

Vietnam Competition Law Newsletters

This year, VCAD began publishing monthly newsletters. Much of the content thus far deals with non-competition specific information particularly related to consumer protection and trade law issues. This update will focus on competition law related information provided in the newsletter.

JANUARY

This edition starts with an outline of the legal framework relating to multi-level marketing in Vietnam. VCAD describes its activities in this area as including training courses, publication of explanatory materials and legal updates, conferences and drafting of a decree on administrative fines in respect of commercial activities. VCAD reports that it has investigated 10 multi-level marketing cases and imposed fines of over 800 million dong. Multi-level marketing is identified as an enforcement focus in 2009.

The January newsletter also identifies the Vietnam Competition Network as an organization proposed by VCAD to promote the dissemination of competition related information and the development and research of information to guide competition policy.

FEBRUARY

The February edition starts with the encouraging announcement that VCAD has joined the International Competition Network and goes on to note two important anti-competitive acts which occurred in 2008:

- 1) The unilateral termination of fuel sales by Vinapco to Jetstar Pacific Airlines; and,
- 2) The September 15, 2008 signing of an agreement between 19 insurance companies involving cooperation in the provision of certain insurance products.

VCAD reports that it conducted 15 investigations with respect to the unfair competition provisions of the Competition Law with total fines of 805 million dong in 2008. Interestingly, VCAD predicts that, due to declining economic circumstances, incidences of unfair competition may increase with the need for business to compete more aggressively.

MARCH

The March newsletter notes areas of cooperation with foreign governments. For example, with collaboration from Japanese aid agencies and regulatory authorities, VCAD conducted a seminar on "the role of enterprises and associations in promoting healthy competitive environment" and a training workshop for VCAD officials in investigation techniques.

The newsletter also notes discussions with Italian authorities regarding cooperation and cited training of investigators as an area of focus. Similarly, the Fourth APEC Training Course on Competition Policy held in November, 2008 was also noted.

From a trade perspective, the newsletter reports that on February 27, 2009, during the 14th ASEAN Summit, the ASEAN members, Australia and New Zealand signed the Agreement establishing the Association of Southeast Asian Nations - Australia- New Zealand Free Trade Area (AANZ FTA) and that the latter countries formally recognized Vietnam as a full market economy.

This edition identifies issues related to the Vietnamese gas market and references consumer complaints regarding pricing of Honda products. With regards to the former, VCAD recommends government action to address the concerns raised. In response to the latter, VCAD met with Honda officials who agreed, among other things, to make their pricing more public.

Finally, the newsletter reports on a survey undertaken by VCAD to assess knowledge of competition related laws. It identified a poor awareness of the competition law and, interestingly, links this with generally poor enforcement of business laws in Vietnam.

APRIL

The April edition reports that Vietnam has been appointed Vice-Chairman of the ASEAN Competition Group which promotes cooperation in competition law among ASEAN members and throughout the region. Vietnam will thus become Chairman of the Group in 2010. Vietnam is also Team Leader for the construction of a competition law handbook which will address the policies and competition laws of ASEAN members.

The Newsletter noted the 10/3/2009 conference on Competition Law and Policy in Da Nang which had the dual goal of promoting the business community's awareness of the law and learning from U.S. experience in this area. Attendees included local and national government officials, business representatives, VCAD staff and representatives of U.S. competition authorities and USAID.

In addition, VCAD held seminars in Hanoi and Ho Chi Minh City on 18/3/2009 and 20/3/2009 respectively to discuss a report on the regulation of anti-competition practices in Vietnam's pharmaceutical distribution system and seek industry and government feedback. The Newsletter reviews some of the participants' comments on the report, features of this market and aspects of consumer protection that might be addressed through more effective regulatory enforcement.

Finally, also in March, a seminar was held on proportionality principles in competition law at VCAD's offices. This seminar was attended by various government officials, VCAD staff and experts, academics and an expert from the Japan International Cooperation Agency. A number of comments discussed in the Newsletter address concerns of ensuring that the competition law is implemented with due regard to historic and present market and cultural realities in Vietnam with specific concerns noted including the need:

- to better educate businesses and the public;
- to gain from the experiences of other countries in the region in the implementation of their respective competition laws; and
- to promote certainty in the application of the competition law.

MAY

The most recent newsletter starts off with news of a major decision. On April 14, 2009, the Vietnam Competition Council in a public hearing fined the Vietnam Air Petrol Company (otherwise known as Vinapco) approximately 3 billion dong for abuses of its monopoly position. The Council determined that

when Vinapco cut off supplies to a predecessor of Jetstar Pacific Airlines in April, 2008 it violated Clauses 2 and 3 of Article 14 of the Competition Law. The maximum monetary penalty under these provisions is 10% of Vinapco's revenue from the financial year immediately preceding the year the conduct occurred – a sum significantly higher than the fine actually imposed.

The newsletter contains a discussion of certain issues related to multi-level marketing including tips on how to identify an illegal multi level marketing scheme. It briefly outlines some issues related to standard form contracts and also discusses the concept and definition of unfair competition and how this concept relates to violations of intellectual property rights.

Finally, the following seminars and courses are reported:

- A training course from April 20th to 22nd in Hanoi on Quantitative Analysis in Competition co-organized by VCAD and the OECD Committee of Competition;
- A forum on Enhancing Competitiveness through Integration in the Region on April 27th and 28th in Thailand organized by the Government of Thailand with co-operation of OECD, ASEAN and the ADB during which regional experiences in competition law and issues related to cooperation of competition law and policy were discussed.