

 VIETNAM

## Legislation and Jurisdiction

### The Law

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#### What is the relevant legislation?

The relevant legislation includes the **Competition Law No. 27/2004/QH11** (the “Law”) and six implementing guidelines (five decrees and a circular).

The implementing provisions are the following:

- Decree No.116/2005/ND-CP of 15 September 2005, setting forth detailed provisions for implementing a number of Articles of the Law;
- Decree No. 120/2005/ND-CP of 30 September 2005 on administrative offences in the field of competition;
- Decree No.110/2005/ND-CP of 24 August 2005 on management of multi-level sales of goods;
- Decree No. 06/2006/ND-CP of 9 January 2006 on the functions, tasks, power and organization structure of the Competition Administration Department;
- Decree No. 05/ 2006/ND-CP of 6 January 2006 on the functions, tasks, powers, and organization structure of the VCC;
- Circular No. 19/ 2005/TT-BTM of 8 November 2005 on guiding the implementation of a number of provisions prescribed in Decree No. 110/ 2005/ ND-CP.

Both the law and the implementing guidelines are available on the Vietnam Competition Authority website ([www.vca.gov.vn](http://www.vca.gov.vn), under “legal resources”).

#### To whom does it apply?

According to Article 2, the Law applies to any business organisations and individuals (referred to as “**enterprises**”), including enterprises providing public-utility products or services, enterprises operating in State monopoly industries and sectors (“State-monopolized sectors and domains”), as well as foreign enterprises and professional associations operating in Vietnam.

#### Which practices does it cover?

The Law covers the following practices:

- “**competition-restriction acts**” (Chapter II), which include agreements, abuse of monopoly/dominant position and economic concentrations which distort or restrain competition in the market; and
- “**unfair competition acts**” (Chapter III), defined as business practices, which run counter to common standards of business ethics and cause actual or potential damage to State’s interests, legitimate rights and interests of other enterprises or consumers.

#### Are there proposals for reform?

As foreseen by the VCA work program, a comprehensive programme for amending the Law is in progress.

### The Authorities

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#### Who is the enforcement authority?

According to Chapter IV of the Law, there are two authorities: the Vietnam Competition **Authority (VCA)** and the **Vietnam Competition Council (VCC)**.

The VCA (Article 49 of the Law), established within the Ministry of Industry and Trade (MoIT), is responsible for investigating competition-restriction acts, application for exemptions for agreements and mergers, and unfair competition practices.

The VCC (Article 53 of the Law), established by the Government, is responsible for adjudicating cases concerning competition restrictive acts. In competition matters, the VCC establishes a Competition Case-Handling Council, composed of at least five members of the VCC.

The VCA adjudicates unfair competition cases and decides on whether mergers fall within the prohibited category. In all other cases, the VCA submits a report, respectively to the VCC (who decides competition-restriction cases), to the MoIT (who decides on exemptions for competition-restriction agreements and economic concentrations between parties in danger or dissolution or bankruptcy) or to the Prime Minister (who decides on exemptions for economic concentrations which may have the effect of expanding export or contributing to socio-economic development, technical and technological development).

### **Are there any sector-specific regulatory authorities (RAs) with competition enforcement powers?**

There are no RAs with exclusive competition enforcement powers. However, there are a number of RAs or administrative authorities which cooperate with the VCA in competition cases, such as:

- In the electricity sector, the Electricity Regulatory Authority of Vietnam (Ministry of Industry and Trade);
- In the telecommunications sector, the Department of Telecommunications (Ministry of

Information and Communications) (under the new telecommunications law, a regulatory authority for telecommunications is to be established);

- In the maritime sector, the Vietnam National Maritime Bureau (Ministry of Transport);
- In the civil aviation sector, the Civil Aviation Administration of Vietnam (Ministry of Transport);
- In the foreign investment sector, the Foreign Investment Agency (Ministry of Planning and Investment);
- In the financial sector, the Ministry of Finance and The State Bank of Vietnam;
- In the pharmaceutical sector, the Drug Administration of Vietnam (Ministry of Health);
- In the intellectual property sector, the National Office of Intellectual Property of Vietnam (Ministry of Science and Technology);
- In the insurance sector, the Insurance Administration and Supervision Department (Ministry of Finance).

In other industries and sectors the VCA may cooperate with the relevant administrative authorities.

## Anticompetitive practices

### Agreements

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#### Which agreements are prohibited?

Article 8 of the Law identifies a list of “competition-restrictive agreements”. According to Article 9, some of these agreements are prohibited per se, namely agreements:

- preventing, restraining or impeding other enterprises from entering the market or develop business (Article 8, Paragraph 6);
- excluding other enterprises from the market (Article 8, Paragraph 7); and
- favouring one or all of the parties in tender procedures (collusive tendering) (Article 8, Paragraph 8).

In addition, some agreements are prohibited only where the parties’ combined market share is equal to or above 30%, namely agreements:

- directly or indirectly fixing prices for goods or services (Article 8, Paragraph 1);
- partitioning outlets, sources of supply of goods and provision of services (Article 8, Paragraph 2);
- restricting or controlling production, purchase or sale output of goods or services (Article 8, Paragraph 3);
- restricting technical and technological development and investments (Article 8, Paragraph 4); and
- imposing on other enterprises conditions on goods or services purchase or sale contracts or forcing other enterprises to accept obligations which have no direct connection with the subject of such contracts (Article 8, Paragraph 5).

These categories include both vertical and horizontal anti-competitive agreements.

#### Which agreements may be exempted?

According to Article 10 of the Law, exemptions for a specific period may be granted by the MoIT to agreements that are not per se prohibited and when the parties’ combined market share is equal to or above 30%, provided that the agreements aim to:

- rationalise an organisational structure or business scale and increase business efficiency;
- promote technical or technological progress, improve the quality of goods or services;
- promote the uniform application of quality standards and technical norms of certain products;
- harmonise business, goods delivery and payment conditions, which are not related to prices or any price factors;
- enhance the competitiveness of medium and small-size enterprises;
- enhance the competitiveness of Vietnamese enterprises in the international market.

### Is there any formal notification requirement and to which authority should a notification be made?

There is a formal notification system. Notifications shall be made to the VCA at the following address:

Competition Policy Board,  
Vietnam Competition Authority,  
Ministry of Industry and Trade  
Address: 25 Ngo Quyen Street,  
Hoan Kiem district, Hanoi, Vietnam

 +84 4.22205014 –

 +84 4.22205003 -

 [lantp@moit.gov.vn](mailto:lantp@moit.gov.vn)

Alternatively, submissions can be sent online at [www.vca.gov.vn](http://www.vca.gov.vn), under the section “competition > submit information online”.

### Is there a notification form?

Applications for exemption shall be submitted according to the VCA notification form, which is available at the above addresses.

Further information is available online ([www.vca.gov.vn](http://www.vca.gov.vn), under the section “competition > exemption of competition restriction agreements” - Vietnamese text).

### Are there any filing fees?

Filing fees currently amount to fifty million VND, under Article 57 of Decree No. 116/2005/ND-CP of 15 September 2005, implementing Article 30(3) of the Law.

Further updates on applicable fees will be available online ([www.vca.gov.vn](http://www.vca.gov.vn), under the section “competition”).

### Is there any obligation to suspend the transaction pending the outcome of the assessment (standstill clause)?

According to Article 36(1) of the Law, parties are prevented from implementing the agreement until the formal decision approving the exemption is granted.

### Procedure and timeline

The MoIT is responsible for granting exemptions.

According to Article 34(1) of the Law, within 60 days from receiving the exemption application from the VCA, the MoIT issues a decision approving or disapproving the exemption. According to Article 34(2), the MOIT may extend the deadline no more than twice, for up to 30 days per time.

Further information on notification requirements and procedure for exemption of competition restriction agreements can be found at [www.vca.gov.vn](http://www.vca.gov.vn), under the section “competition > competition-restrictive acts > exemptions and procedures”.

## Monopoly and dominant position

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### Is monopoly or dominant position regulated?

Chapter II, Section 2 of the Law prohibits both the abuse of a dominant position (“market dominance”) and the abuse of a monopoly position in the market.

### What is a dominant position?

According to the Article 11 of the Law, one or more enterprises are presumed to hold a dominant position when:

- (single dominance): an enterprise has a market share of at least 30% in the relevant

market or it is capable of restricting competition considerably on the basis of specific factors (provided for in Article 22 of Decree 116/2005/ND-CP);

- (collective dominance): more enterprises hold a combined market share of at least 50% (two enterprises), 65% (three enterprises) or 75% (four enterprises) in the relevant market.

### What is a monopoly position?

According to Article 12, an enterprise holds a monopoly position when there are no other enterprises competing in the relevant market.

### When are monopoly and dominant positions prohibited?

Under Article 13, **abuse of dominant position** includes the following practices:

- Predatory pricing (selling goods or providing services below cost in order to eliminate competitors) (Paragraph 1);
- Unreasonable purchase or selling prices or minimum re-selling prices causing damage to customers (Paragraph 2);
- Restricting production, distribution, and limiting markets or preventing technical and technological development causing damage to customers (Paragraph 3);
- Imposing discriminatory commercial conditions in similar transactions with the aim of creating inequality in competition (Paragraph 4);
- Imposing conditions on other enterprises in purchase or sale contracts or forcing other enterprises to accept obligations which have no direct connection with the object of such contracts (Paragraph 5);
- Preventing competitors from entering the market (Paragraph 6).

Under Article 14, **abuse of a monopoly position** includes all the practices above and:

- Imposing unfavourable conditions on customers (Paragraph 2); and
- Abusing the monopoly position to unilaterally modify or terminate a contract without plausible reasons (Paragraph 3).

### Can abuses of dominant or monopoly position be exempted?

No exemption is allowed.

## Merger control

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### What is a merger?

Chapter II, Section 3 of the Law regulates “economic concentrations”, which include the following transactions:

- Mergers: one or more enterprises transfer all of its/their property rights, obligations and legitimate interests to another enterprise and, at the same time, terminate the existence of the merged enterprise(s) (Articles 16 and 17, Paragraph 1);
- Consolidations: two or more enterprises transfer all their property rights, obligations and legitimate interests to form a new enterprise and, at the same time, terminate the existence of the consolidated enterprises (Articles 16 and 17, Paragraph 2);
- Acquisitions: one enterprise acquires the whole or part of another enterprise sufficient to obtain control on the latter (Articles 16 and 17, Paragraph 3);
- Joint ventures: two or more enterprises jointly contribute to the establishment of a new enterprise (Articles 16 and 17, Paragraph 4); and

- Other acts of economic concentrations, as it may be prescribed by law (Article 16, Paragraph 5).

### **Are foreign-to-foreign mergers included?**

The Law also applies to foreign enterprises operating in Vietnam, which are therefore subject to merger control (Article 2.1 of the Law).

### **Do mergers need to be notified?**

According to Article 20(1) of the Law, enterprises having a combined market share of between 30% and 50% must notify the VCA before implementing the transaction (requirements for merger notification are laid down in Article 21), except where the enterprises are, and remain after the concentration, of small or medium-size. The definition of small and medium-sized enterprises, specified under Article 3 of Decree 56/2009/ND-CP with reference to registered capital or average employees, varies according to the sector, i.e., agriculture, industry or services.

The VCA notification form is available online ([www.vca.gov.vn](http://www.vca.gov.vn)). Further information on notification requirements and procedure for exemption of economic concentrations may be found online ([www.vca.gov.vn](http://www.vca.gov.vn), under the section “competition > competition-restrictive acts > exemption of economic concentration”).

According to Article 20(2) of the Law, enterprises which apply for an exemption from the prohibition shall, instead of notifying the merger according to Article 21, submit an application for exemption according to Section 4 of Chapter II (procedures for execution of exemption cases).

### **Are there any filing fees?**

There are no filing fees for merger notification. <http://www.vca.gov.vn/>

### **Are there sanctions for not notifying?**

Fines for not notifying a merger range from 1% to 3% of the previous fiscal year total turnover of the parties involved, according to Article 29 of Decree No. 120/2005/ND-CP, implementing Article 20 of the Law.

### **How long does it take for approval or exemption?**

According to Article 23 of the Law, within 45 days from the receipt of a complete file the VCA shall establish whether the economic concentration (i) does not fall under a prohibited category or (ii) is prohibited under Article 18.

When the merger “involves many complicated circumstances” the VCA may extend the deadline no more than twice, for up to 30 days per time (in any case, under Article 24 the expiry of the time limit does not provide for an automatic clearance of the merger).

According to Article 34, the procedure for exemption before the MoIT lasts 60 days from the receipt of the exemption application from the VCA. The VCA may extend the deadline no more than twice, for up to 30 days per time.

### **Is there any obligation to suspend the transaction pending the outcome of the assessment (standstill clause)?**

According to Article 24, a merger may only be implemented after approval.

### **Which mergers are prohibited?**

According to Article 18 of the Law, economic concentrations are prohibited where the parties' combined market share exceeds 50%, except where the enterprises are (and remain after the concentration) of small or medium-size or are exempted under Article 19 (see below).

### What happens if prohibited mergers are implemented?

According to Article 117, the Law allows the VCA to impose

- Warnings or fines (up to 10% of the previous fiscal year total turnover of the merging parties);
- Additional sanctions, namely the revocation of business registration certificates, deprivation of licenses and practicing certificates, and the confiscation of exhibits and means used for competition law infringements;
- Remedies, namely the de-concentration of prohibited mergers, i.e., dividing or separating the merged or consolidated enterprises, or forcing the resale of the share of the acquired enterprise.

### Can mergers be exempted/authorised?

Under Article 23 of the Law, an economic concentration is approved when it does not fall into Article 18 prohibition.

Under Article 19, prohibited economic concentrations (i.e., concentrations which exceed the 50% threshold) may be exempted if:

- one or more of the parties is/are at risk of being dissolved or declared bankrupt, or
- the economic concentration has the effect of expanding export or contributing to socio-economic development, technical and technological progress.

According to Article 25, the Minister of Industry and Trade is responsible for approving economic concentrations under Article 19(1), while the Prime Minister is responsible for granting exemptions under Article 19(2).

### How to apply for an exemption?

As explained above, the merging parties may

notify for approval under Article 20 (notification requirements are laid down in Article 21) or apply for exemption under Section 4 (application requirements are laid down in Article 29).

The VCA application form is available from the Competition Policy Board, Vietnam Competition Authority, Ministry of Industry and Trade  
25 Ngo Quyen, Hoan Kiem, Hanoi, Vietnam,

 +84 4 2220 5014

 +84 4 2220 5003

or on the Internet at

 [www.vca.gov.vn](http://www.vca.gov.vn),

under the section "competition > competition-restrictive acts > exemption of economic concentration" (Vietnamese text).

Interested parties may require further information/assistance on procedures/exemptions at the above address and number.

### State management agencies, state monopolies and public utilities

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#### Which special provisions apply to State management agencies, State monopolies and public utilities?

Under the Law, the following special provisions apply to State management agencies, State monopolies and public utilities.

According to Article 6 of the Law, State management agencies are prohibited from:

- Forcing enterprises, organisations or individuals to buy or sell goods, or provide services to enterprises which are designated by these agencies, except for goods and services in the State monopoly sectors or in emergency cases prescribed by law;
- Discriminating between enterprises;
- Forcing professional associations or enter-

prises to align with one another with a view to precluding, restricting or preventing other enterprises from competing in the market;

- Engaging in other acts that prevent lawful business activities of enterprises.

According to Article 15(1), the State controls enterprises operating in the State-monopolized domains through deciding, in the State monopolized domains: (a) buying and selling prices of goods and services; (b) quantities, volumes and scope of market of goods and services.

According to Article 15(2), the State controls enterprises producing and supplying public-utility products and services through ordering goods, assigning plans or bidding according to prices or charges set by the State.

Article 15(3) specifies that, when undertaking other business activities outside the State-monopolized and public-utility sectors, enterprises shall not be subject to the application of Article 15(1) and (2).

### **Other unfair commercial practices**

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#### **Which unfair commercial practices are regulated?**

Chapter III of the Law prohibits “unfair competition acts”, defined in Article 3, Paragraph 4, as “competition acts performed by enterprises in the process of doing business, which run counter to common standards of business ethics and cause damage or can cause damage to the State’s interests, legitimate rights and interests of other enterprises or consumers”. According to Article 39, these include:

- misleading indications (Article 40);
- infringement of business secrets (Article 41);
- coercion in business (Article 42);

- discrediting other enterprises (Article 43);
- disturbing business activities of other enterprises (Article 44);
- advertising for the purpose of unfair competition (Article 45);
- sale promotion for the purpose of unfair competition (Article 46);
- discrimination by associations (Article 47);
- illicit multi-level sale (Article 48);
- other unfair competition acts as prescribed by the Government (Article 39, Paragraph 10).

#### **Does the Law provide for any exemption?**

No exemption is allowed.

## **Procedure**

### **Investigations**

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#### **How does an investigation start?**

Under Article 58 of the Law, interested parties (business organisations and individuals) who believe that their rights and interests have been infringed due to a breach of the Law can submit a complaint to the VCA, within two years from the violation. Under Article 86, the VCA can also open an investigation on its own initiative.

A complaint may be submitted directly or posted to the Office of Vietnam Competition Authority, Ministry of Industry and Trade (25 Ngo Quyen, Hoan Kiem, Hanoi, Vietnam, ☎ +84 4 2220 5002 - 📠 +84 4 2220 5003).

#### **What are the procedural steps and how long does the investigation take?**

Under Article 87 of the Law, the VCA conducts a

preliminary inquiry within 30 days from the start of the investigation.

Where indications of an offence are found, the VCA opens an official inquiry, which according to Article 90 is concluded within 180 days for competition-restrictive cases (extended “in case of necessity” no more than twice, for up to 60 days per time) and 90 days for unfair competition cases (extended “in case of necessity” for up to 60 days).

The procedure in competition-restrictive cases follows three stages: investigation, processing and adjudication (details are provided for in Article 90 of the Law and Articles 46 and 47 of Decree 116/2005/ND-CP).

### **What are the investigation powers of the VCA?**

Under Article 77 of the Law, the investigators of the VCA have the power to:

- Request organisations and individuals to provide necessary information and documents;
- Request parties under investigation to produce documents and give explanations concerning competition cases;
- Request expertise; and
- Apply administrative preventive measures.

### **What are the rights and safeguards of the parties?**

Article 56(3) of the Law introduces general safeguards to protect the confidentiality of information containing business secrets and to protect rights and interests of organizations and individuals.

A more detailed description of the rights of parties involved in the proceedings (investigated parties and complainants) are specified in Article 66, while Articles 67 to 71 specify, respectively, the rights of lawyers (of both com-

plainants and investigated parties), witnesses, experts, interpreters and persons with interests and obligations related to the case.

### **Is there any leniency programme?**

Currently, there is no leniency programme in Vietnam. However, a voluntary declaration of prohibited acts, before they are detected by competent agencies, is treated as an attenuating circumstance (Article 85(1.a) of Decree 116/2005/ND-CP).

### **Is it possible to obtain any informal guidance?**

Interested parties may obtain informal guidance from the VCA in relation to anti-competitive practices and unfair commercial practices at the following addresses:

#### For anticompetitive cases:

Antitrust Investigation Board,  
Vietnam Competition Authority,  
Ministry of Industry and Trade  
Address: 25 Ngo Quyen Str.,  
Hoan Kiem Dist., Hanoi, Vietnam

 +84 4 2220 5016

 +84 4 2220 5003

#### For unfair commercial cases:

Unfair Competition Investigation Board  
Vietnam Competition Authority –  
Ministry of Industry and Trade  
Address: 25 Ngo Quyen Street,  
Hoan Kiem District, Hanoi

 +84 4 2220 5015

 +84 4 2220 5003

## Adjudication

### What are the final decisions?

Under the procedures for exemption (Chapter II, Section 4), a final decision approving or disapproving the exemption (Article 34) is taken by the MoIT in case of exemption from restrictive agreements and merger approval and by the Prime Minister in case of exemption from prohibited mergers (Article 25).

Following an investigation (under Chapter V of the Law), a final decision is taken by the VCC in case of restrictive-agreements and abuse of dominant position or monopoly cases and by the VCA in unfair competition cases.

### What are the sanctions?

Sanctions for infringing the Law are dealt with by Section 8 of Chapter V. In particular, Articles 117 and 118 list the following sanctions and remedies:

- Sanctions in the form of warnings or fines (Article 117(1)), which may be:
  - ▶ Fines up to 10% of the previous fiscal year total turnover of the parties involved in case of competition-restrictive acts (Article 118(1));
  - ▶ sanctions according to the relevant administrative law provisions in case of unfair competition and other acts violating the Law (Article 118(2));
- Additional sanctions, namely (a) revocation of business registration certificates, deprivation of licenses and practicing certificates; (b) confiscation of exhibits and means used for competition law infringements (Article 117(2));
- Remedies, namely (a) restructuring enterprises who have abused a dominant position; (b) de-concentration of prohibited mergers,

i.e., dividing or separating the merged or consolidated enterprises, or forcing the resale of the share of the acquired enterprise; (c) public corrections; (d) removing illegal provisions from business contracts or transactions; (e) “other necessary measures to overcome the competition restriction impacts of the violation acts” (Article 117(3)).

## Judicial review

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### Can the enforcement authorities’ decisions be appealed?

According to Article 107 of the Law, decisions of the Competition Case-Handling Council may be appealed before the VCC, while decisions issued by the head of the VCA may be appealed before the Minister of Industry and Trade.

In both cases, according to Article 115 further appeal (“administrative lawsuit”) may be lodged before the competent provincial/municipal Peoples’ Court.

## Private enforcement

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### Are private actions for damages available?

Private parties (individual and organizations) may bring actions in court for damages resulting from the violation of competition law, according to general civil procedural law, according to Article 117.

## Exclusions

### Is there any exclusion from the application of the Law?

There are no specific exclusions from the application of competition law. However, enterprises operating as State monopolies (in “State-monopolised domains”) or in public-utility sectors are subject to specific State control measures, as explained above.

## Enforcement Practices

Please refer to the Annex I - Case Studies.