payment services or to receive deposits for a term of less than a year.

Insurance Services: The general policies for the development of the Vietnam insurance sector are stated in the Strategy for Development of Vietnam's Insurance Market for the period from 2003-2010. According to the Strategy, the State sector participation in insurance business activities will be limited by ending further investment by the State in the insurance brokerage segment, not allowing SOEs to use the State capital for establishing new insurance enterprises or contributing capital in insurance enterprises in specific industries. At the same time, the non-State sector is allowed to establish insurance shareholding companies provided that can satisfy certain conditions.

The Strategy states that licensing of foreign invested insurance businesses operating in Vietnam must conform to the country's market development strategy and requirements, its integration roadmap, and international

commitments. Furthermore, insurance companies are encouraged to expand their activities and operation scope. Foreign invested enterprises will be subject to the same policies as domestic ones. The State respects the autonomy of enterprises and will gradually apply state management in accordance with the principles and standards of international insurance practices and without intervention into the enterprises' activities.

Vietnam's insurance industry is regulated by the Law on Insurance approved in 2000, and the government's implementation regulations in 2001. Under the Insurance Law, foreign invested insurers and brokerage companies are permitted to set up full business operations in Vietnam. These operations can be 100 percent foreign-owned enterprises (FOEs), representative offices, or joint ventures with Vietnamese partners. However, 100 percent FOEs are only permitted on the basis of the development needs of the country's insurance market, with considerations as to the number of existing suppliers, the operation of these enterprises, and their impact on the stability of the market, and the overall economy. All insurance companies must: (i) have at least US\$10mn in capital; (ii) have experienced and effective management; and (iii) they must prove that there is a need for such services.

Consumer Protection Policy

A major piece of legislation on consumer protection to date in Vietnam is the Ordinance on the Protection of Consumers' Interests of Vietnam No 13/1999/PL-UBTVQH10, which was approved by the Standing Committee of the National Assembly on 27 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 (Art. 8 – Art. 13, Chapter 2 – Rights and Responsibilities of the Consumers) and specifically prohibits some acts in contravention of such rights (Art. 7), such as:

- (i) Production and doing business of prohibited goods, fake goods;
- (ii) Production, doing business and consumption of goods, 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 advertisement; and
- (iv) All other acts that 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 for their goods, services. They also have to ensure exact and true information, advertisement on their goods, services; make public the price of goods, services; declare the conditions, duration, and location of warranty and provide clear instructions relating to the use of goods, service to the consumer (Art. 15). They shall be responsible for resolving the complaint launched by the consumer on their goods and services, which do not comply with the declared standard, quality, quantity, price or with the contract signed; and shall be responsible for carrying out warranty of their goods, services for the customer (Art. 16). In addition, they shall be responsible for gathering, studying, considering feedback of the consumer; and shall be responsible for refunding, compensating against the damage for 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 unsuccessful, 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 upon the gravity and extent, shall be subject to discipline, administrative fine or prosecution of criminal liabilities. The violators shall also have to compensate to the consumer for the damages caused (Art. 26).

The Ministry of Science, Technology, and Environment (MOSTE) is assigned to take charge of the State management of consumer protection, with the assistance of the General Department of Standards, Weights, Measures, and Quality. The Departments of Standards, Weights, Measures, and Quality, under the provincial-level People's Committees, are responsible for undertaking the State management of the protection of consumers' rights within their localities.

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 the Commerce Law 1997.

5

Stakeholders' Perception and Level of Awareness

Based on a field survey undertaken within the framework of the 7Up2 project, this chapter presents Vietnam stakeholders' perception and awareness on some important aspects of competition policy and law.

Pricing Policies: Most enterprises and offices have realised that generally, enterprises have autonomy in determining the prices of their products and services. Prices are calculated on the basis of production costs and market conditions. The benefits of price competition do reach the consumer, because a significant proportion of them think that the general price level is reasonable and that there is no major price difference among different brands for similar types of goods. However, the respondents also reported that prices of certain products and services are still too high. The utility industries are claimed to charge high prices to their customers. There are many reasons indicated by the respondents for the remaining problems in price determination. They are: the existence of monopoly in some public utility industries; insufficient competition regulations and weak implementation of the existing regulations; strong price fluctuation in the world market; price-cross subsidy policy, high tariff rates imposed on the imported goods; speculations, and temporary shortage of supply. Vietnam's price policy should follow the principles of market orientation – cost-based, and non-discriminatory. The government should play the role of price stabilisation for very sensitive products.

Tied Selling: Tied Selling is not common for the enterprises and consumers, as only a few of them have faced this type of anti-competitive practice in certain special situations.

Unfair Advertisements: They constitute a problem faced by many surveyed enterprises. These advertisements normally contain direct or indirect

Table 3: Respondents' views on prices	
	Responses (%)
Enterprises	
High Importance of Utility Services in Production Cost	92
Autonomy in Price Decision-making	90
Below Cost Competition	10
Price Difficulties:	
Monopoly in Some Public Utilities	88
Inadequate Regulations and Weak Implementation	64
Strong Fluctuations of Prices in the World Market	48
Government Officials	
Views on Principles of Price Determination	
Market-determined	90
Cost-based	95
Non-discrimination	95
Views on Price Interventions	
Gradual Elimination of Price Subsidisation	85
Limited Application of Cross-subsidies	70
Price Stabilisation	100
Consumers	
Views on General Price Level:	
Too High	22
Reasonable	76
No Large Difference in Prices of Similar Products	78

comparative information with competing goods and services. For a significant proportion of consumers, advertisement is considered as an information source for making decisions as to buying.

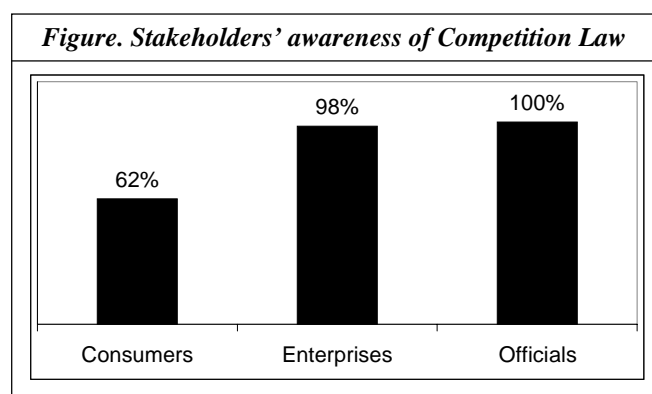
Bidding Collusion: It has been reported as usually occurring in the tenders for State-funded projects.

Business Associations: Many surveyed enterprises are members of professional or trading associations. The main function of these associations is to provide information to their members rather than make the arrangements on prices or market shares. A moderate proportion of enterprises feel that the associations are discriminatory in the provision of services, especially regarding provision

of sensitive information. Only a few consumers said that they knew about the existence of any consumer association in Vietnam. However, the consumers usually rely on their own measures rather than on any consumer association to solve problems in buying products.

Access to Customers and the Distribution System: This has proved to be not at all easy for the enterprises. Most enterprises said that they preferred to establish their own distribution system. However, these enterprises are not capable of supervising the retail stage of their distribution chains. Consequently, they cannot control and ensure that the sales representatives sell their products at the prescribed prices. It has remained difficult for non-State domestic enterprises to compete successfully with SOEs and foreign-invested enterprises who have advantages in terms of capital, labour force, and market position.

Understanding of Competition Law: All surveyed officials, most enterprises, and a moderate proportion of the consumers know about the newly passed Competition Law 2004. However, many of them do not understand this law in



detail. The respondents expect the Law to (i) promote fair competition and create an equal playing field for enterprises of different types of ownership; (ii) prohibit abuses of monopolistic or dominant positions; and (iii) protect the consumers' interests.

6

Agenda for Action

This section presents the challenges or obstacles to the effective enforcement of competition law in Vietnam. Based on these findings, the recommendations to strengthen the enforcement will be made.

Heavy State Intervention into the Operation of the Markets

International experiences show that wherever the government intervenes, competition laws' role would be undermined and the competition authority, as part of the government, would barely be able to stop the actions of other government agencies: In other words, the significance of competition policy and law would be more in a free market economy than it is in a controlled economy. Vietnam's economy is still unnecessarily over-regulated and heavily controlled by the government in many aspects, although significant steps towards building a market economy have been made in the past few years. The government remains powerful and active in various markets, which, otherwise, should be free from such interventions. Sometimes, the government even gives direct orders to the SOEs, which are still considered as important tools for State intervention in the economy.

It is not realistic to expect the government to withdraw quickly and completely from areas it used to heavily intervene. The determination of an appropriate role for the State in the economy is not a new issue in Vietnam. There are many debates on this issue and many solutions have been recommended. However, progress has been slow, as it stands related to the interests of certain groups. The relevant question here is how to combine the State interventions into the markets with the enforcement of competition policy and law in Vietnam. In the short term, it is recommended that the government and its authorities should take into account the various competition principles in designing and implementing economic policies.

It is also recognised that resistance to the application of competition principles into the policy making process come not only from the interests of the policymakers themselves, but also from their lack of awareness as to the benefits of competition. The policymakers, therefore, should be convinced of the effectiveness of applying competition principles to address their current policy concerns. In this regard, raising the awareness of policymakers about the benefits of competition in general as well as in specific areas is important.

Protectionist Policy by Provincial Governments to Enterprises Located in their Jurisdiction

In many transition economies, provincial governments have incentives to block products that are competing with the ones produced in their own jurisdiction, from entering the market. This problem has been a critical issue in Vietnam for a long time. The central government has tried to solve the problem through various measures, including adopting the Competition Law 2004. As mentioned above, the Law prohibits State administrative agencies, including provincial governments, from performing acts to pre-empt and restrict competition in the markets. However, the enforcement of this provision is not easy. International experiences show that it is hard to find a successful case wherein a higher authority took proactive measures to correct a violation committed by a provincial government.

Actions aimed at eliminating competition, undertaken by provincial governments, would still be a big challenge to the enforcement process of competition law in Vietnam. First, the revenue collected on products is shared in a certain proportion between the central government and the provincial governments. Therefore, the more products sold by the local enterprises, the more benefits provincial governments would receive. Secondly, there are many SOEs, which remain under the management of provincial authorities. A success in controlling these administrative monopoly requires strict regulatory mechanisms and effective legal restrictions on the one hand, and the determination of the central government and the strong independence of the competition authorities on the other.

Prominence of Sector Monopoly

Many State sectoral monopolies have been dismantled or restricted in recent years, but there remain certain gaps as compared with the requirements of a market economy system. In fact, some sector monopoly enterprises are still abusing their positions of natural monopoly or sector monopoly and undertake restrictive business practices or unfair trade acts. Goods and services provided by these sectoral monopolies generally have inferior quality at higher prices as compared with those of other countries.

Most of the regulated sectors have their own sectoral development strategies for the 2001-2010 period up till 2020. One of the most important measures undertaken is the introduction of competition into these sectors. A noteworthy point is that these strategies still insist on the leading role or the dominant position of the SOEs. As such, competition is finding a place, albeit gradually. It is therefore no surprise that will it take a long time to have real competitive markets in these regulated sectors.

It is clear that the most important issue regarding strengthening these regulated sectors is to find out the measures to speed up the liberalisation process. One of the solutions is to separate the natural monopolistic segments from the competitive ones. For the monopolistic part, the government should emphasise on the establishment and implementation of principles, rules and regulations that ensure fair competition between incumbents and rivals. For the competitive part, the introduction of competition should be speeded up.

Lack of Explicit Statement of the Objectives of Competition Law

Vietnam has not clearly stated the objectives of its competition law. It is important to note that competition law objectives are closely related to effective implementation of the law, including the institutional set-up of the competition enforcement agencies. On the other hand, the inclusion of multiple objectives may increase the risks of conflicts among the objectives. Compromising on the conflicted objectives to reflect the interests of different stakeholders can adversely affect economic efficiency that is one of the major benefits of the competitive process. It can also severely constrain the independence of competition enforcement agencies. In fact, the use of competition laws to achieve broad public interest objectives has been gradually reduced in developed economies, but is still widely popular in developing and transition countries. Developed countries eliminate or less frequently use public interest considerations for approving anti-competitive merger or restrictive trade practices or rejecting the pro-competitive ones.

In Vietnam's context, competition law may have multiple objectives. Among these, the 'core objectives' should be stated clearly. It is also important to determine the rank ordering and weights attached to each objective in order to avoid ambiguity and conflicts in implementing the law.

Incomplete Provisions on Competition Restriction Agreements

Vietnam has made a fundamental step towards the establishment of a competitive business environment by adopting the Competition Law 2004. However, Vietnam must improve its competition law in order to, *inter alia*, bring it closer to international good practices. As mentioned above, incomplete

provisions limit the application of the competition law, such as lack of definition or inclusive list of anti-competitive agreements that condition which agreements are considered anti-competitive or not.

Because the Competition Law was just passed in 2004 and started to become effective since July 1, 2005, one should not expect its substantive provisions to be improved in the short-term. However, based on the real practice of law implementation, some detailed studies on these anti-competitive agreements should be undertaken in order to create the scientific and practical grounds for future amendments to the current competition law.

Insufficient Independence of the Competition Authorities

The most important issue in designing the competition authorities is to balance between: (i) sufficient independence to allow the competition authorities to respect the principles of competition law, and (ii) enough access to the policy-making process to protect competition. There is no single solution to this problem. In Western countries, the competition authorities must be neutral or non-political, so that the value of competition would be maintained or promoted. If the competition authorities are influenced by politics too much, the goal of competition law will be sacrificed to other values.

Totally neutral or independent competition authorities are, however, hard to imagine in Vietnam. All officials or authorities must accept the leadership or guidance from their higher authority, and the competition authorities. Therefore, when competition law conflicts with other values, the value of competition would possibly be given up. Thus, sometimes the law would not be properly enforced. Furthermore, because of severe resource and personnel constraints, creating an autonomous body will not be feasible for the time being. Considering the Ministry of Trade's expertise and experiences so far on the issues, the competition authorities, therefore, should be vested with this Ministry, and should evolve into autonomous bodies when necessary conditions arise.

Back to the question of how to ensure the relative independence of the competition authorities in the organisational structure of the Ministry of Trade. As mentioned above, the required independence of the competition authorities is different across various stages during the law implementation process. The decision-making stage requires most independence. Therefore, it is important to ensure the independence of the Competition Council. Under the existing institutional structure, it is necessary to set up transparent rules that regulate the role of the Ministry of Trade in the operation of the competition authorities.

The Ministry of Trade should not be able to intervene into the daily operations of the authorities.

Capacity of the Competition Authorities

Making decisions on whether business practices are really anti-competitive requires competition experts who have to do lots of economic analyses. Therefore, the competition authority officials should be skilled and professional. In Vietnam, the CAA is a new institution with many weaknesses in terms of human resources, organisation, system, etc. These drawbacks should be resolved by developing operational guidelines and procedures, collecting information, recruitment, and training.

Weak Co-ordination Among the Relevant State Agencies vis-à-vis Competition Issues

The current Competition Law gives different powers to different authorities and sectoral regulators, normally the line ministries. Therefore, close and consistent co-operation among the relevant State agencies are essential for the effective implementation of the law. This requirement is contrary with the situation in Vietnam where teamwork and leadership are very weak, and where a bureaucratic system of government is a critical problem. Needless to say, working habits cannot be changed in a short time. The solution in the short and the medium term is to establish the necessary guideline documents, which should state clearly the power and responsibilities of each authority in implementing the law. Designing a practical and effective co-operation mechanism among the relevant State agencies is also another solution to poor co-operative behaviour. As the institutional arrangement regarding implementation of competition law is a new issue in Vietnam, detailed studies on this topic should be undertaken.

In addition to strengthening co-ordination among the relevant State agencies, consultation with affected groups in developing competition policy and law is also needed. National consultation will make the analytic and decision standards that the competition authority is actually applying more transparent. Furthermore, the competition authorities should develop:

- Guidelines to assist businesses in understanding how the law is applied;
- Explanations and interpretations of the competition laws or decisions;
- More open dialogue and consultation with the stakeholder groups that are affected by its policies; and
- An alternative, public ‘advocacy’ voice by parties consulted.

Lack of Capacity for Competition Advocacy and Public Education

Effective competition advocacy is an unlikely possibility where the general understanding of the goals and benefits of competition is weak. The competition authorities can educate all the stakeholders concerned (ministries, sectoral regulators, lawmakers, judges, and lawyers) and make them understand the benefits of competition. Moreover, the public, including the media, should be made aware about the benefits of competition, through the communication activities of the competition authorities. To undertake this task, the competition authorities should be able to conduct different types of analyses and should have access to different sources of information, which in turn requires co-operation with different groups of State agencies, academia, firms, and citizens. A first step to support the competition authority in implementing competition advocacy and public education is to determine what the authority should do to educate the public about competition. The methods that should be employed by the competition authorities in order to promote an understanding of competition are:

- Seminars and workshops for representatives of the business community, experts in the regulatory authorities, lawyers and judges, representatives of the academic community;
- Publication of annual reports and newsletters;
- Maintenance and dissemination of a bulletin containing articles and analyses; and
- The establishment of a website in order to improve public access to information. The website should include:
 - Relevant competition legislations;
 - The competition authorities' activities in each of its areas of responsibility;
 - Materials explaining the purposes and benefits of competition and the basic content of the competition law;
 - Regular publication and description of case-specific decisions in order to help lawyers and businesses develop an accurate understanding to specific questions in the application of the law and to conform business behaviour accordingly;
 - Competition analyses of specific markets. The market reports should contain direct discussion of specific competition problems that are encountered in the markets or specific recommendations for changes that need to be made to increase competition; and
- Publication of several guidelines or viewpoints, aiming to clarify the approaches used by the competition authorities in certain cases.

These activities will, as a result, lead to an increased transparency of the competition law, the rise of credibility and the persuasion of the institutions

involved. They will also, as an effect, help to build up ‘competition advocacy’, materialised in the raised awareness of the undertakings and of the public on competition rules. These activities require the competition authorities to have sufficient qualified staffs and resources. However, the resource requirements seem not be satisfied quickly. Therefore, in the short and medium terms, some analytic work should be done mainly by the academia. Furthermore, technical assistance to the competition authorities to set up regular and effective communication channels with the stakeholders concerned is also needed.

Inadequate Training in the Universities on Competition Issues The competition authorities must have plenty of talents, both on economics and on laws. Law and economics universities in Vietnam have not offered any competition course, as yet. On the other hand, students who study economics usually do not have a sound mathematical and statistical background. It is now the right time to introduce systematic knowledge and, even, competition courses in the universities.