

Competition Law

Draft 2

Foreword

To create and promote an equitable competition environment, protect and encourage fair competition; prevent restrictive business practices and unfair competition practices; to protect the interest of the State, the legitimate rights and interests of business entities and consumers with the aim of contributing to social - economic development;

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam;

This Law provides for competition in the Socialist Republic of Vietnam.

Chapter 1 General Provisions

Article 1: Scope of regulation

This Law governs the competition practices of business entities and trade associations in the Socialist Republic of Vietnam.

This Law shall not apply to practices of individuals and organizations under the decisions of Government or agencies authorised by Government within its tasks and duties for national and/or public interest.

Article 2: Application of Competition Law and relevant law

Competition practices in conducting business in goods and services must comply with this Law and other relevant provisions of the law.

Article 3: Application of International Treaties

Where international treaties which Vietnam has signed or acceded to contain provisions which are different from those hereof, the provisions of such international treaties shall prevail.

Article 4: Right to competition in business

All business entities shall have the right to freely compete in accordance with law.

The State shall protect and encourage lawful competition practices.

Article 5: Principles in competition

1. Competition practices are subject to the rules of equality, goodwill, honesty; and not harmful to lawful rights and interest of other business entities and consumers.

2. Any competition practice causing harm to the national interests, the legitimate rights and interests of other business entities and consumers shall be prohibited.

Article 6: Competition Policy

The State shall ensure the right to equality in competition before the law of business entities.

The State shall encourage Vietnamese enterprises, especially small and medium size ones to join and cooperate in business with the aim of increasing their effectiveness and competition capacity in the international market.

The State agencies shall not abuse their powers to conduct discrimination among business entities, or to restrict fair and equitable competition.

Article 7: Interpretation

In this law, the followings terms shall be defined as follows:

1. *Enterprises* shall comprise enterprises established in accordance with the Law on State-owned enterprise, the Law on enterprises, the Law on Co-operatives, and the Law on Foreign Investment in Vietnam.

2. *Business* means the conduct of one, several or all of the stages of the investment process, from production to sale of products or provision of services in the market for profits.

4. *Unfair competition practices* are practices of business entities, which cause damage to lawful rights and interests of other business entities and consumers by acquiring, misleading, unfair and dishonest measures.

5. *Relevant market* refer to the line of goods and services including all reasonably substitutable goods or services, and to the geographic area involved including all business entities conducting business in the same line of goods and services.

6. *Trade association* is an association of business entities.

7. *Anti - competition* is a practice of business entities, which distorts, prevents or restraints fair competition in the market.

Chapter 2

Anti-competitive agreements

Article 8: Anti-competitive agreements

Anti-competitive agreements are agreements among business entities or between business entities and trade associations or among trade associations, regardless written or oral, formal or informal, which restrict or prevent competition in the market.

Article 9: Identification of anti-competitive agreements

Anti-competitive agreement shall be determined on the following bases:

1. The unreasonable increase or decrease of price of goods, services.
2. The unreasonable change of sources of supply of goods, services.
3. The possibility of unreasonably conditioning to restrict competition.

Article 10: Prohibition of anti-competitive agreements

1. The following anti - competitive agreements are prohibited:

- a. Agreements to fix price of goods and services directly or indirectly.
- b. Sharing markets or sources of supply of goods or services between business entities.
- c. Limiting the volume of production, sales or purchase of goods, and the supply of services.
- d. Conditioning the closing of contracts with the purchase of goods and services, or accepting of other obligations which are not directly related to the object of the contract.

dd. Applying dissimilar conditions to identical or equivalent transactions with different business entities thereby placing them at a competitive disadvantage in the market.

e. Setting terms of agreement in a connivance description so that a certain party may win a bid or tender for the supply of goods and services.

g. Restricting, preventing other business entities from entering the market or competing in the market in any form.

h. Reducing the quality of goods, services to be lower than that manufactured, sold or serviced previously by selling same at the old or higher prices.

i. Other anti-competitive agreements.

2. Except for exemptions stipulated by this Law, all anti-competitive agreements are automatically null and void.

Article 11: Exemption

Agreements listed in Item 1 Article 10 may be declared inapplicable if meeting any of the following criteria:

1. Researching and developing of science and technology in fields of goods, services production and distribution.

2. Rationalizing organizational structure, the method of production and distribution for the purpose of increasing efficiency of the enterprise.

3. Increasing business capacity of small and medium enterprises and not restraining competition considerably.

4. Increasing the competitiveness of Vietnam's enterprises in the international market.

5. Improving the quality and increasing sources of supply of goods and services.

Chapter 3 **Abuse of dominant position**

Article 12: Dominant market position

Dominant position in a market is a situation where an enterprise or a group of enterprises acting together is capable of controlling the relevant market for a certain type or group of goods or services.

An enterprise or a group of enterprises acting together which have a market share in the relevant market above 50% shall be considered as having a dominant position in the market as stipulated in this Article.

Article 13: Abuse of dominant position

Abuse of a dominant market position is a practice of an enterprise or a group of enterprises acting together using its dominant position in the market to restrict or prevent the competition in or remove the competitor from the market.

Article 14: Prohibition on abuse of dominant position

Following abuse of dominant position shall be prohibited:

1. Increasing prices of goods and services directly or indirectly in intention or decreasing prices below unit cost in temporary with the aim of maintaining or strengthening a dominant position.

2. Limiting production, markets or technical development to the prejudice of consumers.

3. Applying dissimilar conditions to identical or equivalent transactions with different business entities thereby placing them at a competitive disadvantage in the market.

4. Conditioning the closing of contracts with the purchase of goods and services, or accepting of other obligations which are not directly related to the object of the contract.

5. Unreasonably hindering the entry of new competitors;

6. Unreasonably interfering with the business activities of other business entities.

7. Unreasonably refusing to transact with other business entities.

8. Other abuses of dominant position of market power.

Article 15: Exemption

An abusive practice stipulated in Article 14 this Law may be declared inapplicable if meeting any of the followings:

1. Improving quality and sources of supply of goods/services;

2. Promoting technical and technological innovation.

3. Creating factual interests for consumers;

Chapter 4
Merger, consolidation and acquisition of enterprises

Article 16. Merger, consolidation and acquisition of enterprises

1. Merger of enterprises shall be the case where one or more enterprises of the same type (hereinafter referred to as merging enterprises) are merged into another enterprise (hereinafter referred to as the merged enterprise) by way of transferring of all lawful assets, rights, obligations and interests to the merged enterprise and at the same time, termination of the existence of the merging enterprises.

2. Consolidation of enterprises shall be the case where two or more enterprises of the same type (hereinafter referred to as enterprises being consolidated) are consolidated into a new enterprise (hereinafter referred to as the consolidated enterprise) by way of transferring all lawful assets, rights, obligations and interests to the consolidated enterprise and at the same time, terminating the existence of the enterprises being consolidated.

3. Acquisition of enterprises shall be the case where one enterprise (hereinafter referred to as the acquiring enterprise) purchases all or part of the assets of another enterprise (hereinafter referred to as the acquired enterprise) which is sufficient for controlling or directing activities of the acquired enterprise.

Article 17. Merger, consolidation and acquisition of enterprises that shall be prohibited

Merger, consolidation and acquisition of enterprises shall be prohibited in case of:

1. Creating or strengthening the market dominance of the merged, consolidated or the acquiring enterprise;

2. Being likely to result in considerable competition restraint in the market.

Article 18. Exemption

A merger, consolidation, acquisition may be declared inapplicable if meeting any of the followings:

1. Increasing the competitiveness of small and medium enterprises;

2. *The merging, consolidating or acquired enterprises are in financial difficulties, facing the danger of being dissolved or bankrupt and the merger, consolidation or acquisition is necessary to solve that situation.*

Article 19. Assessing the possibility of competition restraint resulting from a merger, consolidation or acquisition of enterprises

The level of competition restraint caused by a merger, consolidation or acquisition of enterprises shall be determined based on the followings:

1. The market shares of goods and services taken by the enterprises in the market;

2. The economic and financial position of the business entities especially the financial power;

3. The development of the distribution network and the access to sources of goods or services

4. The capacity of the enterprises of preventing and/or removing its competitors from the market by directing them or by creating barriers to market access for other enterprises.

Chapter 5 Unfair Competition

Article 20: Discriminatory practice in competition

Business entities shall not conduct any of the following practices:

1. Unreasonably refusing to transact with other business entities.
2. Applying dissimilar conditions to identical or equivalent transactions with different business entities thereby unreasonably restrict or disrupt business activities of other business entities.

Article 21: Unduly assumption of tradenames, tradelabels

Business entities shall not conduct any of the following practices:

1. Using in an identical or similar manner registered or operated tradenames of other business entities used for identical or similar goods or services to confuse or potentially to confuse with business entities conducting business under the tradenames thereof.
2. Using in an identical or similar manner tradelabels, decorating style or other symbols on goods, instruments for services or business documents to confuse with goods, services of other business entities which is considered well-known or broadly recognized;
3. Forging or falsely using, on their goods, symbols of quality such as symbols of authentication, symbols of famous and high quality goods, falsifying the origin of their goods, and making false representations which are misleading as to the quality of the good.

Article 22: Infringement on business secrets

Business entities shall not conduct any of the following practices to infringe on business secrets of others:

1.- Obtaining business secrets from the owners of rights by stealing, enticing, bribing, coercing or other improper measures.

2.- Disclosing, using or allowing others to use business secrets of the owners of rights obtained by the measures stipulated in item 1 this Article.

Article 23. Coercion in conducting business

Business entities shall not coerce customers or trading partners of its competitors to transact business with itself by coercing, bribing, inducing or other improper measures.

Article 24: Denigration of competitor

Business entities shall not make incorrect, false, unduly announcements to give bad effects to reputation, financial situation, business activities in goods and services of competitors with the aim of competition.

Article 25: Enticement of competitor employees

Business entities shall not entice employees of competitors by coercing, inducing with profit or other improper measures to the prejudice of lawful interests and rights of the competitors.

Article 26: Predatory price

1. Business entities shall not sell their goods at a price that is below the production cost for the purpose of removing their competitors.

2. The provision stipulated in Item 1 of this Article shall not apply to followings:

- a. Selling fresh goods, which have sort useful life.
- b. Disposing of goods the useful life of which is about to expire or other overstocked goods.
- c. Seasonal lowering of prices.

d. Selling goods for changing or closing the business or for resolving financial difficulty, potentially leading to dissolution or bankruptcy.

Article 27: Illegal advertisement

Business entities shall not conduct any of the following advertisements:

1. Comparing their own goods, services with those of the same type in the market.

2. Imitating other advertising products to make confusion among customers.

3. Giving false, misleading information to customers on any of the followings: price, quantity, quality, usage, design, type, packaging, mode of use and service, date of manufacture, useful life, warranty period, origin, manufacturers, place of manufacture, etc of the goods.

3. Advertisement for the purpose of competition prohibited by other provisions of the law.

Article 28. Illegal sales promotion

Business entities shall not conduct any of the followings sales promotion:

1. Making sales with prizes attached by the fraudulent method of falsely claiming the existence of prizes or intentionally causing previously chosen people to win the prizes;

2. Sales promotion for the purpose of competition prohibited by other provisions of the law.

Chapter 6

State Administration of Competition

Article 29: Content of State administration of competition

The contents of State administration of competition include:

1. To issue, disseminate and implement legal documents on competition.

2. To work out strategies, schemes, plans and policies on competition for enterprises, goods and services of Vietnam.

3. To decide, approve and provide guidance on conditions for exemptions stipulated in this Law.

4. To take necessary measures to prevent anti-competitions, unfair competitions and discriminations in business.

5. To provide information and forecast of issues relating to competition law and policy.

6. To conduct international cooperation on competition law and policy

7. To organize and manage professional training for officials in the field of competition;

8. To inspect, examine competition in the market, to resolve complain, denouncement and to deal with breaches of competition regulations.

Article 30: State body in charge of competition

1. The Government uniformly exercises State administration of competition.

2. Ministries, ministerial-level bodies, and Government bodies are, within their respective powers and duties, responsible for exercising State administration of competition in their assigned areas.

The Government shall stipulate concretely the responsibilities of ministries, ministerial equivalent bodies and bodies of the Government for co-ordination with the Competition Agency in the exercise of State administration of competition.

3. People's committees of provinces, cities under central Government administration exercise State administration of competition within their respective localities according to law.

4. The Government shall make decision for the establishment of the Competition Agency.

Alternative 1

The Competition Agency is established as a department under Ministry of Trade (so that it is named Competition Department).

Alternative 2

The Competition Agency is established as a national Committee under the Prime Minister (so that it is named National Competition Board).

Alternative 3

The Competition Agency is established as a national Committee under the Government (so that it is named National Competition Committee).

Article 31: Responsibility and power of the Competition Agency

The Competition Agency has main responsibilities as follows:

1. Drafting regulations on competition to submit to competent state bodies for approval, implementing and providing guidance thereof.

2. Presiding over and Co-ordinating with concerning Agencies in making competition policies for certain periods; and measures to improve competition capacity of

enterprises, goods and services of Vietnam in the domestic as well as international market.

3. Providing specific criteria for determination of anti-competitive agreement; abuse of dominant position in the market; merger, consolidation and acquisition of enterprises; and for exemption.

4. Appraising documentation for exemption stipulated in this Law.

5. Commenting in law and regulations relating to the protection of fair and equal competition.

6. Studying to discover and resolving within its power (or suggesting measures to resolve) stipulated in Article 25, 26, 27 of Law on Organizing Government, regulations issued by other agencies, which prevent competitions or create discriminations in competition.

7. Presiding over and co-ordinating with concerning agencies in working out and implementing measures to control monopoly.

8. Training and enhancing professional knowledge and skills for officials in charge of administration and implementation of competition law and policies.

9. Presiding over and co-ordinating with concerning agencies in taking necessary measures to implement effectively this Law.

10. Presiding over and co-ordinating with concerning agencies in monitoring and inspecting the implementation of regulations on competition and in dealing with breaches of competition regulations.

11. Requiring concerning organisations and individuals to provide all information and documents necessary for the implementation of this Law.

12. Cooperating with foreign countries and international organisations in the field of competition law and policies.

13. Other responsibilities and powers stipulated by law.

Chapter 7
Procedure for exemptions

Article 32. Procedure for implementation

Anti-competitive agreements, abuse of dominant position, merger, consolidation and acquisition stipulated in Article 11, 15, 18 shall be allowed to be carried out only after business entities have approval in writing by the Competition Agency.

Article 33. Applicant for permission

1. Business entities participating in the anti-competitive agreements or its representative legally authorised of all concerning parties.

2. Business entity or group of business entities intending to conduct abusive practices or its representative legally authorised of all concerning parties.

3. Merging enterprises, acquiring enterprises and enterprises being consolidated or its representative legally authorised of all concerning parties.

Article 34. Documentation for permission

1. The documentation shall comprise the followings:

a. The application in form stipulated by Competition Agency

b. Certified copy of Certificate of business registration.

c. Financial report of each business entity for last 3 years certified by independent auditing organizations.

d. Impact evaluation report (proving the meeting requirements stipulated in this Law)

2. Business entities shall be responsible for the truth of their documentation.

Article 35. Addition and amendment to documentation

1. In the case of incomplete or improper documentation, the Competition Agency shall notify the business entities in writing for addition and amendment to the documentation.

2. Applicants shall be responsible for providing additional documents related under the requirements of the Competition Agency.

Article 36. Suspension, cancellation of application for permission

Any suspension, cancellation of the implementation of practices being applied for permission shall be notified in writing to the Competition Agency.

Article 37. Timeframe for permission

1. Within 2 months of receiving documentation, the Competition Agency shall respond the business entity in writing to declare acceptance or acceptance with conditions or not acceptance with regard to the implementation of the practices applied thereto. In the case of not acceptance, the reason must be clearly indicated.

2. In case of complexity, the timeframe stipulated in Item 1 this Article could be extended for a further period of not more than 4 months of receiving documentation. In the case of extension, the Competition Agency shall notify applicants and indicate clearly the reason.

3. In case the timeframe stipulated in item 2 this Article has expired without any idea from the Competition Agency, business entities submitting the documentation for permission shall be allowed to carry out the practices applied.

Article 38. Permission Document

Permission documents shall comprise the followings:

1. The names of business entities.
2. Scope of permission

3. Duration of validity, condition of permission, if any.

Article 39: Publication of permission of the Competition Agency

All permission documents released by the Competition Agency shall be publicized at its headquarter except for case where this provision may disclose the business secrets of business entities.

Article 40: Confidentiality

Members of the Competition Agency or other Governmental Agency shall not disclose the business secrets of business entities obtained in the process of enforcement of this Law or use such secrets thereof for the purpose other than enforcement of this Law.

Article 41. Revocation of permission

Competition Agency shall have the right to revoke its permission in following cases:

1. Business entities have failed to meet the conditions and obligations stipulated in permission document.

2. The circumstances justifying the granting of the permission have ceased to exist.

3. Information provided in documentation for permission has been false and misleading, directly affecting to permission of Competition Agency.

Article 42. Appeal against the decision of the Competition Agency

Any business entities who is dissatisfied with the decision of the Competition Agency, may file an appeal with the Competition Agency or take legal action with competent Court in accordance with law.

Chapter 8 Dealing with Breaches

Article 43. Breaches of Competition Law

1. Anti-competitive agreement, abuse of dominant position, merger, consolidation and acquisition, which is prohibited except for exemptions, stipulated in this Law.

2. Unfair competition practices.

3. Failure to comply with decisions or orders of the Competition Agency or other competent agencies.

4. Failure to provide information or documents required within the time limits specified.

5. Provision of false or misleading information and documents.

6. Other practices breaching the provisions of this Law.

Article 44. Bases for investigation of breaches

The investigation of breaches shall be started based on

1. Complaint, denouncement submitted by concerned business entities.

2. Request submitted by competent State agencies.

3. Discovery of breaches by the Competition Agency.

Article 45. Order and procedure of dealing with breaches

Breaches shall be dealt under order and procedure stipulated by law.

Article 46. Forms of dealing with breaches

1. Depending on the nature and seriousness of each breach, business entities committing breaches of the

provisions of this Law shall be subject to administrative penalty or criminal prosecution in accordance with law.

2. Beside forms of dealing with breaches mentioned in item 1 this Article, business entities committing breaches of the provisions of this Law may be subject to one of the followings:

- Reorganization with respect to business entities having a dominant position.

- Division, separation with respect to business entities merging, consolidating illegally.

- Correction in public of false information

- Removal of illegal terms and conditions from contract or transaction.

3. Where a breach causes damage to the interests of State, business entities or other persons, the business entities in breach must compensate in accordance with law.

Article 47. Competent agency of administrative penalty

1. The Competition Agency has competence of administrative penalty for breaches in the field of competition.

2. Other competent agencies in the field of competition are stipulated by law.

Article 48: Effect of decision on administrative penalty of the Competition Agency

The decisions on administrative penalty of the Competition Agency have the mandatory effect for relating business entities.

Article 49: Dealing with breaches committed by State employees and officials in exercise of administration of competition

State employees and officials who commit breaches while implementing their responsibilities, depending on the

seriousness of the breach, be subject to disciplinary action or prosecution for criminal liability, and compensate for damage or losses caused by the breach in accordance with law.

Article 50. Appeal against the decision on penalty

Any business entities who is dissatisfied with the decision on penalty of the Competition Agency, may file an appeal with the Competition Agency or take legal action with competent Court in accordance with law.

**Chapter 9
Implementing Provisions**

Article 51: Effectiveness

This Law shall be of full force and effect as of ...
... ..

Article 52: Guidance for implementation

The Government shall provide detailed provisions and guidance for the implementation of this Law.