

Vietnam Air Petrol Company

On April 14, 2009, the Vietnam Competition Council ("VCC") issued a decision after holding its first hearing in relation to an act in restriction of competition. In the public hearing, the VCC fined the Vietnam Air Petrol Company ("Vinapco") approximately VND 3 billion for abuses of its monopoly position. In addition to the fine, the VCC appears to have approved recommendations of Jetstar Pacific Airlines ("Jetstar") that Vinapco be split off its parent company Vietnam Airlines, that regulators pay careful attention to its operations and that other firms be allowed to sell jet fuel thereby eliminating Vinapco's monopoly.

Vinapco was formed in 1993 to supply jet fuel to Vietnam Airlines and has maintained a monopoly position in the supply of jet fuel to all airlines operating in Vietnam since then. On December 31, 2007, Vinapco and a predecessor of Jetstar ("Pacific") signed a contract for the supply of jet fuel for 2008. The pumping fee for one tonne of fuel was set at VND 593,000 a tonne. On March 20, 2008, Vinapco unilaterally attempted to increase the pumping fee to VND 750,000 a tonne. Vinapco argued that the price increase was necessary in response to global price fluctuations.

When Pacific refused the increase, Vinapco cut off its supplies. Vinapco's actions reportedly caused delays for some 30 flights and affected more than 5,000 passengers. Vinapco was quickly ordered by the Minister of Transport to continue supplying Pacific despite the price dispute.

Within a few days of the incident, on its own initiative, the Vietnam Competition Administration Department ("VCAD") opened a preliminary investigation with respect to the matter and on April 3, 2008 sent official notice to Vinapco asking for an explanation of its actions. Vinapco responded within a week. VCAD also sought information from Pacific and other relevant parties.

Having found sufficient cause for an official investigation, the matter was eventually submitted to the VCC. In its decision, the VCC determined that Vinapco's cutting off supplies to Pacific violated Clauses 2 and 3 of Article 14 of the Competition Law which state as follows:

"Article 14 Practices constituting abuse of monopoly position which are prohibited

Any enterprise in a monopoly position shall be prohibited from carrying out the following practices:

- 1. Practices stipulated in article 13 of this Law;*
- 2. Imposing disadvantageous conditions on customers;*
- 3. Abuse of monopoly position in order to change or cancel unilaterally a signed contract without legitimate reason."*

The maximum monetary penalty under these provisions is 10% of Vinapco's revenue from the financial year immediately preceding the year the conduct occurred – an official of the VCC has been quoted as saying that sum would be approximately VND 70 billion - significantly higher than the fine actually imposed. The official has been reported as stating that the relatively small fine should be interpreted as a warning to Vinapco.

Vinapco has submitted reports on unpaid fuel bills to the Ministry of Transport in relation to Jetstar and Indochina Airlines, but Jetstar has disputed this report. Vietnam Airlines has also publicly rejected the proposal that it spin off Vinapco.

Vinapco had a month in which to file an appeal but despite requests for information to the VCC, we have not yet been able to determine if the appeal has been filed.

Due to difficulties in obtaining direct sources of information, the update has been derived from various publicly reported news sources and press releases.