

Competition law fact sheet

Vietnam

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Main features of the law

Prohibitions on restrictive agreements, abuse of dominance and unfair competition practices

Vertical agreements expressly caught under the Competition Law

Merger control regime in force since 2020

New Vietnamese Competition Commission assumed office on 1 April 2023



Enforcement trends

Increase in merger filings

Competition law enforcement expected to significantly increase in the coming years

In June 2018, Vietnam's National Assembly passed a new competition law (the **Competition Law** or **Law**), which came into effect on 1 July 2019. The Competition Law overhauled a competition enforcement regime that had been in place with varying levels of success since 2004 under the previous law (the **2004 Competition Law**).

The Competition Law introduced a substantial number of changes, including the consolidation of the previous competition authorities into a new Vietnamese Competition Commission (the **VCC**), which assumed office on 1 April 2023.

Substantive provisions

Main rules

The Competition Law provides for four main prohibitions:

- a prohibition on restrictive agreements;
- a prohibition on the abuse of dominance;
- a prohibition on mergers and acquisitions which lead or can lead to substantial anticompetitive effects on the Vietnamese market; and
- a prohibition on unfair competition practices.

Prohibition on restrictive agreements

The Competition Law provides a non-exhaustive list of restrictive agreements, distinguishing between agreements that are prohibited as a rule irrespective of their effects on competition (also known as a "*per se* prohibition") and those that are prohibited if they have the effect of substantially lessening competition (i.e. effects-based prohibition)¹.

Per se prohibitions

Horizontal and vertical agreements. The following agreements are prohibited as a rule:

- bid-rigging; and
- agreements which exclude from the market or prevent from entering the market other enterprises which are not parties to the agreement.

The prohibition applies to all agreements, whether entered into between competitors ("horizontal" agreements) or between parties at different stages of the supply chain ("vertical" agreements).

¹ Articles 11 and 12 of the Competition Law.

Horizontal agreements. In addition, the following agreements are also prohibited *per se* provided they are concluded between competitors:

- price-fixing;
- market sharing (i.e. customer or market allocation); and
- restricting output.

Effects-based prohibitions

Vertical agreements. The same agreements as listed just above are also prohibited if they are concluded between companies at different levels of the supply chain, to the extent they, actually or potentially, substantially restrict competition.

Horizontal and vertical agreements. The following agreements, whether vertical or horizontal, will be prohibited if they have the effect of substantially restricting competition:

- restrictions on research and development;
- agreements to impose certain contractual conditions on other businesses, or forcing other businesses to accept obligations, not directly related to the subject matter of the contract;
- agreements not to deal with other enterprises which are not parties to the agreement;
- agreements restricting access to consumer markets or sources of supply of goods and services of other entities that are not parties to the agreement; and
- other agreements that cause or may cause anticompetitive effects.

De minimis exception. In its implementing Decree with detailed regulations for implementation of the law on competition (**Decree 35**), the Government provided indicative market share thresholds on the types of agreements that would not be considered to result, or likely to result, in significant anticompetitive effects:

- horizontal agreements where the combined market share of the parties to the agreement is less than 5 per cent; and
- vertical agreements where the combined market share of the parties to the agreement is less than 15 per cent.

Exemptions

Parties to the agreements listed above, except for bid-rigging and agreements which exclude other enterprises from the market or prevent them from entering the market, can apply to the VCC for an exemption from the prohibition on restrictive agreements if the agreement:

- promotes technological advances or raises the quality of goods or services;
- increases the competitiveness of the Vietnamese enterprises on international market(s);
- promotes the uniform application of quality standards or technical norms for categories of products; or
- harmonises the trading conditions on goods delivery and payment, provided it does not relate to price or any pricing elements.²

The VCC's exemption decisions are valid for a maximum of five years and can be extended at the request of parties by another period not exceeding five years.³

Prohibition on the abuse of dominance

Prohibited abusive conduct. The Competition Law prohibits business operators (including enterprises or groups of enterprises) from abusing their dominant position by engaging in the following conduct:

- selling goods or providing services below costs in a manner that forces or is likely to force competitors out of the market or prevent their entry (i.e. predatory pricing);
- imposing an unreasonable selling or purchasing price or fixing a minimum resale price (i.e. resale price maintenance or RPM) to the detriment of customers;
- restricting production or distribution of goods or services, or hindering technical and technological development which causes or is likely to cause damage to customers;
- applying different conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, where this leads to or can lead to the exclusion of competitors from the market or prevents the market entry or expansion of competitors on the market;
- imposing conditions on other enterprises or requesting customers to accept obligations which have no direct connection with the subject matter of the contract, and which exclude competitors from the market or prevent the market entry or expansion of other enterprises; and
- preventing other businesses from entering the market or expanding.⁴

Prohibited monopoly conduct. The same conduct as above is also prohibited if an enterprise holds a monopoly position, that is where there are no other enterprises competing on the relevant market. In addition, the following monopoly conduct is also prohibited:

² Articles 14 and 15 of the Competition Law.

³ Article 21 of the Competition Law.

⁴ Article 27(1) of the Competition Law.

- imposing disadvantageous conditions on customers; and
- taking advantage of the monopoly position in order to change or cancel a signed contract unilaterally without legitimate reason.⁵

Assessing dominance. Under the Competition Law, an enterprise with “substantial market power” or with a market share of 30 per cent or above will be deemed to be dominant.⁶ Substantial market power will be determined based on a number of factors, including, inter alia, the market shares of the enterprise on the relevant market, barriers to market entry and expansion, access to or control over a specific infrastructure, the holding of IP rights or benefiting from a technological advantage on the market.⁷

Collective dominance. A group of enterprises will be considered to hold a dominant position if either they jointly have substantial market power or their combined market share reaches or exceeds the following thresholds.⁸

- two enterprises have a market share equal to or above 50 per cent;
- three enterprises have a market share equal to or above 65 per cent;
- four enterprises have a market share equal to or above 75 per cent; or
- five enterprises have a market share equal to or above 85 per cent.

Enterprises with an individual market share of less than 10 per cent will however not be considered to hold a dominant position jointly.⁹

Mergers and acquisitions

Similar to the approach in many other jurisdictions, the Competition Law provides for a merger control regime through which the VCC assesses compliance with the prohibition against mergers and acquisitions that lead or can lead to substantial anticompetitive effects on the Vietnamese market.

Merger control thresholds. Under Decree 35, “economic concentrations” are required to be notified to the VCC before their implementation if any of the following thresholds are met:¹⁰

- the value of the total assets or turnover in Vietnam of any party, assessed on a consolidated group basis, exceeds VND

3,000bn (approximately US\$129m) in the preceding fiscal year; or

- the value of the transaction is of VND 1,000bn (approximately US\$43m) or more (this threshold does not apply to economic transactions that take place outside the territory of Vietnam); or
- the combined market share of the parties in the preceding fiscal year is 20 per cent or more.

Importantly, Decree 35 does not refer to the combined assets or turnover of the parties, such that the thresholds referred to under (i) above can be met by one party alone. Similarly, although the 20 per cent market share threshold under (iii) refers to the combined market share of the parties, the VCC clarified that the combined market share threshold can be triggered if the market share of one party alone exceeds 20 per cent prior to the transaction.

Merger control applies to “economic concentrations”. Economic concentrations subject to the merger control provisions include the following transactions:¹¹

- mergers or consolidations;
- the acquisition of control or joint control through the acquisition of shares or assets; and
- joint ventures (including greenfield joint ventures provided the parent entities contribute part of their property, rights, obligations or legitimate interests to the establishment of the new joint venture).

Review period. Upon submission of the notification materials, the VCC has seven working days to declare the notification complete, starting from the official date of receipt of the notification, as mentioned on the acknowledgement of receipt issued by the VCC (which can be issued a couple of days or more after the filings materials have been submitted for processing reasons). The preliminary review period (i.e. Phase 1) lasts 30 calendar days and starts once a complete notification is submitted:

- In case the VCC notifies the parties within the seven working days period that the filing is complete, the 30 days clock started on the day mentioned in the VCC’s acknowledgement of receipt.
- If the filing is deemed incomplete, the VCC will notify the parties within the seven working days period and the parties will have 30 calendar days to amend and supplement the notification.

⁵ Article 27(2) of the Competition Law.

⁶ Article 24(1) of the Competition Law.

⁷ Article 26 of the Competition Law.

⁸ Article 24(2) of the Competition Law.

⁹ Article 24(3) of the Competition Law

¹⁰ Article 13 of Decree 35. Higher thresholds apply to credit institutions, insurance companies and securities companies.

¹¹ Article 29 of the Competition Law.

- In case the notification is not considered complete at the end of the 30 calendar days, the parties will have to resubmit their filing materials. Upon resubmission, the VCC will have a new seven working days period to confirm the completeness of the materials.

It is not uncommon for the VCC to reject the filing materials once before accepting them as complete.

If no notice is issued by the VCC at the end of Phase 1, the economic concentration will be deemed approved. In case a formal appraisal (i.e. Phase 2) is required, the VCC will send a notice to the parties to that effect. The Phase 2 review period can last up to 90 calendar days and, in complex cases, can be extended by up to 60 calendar days upon written notice issued by the VCC to the parties.

The prohibition on unfair competition practices

The Competition Law also prohibits unfair competition practices including trade secret infringements (such as acquiring trade secrets in breach of security measures, disclosing or using trade secrets without the consent of the owner), forcing customers or business partners not to do commerce with certain enterprises or providing false or misleading information to customers about specific enterprises or products.¹²

Sanctions

A violation of the Competition Law can lead to, amongst other things, the issuance of fines (as specified below) or warnings, the revocation of business licences, the removal of illegal terms and conditions from “a contract, an agreement or a business transaction”, or the issuance of divestiture or unwinding orders.¹³

The following fines can be imposed in the context of:¹⁴

- *Restrictive agreements and abuse of dominance*: maximum 10 per cent of the total turnover achieved by the parties in the last financial year in the relevant market where the breach occurred.
- *Failure to seek merger clearance for economic concentrations exceeding the thresholds*: maximum 5 per cent of the total turnover achieved by the parties in the relevant market in the last financial year.
- *Unfair competition practices*: maximum fine of VND 2 billion (approximately US\$77,000).

Fines can also be imposed on individuals. The maximum fines that can be imposed on individuals is of half the level of the fines that can be imposed on enterprises (as detailed above).

¹² Article 45 of the Competition Law.
¹³ Article 110 of the Competition Law.
¹⁴ Article 111 of the Competition Law.

Further, anticompetitive agreements may also attract criminal liability in certain cases, such as in the context of agreements which exclude other enterprises from the market or prevent them from entering the market, in case of bid-rigging or where anticompetitive agreements involve competitors with a combined market share of at least 30 per cent.

Extraterritorial effect

The Competition Law provides that anticompetitive conduct occurring outside of Vietnam will be caught if the conduct restricts, or has the potential to restrict, competition in Vietnam.¹⁵ The merger control provisions are also applicable to foreign mergers where the parties meet the merger control thresholds, regardless of whether the target has any revenue or commercial activities in Vietnam.

Enforcement regime

Public and private enforcement

Under the Competition Law, the previous authorities in charge of enforcing competition law in Vietnam – the Vietnam Competition and Consumer Authority (**VCCA**) and the Vietnam Competition Council – have been merged into a new Vietnamese Competition Commission or VCC. The VCC assumed office on 1 April 2023¹⁶ and is affiliated with the authority of the Ministry of Industry and Trade (**MOIT**),¹⁷ as was the case for the previous authorities under the previous 2004 Competition Law.

The VCC is primarily responsible for initiating competition proceedings, reviewing economic concentrations, considering applicable exemptions to the prohibition against anticompetitive agreements, handling appeals against settlement decisions of competition cases and advising the MOIT on competition and consumers matters.

Private parties who have suffered a loss as a result of a breach (or alleged breach) of the Competition Law are able to bring an action for damages in Vietnam. While the Competition Law does not provide many details on private actions, it appears that civil damages actions can be brought on a “stand-alone” basis (i.e. absent any infringement decision by the VCC) and arguably also on a “follow-on” basis (i.e. relying on an infringement decision issued by the VCC).¹⁸

¹⁵ Article 1 of the Competition Law.

¹⁶ On 10 February 2023, the Government of Vietnam issued the new Decree 03/2023/ND-CP regulating the functions, duties, powers and organizational structure of the VCC.

¹⁷ The VCC is also a unit under the Ministry of Industry and Trade.

¹⁸ Article 110(1) of the Competition Law provides that “Any entity committing violation of competition law shall, depending on the nature and seriousness of their violations, be disciplined, incur penalties for administrative violations or face a criminal prosecution; in case of damage to the interests of the State, legitimate rights and interests of organizations and individuals, compensation must be paid according to the provisions of law.” (emphasis added).

Leniency

A leniency program has also been introduced in the Competition Law, which only applies to enterprises and not to individuals.¹⁹ Enterprises that are parties to an anticompetitive agreement may be entitled to a full or partial immunity if they voluntarily report the anticompetitive agreement before an investigation is formally opened. The leniency program is only available to the first three applicants in respect of any particular agreement, with the first applicant eligible for a penalty exemption of 100 per cent, while the second and third will, respectively, be eligible for an exemption of 60 per cent and 40 per cent. It is however not clear whether the leniency program also protect enterprises against criminal prosecution.

Investigation powers

The Competition Investigation Agency (CIA), an authority placed under the VCC, is in charge of investigating violations of the Competition Law. The CIA has the power to request information, open investigations and conduct “investigative measures”. The CIA can also request other competent authorities to seize documents and search vehicles, objects or premises. Court orders are not required to make use of these investigative measures.

Recent enforcement trends

Although the VCC was first mentioned in the 2018 Competition Law, Decree 03/2023/ND-CP that established the VCC was only published on 10 February 2023 (in part due to the covid-19 pandemic), with the new authority taking office on 1 April 2023. While the VCCA continued to handle merger filings in the interim period before the VCC took office, other prohibitions of the Law against anticompetitive agreements, abuses of dominance and unfair competition practices were left relatively unenforced.

Enforcement against competition law infringements is however expected to increase in Vietnam with the establishment of the VCC, in particular in relation to unfair competition practices which were actively enforced under the previous 2004 Competition Law.

According to the last Annual Report published by the VCCA, for the year 2022, the VCCA continued to monitor and investigate possible breaches of competition law across several markets and industries before the VCC was established²⁰ and also carried out inspections in that respect.²¹ In 2022, the VCCA received and investigated eight competition law complaints and proactively reviewed six cases related to unfair competition behaviours.²²

On merger control, while several transactions were notified in 2020 before Decree 35 became effective, 40 of the 62 transactions notified in 2020 were submitted after Decree 35 became effective and clarified the merger control thresholds. In 2021, 130 economic concentrations were notified to the VCC and 154 in 2022.²³ The increase in notifications under the Competition Law is a clear sign that merger control is an issue taken seriously in Vietnam.

The vast majority (82 per cent) of notifications submitted in 2022 related to acquisitions of control over a target, while joint ventures and mergers represented 13 per cent and 5 per cent respectively, of the notified transactions. Offshore transactions and foreign companies accounted for 40 per cent of the transactions notified in 2022, on par with 2021.²⁴

Most merger notifications were cleared after the Phase 1 initial assessment review, while at least five transactions were cleared after a formal appraisal (i.e. Phase 2), including three transactions in 2021 and two transactions in 2022. As of the date of this publication, no penalties or decisions have been imposed in Vietnam in respect of failure to notify economic transactions which reached the merger control thresholds. These statistics are however based on the list of cases published by the previous authority (the VCCA), which does not seem to encompass all notifications and cases the VCCA cleared before the VCC took office. So far, no merger cases have been published by the VCC since it took office.

²⁰ The VCCA notably looked into allegations of imposition of a “hot weather” surcharge in the ride-hailing sector; tie-in sales of fireworks products during the Lunar New Year period; increase of SMS Banking fees; allegations of unreasonable increase in rental fees of telecommunications technical infrastructure; allegations of breach of competition law in relation to the licensing conditions for licence to store explosive precursors in the Lao Cai province. Source: VCCA Annual Report 2022, p.19.

²¹ For example, inspection of Toyota Motor Viet Nam and National Payment Corporation of Viet Nam under the annual inspection plan of the Ministry of Industry and Trade.

²² VCCA Annual Report 2022, p.20.

²³ VCCA Annual Report 2022, p.24-25 and *Report on economic concentration activities in 2022* jointly prepared and published by the VCCA and KPMG Law, p.17-19.

²⁴ VCCA Annual Report 2022, p.24-25 and *Report on economic concentration activities in 2022* jointly prepared and published by the VCCA and KPMG Law, p.17-19.

¹⁹ Article 112 of the Competition Law.

Key information

Relevant legislation

Competition Law (2018)

Competition authority

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Relevant officials

Members of the Commission:

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- Ms Nguyen Thi Quynh Nga (Deputy Chairperson)
- Mr Ngo Duc Minh (Deputy-Chairperson)
- Ms Nguyen Quynh Anh (Deputy-Chairperson)
- Mr Phan Duc Hieu
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- Mr Trinh Anh Tuan
- Ms Le Thi Hoang Thanh
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