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**TO BUILD COMPETITION LAW IN THE CONTEXT
OF THE TRANSITION TO MARKET ECONOMY IN VIETNAM**

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In the former central-planned and subsidized economic structure, there were only 2 sectors, the state sector and the collective sector. Enterprises in these two sectors did not have motivation to compete with each other since all input and output factors were assigned and planned. As a result, enterprises – the foundation of any economy – lacked motive for operation, leading to stagnancy in business and production and the shortage of common commodities.

The economic reform was launched in 1986; but in the legal terms only since 1992, our revised Constitution officially acknowledged different types of ownership, acknowledged equitable competition of enterprises.

Our achievements of economic reform in the recent year have helped to realize and fully understand the role of competition. At the present, the competition is considered as an internal drive of the economy. Under the pressure of the producers and the consumers in terms of price, quality and other factors, enterprises are forced to react reasonably. Competition is one of “internal drives” to make the production forces develop for the target of increasing labor productivity, of accelerating production concentration. Especially in the context of the fact that all factors of production such as natural resources, labor force, intellectuals and so on are the goods in the market.

The necessity of building competition law in Vietnam at the present deprives from followings:

1. The nature of the market economy

Vietnam's advocacy is to develop consistently the multi-sectors commodity economy operating in market mechanism under the State management. Competition is one of fundamental rules and principles of the market economy. Shifting the economy into the market direction forces us to continuously renovate our management structure as well as our legal system to regulate economic activities including competition.

2. The need of controlling State monopolies

At the moment, our economy is under the transition into the market economy. However, the State economic proportion in comparison with other economic sectors is still dominant, of which some goods are exclusively distributed by State-owned enterprises. It can be said that monopolistic enterprises in Vietnam market are merely established by administrative decisions, not by free and equitable competition. Therefore, it is critical for Vietnam to control and limit state monopolistic enterprises.

3. The need of international economic integration

In addition, it can be said that Vietnam economy integrated actively into the regional and global markets. In the year of 2001, export value per capita of Vietnam is 200 USD. In the field of investment, by the end of 2000, the total value of foreign direct investment tops USD 41 billions. However, the

appearance of foreign-invested enterprises and branches of foreign companies in Vietnam market intrigues some problems. Those are the differences in terms of the size, experience, financial strength between these enterprise/ companies and Vietnamese partners. Vietnam, like any other transitional economies, may face the situation that foreign enterprises can abuse the advantage of market liberalization to impose their restraints such as price fixing agreement, predatory pricing and other abusive behaviors to distort fair and equitable competition environment.

4. The need of creating equitable business environment

Based on experiences gained during 15 years of the "Doi moi" (renovation), our State has been committed to "continuously creating and completing well-structured market elements; renovating and improving the efficiency of the State economic management". In the light of this statement, we are sparing no efforts to create an equal and open environment favorable for both foreign and domestic investments and responsive to the changing production and business conditions. Vietnam's economy with a low baseline has been moving towards a market mechanism while the percentage of enterprises established in the old system is still very dominant. Therefore, the compromise between paving the way for State economic sector to develop and creating equitable competition environment forces us to have consistent principles in this field.

5. The reality of legal system for regulating competition activities at the present

The 1992 Constitution, which recognizes the right to business freedom of enterprises and the development of multi-sectors economy laid the first stone for competition environment for enterprises under all types of ownership in Vietnam. Since then, other legislations such as Civil Code, Criminal Code, Enterprise Law, Collective Law, Bankruptcy Law, Foreign Investment Law, Domestic Investment Law, Commercial Law, Ordinance on Goods Quality Management, Ordinance on Protection of Consumer Rights and the effort to restructure state owned enterprises have contributed to create equal legal framework for competition.

However, legislations that regulate the competition activities have only covered competition principles on commercial activities and fundamental rules protecting the rights of producers and consumers. These are not adequate for regulating the whole market's current competition activities.

Like any other nation, the objective of the competition policy in Vietnam is to create and to develop an equitable competitive environment, to maintain and to encourage healthy competition, to block any anti-competitive and unhealthy competition actions in the market; to protect the interest of the States, the legal rights and interests of business individuals, institutions and consumers; to contribute to the socio-economic development.

Nonetheless, due to the fact that Vietnam has just entered the market economy for 15 years, the nation is virtually lacking of experience in regulating competition activities. Unlike some suggestion supporting the viewpoint that the enactment of competition regulations will limit foreign investment, on the contrary, we are strongly with the viewpoint that the competition policy is the fourth corner stone in the economic legal framework, apart from commercial, financial and monetary instruments. This means the enactment of competition policy will help increase the attractiveness of the investment environment, toward a healthier and transparent environment. Enterprises will have a more equitable playground, small and medium enterprises are more well protected.

In drafting the Competition Law, Vietnam is facing a challenge that is establishing and running the competition regulatory authority in the future. In this task, the difficulty is how to maintain the independence of this body in the executive branch in accordance with the trend of limiting the establishment of new bodies and the merging of ministries in the light of administrative reform. We are also facing obstacles in setting up the procedures for considering exemption, procedures for investigating competition cases in the market. Therefore, we highly appreciate the international cooperation in assistance for regulating the policy. These helps came from *French Conseil de la Concurrence*, *Bundeskartellant*, UNCTAD. We are very grateful and willing to receive more cooperation and supports from other competition authorities, international institutions in completing the draft of the Competition Law to meet the deadline of submitting the Bill to our government by the end of this year. Besides, we are highly valued for the support from competition authorities in the field of capacity and institutional building to prepare for the human resource requirements of the Vietnam's competition authority in the future.