Vietnam’s New Competition Law 2018

New provisions & business impacts | EuroCham Legal Sector Committee

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Frm. Finnish Consul General A.H.
CONTENTS

1. TEAM INTRODUCTION
2. DIFFERENCES BETWEEN THE COMPETITION LAW OF 2018 & 2004
3. IMPACTS ON FDI & EU BUSINESSES
TEAM

INTRODUCTION

In-depth Legal consulting for Tax, Finance and M&A
LOCAL INSIGHTS MEET INTERNATIONAL EXPERTISE

- A full-service law firm with a seasoned team of multi-disciplinary professionals
- in-depth understanding of the legal system, business environment, and cultural background in Vietnam.
- Offices: Hanoi and Ho Chi Minh City
- Professional staffs: 25
- Languages: Vietnamese, English, Japanese, French, Chinese, Korean
INTERNATIONAL AWARDS

- Legal500, Chambers & Partners, IFLR 1000 and Legalese’s Tax Director Handbook (global legal directories & ranking agencies) and international professional magazines list VCI Legal among the top law firms in Vietnam for: M&A, competition law, banking and corporate, insurance, taxation, intellectual property, investment.

- Acquisition International Magazine:
  - Vietnam Corporate Law Firm of the Year 2012-2014,
  - M&A Vietnam Law Firm of the Year 2013,
  - Real Estate Law Firm of the year 2012-2013

- ACQ Global Magazine:
  - Vietnam Banking & Finance Law Firm of the Year 2012-2013
  - Vietnam Capital Markets Law Firm of the Year 2012-2013
  - Vietnam Corporate Law Firm of the Year 2012-2013
  - Vietnam M&A Law Firm of the Year 2012-2013

- Financial Monthly – Law Firm of the Year 2011-2013

- Corporate LiveWire – M&A Vietnam Law Firm of the Year 2012-2013
Practice Overview

- Full-service business law firm with business-oriented & specialized legal services:
  - In-house Counsel Service™
  - Finance, Legal & Stock Market Engineering Service;
  - Investment Structuring & Placement
  - Legal, Insurance & Risk Management Service;
  - Intellectual Properties Strategic Management Service;
  - IP Enforcement Service.
Key Practice Areas

Strategic practice groups built on our “In-house Counsel Service” platform

1. Corporate | M&A | Investment Structuring;
2. Securities, Banking & Finance
3. Real Estate | Construction |
4. Tax | Transfer Pricing | HR Management & Labour
5. Petroleum | Mining | Energy
6. Infrastructure
2004 vs 2018 Key differences

OVERCOME LIMITATIONS & SHORTCOMINGS
BACKGROUND

the new Law on Competition was officially passed On June 12, 2018 by the Vietnam National Assembly and officially come into force on July 1st 2019

→ Overcoming the disadvantages of the 2004 Competition Law ("The old law", "2004 Law")
ABOLISED PROVISIONS

- “economic concentration” is not an anti-competitive act;
- Concept of “business secrets” (Art 3.10, the 2004 Law);
- The concept of “multi-level marketing” (Article 3.11, the 2004 Law)
Expanding jurisdiction, geographical scope & targets

<table>
<thead>
<tr>
<th>2004</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>business <strong>in Vietnam only</strong></td>
<td>business <strong>inside and/or outside that impact the competitive environment in Vietnam</strong></td>
</tr>
<tr>
<td>• Organizations &amp; individuals</td>
<td>• <strong>Domestic/foreign</strong> individuals &amp; organizations</td>
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<tr>
<td>• Industry associations</td>
<td>• <strong>Public and related public organizations.</strong></td>
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<td></td>
<td>• Industry associations</td>
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**Controlling anti-competitive agreements**

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<tr>
<th>2004</th>
<th>2018</th>
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<tbody>
<tr>
<td>Focus on the form of anti-competitive agreements, not the economic nature</td>
<td>Examining the nature – rule of reason - substantial anti-competitive effects caused/probable cause by an anti-competitive agreement:</td>
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<td></td>
<td>1. Market share;</td>
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<td>2. Barriers to market entry &amp; expansion;</td>
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<td>3. Limitations to technological research, development, renovation or technological capacity limitation;</td>
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<td></td>
<td>4. Reduction in accessibility or ownership to essential facilities</td>
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<td></td>
<td>5. Increase of customers’ costs/time or switching to other products;</td>
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<td></td>
<td>6. Obstruction of competition through control of other specific factors &amp; domains</td>
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Controlling anti-competitive agreements - 1

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<tr>
<th>2004</th>
<th>2018</th>
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</table>
| • Anti-competitive agreements are prohibited when the **combined market share** of parties is **30% or more.** | whether an agreement is prohibited or not basing on specific criteria  
1. Market share;  
2. Barriers to market entry;  
3. Access to essential infrastructure. |
Prohibited Horizontal Agreements

• Cause or potentially cause a significant anti-competitive effect in the market
  • firms are in the same market:
  • Directly or indirectly fixing prices;
  • Sharing customers or markets or supply sources; and
  • Controlling the number of goods produced, sold, or bought & services provided
Prohibited Vertical agreements

When create negative impact on market competitiveness i.e. cause or potentially cause a significant anti-competitive effect in the market

- bid rigging, prevention of market entry and exclusion of market participation
- Restraining investments, technical, and technological capabilities; and
- Forcing other companies to enter buying or selling contract of goods and services or bind them into commitments not related to the transactions
## Concept of prohibited economic concentration

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<tbody>
<tr>
<td>- Any economic concentration is prohibited if result in the combined market share of more than 50% in the relevant market</td>
<td>- <strong>abolishes</strong> the threshold of 50% market share</td>
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<td></td>
<td>- Economic concentration <strong>impacting/likely to exerting significant anti-competitive effect</strong> on the Vietnamese market shall be prohibited</td>
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Announcement of economic concentration

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<tbody>
<tr>
<td>If the combined market share in the relevant market of the enterprises is 30% or more</td>
<td>• If they are subject to <strong>notification threshold</strong> based on:</td>
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<td></td>
<td>i.  <em>total assets &amp; turnover</em> of the enterprises in the Vietnam market,</td>
</tr>
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<td></td>
<td>ii. <em>transaction value</em>; or</td>
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<td>iii. <em>combined market share</em> in the relevant market.</td>
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Improving regulations on unfair competition

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<td>Set out all acts of unfair competition</td>
<td>If there are any discrepancies between this law and other laws, other laws shall prevail</td>
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<tr>
<td>that are already covered by the other laws → conflict &amp; overlapping</td>
<td>- Intellectual Property Law</td>
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<td></td>
<td>- Commercial Law</td>
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<td>- Consumer Protection Law</td>
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<td>- Advertising Law</td>
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<td>- Press Law</td>
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<td>- Publication Law</td>
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<td>- Pharmaceutical Law</td>
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<td>- Insurance Business Law...</td>
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Leniency: exemption criteria

- A leniency policy didn’t exist under the 2004 Competition Law
- 2018: leniency come into place
  - but shall only apply to **three businesses** that submit application for leniency and
  - meet the conditions in line with the law
- Applicable for max 5 years.
Leniency Conditions

Full or partial immunity from fines shall be granted if the enterprise meets the following conditions:

a) has engaged in the anti-competitive agreement as a party as prescribed in Article 11 of this Law;

b) voluntarily gives notice of the violation before competent bodies decide on investigation;

c) honestly provides information/evidence cooperate & help the NCC to detect, investigate and handle the violation;

d) Fully cooperate with competent authorities during investigation and handling of the violation.

NOT apply to those who force or arrange others to participate in the agreement.
## Competition Authorities

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<tr>
<td><strong>VCA The Administrative Body for Competition</strong></td>
<td>The new law enforcement agency is the NCA - National Competition Commission</td>
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<td><strong>Competition Council</strong></td>
<td>a) advice MOIT Minister for state management of competition;</td>
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<td>b) Initiate competition legal proceedings; control economic concentration; consider exemption; handle complaints against settlement; other duties</td>
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Statutory “Trade Secrets”

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<tr>
<td>“Trade secrets” means information which satisfies all of the provisional conditions</td>
<td>• Overlapping with IP Law have been removed</td>
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<td></td>
<td>• The new Law seems to introduce a new statutory term, “Secrets in Business”, yet still no specific definition.</td>
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SOME IMPACTS ON EU BUSINESSES IN VIETNAM

Similar to GDPR & global antitrust laws elsewhere
Potential exposure & liabilities for foreign firms

- **Compliance**: foreign companies with business activities in or related to Vietnam, e.g.
  - an entirely-abroad M&A which have or potentially have the effect of significantly restricting competition in the Vietnamese market,
  - parties to the transaction will be subject to the 2018 Law.
- **Notification**: Before a merger, acquisition or joint venture
  - notify the regulator if certain thresholds (assets/turnover)
  - are crossed pre-merger consultation with entities involved & the regulator is helpful.
Additional compliance

- check for regulatory compliance
  - when entering into horizontal/vertical agreements to ensure no anti-competition conduct is taking place;
- Compliance liabilities are not only for completion law but also other laws
  - IP law, Law on Advertising, etc.
MORE QUESTIONS?

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- former Board Member for the EUROCHAM Vietnam
- Board Member YBA Young Business Association | HCMC

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