

THE STATE PRESIDENT

DECREES:

Chapter I

GENERAL PROVISIONS

**DECISION No. 958/2005/QĐ-CTN of August 26, 2005, permitting the naturalization in Vietnam**

Under this Decision, which takes effect after its signing, the State President permits 2 Chinese (Taiwanese) citizens, 2 Cambodian citizens, 1 Pakistani citizen, and 2 stateless persons to be naturalized in Vietnam.

**Article 1.- Governing scope**

This Decree provides for activities of multi-level sale of goods and management of such activities in the territory of the Socialist Republic of Vietnam.

**-Article 2.- Subjects of application**

This Decree shall apply to enterprises engaged in multi-level sale of goods and participants in the multi-level sale network.

**Article 3.- Multi-level sale of goods**

1. Multi-level sale of goods means an approach of marketing to retail goods which meets the conditions specified in Clause 11, Article 3 of the Competition Law.

THE GOVERNMENT

2. Enterprises shall be allowed to organize multi-level sale of goods only after being granted multi-level sale registration papers according to the provisions of Article 16 of this Decree.

**DECREE No. 110/2005/ND-CP OF AUGUST 24, 2005, ON MANAGEMENT OF MULTI-LEVEL SALE OF GOODS**

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**Article 4.- Participants in multi-level sale of goods**

1. Participants in multi-level sale of goods (hereinafter referred collectively to as participants) are individuals who have full civil act capacity and have entered into contracts for participation in multi-level sale of goods with multi-level sale enterprises, except for individuals defined in Clause 2 of this Article.

*Pursuant to the December 25, 2001 Law on Organization of the Government;*

*Pursuant to the December 3, 2004 Competition Law;*

*At the proposal of the Trade Minister.*

2. The following individuals must not participate

in multi-level sale of goods:

- a/ Those who are serving imprisonment sentences or former convicts for crimes of manufacturing and trading in fake goods, making false advertisements, illegally conducting business, evading taxes, deceiving customers, appropriating property through swindling, abusing trust in order to appropriate property, illegally holding property;
- b/ Foreigners and overseas Vietnamese without permits to work in Vietnam granted by competent agencies.

**Article 5.- Goods traded by mode of multi-level sale**

1. All goods may be traded by mode of multi-level sale, except for the following cases:

- a/ Goods on the list of goods banned from circulation or the list of goods subject to restricted business, fake goods and illegally imported goods according to provisions of law;
- b/ Goods being preventive and curative medicines for human use; vaccines and immunobiologicals; medical equipment and instruments; assorted veterinary drugs (including veterinary drugs for aquatic animals), plant protection drugs; insecticidal and germicidal chemicals and preparations for domestic and medical use; raw materials for manufacture of curative medicines; toxic chemicals and products containing toxic chemicals specified by law.
2. Goods traded by mode of multi-level sale must satisfy the following conditions:
- a/ Being up to the food quality, safety and hygiene standards provided for by law;
- b/ Having clear and lawful origins, properties and utilities;

c/ Having labels according to provisions of law.

#### Chapter II

#### MULTI-LEVEL SALE ACTIVITIES

**Article 6.- Responsibilities of multi-level sale enterprises**

1. Multi-level sale enterprises shall have to formulate and publicly announce the rules of activities of enterprises and participants in multi-level sale activities;

2. Multi-level sale enterprises shall have to supply the persons who wish to join their multi-level sale networks with documents regarding the following contents:

- a/ Sale programs, covering modes of bonus payment; model contracts which enterprises would enter into with participants and all other agreements on the rights and obligations of participants; information on quality standards or quality certificates (if any), prices, utilities and use instructions for goods sold; regulations on warranty, return or buy-back of goods sold.
- b/ Programs on training of participants, covering training contents; training duration; order and procedures for granting training certificates; duration and contents of periodical training courses for participants;
- c/ Operation rules containing guidance on transaction modes and regulations concerning multi-level sale;
- d/ Responsibilities of participants;
- e/ Economic benefits which participants may enjoy through activities of marketing or directly selling goods, as well as conditions for obtaining

initial quantity of goods in order to be entitled to participate in their multi-level sale networks.

3. Requesting want-to-be participants to pay money or any charges for study courses, training courses, seminars, social activities or other similar activities in order to be entitled to participate in their respective multi-level sale networks, except for expenses for purchase of documents specified in Clause 2, Article 6 of this Decree.

4. Failing to commit to permit participants to return goods and receive back money amounts already remitted to enterprises according to the provisions of Article 11 of this Decree.

5. Obstructing participants in returning goods as a result of termination of contracts on participation in multi-level sale.

6. Permitting participants to receive commissions, bonuses or other economic benefits from luring other persons into participating in multi-level sale.

7. Refusing to pay, without plausible reasons, commissions, bonuses or other economic benefits enjoyable by participants.

8. Supplying deceitful information on benefits from participation in the multi-level sale networks in order to entice other persons to participate in multi-level sale.

9. Supplying untruthful information on characteristics and utilities of goods in order to lure other persons into participating in multi-level sale.

**Article 8.- Responsibilities and prohibited acts of participants**

1. When participating in multi-level sale activities, the participants shall have the following responsibilities:

such economic benefits;

f/ Conditions for termination of contracts by participants as well as rights and obligations arising from such contract termination;

g/ Other matters stipulated by competent state agencies.

3. Apart from the responsibilities defined in Clause 2 of this Article, multi-level sale enterprises shall also have the following responsibilities:

a/ To ensure truthfulness and accuracy of information supplied to participants;

b/ To ensure quality of goods sold by mode of multi-level sale;

c/ To settle complaints of participants and consumers;

d/ To withhold and remit personal income tax amounts of participants into the state budget before paying commissions, bonuses or other economic benefits to participants;

e/ To provide professional training in multi-level sale and law on multi-level sale to participants;

f/ To manage participants through the system of multi-level sale network member cards made according to a form set by the Trade Ministry;

g/ To notify participants of goods not to be bought back by enterprises before they buy such goods.

**Article 7.- Prohibited acts of multi-level sale enterprises**

Multi-level sale enterprises are forbidden to perform the following acts:

1. Requesting want-to-be participants to make deposits in order to be entitled to participate in their respective multi-level sale networks.

2. Requesting want-to-be participants to buy an

a/ To produce their multi-level sale network member cards before introducing goods or marketing for sale of goods;
b/ To notify all contents specified in Clause 2; Article 6 of this Decree to other persons under their sponsorship for participation in multi-level sale networks;
c/ To supply truthful and accurate information on type, quality, prices, utilities and usages of goods for sale;
d/ To comply with regulations in operation rules and sale programs of enterprises.
2. Participants are forbidden to take the following acts:
a/ Requesting persons under their sponsorship for participation in multi-level sale networks to pay any charges for study courses, training courses, seminars, social activities or other similar activities;
b/ Supplying deceitful information on benefits from the participation in multi-level sale, untruthful information on characteristics and utilities of goods, activities of multi-level sale enterprises in order to entice other persons to participate in multi-level sale.

Article 9.- Contracts on participation in multi-level sale
1. Multi-level sale enterprises must enter into written participation contracts with participants in their respective multi-level sale networks.
2. The Trade Ministry shall have to guide the basic contents of model contract for multi-level sale activities.
Article 10.- Termination of contracts on participation in multi-level sale

1. Participants have the right to terminate participation contracts by sending written notices to multi-level sale enterprises at least 7 working days before terminating the contracts.
2. Multi-level sale enterprises have the right to terminate contracts with participants when the latter violate the provisions of Article 8 of this Decree and shall have to notify such in writing to the participants at least 7 working days before terminating the contracts.
3. Within 15 working days after the termination of contracts, multi-level sale enterprises shall have the following responsibilities:
a/ To buy back goods already sold to the participants according to the provisions of Article 11 of this Decree;
b/ To pay the participants commissions, bonuses and economic benefits enjoyable by participants in the course of participating in the multi-level sale networks.

Article 11.- Buying back goods from participants upon termination of multi-level sale participation contracts
1. Multi-level sale enterprises must buy back goods already sold to participants when such goods satisfy the following conditions:
a/ They can be re-sold for their initial use purposes;
b/ They are returned within 30 days after the participants receive them.
2. In cases where they must buy back goods under the provisions of Clause 1 of this Article, multi-level sale enterprises shall have to:
a/ Refund the total money amount already paid

by participants to receive such goods, if there is no ground for deduction under the provisions of Point b of this Clause;
b/ In cases where enterprises must bear management and re-warehousing expenses as well as other administrative expenses, they shall have to refund a total sum which is not smaller than 90% of the amount already paid by participants to receive such goods.
3. When refunding money according to the provisions of Clause 2 of this Article, multi-level sale enterprises may deduct commissions, bonuses and/or other economic benefits which have been enjoyed by participants from the receipt of such goods.
4. The provisions of Clauses 1 and 2 of this Article shall not apply to goods which are not subject to buy-back, including goods which are expired upon return, seasonal goods or goods for sale promotion.

Chapter III
MANAGEMENT OF MULTI-LEVEL SALE ACTIVITIES

Article 12.- Conditions for granting multi-level sale registration papers
Enterprises shall be granted multi-level sale registration papers when fully satisfying the following conditions:
1. Having paid deposits according to the provisions of Article 17 of this Decree.
2. Trading in goods in accordance with business lines and trades stated in their business registration certificates.
3. Satisfying all business conditions or being granted certificates of satisfaction of business conditions as provided for by law in cases where they trade in goods on the list of goods subject to conditional business.

Article 13.- Information on benefits from participation in multi-level sale
In cases where an individual participates in a multi-level sale network to introduce sale activities, the multi-level sale enterprise or the participant must clearly state his/her name, age, address, participation duration and profit earned in each period, certified by tax payment receipts issued by the tax office which collects tax from such individual.

Article 14.- Responsibilities binding between multi-level sale enterprises and participants
1. Multi-level sale enterprises shall have to pay damages to consumers or participants in the following cases:
a/ Participants cause damage to consumers or other participants while strictly observing operation rules and sale programs of enterprises;
b/ Participants have not been supplied with adequate information on goods according to the provisions of Clause 2, Article 6 of this Decree.
2. Multi-level sale enterprises shall have to regularly supervise activities of participants in order to ensure that the latter strictly observe their operation rules and sale programs.

3. In cases where they fail to comply with the provisions of Article 8 of this Decree, thus causing damage to consumers or other participants, multi-level sale participants shall have to pay compensations for such damage.
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a/ Participants cause damage to consumers or other participants while strictly observing operation rules and sale programs of enterprises;
b/ Participants have not been supplied with adequate information on goods according to the provisions of Clause 2, Article 6 of this Decree.
2. Multi-level sale enterprises shall have to regularly supervise activities of participants in order to ensure that the latter strictly observe their operation rules and sale programs.

4. Having transparent sale programs which are not contrary to law.

5. Having clear programs on training of participants.

**Article 15.-** Dossiers of request for multi-level sale registration papers

Dossiers of request for multi-level sale registration papers shall be filed with provincial-level Trade Services or Trade-Tourism Services where enterprises have made their business registrations. Such a dossier comprises:

1. A written request for multi-level sale registration paper, made according to a form set by the Trade Ministry.

2. Notarized copies of the business registration certificate.

3. A bank's written certification of the deposit amount according to the provisions of Clause 1, Article 17 of this Decree.

4. Notarized copies of the certificate of satisfaction of business conditions in cases where the enterprise trades in goods on the list of goods subject to conditional business.

5. The list and curricula vitae of leaders of the enterprise with their photos and certifications by police offices of communes or wards where they reside. For foreigners, certifications by Vietnam-based embassies or consulates of foreign countries of which such persons are citizens are required.

6. The sale program which has the contents specified at Point a, Clause 2, Article 6 of this Decree.

7. The program on training of participants, with

the contents specified at Point b, Clause 2, Article 6 of this Decree.

**Article 16.-** Procedures for granting and supplementing multi-level sale registration papers

1. Within 15 working days after receiving complete and valid dossiers, provincial-level Trade Services or Trade-Tourism Services where enterprises have made their business registrations shall have to grant multi-level sale registration papers to such enterprises, provided that their dossiers fully satisfy the conditions specified in Article 14 of this Decree.

In case of refusal to grant the multi-level sale registration papers, provincial-level Trade Services or Trade-Tourism Services must issue written replies clearly stating the reasons therefor.

2. Enterprises requesting the grant of multi-level sale registration papers must pay grant fees. The fee levels and the regime of fee management and use shall be specified by the Finance Ministry.

3. In case of any changes relating to contents of their sale programs, enterprises shall have to carry out procedures for requesting additional grant of multi-level sale registration papers.

The order and time limit for additional grant of multi-level sale registration papers shall comply with the provisions of Clauses 1 and 2 of this Article.

4. Within 15 working days after the grant or additional grant of multi-level sale registration papers, provincial-level Trade Services or Trade-Tourism Services shall have to report such in writing to the competition-managing office of the Trade Ministry.

5. When multi-level sale enterprises develop

their sale networks to provinces or centrally-run cities other than those where they are headquartered, they shall have to notify such development to Trade Services or Trade-Tourism Services of such provinces or centrally-run cities.

6. The Trade Ministry shall set the forms of multi-level sale registration papers and multi-level sale organization notices.

#### **Article 17.-** Deposits

1. A multi-level sale enterprise must pay a deposit which is equal to 5% of its charter capital and must not be lower than VND one billion at a commercial bank operating in Vietnam.

2. Upon receiving notices on cessation of multi-level sale activities, multi-level sale enterprises may use deposits to pay commissions, bonuses or sums for buying back goods from participants.

3. Upon termination of multi-level sale activities, multi-level sale enterprises may withdraw the whole deposit amount only in cases where there is no complaint or lawsuit initiated by multi-level sale participants concerning the payment of commissions, bonuses or sums for buying back goods.

**Article 18.-** Withdrawal of multi-level sale registration papers

1. Provincial-level Trade Services or Trade-Tourism Services shall withdraw multi-level sale registration papers in the following cases:

a/ Enterprises have their business registration certificates withdrawn;

b/ Enterprises have their certificates of satisfaction of business conditions withdrawn in

cases where they trade in goods on the list of goods subject to conditional business;

c/ Enterprises intentionally include in their dossiers of request for multi-level sale registration papers untruthful information;

d/ Enterprises commit serious law-breaking acts in multi-level sale activities.

2. In cases where multi-level sale enterprises have their multi-level sale registration papers withdrawn under the provisions of Clause 1 of this Article, they shall have to immediately stop the multi-level sale and the recruitment of new participants, and fulfill their responsibilities toward participants according to the provisions of Article 11 of this Decree, or compensate consumers or participants for cases or matters arising from previous transactions before the withdrawal of multi-level sale registration papers.

3. Decisions on withdrawal of multi-level sale registration papers shall be sent by provincial-level Trade Services or Trade-Tourism Services to the competition-managing office of the Trade Ministry and publicized on the mass media.

**Article 19.-** Suspension or termination of multi-level sale activities

1. When wishing to suspend or terminate multi-level sale activities, multi-level sale enterprises shall have the following obligations:

a/ To abide by regulations on suspension or termination of business activities according to the provisions of law on enterprises;

b/ To notify such to provincial-level Trade Services or Trade-Tourism Services where they have made their business registrations; and at the

same time, to post up the suspension or termination at their headquarters and notify participants thereof within 30 working days before the suspension or termination of activities.

2. In case of suspension or termination of multi-level sale activities, multi-level sale enterprises shall have to liquidate multi-level sale participation contracts with participants according to the provisions of Article 10 of this Decree within 30 working days after multi-level sale activities are suspended or terminated.

**Article 20.-** Periodical reports of multi-level sale enterprises

Once every six months, multi-level sale enterprises shall have to report to provincial-level Trade Services or Trade-Tourism Services where they have made their business registrations on the number of participants, their turnovers and paid tax amounts as well as personal income tax amounts of participants they have paid on the letter's behalf.

**Article 21.-** Responsibilities of the Trade Ministry

1. The Trade Ministry shall be answerable to the Government for performing the function of state management over multi-level sale activities throughout the country.

2. The competition-managing office of the Trade Ministry shall have to assist the Trade Minister in the following specific management contents:

a/ Guiding provincial-level Trade Services or Trade-Tourism Services in granting multi-level sale registration papers; inspecting the management of multi-level sale activities by provincial-level Trade Services or Trade-Tourism Services;

b/ Directly inspecting or examining multi-level sale activities when deeming it necessary; handling according to its competence acts of violating the provisions of law on multi-level sale activities;

c/ Proposing the Government to promulgate or amend legal documents on assurance of order in organizing multi-level sale activities, protection of benefits of participants in the multi-level sale networks, consumers, and maintenance of socio-economic stability.

**Article 22.-** Responsibilities of provincial municipal People's Committees

1. Provincial/municipal People's Committees shall have to perform the state management over the mode of multi-level sale according to their respective competence and the Trade Ministry's directions and instructions under the provisions of this Decree and other relevant provisions of law.

2. Provincial-level Trade Services or Trade-Tourism Services shall assist provincial/municipal People's Committees in granting multi-level sale registration papers; regularly inspect and supervise multi-level sale activities in their localities and periodically report to the competition-managing office of the Trade Ministry on such inspection or supervision.

**Article 23.-** Handling of violations committed by multi-level sale enterprises or participants

1. Multi-level sale enterprises or participants that commit the following acts of violation shall, depending on the nature and seriousness of their violations, be administratively sanctioned according to the provisions of law on handling of administrative violations:

a/ Organizing multi-level sale while the specified

conditions therefor are not fully satisfied;  
b/ Violating the regulations on subjects eligible for participating in multi-level sale;

c/ Violating the regulations on goods permitted to be traded by mode of multi-level sale;  
d/ Failing to fully notify the required information to new sale network participants under their sponsorship;

e/ Taking acts which multi-level sale enterprises and participants are forbidden to take;

f/ Failing to enter into written contracts with participants;

g/ Violating the regulations on termination of multi-level sale participation contracts;

h/ Failing to comply with the reporting regime provided for in Article 20 of this Decree;

i/ Altering contents of sale programs without carrying out procedures of request for additional grant of multi-level sale registration papers;

j/ Violating the regulations on deposits and payments made from deposits in the course of operation;

k/ Failing to pay taxes according to the provisions of law;

l/ Failing to abide by the requests of competent state agencies conducting inspections or examinations;

m/ Violating other provisions of this Decree.

2. In cases where violations by multi-level sale enterprises or participants cause damage to material benefits of concerned organizations or individuals, they shall have to pay damages according to the provisions of law.

**Article 24.-** Competence and procedures for handling administrative violations

1. Competence for handling acts of administrative violation specified in Article 23 of this Decree shall comply with the provisions of the Competition Law and the Ordinance on Handling of Administrative Violations.

2. Procedures for handling acts of administrative violation specified in Article 23 of this Decree shall comply with the provisions of law on handling of administrative violations.

#### Chapter IV

#### IMPLEMENTATION PROVISIONS

**Article 25.-** Implementation effect

1. This Decree takes effect 15 days after its publication in "CONG BAO." Multi-level sale enterprises which make business registrations before the effective date of this Decree shall have to carry out procedures of request for multi-level sale registration papers at provincial-level Trade Services or Trade-Tourism Services where they have made business registrations within 3 months as from the effective date of this Decree.

2. Ministers, heads of ministerial-level agencies, heads of Government-attached agencies and presidents of People's Committees of provinces or centrally-run cities shall have to implement this Decree.

On behalf of the Government  
Prime Minister  
PHAN VAN KHAI

**THE GOVERNMENT**

**DECREE No. 116/2005/ND-CP OF SEPTEMBER 15, 2005, DETAILING THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE COMPETITION LAW**

**THE GOVERNMENT**

*Pursuant to the December 25, 2001 Law on Organization of the Government;*

*Pursuant to the December 3, 2004 Competition Law;*

*Pursuant to the August 28, 2001 Ordinance on Charges and Fees;*

*Pursuant to the July 2, 2002 Ordinance on Handling of Administrative Violations;*

*At the proposal of the Trade Minister after consulting the President of the Supreme People's Court,*

**DECREES:**

*Chapter I*

**GENERAL PROVISIONS**

**Article 1.-** Scope of regulation

This Decree provides in detail for the implementation of a number of articles of the Competition Law regarding control of competition-restricting acts and competition proceedings.

**Article 2.-** Subjects of application

This Decree shall apply to business organizations and individuals (hereinafter referred

to as enterprises) and professional associations operating in Vietnam, as provided for in Article 2 of the Competition Law.

**Article 3.-** Responsibility to supply information  
State agencies, financial, credit, accounting and audit institutions, other organizations and individuals involved in competition cases or procedures for implementation of exemptions shall have to supply full, truthful and accurate necessary information in a timely manner at the request of the competition-managing agency or the Competition Council.

*Chapter II*

**CONTROL OF COMPETITION-RESTRICTING**

**ACTS**

**Section 1. DEFINITION OF RELEVANT**

**MARKETS**

**Article 4.-** Definition of relevant product markets

1. A relevant product market is a market of products or services which are interchangeable in terms of characteristics, intended use and price.

2. Characteristics of a product or service shall be identified on one or more of the following grounds:

- a/ Physic characteristics;
- b/ Chemical characteristics;
- c/ Technical properties;
- d/ Side effects on users;
- e/ Absorbability.

3. Intended use of a product or service shall be determined as its most principal intended use.

4. The price of a product or service is the price

written in its retail invoice according to the provisions of law.

5. The "interchangeability" of a product or service shall be defined as follows:

a/ Products or services shall be regarded as interchangeable in characteristics if they have many similar physic, chemical characteristics, technical properties, side effects on users and absorbability.

b/ Products or services shall be regarded as interchangeable in intended use if they have similar intended uses;

c/ Products or services shall be regarded as interchangeable in price if, in case of an increase of over 10% in the prices of such products or services which is maintained for six consecutive months, over 50% of a random sample of 1,000 consumers living in a relevant geographical area switch or intend to buy other products or services with the characteristics or intended use similar to products or services which they are using or intend to use.

d/ In case the number of consumers living in a relevant geographical market stated at this Point is less than 1,000, a random sample must include at least 50% of the number of such consumers.

6. In case the result of definition of the "interchangeability" of products or services by the method defined in Clause 5 of this Article is insufficient for reaching a conclusion on the "interchangeability" of such products or services, the competition-managing agency or the competition case-handling panel may additionally consider one or more of the following factors for defining the "interchangeability" of products or services:

a/ The rate of change in the demand for a product or service as a result of a change in the price of another product or service;

b/ The length of time required for the supply of a product or service to the market when there is a sudden increase in demand;

c/ The duration of use of a product or service;

d/ The supply substitutability under the provisions of Article 6 of this Decree.

7. In case of necessity, the competition-managing agency or the competition case-handling panel may identify an additional group of consumers living in the relevant geographical area who cannot switch to buy another product or service which has characteristics and intended use similar to the product or service they are using or intend to use in case of an increase of over 10% in the price of such product or service, which is maintained for six consecutive months.

**Article 5.-** Definition of relevant product market in special cases

1. A relevant product market may be defined to be the market of a specific product or a group of specific products based on the market structure and consumer practices.

2. When defining a relevant product market in the case specified in Clause 1 of this Article, the market of products complementary to the relevant product may be taken into consideration.

Products shall be regarded as complementary to the relevant product if an increase or decrease in their price will result in a corresponding increase or decrease in the relevant product.

**Article 6.-** Determination of supply substitutability

Supply substitutability is the capacity of an enterprise that is producing or distributing a product or service to switch to produce or distribute another product or service, in case of a price increase of

such product or service, within a short period of time without incurring significant costs.

**Article 7.-** Definition of relevant geographical market

1. Relevant geographical market means a specific geographical area where exist products or services which are interchangeable under similar conditions of competition, and which is considerably differentiated from neighboring areas.

2. The boundaries of a geographical area defined in Clause 1 of this Article shall be determined on the following grounds:

a/ A geographical area where a business establishment of an enterprise participating in the distribution of the relevant product is based;

b/ A business establishment of another enterprise is based in a neighboring area sufficiently close to the geographical area defined at Point a of this Clause for its participation in the distribution of the relevant product in such geographical area;

c/ Transportation costs in the geographical area defined in Clause 1 of this Article;

d/ The time of transportation of the product or provision of the service in the geographical area defined in Clause 1 of this Article;

e/ Barriers to market entry.

3. A geographical area may be considered having similar competition conditions and being significantly differentiated from neighboring geographical areas if it satisfies one of the following criteria:

a/ Transportation costs and time will result in an increase of no more than 10% in the retail prices of products;

b/ There exists one of the barriers to market

entry as specified in Article 8 of this Decree.

**Article 8.-** Barriers to market entry

Barriers to market entry include:

1. Inventions, utility solutions, industrial designs, marks, geographical indications according to the provisions of law on industrial property.

2. Financial barriers, including costs of investment in production, distribution, trade promotion or accessibility to financing sources.

3. Administrative decisions of state management agencies.

4. Regulations on conditions on trading and use of goods or services; professional standards.

5. Import duties and import quotas.

6. Consumer practices.

7. Other barriers to market entry.

#### Section 2. DETERMINATION OF SALES TURNOVER, PURCHASE TURNOVER, MARKET SHARES FOR CONTROL OF COMPETITION, RESTRICTING ACTS

**Article 9.-** Sales turnover, purchase turnover for determining market shares of enterprises

An enterprise's sales turnover or purchase turnover with respect to a product or service shall be determined in accordance with the provisions of law on tax, accounting standards of Vietnam and the provisions of Articles 10, 11, and 12 of this Decree.

**Article 10.-** Sales turnover, purchase turnover for determining market shares of groups of enterprises which are directly organizationally and financially associated

1. A group of enterprises shall be regarded as directly organizationally and financially associated (hereinafter collectively referred to as group of associated enterprises) if it has a common executive body and its capital invested by this body.

2. Sales turnover, purchase turnover with respect to a product or service for determining the market share of a group of associated enterprises shall be the aggregate of sales turnovers or purchase turnovers with respect to such product or service of all member enterprises and non-business units operating according to the assignment of the common executive body defined in Clause 1 of this Article.

Sales turnover or purchase turnover with respect to a product or service of a group of associated enterprises shall not include turnover from the sale of the product or the provision of the service between the common executive body and member enterprises or non-business units operating according to the assignment of the common executive body defined in this Clause.

**Article 11.-** Turnover for determining market shares of insurance enterprises

Turnover for determining the market share of an insurance enterprise shall be the aggregate of insurance premiums and re-insurance premiums received in a fiscal year. In case of a newly established insurance enterprise which has operated for less than one fiscal year, turnover for determining its market share shall be the total of insurance premiums and re-insurance premiums received in a month or a quarter counting from the time the insurance enterprise starts to operate to the time of determining its market share according to the provisions of Article 13 of this Decree.

**Article 12.-** Turnover for determining market

shares of credit institutions

Turnover for determining the market share of a credit institution shall be the aggregate of the following incomes:

1. Interests.
2. Service charges.
3. Incomes from foreign exchange dealings.
4. Profits from contributed capital and/or purchased shares.
5. Incomes from other business operations.
6. Other incomes.

**Article 13.-** Determination of market shares of enterprises on relevant markets

1. The market share of an enterprise with respect to a certain product or service on a relevant market shall be determined under the provisions of Clause 5, Article 3 of the Competition Law, except for cases specified in Clauses 2 and 3 of this Article.

2. The market share of a newly established enterprise which has conducted business operations for less than one fiscal year before joining an economic concentration shall be its market share on the relevant market in a month or a quarter counting from the time the enterprise starts operation to the time one month before the date indicated in the notice on its joining in the economic concentration.

3. The market share stated in the exemption application dossier of a newly established enterprise which has conducted business operations for less than one fiscal year shall be its market share on the relevant market in a month or a quarter counting from the time the enterprise starts operation to the time one month before the

date indicated in the exemption application.

### Section 3. COMPETITION RESTRICTION AGREEMENTS

**Article 14.-** Agreements on directly or indirectly fixing product or service prices

An agreement on directly or indirectly fixing the price of a product or service is an agreement on concerted practices in one of the following forms:

1. Application of a single price to some or all customers.
2. Price increase or decrease at a given level.
3. Application of a common pricing formula.

4. Maintenance of a fixed price rate of the relevant product.

5. Offer of no price discount or application of a uniform price discount.

6. Offer of credit quotas to customers.

7. No price decrease unless other parties to the agreement are notified thereof.

8. Use of a uniform price at the time when price negotiations start.

**Article 15.-** Agreements on sharing of outlets, sources of supply of products, provision of services

1. An agreement on sharing of outlets is an agreement on the volume of products or services; place of purchase and sale of products or services; group of customers for each party to the agreement.

2. An agreement on sharing of the source of supply of products or provision of services is an agreement whereby each party may purchase products or services only from one or some given sources.

to impose one or some of the following pre-conditions before signing a contract:

a/ Restriction of production or distribution of other products; purchase or provision of other services not directly related to the commitments of the agent according to the provisions of law on agency;

b/ Restriction of the place for re-sale of products, except for products on the list of those subject to conditional business or restricted business according to the provisions of law;

c/ Restriction of customers who can purchase products for resale, except for products stated at Point b of this Clause;

d/ Restriction of the form and quantity of products to be supplied.

2. An agreement on forcing of another enterprise to accept obligations not directly connected with the object of the contract is an agreement binding another enterprise, when purchasing or selling the product or service with any enterprise being a party to the agreement, to purchase other products or services from a designated supplier or person or to perform one obligation or some obligations unnecessary for the performance of the contract.

**Article 19.-** Agreements on prevention, restraint or prohibition of other enterprises from entering the market or developing business

1. An agreement on prevention, restraint or prohibition of another enterprise from entering a market is an agreement not to transact with an enterprise not being a party to the agreement or to take concerted practices in one of the following forms:

a/ Requesting, appealing, inducing one's customers not to purchase, sell products or not to use services of an enterprise not being a party to

the agreement;

b/ Purchasing, selling products or services at a price sufficient for rendering an enterprise not being a party to the agreement unable to enter the relevant market.

2. An agreement on prevention, restraint or prohibition of another enterprise from developing business is an agreement not to transact with an enterprise not being a party to the agreement or to take concerted practices in one of the following forms:

a/ Requesting, appealing, inducing distributors or retailers that are transacting with the parties to the agreement to discriminate, when purchasing or selling products, against an enterprise not being a party to the agreement in a way that causes difficulties to this enterprise in consuming products;

b/ Purchasing, selling products or services at a price sufficient for rendering an enterprise not being a party to the agreement unable to expand its business operation.

**Article 20.-** Agreements on elimination from the market of enterprises not being parties to the agreements

An agreement on elimination from the market of enterprises not being parties to the agreement is an agreement not to enter into transactions with enterprises not being parties to the agreement while taking concerted practices in a form specified at Point a, Clause 1 and Clause 2, Article 19 of this Decree, or to purchase or sell products or services at a price sufficient for rendering such enterprises to withdraw from the relevant market.

**Article 21.-** Collusion to help one or all of the parties to an agreement to win bids for supply of products or provision of services



d/ Reducing the selling prices of products under promotion programs according to the provisions of law;

e/ Reducing the selling prices in case of bankruptcy, dissolution, termination of production, business activities, relocation, change of production, business orientations;

f/ Measures applied by the State to implement price stabilization policies in accordance with current provisions of law on prices.

3. In cases of reducing selling prices specified in Clause 2 of this Article, old prices, new prices and the period when reduced prices are applied must be publicly and clearly posted up at shops and transaction places.

**Article 24.-** Costs of production of products or services

Costs of production of products or services include the following direct expenses:

1. Direct costs of supplies, including costs of raw materials, materials, fuels and motive force directly consumed for production of products or services of the enterprise.
2. Direct costs of labor, including amounts payable to laborers personally engaged in production, such as salaries, wages, and allowances of salary nature, expenses for mid-working shift meals, social insurance and medical insurance premiums, trade union dues for workers.

3. General costs of production, including general costs arising at workshops and business sections of the enterprise, such as salaries, allowances, mid-working shift meal money paid to workshop employees, costs of materials, tools and instruments of production used in workshops, depreciation of fixed assets, expenses for the lease

enterprise.

3. Financial capability of the organization or individual that has the right to control or dominate the operation of the enterprise according to the provisions of law or the enterprise's charter.

4. Financial capability of the parent company.

5. Technological capability.

6. The right to own or use industrial property objects.

7. The scope of the distribution network.

**Article 23.-** Sale of products, provision of services below total costs of production in order to eliminate competitors.

1. Except for cases specified in Clause 2 of this Article, the sale of products or provision of services below total costs of production in order to eliminate competitors is the sale of products or provision of services at prices lower than the aggregate of the following costs:

a/ Expenses constituting costs of production of products or services as provided for in Article 24 of this Decree, or prices of purchasing goods for resale;

b/ Costs of circulation of products or services as provided for in Article 25 of this Decree.

2. The following acts shall not be regarded as selling products below costs of production in order to eliminate competitors:

- a/ Reducing the prices of fresh, live products;
- b/ Reducing the selling prices of products in stock which are deteriorated in quality, obsolete in form and no longer suitable to consumers' taste;
- c/ Reducing the selling prices of products on a seasonal basis;

Collusion to help one or all of the parties to an agreement to win bids for supply of products or provision of services is an agreement to take concerted practices in one of the following forms in a bidding:

1. One or more parties to an agreement withdraw from participating in the bidding or retract their bids already submitted so that one or more parties to the agreement win the bid.

2. One or more parties to an agreement cause difficulties to non-parties to the agreement which participate in a bidding, by refusing to supply raw materials or to sign subcontracts or otherwise.

3. All parties to an agreement agree to offer non-competitive bids or competitive bids accompanied with conditions unacceptable to the bid inviter, so as to pre-determine one or more parties that will win the bid.

4. All parties to an agreement pre-determine the number of times each party will win the bid for a given period of time.

5. Other acts prohibited by law.

#### **Section 4. ABUSE OF DOMINANT MARKET POSITION, ABUSE OF MONOPOLY POSITION**

**Article 22.-** Grounds for determining the capability of enterprises to significantly restrict competition on relevant markets

The capability of an enterprise to significantly restrict competition on a relevant market shall be determined on one or some of the following major grounds:

1. Financial capability of the enterprise.
2. Financial capability of the economic organization or individual that has established the

of workshops, expenses for services purchased from outside, and cash expenses other than the aforesaid expenses.

**Article 25.-** Costs of circulation of products and services

Costs of circulation of products or provision of services shall cover the following costs arising from the process of product consumption or service provision:

1. Salaries.
2. Allowances payable to salespersons.
3. Agent commissions, broker commission.

4. Marketing.

5. Packaging.

6. Wrapping.

7. Transportation.

8. Preservation.

9. Depreciation of fixed assets.

10. Materials.

11. Tools, utensils.

12. Loading and unloading of products.

13. Services purchased from outside.

14. Social insurance premiums, medical insurance premiums, trade union dues payable for salespersons according to the provisions of law.

15. Interests on business loans.

16. Enterprise management expenses allocated to the circulation of products, services.

17. Product warranty expenses.

18. Advertisement expenses.

19. Other cash expenses according to the

provisions of law.

**Article 26.-** Enterprise management expense  
Enterprise management expense is the sum of business management expenses, administrative management expenses and other general expenses related to activities of the whole enterprise, including:

1. Salaries and allowances, mid-working shift meal money payable to the directorate and managerial staff in different sections and units, insurance premiums and trade union dues payable for all managerial personnel of the enterprise.
2. Costs of office supplies, depreciation of fixed assets commonly used for the enterprise, taxes, fees and expenses for services purchased from outside for the enterprise's office, and other cash expenses for the whole enterprise as follows:

- a/ Provisions for bad debts, provisions for decreases in the prices of goods in stock, audit charges, expenses for receptions, celebrations, working mission allowances, severance allowances for laborers; expenses for scientific research, research for technology renewal, expenses for innovations, expenses for training to raise job skills for workers, training in managerial capability.
  - b/ Healthcare expenses for laborers;
  - c/ Expenses for environmental protection;
  - d/ Expenses for female laborers;
  - e/ Expenses for enterprise guard.
3. Payment of loan interests.

**Article 27.-** Imposition of irrational purchase prices, sale prices of products or services or fixing of minimum re-sale prices causing damage to customers

1. Acts of imposing purchase prices of products

or services shall be regarded as irrational, causing damage to customers if purchase prices imposed on the same relevant market are lower than the costs of production of products or services under the following conditions:

- a/ The quality of products or services for which purchase orders are placed is not inferior than that of previously purchased products or services;
- b/ There was no economic crisis, natural calamity, enemy sabotage or abnormal fluctuation that caused the wholesale price of the product or the price of provision of the service on the relevant market to fall under the costs of production within the minimum period of 60 consecutive days, compared to before.

2. Acts of imposing sale prices of products or services shall be regarded as irrational, causing damage to customers if the demand for such products or services sees no sudden increase in excess of the design capacity or production capacity of the enterprise and the following conditions are satisfied:

- a/ The average retail price on the same relevant market within the minimum period of 60 consecutive days has been increased once by more than 5% or increased more than once with a total increase exceeding 5% compared with the actual sale price before such minimum period of time;
- b/ There is no abnormal fluctuation resulting in an increase of more than 5% in the costs of production of the product or service concerned within the minimum period of 60 consecutive days before the price is increased.

3. Fixing the minimum resale price, causing damage to customers, is an act of prohibiting distributors and retailers to re-sell products at a price lower than the pre-fixed price.

**Article 28.-** Restriction of production.

distribution of products, services, limitation of markets, obstruction of technical and technological developments, causing damage to customers

1. Restriction of the production or distribution of a product or service, causing damage to customers is an act of:
  - a/ Cutting or reducing the volume of a product or service supplied on the relevant market compared to the previously supplied volume of the product or service while there is no significant fluctuation in the demand-supply relation; there is no economic crisis, natural calamity or enemy sabotage; there is no big technical incident; or there is no state of emergency;
  - b/ Fixing the supplied volume of a product or service at a level sufficient for creating a scarcity on the market;
  - c/ Stockpiling the product to destabilize the market.

2. Limitation of the market, causing damage to customers is an act of:

- a/ Supplying a product or service only within one or some certain geographical areas;
- b/ Buying a product or service only from one or some certain supplying sources, except for the case where other supplying sources fail to meet reasonable conditions imposed by the buyer in conformity with normal practices.

3. Obstruction of technical or technological developments, causing damage to customers is an act of:

- a/ Buying an innovation, utility solution or industrial design for destruction or non-use;
- b/ Threatening or compelling those who are doing a research for technical or technological developments to stop or cancel such research.

**Article 29.-** Imposition of different trading conditions under similar transaction conditions in order to create unfair competition

Imposition of different trading conditions under similar transaction conditions in order to create unfair competition is an act of discriminating against enterprises regarding purchase or sale conditions, price, payment, deadline and quantity in transactions of purchasing or selling products or services which are similar in value or characteristics so as to place one or some enterprises in a competition position more advantageous than other enterprises.

**Article 30.-** Imposition of conditions on other enterprises to sign contracts for purchase or sale of products or services or forcing of other enterprises to accept obligations not directly related to the objects of contracts

1. Imposition of conditions on other enterprises to sign contracts for purchase or sale of products or services is the imposition of the following pre-conditions before signing contracts:

- a/ Restrictions on production or distribution of other products; purchase or provision of other services not directly related to the commitments of the agents according to the provisions of law on agency;
- b/ Restrictions on places for resale of products, except for goods on the list of those subject to business conditions, goods subject to restricted business according to the provisions of law;
- c/ Restrictions on customers that buy products for resale, except for goods stated at Point b of this Clause;
- d/ Restrictions on the form and quantity of products allowed to be supplied.

reasons is an act performed by an enterprise holding a monopoly position in one of the following forms:

1. Unilaterally modifying or canceling signed contracts without having to notify in advance customers thereof and without facing any penalty.
2. Unilaterally modifying or canceling signed contracts on the basis of one or more grounds not related to the conditions necessary for the continued performance of the contract, without facing any penalty.

#### Section 5. ECONOMIC CONCENTRATIONS

**Article 34.-** Control or domination of all or one of trades of other enterprises

Control or domination of all or one of trades of other enterprises as provided for in Clause 3, Article 17 of the Competition Law is the case where an enterprise (hereinafter referred to as controlling enterprise) acquires the right to own the assets of another enterprise (hereinafter referred to as controlled enterprise) which is sufficient for holding over 50% of the voting right in the shareholders' congress or the management board or is at a level which, as provided for by law or the controlled enterprise's charter, is sufficient for the controlling enterprise to dominate financial policies as well as the operation of the controlled enterprise for the purpose of obtaining economic benefits from business operations of the controlled enterprise.

**Article 35.-** Acquisition of other enterprises which is not regarded as economic concentration

1. The case where an insurance enterprise or a credit institution acquires another enterprise for the purpose of resale within the maximum period of one year shall not be regarded as economic

2. Forcing of other enterprises to accept obligations not directly related to the object of the contract is an act of linking the purchase or sale of a product or service being the object of the contract with the compulsory purchase of another product or service from a designated supplier or person or with the performance of one or more obligations beyond the necessary scope of performing the contract.

**Article 31.-** Prohibition of new competitors from entering the market

Prohibition of new competitors from entering the market is an act of creating the following barriers:

1. Requesting one's customers not to enter into transactions with new competitors.
2. Threatening or forcing distributors and retail shops not to distribute products of new competitors.
3. Selling products at a price sufficient for rendering competitors unable to enter the market, which, however, does not fall into the case specified in Article 23 of this Decree.

**Article 32.-** Imposition of unfavorable conditions on customers by enterprises having monopoly positions

Imposition of unfavorable conditions on customers by enterprises having monopoly positions is an act of forcing customers to unconditionally accept obligations causing difficulties to customers in the process of performing contracts.

**Article 33.-** Abuse of monopoly position to unilaterally modify or cancel signed contracts without plausible reasons

Abuse of monopoly position to unilaterally modify or cancel signed contracts without plausible

concentration if the acquiring enterprise does not exercise the right to control or dominate the acquired enterprise or only exercises this right in a compulsory manner in order to achieve the resale purpose.

2. The insurance enterprise or credit institution stated in Clause 1 of this Article must send to the competition-managing agency an acquisition notification dossier with the contents specified in Clause 1, Article 21 of the Competition Law.

3. The time limit for resale of enterprises specified in Clause 1 of this Article may be extended by the head of the competition-managing agency at the proposal of the acquiring enterprise if it proves that it cannot resell the acquired enterprise within one year.

**Article 36.-** Enterprises in danger of dissolution or falling into bankruptcy

1. An enterprise in danger of dissolution is an enterprise which falls into the case of dissolution as provided for by law or its charter but has not yet carried out dissolution procedures or is carrying out dissolution procedures but a dissolution decision has not yet been issued by a competent agency according to the provisions of law.

2. An enterprise falling into bankruptcy is an enterprise as provided for by the Bankruptcy Law.

**Article 37.-** Financial statements in economic concentration notification dossiers for newly established enterprises which have carried out business activities for less than one fiscal year

Financial statements in an economic concentration notification dossier of an enterprise joining an economic concentration which is newly established and has carried out business activities for less than one fiscal year may be substituted

with the following documents:

1. Written declaration of the charter capital, fixed assets, movable assets and amounts due to it, with the certification of an independent audit organization according to the provisions of law.
2. Written declaration of taxes paid within the period from the time the enterprise starts operation to the time one month before the enterprise is required to make financial statements for notifying the economic concentration.

**Article 38.-** Replies to economic-concentration notifications

1. Replies to economic-concentration notifications shall be issued in writing.
2. The competition-managing agency's written replies to economic-concentration notifications must be addressed to the following:

a/ The business registration agency and other agencies competent to permit merger, consolidation, acquisition or joint venture according to the provisions of law.

b/ Lawful representatives of the parties to economic concentrations;

c/ Parties to economic concentrations.

#### Section 6. PROCEDURES FOR IMPLEMENTATION OF EXEMPTIONS

**Article 39.-** Financial statements in exemption application dossiers for newly established enterprises which have carried out business activities for less than one fiscal year

For newly established enterprises which have carried out business activities for less than one fiscal year, financial statements in their exemption application dossiers may be substituted with the

following documents:

1. Documents stated in Clause 1, Article 37 of this Decree.

2. Written declaration of taxes paid within the period from the time the enterprise starts operation to the time one month before the date of making of the exemption application.

**Article 40.-** Explanatory reports in exemption application dossiers

1. Explanatory reports on the satisfaction of conditions for exemption specified in Clause 1, Article 10 and Clause 2, Article 19 of the Competition Law must be expressed in the form of feasibility study schemes conducted or evaluated by scientific and technological organizations or research and development organizations established under the June 9, 2000 Law on Science and Technology.

2. Explanatory reports on the satisfaction of conditions for exemption specified in Clause 1, Article 19 of the Competition Law must prove that one or more parties to economic concentrations are in danger of dissolution or falling into bankruptcy in accordance with the provisions of Article 36 of this Decree.

**Article 41.-** Responsibility for evaluating exemption application dossiers

1. Where an economic concentration falls within the scope of the exemption-granting competence of the Trade Minister, the competition-managing agency shall have to evaluate the exemption application dossier and submit it to the Trade Minister for decision on the grant of exemption within the time limit specified in Clauses 1 and 2, Article 34 of the Competition Law.

2. Where an economic concentration falls within the scope of the exemption-granting competence of the Prime Minister, the competition-managing agency shall have to evaluate the exemption application dossier and propose the Trade Minister to send a written request to concerned ministries, ministerial-level agencies, Government attached agencies, other agencies and organizations for their opinions on this case within 50 days as from the date of receipt of the complete dossier. For complicated cases, this time limit shall be 100 days.

Within 15 days as from the date of receipt of the written request from the Trade Ministry for opinions on the exemption application case, the consulted agencies and organizations shall have to study and send their opinions in writing to the competition-managing agency.

Within 15 days as from the date of receipt of the opinions of the consulted agencies and organizations, the competition-managing agency must sum up these opinions and prepare a draft evaluation document for the Trade Minister to submit to the Prime Minister for consideration and decision.

**Article 42.-** Principal contents of documents on evaluation of exemption application dossiers

A document on the evaluation of an exemption application dossier shall contain the following principal contents:

1. The consistency of the explanatory report with the satisfaction of conditions for exemption for a given period;
2. Issues on which opinions remain divergent and solutions.
3. Proposals of the competition-managing agency or the Trade Minister regarding the case of

economic concentration falling within the exemption-granting competence of the Prime Minister.

**Article 43.-** Publication of decisions on grant of exemptions

Within seven working days as from the date of issuance of decisions on the grant of exemptions, the competition-managing agency shall have to publicize them in all the following forms:

1. Posting them up at its head office.
2. Announcing them on the mass media.

**Article 44.-** Errors not regarded as frauds in exemption application dossiers

Errors which shall not be regarded as frauds in the exemption application stated at Point a, Clause 2, Article 37 of the Competition Law shall include spelling mistakes, typing mistakes and printing mistakes which are not related to financial statement figures, and do not alter the principal contents of the explanatory reports in the exemption application dossiers.

### Chapter III

#### COMPETITION PROCEEDINGS

##### Section 1. ACCEPTANCE OF DOSSIERS OF COMPLAINT ABOUT COMPETITION CASES

**Article 45.-** Contents of written complaints in dossiers of complaint about competition cases

1. A written complaint in a dossier of complaint about a competition case stated in Article 58 of the Competition Law must contain the following principal details:

a/ Date of making of the written complaint;

b/ Name and address of the complainant;  
c/ Name and address of the complained party;  
d/ Names and addresses of persons with related interests or obligations (if any);  
e/ Specific matters proposed to the competition-managing agency for handling;

f/ Full names and addresses of witnesses (if any);  
g/ Grounds to prove that the complaint is grounded and lawful;

h/ Other information which the complainant deems necessary for the settlement of the competition case;

i/ Signature or fingerprint of the complainant, for complainants being individuals; signature and seal of the lawful representative of the complainant, for complainants being organizations.

2. Documents stated at Points g and h, Clause 1 of this Article may be established as annexes to the written complaint included in the dossier of complaint about a competition case.

**Article 46.-** Requests for supplementation of dossiers of complaint about competition cases, return of such dossiers; complaints about return of such dossiers and settlement thereof

1. Within seven working days as from the date of receipt of a dossier of complaint about a competition case, the competition-managing agency shall check the completeness and legal validity of the dossier. Where a dossier lacks documents stated in Clause 3, Article 58 of the Competition Law, the competition-managing agency shall notify such to the complainant for supplementation within 30 days; in special cases, the competition-managing agency may, at the request of the complainant, give one extension of no more than 15 days.

**Article 51.- Charges for handling of competition cases**

Charges for handling of a competition case as provided for in Article 62 of the Competition Law shall include the following:

1. Charges for settlement of a complaint about a competition case according to the complaint dossier provided for in Article 58 of the Competition Law or charges for settlement of a competition case where indication of violation of the Competition Law have been detected by the competition-managing agency;
2. Charges for settlement of an independent request filed by a person with related interests or obligations.

**Article 52.- Principles for collection, remittance and management of charges for handling of competition cases, fees for evaluation of exemption application dossiers**

1. Charges for handling of competition cases and fees for evaluation of exemption application dossiers must be fully and promptly remitted into the state budget.
2. Advances on expenses for handling of competition cases shall be paid to the competition-managing agency for depositing in temporary custody accounts opened at the State Treasury and be withdrawn for the execution of competition case-handling decisions as decided by the competition-managing agency or competition case-handling panel.
3. Where a payer of an advance on expenses for handling of a competition case stated in Clause 2 of this Article is entitled to reimbursement of part or whole of the paid amount, the competition-managing agency must carry out procedures for reimbursing this amount to the payer.

**requests**

1. Where a person with related interests or obligations does not participate in proceedings together with the complainant or investigated party according to the provisions of Article 71 of the Competition Law, he/she shall have the right to make an independent request if meeting the following conditions:

- a/ The settlement of the competition case is related to his/her interests or obligations;
- b/ His/her independent request is related to the competition case being settled;
- c/ The settlement of his/her independent request in the same competition case will help settle the case in a more accurate and rapid manner.

2. Independent requests shall be made according to procedures for lodging complaints about competition cases as provided for in Section 1 of this Chapter.

**Article 50.- Lawyers of persons with related interests or obligations**

1. Lawyers who are qualified for participating in legal proceedings according to the provisions of law and authorized by persons with related interests or obligations shall have the right to participate in competition proceedings to protect legitimate rights and interests of such persons.
2. When participating in competition proceedings, lawyers of persons with related interests or obligations shall have rights and obligations specified in Article 67 of the Competition Law.

**Section 3. CHARGES FOR HANDLING OF COMPETITION CASES, FEES FOR EVALUATION OF EXEMPTION APPLICATION DOSSIERS AND OTHER PROCEEDING EXPENSES**

3. The competition-managing agency shall accept a dossier of complaint about a competition case only after it receives a receipt of an advance on expenses for the handling of the competition case, except for cases where the complainant is exempt from such payment as provided for in Article 56 of this Decree.

**SECTION 2. PERSONS WITH RELATED INTERESTS OR OBLIGATIONS, THEIR LAWYERS**

**Article 48.- Persons with interests or obligations related to competition cases**

1. A person with interests or obligations related to a competition case is a person whose interests or obligations are related to the settlement of a competition case and who does not complain about the case or who is other than the investigated party but who makes a request on his/her own or at the request of the complainant or the investigated party to participate in proceedings in the capacity as a person with related interests or obligations and such request is accepted by the competition-managing agency or the competition case-handling panel.
2. Where a person has his/her interests or obligations related to the settlement of a competition case but nobody requests him/her to participate in proceedings in the capacity as a person with related interests or obligations, the competition-managing agency or the competition case-handling panel must ask such person to participate in proceedings in the capacity as a person with related interests or obligations.

- Article 49.-** The right of persons with related interests or obligations to make independent requests, procedures for making such independent

2. The competition-managing agency shall return a dossier of complaint about a competition case in the following cases:

a/ The statute of limitations for lodging complaints specified in Clause 2, Article 58 of the Competition Law has expired;

b/ The case does not fall within the scope of its investigating competence;

c/ The complainant fails to modify or supplement the dossier at the request of the competition-managing agency within the time limit specified in Clause 1 of this Article.

3. The complainant may lodge a complaint with the Trade Minister within five working days as from the date of receipt of the dossier of complaint returned by the competition-managing agency.

Within seven working days as from the date of receipt of such a complaint, the Trade Minister must issue either of the following decisions on:

- a/ Upholding the return of the dossier;
- b/ Requesting the competition-managing agency to accept the dossier.

**Article 47.- Acceptance of dossiers of complaint about competition cases**

1. Upon receiving a complete and valid dossier of complaint about a competition case, the competition-managing agency must immediately notify the complainant of the payment of an advance on expenses for the handling of the case, except for cases of exemption therefrom as provided for in Article 56 of this Decree.
2. Within 15 days as from the date of receipt of the notification of the competition-managing agency as stated in Clause 1 of this Article, the complainant must pay an advance on expenses for the handling of the competition case.

commune, ward or township People's Committees (hereinafter referred to as commune-level People's Committees), agencies when they work or social organizations of the localities where they reside may be exempted by the competition-managing agency from paying part or the whole of the advance on expenses for handling of competition cases or from paying the charges for handling of competition cases.

**Article 57.-** Rate of fee for evaluation of exemption application dossiers

The fee for evaluation of an exemption application dossier is VND 50,000,000.

**Article 58.-** Other proceeding expenses

Other proceeding expenses shall include expertise expense, expense for witnesses, expense for interpreters and expense for lawyers.

**Article 59.-** Advances on expertise expense, expertise expense

1. An advance on expertise expense is an amount temporarily calculated by the competition-managing agency or competition case-handling panel for conducting an expertise.

2. Expertise expense is a necessary and reasonable amount payable for an expertise and calculated by the expertise-conducting organization or individual in accordance with the provisions of law.

**Article 60.-** The obligation to pay an advance on expertise expense

1. The requester for an expertise must pay an advance on expertise expense unless otherwise provided for by law.

2. Where the involved parties request an

cases shall be determined under the provisions of Article 63 of the Competition Law, except for cases of exemption from payment thereof stated in Article 56 of this Decree.

2. Persons with related interests or obligations shall be liable to pay charges for handling of competition cases with regard to their independent requests if their requests were rejected by the competition-managing agency or competition case-handling panel, except for cases of exemption from payment thereof stated in Article 56 of this Decree.

3. Where the settlement of a competition case is stopped under the provisions of Point b, Clause 1, Article 101 of the Competition Law, the complainant, the investigated party and persons with related interests or obligations shall be liable to pay 50% of the charge for handling of the competition case as provided for in Article 53 of this Decree.

The complainant, the investigated party and persons with related interests or obligations may reach an agreement among themselves on the portions of the charge for handling of the competition case which each of them shall be liable to pay; if they cannot reach such an agreement, the competition case-handling panel shall make decision.

4. Where a party is exempt from payment of the charge for handling of a competition case, the other party(ies) must still be liable to pay his/her portion of the charge according to the provisions of Clauses 1 and 2 of this Article.

**Article 56.-** Cases of exemption from payment of advances on expenses for handling of competition cases, exemption from payment of charges for handling of competition cases

Low-income consumers as certified by

2. Except for the cases of exemption from payment of advances on expenses for handling of competition cases specified in Article 56 of this Decree, the complainants stated in Article 58 of the Competition Law and persons with related interests or obligations who have filed independent requests in competition cases must pay an advance on expenses for settlement of competition cases, which is equal to 30% of the charge specified in Clause 1 of this Article.

**Article 54.-** Disposal of advances paid on expenses for handling of competition cases

1. Those who have paid an advance on expenses for handling of competition cases shall be reimbursed the whole of the paid amount or the balance thereof if they are not liable to pay the charge for handling of the competition cases or are liable to pay the charge which, however, is less than the paid advance under a legally effective decision of the competition-managing agency or competition case-handling panel.

2. The time limit for reimbursement of the whole of the paid amount or the balance thereof stated in Clause 1 of this Article shall be 30 days as from the date the competition case-handling decision takes legal effect.

3. Where the investigation of a competition case is stopped under the provisions of Clause 1, Article 88 of the Competition Law, the advance paid on expenses for handling of the case shall be remitted into the state budget.

**Article 55.-** Liability to pay charges for handling of competition cases

1. The liability of the complainant, the investigated party or the competition-managing agency to pay charges for handling of competition

4. Where a payer of an advance on expenses for handling of a competition case is liable to pay the charge for handling of the case, the collected advance amount must be remitted into the state budget immediately after the decision of the competition-managing agency or competition case-handling panel takes effect.

5. Upon collecting advance amounts for expenses for handling of competition cases and fees for evaluation of exemption application dossiers, the competition-managing agency must give receipts thereof, which are issued by the Finance Ministry.

6. When the market prices of products or services see a fluctuation of 20% or more, the Trade Ministry shall coordinate with the Finance Ministry in adjusting the rates of charges for handling of competition cases and fees for evaluation of exemption application dossiers, which are specifically determined in cash in this Decree, to suit the actual price levels.

**Article 53.-** Rates of charges for handling of competition cases and the obligation to pay advances on expenses for the handling of competition cases

1. The rates of charge for settlement of competition cases are specified as follows:

a/ The charge for settlement of a competition case involving an unfair competition act is VND 10,000,000;

b/ The charge for settlement of a competition case involving a competition-restricting act is VND 100,000,000;

c/ The charge for settlement of an independent request filed by a person with related interests or obligations is VND 10,000,000.

expertise of the same object, each party shall be liable to pay half of the advance on expertise expense, unless otherwise provided for by law.

**Article 61.-** Disposal of advances paid on expertise expenses

1. Where a person who has paid an advance on expertise expense is not liable to pay expertise expense, the person liable to pay expertise expense under a decision of the competition-managing agency or competition case-handling panel must refund the paid advance to the person who has paid it.

2. Where a person who has paid an advance on expertise expense is liable to pay expertise expense, if the paid advance is lower than the actually incurred expertise expense, he/she must pay an additional amount to cover the deficit; if the paid advance is higher than the actually incurred expertise expense, he/she shall be refunded the superfluous amount.

**Article 62.-** The obligation to pay expertise expense

The obligation to pay expertise expense shall be determined as follows:

1. A person who has requested an expertise shall be liable to pay expertise expense if the expertise result proves that his/her request is groundless.

2. A person who refuses to accept a request for an expertise shall be liable to pay expertise expense if the expertise result proves that the request of the expertise requestor is grounded.

**Article 63.-** Expenses for witness

1. Reasonable and actual expenses for witnesses shall be paid by the witness-inviting party.

2. The person who has requested the competition-managing agency or competition case-handling panel to summon a witness shall be liable to pay expenses for such witness if the witness's statements conform to the facts but do not support his/her request.

Where the statements of a witness conform to the facts and support the request of the person who has requested the summon of such witness, the person liable to pay expertise expense for such witness shall be paid by the party that has made a request independent from the request of the person who has requested for the summon of the witness.

**Article 64.-** Expenses for interpreters, lawyers

1. Expense for an interpreter is a sum of money payable to an interpreter in the course of settlement of a competition case as agreed upon between the interpreter-inviting person and the interpreter or as provided for by law.

2. Expense for a lawyer is a sum of money payable to a lawyer as agreed upon between the lawyer-inviting person and the lawyer within the limit set by the lawyer's office and in accordance with the provisions of law.

3. Expenses for interpreters or lawyers shall be paid by the interpreter- or lawyer-inviting persons, unless otherwise agreed upon by the involved parties.

4. Where the competition-managing agency or competition case-handling panel has requested an interpreter, it shall pay expenses for such interpreter.

**Section 4. GRANT, SERVING, NOTIFICATION OF COMPETITION-PROCEEDING DOCUMENTS**

**Article 55.-** The obligation to grant competition-

proceeding documents, the obligation to serve or notify competition-proceeding documents

The competition-managing agency or competition case-handling panel shall be obliged to grant, serve or notify competition-proceeding documents specified in Article 66 of this Decree to the complainant, the investigated party, other proceeding participants and concerned organizations and individuals in accordance with the provisions of the Competition Law and this Chapter.

**Article 66.-** Competition-proceeding documents which must be granted, served or notified

Competition-proceeding documents which must be granted, served or notified include:

1. Decision on the investigation of a competition case, made by the head of the competition-managing agency.

2. Competition case-handling decision, made by the competition-managing agency, or competition case-handling panel.

3. Written complaint about a competition case, written complaint about a competition case-handling decision.

4. Notices, summonses and invitations in competition proceedings.

5. Receipts of advances on expenses for handling of a competition case, the charge for handling of a competition case and other expenses.

6. Other documents in competition proceedings as provided for by law.

**Article 67.-** Persons responsible for granting, serving or notifying competition-proceeding documents

1. Persons responsible for issuing, serving or

notifying competition-proceeding documents shall include:

a/ Persons conducting competition proceedings and other persons of the competition-proceeding document-issuing agency who are assigned to grant, serve or notify competition procedures;

b/ Commune-level People's Committees of the places where competition proceeding participants reside or agencies or organizations where they work, as requested by the competition-managing agency or Competition Council;

c/ Other persons as provided for by law.

2. Persons who are responsible for granting, serving or notifying competition-proceeding documents but fail to properly perform their duty shall, depending on the nature and seriousness of their violations, be disciplined, administratively sanctioned or examined for penal liability; if causing damage, they must pay compensation therefor according to the provisions of law.

**Article 68.-** Methods of grant, serving or notification of competition-proceeding documents

The grant, serving or notification of competition-proceeding documents shall be effected with one of some of the following methods:

1. Grant, serving or notification of competition-proceeding documents directly to the addressees, by post or through an authorized third party.

2. Public posting.

3. Announcement on the mass media.

**Article 69.-** Procedures for grant, serving or notification of competition-proceeding documents directly to individuals

1. Persons responsible for granting, serving or notifying competition-proceeding documents must

personally grant, serve or notify competition-proceeding documents to the addressees. The persons who are granted, served with or notified of competition-proceeding documents must sign on the records or in the books of hand-over and receipt of competition-proceeding documents.

2. Where a person who is granted, served with or notified of a competition-proceeding document is absent, such competition-proceeding document may be handed over to his/her co-residing relative who has full capacity for civil acts. This relative must sign for the receipt of the document and shall be asked to pledge to hand over the competition-proceeding document to its addressee in person. The date of signing by the co-residing relative shall be regarded as the date of being granted, served with or notified of the competition-proceeding document.

Where there is no co-residing relative who has full capacity for civil acts or there is such person but he/she refuses to receive a competition-proceeding document for handing it over to the addressee, such document may be handed over to the head of the street population group, the chief of the village or hamlet (hereinafter referred to as head of the street population group), the commune-level People's Committee or police of the place where the recipient resides, who shall be asked to pledge to hand over the document to its addressee in person.

3. Where a competition-proceeding document is granted, served or notified by an authorized third person, such person must make a record clearly stating the absence of the recipient and the person who has been handed over the competition-proceeding document; the reason; the hour and date of hand-over, the relationship between such person and the addressee; the pledge to hand the competition-proceeding document to its addressee

in person. Such record must be signed by the person who has agreed to hand over the competition-proceeding document to its addressee, the person in charge of granting, serving or notifying the document, and a witness.

4. Where the person who is granted, served with or notified of a competition-proceeding document has moved to a new address, such document must be granted, served or notified according to his/her new address.

5. Where the person who is granted, served with or notified of a competition-proceeding document is absent and the time of his/her return or his/her whereabouts is unknown, the person in charge of granting, serving or notifying the document must make a record on the impossibility to grant, serve or notify the document, which must be signed by the information supplier.

6. Where the person who is granted, served with or notified of a competition-proceeding document refuses to receive such document, the person in charge of granting, serving or notifying the document must make a record, clearly stating the reason for such refusal and containing the certification by the head of the street population group, the commune People's Committee or police that the addressee has refused to receive the competition-proceeding document.

**Article 70.-** Procedures for grant, serving or notification of competition-proceeding documents directly to agencies or organizations

1. Where the person who is granted, served with or notified of a competition-proceeding document is an agency or organization, such document must be directly handed over to its representative at law or person responsible for receiving documents, who must sign for receipt of such document.

2. Where the agency or organization which is granted, served with or notified of a competition-proceeding document has its representative participating in the proceedings or appoints a representative to receive such document, such persons shall sign for receipt of such document.

**Article 71.-** Procedures for public posting

1. The public posting of a competition-proceeding document shall be effected only when the whereabouts of the person who is granted, served with or notified of such document is unknown or when it is impossible to arrange the direct grant, serving or notification thereof.

2. The public posting of a competition-proceeding document shall be effected directly by the competition-managing agency or Competition Council or authorized to the commune-level People's Committee of the place where the person who is granted, served with or notified of such document resides or last resided according to the following procedures:

a/ The original document shall be posted up at the head office of the competition-managing agency, the Competition Council or the commune-level People's Committee of the place where the person who is granted, served with or notified of such document resides or last resided;

b/ Its copy shall be posted up at the place where the person who is granted, served with or notified of such document resides or last resided;

c/ A record shall be made on the completion of public posting procedures, clearly stating the date of posting.

3. The public posting of a competition-proceeding document shall last for 15 days, as from the first date of posting.

**Article 72.-** Procedures for mass media announcement

1. The mass media announcement shall be made only when it is so required by law or there are grounds that public posting shall not secure that the person to be granted, served or notified of a competition-proceeding document shall receive information on such document.

2. The mass media announcement may be made at the request of the complainant, the investigated party or persons with related interests or obligations. The fee for such announcement shall be paid by the requester for such announcement.

3. The mass media announcement must be carried on a central daily for three consecutive issues or broadcast by a central television or radio station three times on three consecutive days.

**Article 73.-** Notification of the result of grant, serving or notification of competition-proceeding documents

Where a person in charge of grant, serving or notification of a competition-proceeding document is other than the competition-managing agency or Competition Council, he/she must immediately notify the result of the grant, serving or notification to the competition-managing agency or Competition Council.

**Section 5. PROVING AND EVIDENCE**

**Article 74.-** The right and obligation to prove

1. The complainant or a person with related interests or obligations that has made an independent request must produce evidence to prove that his/her complaint or request is grounded and lawful.



2. The party opposing another person's complaint or request with respect to itself shall have the right to prove that its opposition is grounded and must produce evidence to prove such.
3. The competition-managing agency shall have the obligation to prove acts of violation of the law on competition in the case specified in Clause 2, Article 65 of the Competition Law.
- Article 75.-** Circumstances, events which are not required to prove
- The following circumstances and events shall not be required to prove:
1. Apparent circumstances or events known to everyone and accepted by the competition-managing agency or competition case-handling panel.
  2. Appropriate circumstances or events already ascertained in legally effective court judgments or decisions, legally effective competition case-handling decisions of the competition-managing agency or competition case-handling panel or legally effective decisions of competent state agencies.
  3. Circumstances or events already recorded and lawfully notarized or authenticated.

**Article 76.-** Identification of evidence

1. Exhibits must be original objects related to a case.

2. Witness's statements and explanations of related organizations or individuals shall be regarded as evidence if they are recorded in writing, recording tapes, recording discs, video tapes, video discs or other audio or video recording equipment, enclosed with documents certifying the recorded events, or oral statements at hearings.
3. Circumstances or events already recorded and lawfully notarized or authenticated.

**Article 77.-** Submission of evidence

1. The involved parties shall have to submit evidence to the competition-managing agency or competition case-handling panel in the process of investigation and settlement of a competition case.
2. The submission of evidence stated in Clause 1 of this Article must be recorded in writing. Such a record must contain the name, form, content and characteristics of evidence; number of copies and number of pages of evidence and the time of receipt thereof; the signature or fingerprint of the submitter and the signature of the recipient and the seal of the competition-managing agency or Competition Council. It must be made in two copies, one to be filed in the competition case dossier and the other to be given to the evidence submitter.

**Article 78.-** Taking of statements, of complainants, persons with related interests or obligations, witnesses

1. Investigators, members of a competition case-handling panel shall take statements of the complainant or a person with related interests or obligations only when such person has not yet made a written explanation or his/her explanation is incomplete or unclear.
- The complainant, a person with related interests or obligations or a witness must write a statement

by himself/herself and sign it. Where the complainant, a person with related interests or obligations or a witness cannot write a statement by himself/herself, an investigator or a member of the competition case-handling panel shall take his/her statement. The person who takes a statement shall record by himself/herself or a hearing clerk shall record in a minutes the statements of the complainant, persons with related interests or obligations and/or witnesses.

2. The taking of statements provided for in Clause 1 of this Article shall be conducted at the office of the competition-managing agency or Competition Council; in case of necessity, the taking of statements may be conducted outside the office of the competition-managing agency or Competition Council.

3. A statement minutes must be read by or to the statement giver, who shall affix his/her signature or fingerprint on it. The statement giver may request to have alterations and/or additions recorded in the minutes and affix his/her signature or fingerprint for certification thereof. A minutes must be signed by the statement taker and the minutes recorder and affixed with the stamp of the competition-managing agency or Competition Council; if a minutes has loose pages, each page must be signed and affixed with an overlapping stamp.

Where a statement minutes is made outside the head office of the competition-managing agency or Competition Council, a witness or certification of the commune-level People's Committee or police of the place or the agency or organization where the minutes is made shall be required.

4. The taking of statements of the complainant, a person with related interests or obligations or a witness who is a minor or has his/her civil act

capacity restricted must be conducted in the presence of a lawful representative of such person.

5. Minutes of statements of the complainant, the investigated party and persons with related interests or obligations shall be regarded an integral part of the written explanations of these persons.

**Article 79.-** Taking of statements of the investigated parties

1. In case of necessity, investigators or members of the competition case-handling panel may take statements of the investigated parties.
2. The procedures for taking statements of the investigated parties shall be similar to the procedures for taking statements as provided for in Article 78 of this Decree.

**Article 80.-** Solicitation of expertise

1. The head of the competition-managing agency or competition case-handling panel may make decision by himself/herself or at the proposal of an investigator or of the involved parties to solicit an expertise. Such a decision must contain the name and address of the expert, the object to be expertised, matters to be expertised and specific questions which need the conclusion of the expert.
2. The expert specified in an expertise-soliciting decision must conduct an expertise according to the provisions of law.

3. Where it is deemed that the expertise conclusion is incomplete, unclear or in violation of law, the head of the competition-managing agency or competition case-handling panel shall make decision on an additional expertise or a re-expertise. A re-expertise may be conducted by the previous expert or another professional organization according to the provisions of law.

aggravating circumstances

**Article 86.** - Commission of a violation many times in the same domain

Commission of a violation many times in the same domain means the case where a person commits a violation of competition law in the domain where he/she previously committed a violation but has not yet been handled for such violation while the statute of limitations for such handling has not yet expired.

**Article 87.** - Recidivism in the same domain

Recidivism in the same domain means the case where a person commits a violation of competition law in the domain where he/she has been handled for a previously committed violation while the two-year time limit counting from the time he/she has completely served the handling decision or from the date of expiration of the statute of limitations for execution of the handling decision has not yet expired.

**Section 7. ADMINISTRATIVE PREVENTIVE MEASURES IN THE COURSE OF INVESTIGATION, HANDLING OF COMPETITION CASES**

**Article 88.** - Administrative preventive measures in the course of investigation and handling of competition cases

In order to prevent in time violations of competition law or to guarantee the handling of a competition case, a competent person may apply one of the following administrative preventive measures in the course of investigation or handling of a competition case:

1. Detention of persons according to administrative procedures.
2. Detention of exhibits and means employed

aggravating circumstances in the handling of violations of provisions on control of competition-restricting acts shall include:

a/ Voluntary declaration of acts of violation before they are detected by competent agencies;

b/ Violators have averted or reduced the adverse impacts of their acts of violation, have voluntarily remedied consequences or compensated for damage;

c/ Violators have voluntarily supplied evidence and/or information relating to acts of violations which was previously unknown to competent agencies;

d/ Positive impacts of acts of violation on economic development.

2. Aggravating circumstances in the handling of violations of provisions on competition-restricting acts shall include:

a/ Having committed a violation many times or committing recidivism in the same domain;

b/ Committing a violation after receiving a competent agency's decision on rejecting enjoyment of exemptions or decision on annulling the decision on granting exemptions;

c/ Continuing to commit an act of violation though a competent person has requested to terminate such act;

d/ Evading or concealing a committed violation.

3. For acts of violations of provisions on competition-restricting acts, besides extenuating circumstances and aggravating circumstances specified in Clauses 1 and 2 of this Article, the competition-managing agency may consider and apply extenuating circumstances and aggravating circumstances specified in Articles 8 and 9 of the Ordinance on Handling of Administrative Violations.

**Section 6. EXTENUATING CIRCUMSTANCES, AGGRAVATING CIRCUMSTANCES**

**Article 85.** - Extenuating circumstances,

1. The assessment of evidence must be objective, comprehensive, complete and accurate.

2. The competition-managing agency or competition case-handling panel must assess each and every evidence, the relationship between pieces of evidence and assert the legal validity of each evidence.

**Article 84.** - Publicization and use of evidence

1. All evidence must be publicized and used in an equally public manner, except for the cases specified in Clauses 2 and 3 of this Article.

2. The competition-managing agency or competition case-handling panel must not publicize and use in a public manner the following evidence:

- a/ Evidence classified by law as state secret;
  - b/ Evidence relating to fine customs, professional secrets, business secrets or personal privacy at the legitimate request of the concerned party.
3. When deeming it necessary, the competition-managing agency or competition case-handling panel may publicize and use in a public manner only some pieces of evidence at appropriate time in order to ensure proper investigation and handling of competition cases.
4. Proceeding-conducting persons and proceeding participants must keep secret according to the provisions of law pieces of evidence which must not be publicized and used in a public manner according to the provisions of Clause 2 of this Article.

**Section 6. EXTENUATING CIRCUMSTANCES, AGGRAVATING CIRCUMSTANCES**

**Article 83.** - Assessment of evidence

1. Where evidence is denounced to be forged, the producer of such evidence may withdraw it; if he/she does not withdraw such evidence, the denouncer may request the competition-managing agency or competition case-handling panel to solicit an expertise as provided for in Article 80 of this Decree.

2. Where the forging of evidence shows criminal indications, the competition-managing agency or competition case-handling panel shall refer the case to a competent criminal investigation agency.

3. Those who produce forged evidence shall have to pay compensation for damage caused by such evidence to other persons.

**Article 82.** - Preservation of evidence

1. Where an evidence has been submitted to the competition-managing agency or competition case-handling panel, the competition-managing agency or competition case-handling panel shall be responsible for preserving it.

2. Where an evidence cannot be submitted to the competition-managing agency or competition case-handling panel, the person who is keeping it shall have to preserve it.

3. In case of necessity to hand over evidence to a third person for preservation, the head of the competition-managing agency or competition case-handling panel shall make a decision to this effect and a record on the hand-over of such evidence to the third person for preservation, who shall have to sign on the record, enjoy a remuneration and take responsibility for the preservation.

in the commission of a violation of competition law.

**3. Body search.**

4. Search of means or objects.

5. Search of places where exhibits or means employed in the commission of a violation of competition law are hidden.

**Article 89.-** Principles for application, change or cancellation of administrative preventive measures in the course of investigation or handling of competition cases

The application, change or cancellation of administrative preventive measures in the course of investigation or handling of competition cases must comply with the provisions of Clauses 2, 3 and 4, Article 61; Clause 6, Article 76; Clause 4, Article 79; Clause 2, Article 81 of the Competition Law, the provisions of this Section and the provisions of the Ordinance on Handling of Administrative Violations.

**Article 90.-** Detention of persons according to administrative procedures

1. The detention of persons according to administrative procedures shall be applied in cases where it is necessary to gather and verify important circumstances used as a basis for making decision on handling a competition case.

2. The detention of persons stated in Clause 1 of this Article must comply with current provisions of law on detention of persons.

**Article 91.-** Competence to detain persons in the course of investigation or handling of competition case according to administrative procedures

1. The following persons shall have the power

to make decision to detain persons in the course of investigation or handling of competition cases according to administrative procedures:

a/ The head of the competition-managing agency;

b/ The chairman of the Competition Council.

c/ Persons defined in Article 45 of the Ordinance on Handling of Administrative Violations.

2. Where persons defined in Clause 1 of this Article are absent, their authorized deputies may make decision to detain persons according to administrative procedures and take responsibility for their decisions.

**Article 92.-** Detention of exhibits and means employed in violations of competition law

1. The detention of exhibits and means employed in the commission of violations of competition law may be applied in cases where it is necessary to verify circumstances used as a basis for making decision on handling a competition case or to promptly stop acts of violation.

2. Competent persons specified in Article 91 of this Decree may make decision to detain exhibits and means employed in violations of competition law.

3. Where there are grounds to believe that unless exhibits and means employed in violations of competition law are promptly detained, they may be dispersed or destroyed, the direct superiors of people's policemen, border guards, forest rangers, customs officers, market controllers or specialized inspectors may make decision to detain such exhibits and means. Within 24 hours as from the time of issuing such a decision, the decision issuer must report it to his/her superior who has the power to detain exhibits and means employed in

administrative violations as specified in Clause 2 of this Article and get their written approval. In cases where the issued decision is not approved by his/her superior, the decision issuer must immediately cancel such decision and return the detained objects, money, goods and/or means.

4. The detention of exhibits and/or means employed in violations of competition law must be recorded in writing. Such a record must contain the names, quantities and types of exhibits and/or means as well as signatures of the detainer and the violator. The detention decision issuer and the detainer shall have to preserve such exhibits and/or means; if such exhibits or means are lost, sold, fraudulently swapped or damaged due to their fault, such persons shall have to compensate therefor and be handled according to the provisions of law.

Where exhibits or means need to be sealed up, they must be sealed up in the presence of the violator; where the violator is absent, they must be sealed up in the presence of a representative of his/her family, a representative of an organization or local administration, and a witness.

5. For Vietnamese currency, foreign currencies, gold, silver, gems, precious metals, narcotics and other objects subject to a special management regime, the preservation thereof shall comply with the provisions of law.

For exhibits or means employed in violations which are easy-to-deteriorate goods or articles, the detention decision issuer must handle them in accordance with the provisions of Clause 3, Article 61 of the Ordinance on Handling of Administrative Violations.

6. Within 10 days as from the date of detention, the detention decision issuer must handle detained exhibits and means by applying the measures stated in the detention decision or return them to

the individual or organization concerned if the sanctioning form of confiscation of such detained exhibits or means is not applied.

The time limit for detention of exhibits and means employed in violations of competition law may be extended in complicated cases where verification is required but must not exceed 60 days as from the date of detention of such exhibits and means. The extension of such time limit must be decided by one of the persons defined in Clause 2 of this Article.

7. The detention of exhibits and means employed in violations of competition law must be decided in writing, enclosed with a detention record. Their copies must be given to the violator or representative of the violating organization.

**Article 93.-** Body search according to administrative procedures

1. Body search according to administrative procedures shall be conducted only when there are grounds to believe that a person is hiding articles, documents or means employed in a violation of competition law on his/her body.

2. Competent persons defined in Article 91 of this Decree may make decision to conduct a body search according to administrative procedures.

Where there are grounds to believe that articles, documents or means employed in a violation of competition law may be dispersed unless a body search is promptly conducted, apart from persons defined in Article 91 of this Decree, people's policemen, members of coast guard professional squads, border guards, forest rangers or market controllers who are on duty may conduct a body search according to administrative procedures, then immediately send a written report thereon to their superiors being those who are defined in

Article 91 of this Decree and must take responsibility before law for such body search.

3. A body search must be decided in writing, except for prompt searches stated in Paragraph 2, Clause 2 of this Article.

4. Before conducting a body search, the searcher must notify the body search decision to the person to be searched. In a body search, the searcher and the searched person must be of the same sex and the search must be conducted to the witness of a person of the same sex.

5. Every body search must be recorded in writing. The copies of the body search decision and record must be given to the searched person.

**Article 94.** Search of places where exhibits and means employed in violations of competition law are concealed

The search of a place where exhibits and means employed in violations of competition law are concealed shall comply with the following provisions:

1. Competent persons defined in Article 91 of this Decree may issue decisions to search places where exhibits and means employed in violations of competition law are concealed.

2. A place where exhibits and means employed in violations of competition law are concealed is a place where articles, money, goods and/or means employed in a violation of competition law are concealed by the violator. If exhibits and means employed in a violation of competition law are hidden by the violator on his/her body, a body search shall be conducted according to the provisions of Article 93 of this Decree.

3. Where a place where exhibits and means employed in violations of competition law are

concealed is a residence, a competent person defined in Article 91 of this Decree may conduct a search only after having obtained written consent of the president of the district-level People's Committee of the place where exhibits and means are concealed.

A residence stated in this Article is a location for habitual accommodation of an individual or a family household that has been granted permanent residence status or have registered temporary residence there; or, if a means is used as a habitual accommodation of an individual or a family household, a place where such means has been registered.

4. All searches of places where exhibits and means are concealed must be recorded in writing according to a set form.

**Article 95.** Procedures for application of administrative preventive measures

1. Those who propose the head of the competition-managing agency or the chairman of the Competition Council to apply administrative preventive measures defined in Clause 2, Article 61 of the Competition Law must make and send petitions to the latter.

A petition for the application of administrative preventive measures must contain the following principal details:

a/ Date of making of the petition;

b/ Name and address of the petitioner;

c/ Name and address of the person against whom administrative preventive measures are petitioned to be applied;

d/ Brief account of the act that infringes upon the petitioner's legitimate rights and interests;

e/ Grounds for the application of administrative

preventive measures;

f/ Administrative preventive measures which need to be applied and other specific recommendations.

The petitioner must, depending on his/her petition for the application of administrative preventive measures, supply the head of the competition-managing agency or the chairman of the Competition Council evidence to prove the necessity to apply such administrative preventive measures.

2. The head of the competition-managing agency or the chairman of the Competition Council must issue a decision to apply administrative preventive measures within three days after the date of receipt of a petition, if the petitioner is not required to provide a security or immediately after he/she provides a security as provided for in Article 97 of this Decree; if refusing to accept the petition, the head of the competition-managing agency or the chairman of the Competition Council must issue a written notice, clearly stating the reason therefor.

Where the competition case-handling panel receives a petition for the application of administrative preventive measures at a hearing, the president of the hearing shall propose the chairman of the Competition Council to consider and issue a decision to apply such measures immediately or after the petition provides a security as provided for in Article 97 of this Decree.

**Article 96.** Issuance of decisions to apply administrative preventive measures by the head of the competition-managing agency or the chairman of the Competition Council by himself

The head of the competition-managing agency or the chairman of the Competition Council shall issue decisions by himself/herself to apply

administrative preventive measures in the course of investigation or handling of competition cases if there is no petition on the application thereof according to the provisions of Article 95 of this Decree.

**Article 97.** Forced implementation of security measures

The complainant in a competition case shall, when submitting a petition to the head of the competition-managing agency or the chairman of the Competition Council to apply one of administrative preventive measures, must deposit a sum of money, some precious metal, gem or valuable papers in a blocked State Treasury account within a time limit fixed by the head of the competition-managing agency or the chairman of the Competition Council.

**Article 98.** Change of administrative preventive measures, application of additional ones

When it is deemed that the applied administrative preventive measure is no longer appropriate and should be changed or an additional one should be applied, the procedures for change of administrative preventive measures or application of additional ones shall be similar to those specified in Article 95 of this Decree.

**Article 99.** Cancellation of the application of administrative preventive measures

1. The head of the competition-managing agency or the chairman of the Competition Council must decide to cancel the applied administrative preventive measures in one of the following cases:

a/ The cancellation is proposed by the petitioner for the application of such administrative preventive measures;

b/ The time limit for detention of exhibits and

means employed in the violation of competition law has expired.

2. In case of cancellation of an administrative preventive measure, the person who has petitioned for the application of such administrative preventive measure shall be entitled to receive back the security which is a sum of money, some precious metal, gem or valuable papers as provided for in Article 97 of this Decree, except for the case specified in Clause 3, Article 61 of the Competition Law.

**Article 100.**- Effect of decisions to apply, change or cancel administrative preventive measures

1. Decisions to apply, change or cancel administrative preventive measures shall take effect instantly.

2. The head of the competition-managing agency or the chairman of the Competition Council shall grant or send the decisions to apply, change or cancel administrative preventive measures immediately after the issuance thereof to the petitioners, the persons to whom the administrative preventive measures shall be applied, and other concerned organizations and individuals.

**Section 8. HEARINGS, COMPETITION CASE-HANDLING DECISIONS OF THE COMPETITION CASE-HANDLING PANEL**

**Article 101.**- General requirements for hearings

1. A hearing must be conducted on time and at the place as indicated in the decision to open the hearing or in the notice on the re-opening of the hearing in case of postponement of a hearing.

2. The competition case-handling panel must directly identify details of a competition case by

raising questions and listening to statements of the complainant, the investigated party, persons with related interests or obligations, and other participants in the proceedings; consider and examine documents and evidence already collected; listen to the investigator's presentation on the investigation conclusions. A competition case-handling decision shall be based only on the result of the questioning at the hearing, arguments and evidence examined and verified at the hearing.

3. The questioning and argumentation at a hearing must be uninterruptedly conducted, excluding breaks. Members of the competition case-handling panel must participate in the hearing from the beginning to the end, except for the case specified in Clause 1, Article 102 of this Decree.

In a special case specified in this Decree, a hearing may stop for no more than five working days and be resumed after this time limit.

4. Each hearing must be participated by at least one member of the Competition Council other than members of the competition case-handling panel.

**Article 102.**- Replacement of members of the competition case-handling panel in special cases

1. Where a member of the competition case-handling panel is unable to continue participating in a hearing, the member of the Competition Council who participates in the hearing shall replace such person.

2. Where the president of a hearing is unable to continue participating in a hearing, the hearing shall stop for no more than one working day during which the chairman of the Competition Council shall appoint another member of the competition case-handling panel to replace such person.

**Article 103.**- The presence of the complainant,

the investigated party and persons with related interests or obligations at hearings

1. The complainant, the investigated party and persons with related interests or obligations must be present at a hearing in response to the summonses of the competition case-handling panel; a hearing must be postponed if any of them is absent for the first time for a plausible reason.

2. If the complainant, the investigated party or a person with related interests or obligations is still absent though he/she has been summoned for the second time, the competition case-handling panel shall still conduct a hearing to settle the competition case in their absence.

3. If a person with related interests or obligations who has filed an independent request is still absent though he/she has been summoned for the second time, he/she shall be deemed to have abandoned his/her independent request and the competition case-handling panel shall issue a decision to stop the settlement of his/her independent request, provided that it is agreed by both the complainant and the investigated party.

**Article 104.**- Conduct of hearings to settle competition cases in cases where the complainant, the investigated party or a person with related interests or obligations is absent

The competition case-handling panel shall still conduct a hearing to settle a competition case in the following cases:

1. The complainant, the investigated party or a person with related interests or obligations, who is absent at the hearing, has requested in writing the competition case-handling panel to settle the competition case in his/her absence.

2. The complainant, the investigated party or a

person with related interests or obligations, who is absent at the hearing, has a lawful representative participating in the hearing.

3. The investigated party or a person with related interests or obligations falls into the case specified in Clause 2, Article 103 of this Decree.

**Article 105.**- The presence of lawyers

1. Lawyers of the complainant, the investigated party and persons with related interests or obligations must participate in the hearings in response to the summonses of the competition case-handling panel; if any of them is absent for the first time for a plausible reason, the hearing must be postponed.

2. If the lawyer of the complainant, the investigated party or a person with related interests or obligations is absent though he/she has been properly summoned for the second time, the competition case-handling panel shall proceed with settling the competition case; in this case, the complainant, the investigated party or the person with related interests or obligations shall have to defend by himself/herself their legitimate rights and interests.

**Article 106.**- The presence of witnesses

1. Witnesses shall be obliged to participate in the hearings in response to the summonses of the competition case-handling panel to help clarify details of the competition case. In the absence of a witness who has given his/her statements directly or sent his/her written statements to the competition case-handling panel, the president of the hearing shall publicize such statements.

2. In the absence of a witness, the competition case-handling panel shall make decision to

postpone the hearing or proceed with it; if a witness is absent at the hearing without a plausible reason and his/her absence causes difficulties to the settlement of the competition case, such witness may be escorted by police to the hearing if it is so requested by the competition case-handling panel.

**Article 107.-** The presence of experts

1. Experts must participate in the hearings in response to the summonses of the competition case-handling panel so as to help clarify matters related to the expertise and expertise conclusions.
2. In the absence of an expert, the competition case-handling panel shall make decision to postpone the hearing or proceed with it.

**Article 108.-** The presence of interpreters

1. Interpreters must participate in the hearings in response to the summonses of the competition case-handling panel.
2. Where an interpreter is absent for himself and there is no substitute, the competition case-handling panel shall postpone the hearing, unless it is requested by the involved parties to proceed with the hearing.

**Article 109.-** The presence of investigators

1. The head of the competition-managing agency shall appoint two investigators, at least one of whom has investigated the competition case, to participate in the hearings.
2. For a competition case invested by the competition-managing agency under the provisions of Clause 2, Article 65 of the Competition Law, if both appointed investigators cannot continue participating in a hearing, the competition case-handling panel shall postpone the hearing and

notify the head of the competition-managing agency thereof.

**Article 110.-** Time limit for postponement of hearings and making of decisions to postpone hearings

1. Where the competition case-handling panel decides to postpone a hearing under the provisions of Clause 2, Article 73 or Clause 2, Article 85 of the Competition Law and Articles 103, 105, 106, 107, 108, 109, 117, and Clause 4, Article 123 of this Decree, the time limit for postponement shall not exceed 30 days as from the date of making of such decision.
2. A decision on postponement of a hearing must contain the following principal details:

a/ Date of issuance of the decision;

b/ Full names of members of the competition case-handling panel and of other proceeding-conducting persons;

c/ The competition case brought up for settlement;

d/ Reason for the postponement;

e/ Time and place for reopening of the hearing.

3. A decision on the postponement of a hearing must be signed by the president of the hearing on behalf of the competition case-handling panel, publicized to the participants in the proceedings and sent to those who were absent at the hearing.

4. Where the competition case-handling panel cannot re-open the postponed hearing at the time and place as indicated in the postponement decision, it must promptly notify the participants in the proceedings of the new time and place for reopening of the hearing.

**Article 111.-** Internal rules of hearings

The chairman of the Competition Council shall issue internal rules for hearings with the following principal rules:

1. Persons aged under sixteen years shall not be allowed to enter the hearing hall, unless they are summoned by the competition case-handling panel to participate in the hearing.
2. All persons present in the hearing hall must stand up when the competition case-handling panel enter the hall, respect the competition case-handling panel, keep order and comply with the orders of the president of the hearing.

3. Persons may raise questions, reply or express opinions only when they are permitted by the competition case-handling panel and must do so while standing. They may do so while being seated for health reasons and with the permission of the president of the hearing.

**Article 112.-** Procedures for issuance of decisions of competition case-handling panels at hearings

1. A competition case-handling decision must be deliberated and adopted by the competition case-handling panel behind closed doors.
2. Decisions on change of proceeding-conducting persons, experts or interpreters, on stoppage of the settlement of a competition case or on postponement of a hearing must be deliberated and adopted behind closed doors and made in writing.
3. Decisions on other matters shall be deliberated and adopted in the hearing hall and recorded in the hearing's minutes rather than being recorded in separate documents.

**Article 113.-** Minutes of a hearing

1. The minutes of a hearing must fully contain the following details:

a/ Major contents of the decision on the opening of the hearing as stated in Clause 2, Article 102 of the Competition Law;

b/ All happenings in the hearing from the beginning to the end of the hearing;

c/ Questions, replies and opinions expressed in the hearing.

2. Except for the recording of the minutes of a hearing, the audio and video recording of the happenings at a hearing may be conducted only when it is so permitted by the competition case-handling panel.

3. After the end of a hearing, the president of the hearing must check the minutes and sign on it together with the hearing clerk.

4. Proceeding participants may examine the minutes of the hearing immediately after the end of the hearing, request it to be modified or added and sign on it for certification.

**Article 114.-** Preparations for the opening of a hearing

Before opening a hearing, the hearing clerk must perform the following tasks:

1. Publicizing the internal rules of the hearing.
2. Checking and ascertaining the presence or absence of participants in the hearing in response to summonses and notices of the competition case-handling panel; clarifying reasons for any absence.
3. Keeping order in the hearing hall.
4. Requesting persons present in the hearing hall to stand up when the competition case-handling panel enter the hall.

**Article 115.-** Opening of a hearing

1. The president of the hearing opens the hearing by reading aloud the decision on the opening of the hearing.

2. The hearing clerk reports to the competition case-handling panel on the presence and absence of those who are required to participate in the hearing in response to the summonses and notices of the hearing, and the reasons for any absence.

3. In case of necessity, the president of the hearing may ascertain the presence of those who are required to participate in the hearing in response to the summonses, including the complainant, the investigated party and persons with related interests or obligations.

4. The president of the hearing informs the complainant, the investigated party, persons with related interests or obligations and other persons participating in proceedings of their respective rights and obligations.

5. The president of the hearing introduces the full names of the proceeding-conducting persons, experts and interpreters.

6. The president of the hearing asks those who have the right to request change of proceeding-conducting persons, experts or interpreters if they have any such request.

**Article 116.-** Dealing with of requests for change of proceeding-conducting persons, experts or interpreters

Where there is a request for change of a proceeding-conducting person, an expert or interpreter, the competition case-handling panel must consider and make decision to accept or refuse to accept such request according to the procedures specified in Chapter V of the

Competition Law; in case of refusal, it must give the reason therefor.

**Article 117.-** Consideration of and decision on postponement of a hearing in case of absence of persons

When a person who is required to participate in a hearing is absent but his/her absence does not fall into the case where the competition case-handling panel must postpone the hearing, the president of the hearing shall ask if there is any request for the postponement of the hearing; if there is such a request, the competition case-handling panel shall look into it and decide to accept or refuse to accept it according to the procedures specified in Chapter V of the Competition Law and this Section; in case of refusal, it must give the reason therefor.

**Article 118.-** Assurance of the impartiality of witnesses

1. In case of necessity, before questioning a witness, the president of the hearing may decide on the application of appropriate measures to make sure that the witness cannot hear other witnesses' statements or have contacts with other related persons.

2. Where the statements of the complainant, the investigated party, persons with related interests or obligations and witnesses may influence one another, the president of the hearing may, before questioning witnesses, decide to isolate the complainant, the investigated party, persons with related interests or obligations from witnesses.

**Article 119.-** Hearing of explanations of the complainant, the investigated party, persons with related interests or obligations

1. To start the settlement of a competition case,

the competition case-handling panel shall hear the explanations of the complainant, the investigated party, persons with related interests or obligations in the following order:

a/ The lawyer of the complainant presents the complaint of the complainant and evidence to prove that such complaint is grounded and lawful. The complainant may add his/her opinions;

b/ The lawyer of the investigated party presents the opinion of the investigated party on the complaint of the complainant; the investigated party's proposal and evidence to prove that such proposal is grounded and lawful. The investigated party may add his/her opinions;

c/ The lawyer of the person with related interests or obligations presents the opinion of such person on the complaint of the complainant; opinions and proposal of the investigated party; the independent request and proposal of such person and evidence to prove that such request and proposal are grounded and lawful. The person with related interests or obligations may add his/her opinions.

2. Where the complainant, the investigated party or a person with related interests or obligations has no lawyer, such complainant, investigated party or person may present by himself/herself his/her complaint, request and/or proposal and evidence to prove that such complaint, request and/or proposal are grounded and lawful.

3. At the hearing, the complainant, the investigated party and persons with related interests or obligations and their lawyers may add evidence to prove their complaint, request or proposal.

4. For a competition case without a complainant and investigated by the competition-managing agency as provided for in Clause 2, Article 65 of the Competition Law, the presentations by the

persons specified at Point a, Clause 1 of this Article shall be replaced with the investigator's report.

**Article 120.-** Order of questioning at a hearing

After hearing the presentations of the complainant or the report of the investigator in case of investigation by the competition-managing agency as provided for in Clause 2, Article 65 of the Competition Law, of the investigated party and persons with related interests or obligations, questions for each person on each matter shall be raised in the following order:

1. By the president of the hearing.

2. By other members of the competition case-handling panel.

3. By lawyers of the parties: the complainant, the investigated party and persons with related interests or obligations.

4. By other persons participating in the proceedings.

**Article 121.-** Questioning of the complainant, the investigated party and persons with related interests or obligations

1. Where there are more than one complainant, the investigated party and person with related interests or obligations, they shall be questioned one after another.

2. The parties stated in Clause 1 of this Article shall be questioned only on matters which have not yet been clearly presented by them and their lawyers, which conflict to one another, conflict to their previous statements, conflict to the presentations of the other parties and their lawyers.

3. The complainant, the investigated party and persons with related interests or obligations may give their replies or their lawyers may give replies

and they add their opinions.

**Article 122.- Questioning of witnesses**

1. Where there are more than one witness, they shall be questioned one after another.
2. Before questioning a witness, the president of the hearing must ask questions clarifying their relationships with the complainant, the investigated party and persons with related interests or obligations in the competition case.
3. Where a witness is a minor, the president of the hearing may ask for the assistance of his/her parent, guardian or teacher in questioning such minor.
4. The president of the hearing shall ask witnesses to clearly state details of the competition case which they know. After they finish their statements, they shall be questioned only on matters which have not yet been clearly presented by them, which are incomplete or conflict to one another, conflict to their previous statements, conflict to the explanations of other persons participating in the proceedings and their lawyers.

5. After giving their statements, witnesses shall stay in the hearing hall and be possibly further questioned.

6. In case of necessity to protect the safety of witnesses and their relatives, the competition case-handling panel shall decide not to disclose information on their relatives and prevent persons present in the hearing from seeing such witnesses.

**Article 123.- Questioning of experts**

1. The president of the hearing shall request the expert to present his/her conclusions on the expertised matter. When presenting, the expert may give additional explanations on the expertise

conclusions and grounds for reaching such expertise conclusions.

2. Proceeding-participating persons who are present at the hearing may give comments on the expertise conclusions, raise questions concerning unclear or contradictory matters in the expertise conclusions or matters contradictory to other details of the competition case.

3. Where an expert is not present at the hearing, the president of the hearing shall publicize the expertise conclusions.

4. When a proceeding-participating person disagrees with the expertise conclusions publicized at a hearing and request additional expertise or re-expertise, the competition case-handling panel shall consider and make decision to accept or refuse to accept such request; in case of acceptance, the panel shall make decision to postpone the hearing.

**Article 124.- Termination of the questioning at a hearing**

1. Before terminating the questioning at a hearing, the president of the hearing shall ask the complainant, the investigated party, persons with related interests or obligations, their lawyers and other proceeding-participating persons if they have any more questions; if there are any questions, the president of the hearing shall consider and make decision to continue the questioning.

2. If there is no more question, the president of the hearing shall make decision to move on to the argument session provided for in Article 125 of this Decree.

**Article 125.- Order of presentation of arguments**

1. The order of presentation of arguments is as

follows:

a/ The lawyer of the complainant makes a presentation. The complainant may add his/her opinions;

b/ The lawyers of the investigated party makes a presentation. The investigated party may add his/her opinions;

c/ The lawyer of the person with related interests or obligations makes a presentation. The person with related interests or obligations may add his/her opinions.

2. Where the complainant, the investigated party or a person with related interests or obligations has no lawyer, he/she may make a presentation.

3. For a competition case involving no complainant and investigated by the competition-managing agency as provided for in Clause 2, Article 65 of the Competition Law, the presentation by the complainant's lawyer stated at Point a, Clause 1 of this Article shall be replaced by the presentation by an investigator.

**Article 126.- Presentation of arguments**

1. When giving their assessment of evidence and expressing their views on the settlement of the competition case, the arguers shall base themselves on the following grounds:

a/ Documents and evidence already considered and examined at the hearing;

b/ The results of the questioning at the hearing;

2. The president of the hearing must not limit the time for argument.

**Article 127.- Return to questioning**

Through argument, if deeming that a detail of the competition case has not been examined yet or thoroughly examined or additional evidence shall

be examined, the competition case-handling panel shall decide to return to the questioning; after finishing the questioning, it shall resume the argument.

**Article 128.-** The investigated party's final words  
When the arguers have finished their presentations, the president of the hearing shall declare to terminate the argument.

The investigated party shall be allowed to give his/her final words. No question shall be raised when the investigated party gives his/her final words. The competition case-handling panel may request the investigated party not to speak about matters irrelevant to the competition case but must not limit the speaking time of the investigated party.

If, in his/her final words, the investigated party discloses new circumstances of importance to the competition case, the competition case-handling panel shall make decision to return to the questioning.

**Article 129.- Deliberation before issuing decisions on handling competition cases**

1. After terminating the argument, the competition case-handling panel shall meet behind closed doors to deliberate and issue decisions on handling the competition case.

2. During deliberation, members of the competition case-handling panel shall resolve all matters related to the competition case by majority vote. Holders of minority opinions may make written opinions to be filed into the competition case dossiers.

3. The deliberation provided for in Clause 2 of this Article shall be based only on documents and evidence already considered and examined at the hearing, the results of the questioning at the hearing



## THE GOVERNMENT

### DECREE No. 120/2005/ND-CP OF SEPTEMBER 30, 2005, PROVIDING FOR HANDLING OF VIOLATIONS OF LAW IN THE COMPETITION DOMAIN

#### THE GOVERNMENT

*Pursuant to the December 25, 2001 Law on Organization of the Government;*

*Pursuant to the December 3, 2004 Competition Law;*

*Pursuant to the July 2, 2002 Ordinance on Handling of Administrative Violations;*

*At the proposal of the Trade Minister,*

#### DECREES:

#### Chapter I

#### GENERAL PROVISIONS

##### Article 1.- Scope of regulation

1. This Decree provides for the handling of organizations and individuals that have intentionally or unintentionally committed acts of violation of the provisions of competition law.

2. Acts of violating competition law under the provisions of this Decree include:

a/ Acts of violating provisions on control of competition-restricting acts, including acts of violating provisions on competition restriction agreements, abuse of dominant market position, abuse of monopoly position and economic

concentrations.

b/ Acts of violating provisions on unfair competition;

c/ Acts of violating other provisions of competition law.

##### Article 2.- Subjects of application

This Decree shall apply to the following organizations and individuals:

1. Business organizations and individuals (hereinafter collectively referred to as enterprises) and professional associations operating in Vietnam (hereinafter referred to as associations) specified in Article 2 of the Competition Law.

2. Other organizations and individuals committing acts specified in Section 5, Chapter II of this Decree.

Article 3.- Principles for handling violations of competition law

1. The handling of acts of violation of provisions on control of competition-restricting acts must abide by the following principles:

a/ All acts of violation must be promptly detected. The handling of acts of violation must be carried out quickly, fairly and thoroughly; all consequences caused by such acts must be remedied according to the provisions of law;

b/ The handling of acts of violation must follow the competition proceeding order and procedures provided for in Chapter III of the Government's Decree No. 116/2005/ND-CP of September 15, 2005, detailing the implementation of a number of articles of the Competition Law and comply with the provisions of this Decree;

c/ The handling of acts of violation must be carried out by competent persons according to their powers defined by law;

d/ An act of violation of competition law shall be handled only once; an enterprise that commits more than one act of violation shall be handled for each of such acts;

e/ Acts of violation showing criminal signs shall not be handled according to the provisions of this Decree.

2. The handling of acts of violation of provisions on unfair competition acts shall abide by the principles specified in Clause 1 of this Article and Article 3 of the Ordinance on Handling of Administrative Violations.

3. The handling of acts of violation of other provisions of competition law shall abide by the principles specified in Article 3 of the Ordinance on Handling of Administrative Violations.

Article 4.- Forms of handling of violations of competition law

1. The forms of handling of violations of competition laws comprise sanctioning forms and remedies.

2. For each act of violation of competition law, organizations or individuals shall be subject to one of the following principal sanctioning forms:

a/ Caution;

b/ Fine.

3. Depending on the nature and severity of their violations, organizations or individuals violating competition law may also be subject to the application of one or some of the following additional sanctioning forms:

a/ Withdrawal of business registration certificates, deprivation of the right to use practice permits or certificates;

b/ Confiscation of exhibits and means employed for the commission of the violations.

4. In addition to sanctioning forms specified in Clauses 2 and 3 of this Article, enterprises violating competition law may be also subject to the application of one or some of the following remedies:

a/ Forcible restructuring of enterprises having abused their dominant market position;

b/ Forcible division, separation of enterprises which have been merged or consolidated; forcible sale of component(s) which enterprises have bought;

c/ Forcible public rectification;

d/ Forcible removal of illegal terms from the contract or business transaction;

e/ Forcible use or sale of inventions, utility solutions or industrial designs which have been bought and left unused;

f/ Forcible cancellation of measures of preventing and restraining other enterprises from entering the market or developing business;

g/ Forcible restoration of technical and technological conditions which enterprises have obstructed;

h/ Forcible removal of unfavorable conditions already imposed on customers;

i/ Forcible restoration of contractual terms which have been modified without plausible reasons;

j/ Forcible restoration of contracts which have been cancelled without plausible reasons.

Article 5.- Levels of fine for acts of violation of competition law

1. For acts of violation of provisions on control of competition-restricting acts, agencies competent to handle such acts may impose fines at the levels specified in Sections 1, 2 and 3, Chapter II of this Decree, which, however, must not exceed 10% of

total turnover generated by the violating enterprises in the fiscal year preceding the year when the violations are committed.

Where the violating enterprise is newly established and has operated for under one fiscal year, total turnover generated in the fiscal year preceding the year of commission of the violation as stated in this Clause shall be turnover generated by the enterprise from the date of its establishment to the date the decision on official investigation of the violation is issued.

2. For acts of violation of provisions on unfair competition and of other provisions of competition law not falling into the cases specified in Clause 1 of this Article, competent agencies shall impose fines at the levels specified in Sections 4 and 5, Chapter II of this Decree.

**Article 6.-** Compensation for damage caused by acts of violation of competition law

1. Organizations or individuals that have committed acts of violation of competition law, thereby causing damage to State interests or legitimate rights and interests of other organizations or individuals, must pay compensation therefor.

2. The compensation for damage as provided for in Clause 1 of this Article shall comply with the provisions of civil law.

**Article 7.-** Bases for determining the extent of handling of acts of violation of competition law

When determining the extent of handling of each act of violation of competition law, competent agencies may base themselves on one or some of the following facts:

1. The extent of competition restriction caused by the act of violation.

2. The extent of damage caused by the act of violation.

3. The violators' capability of causing competition restriction.

4. The time of commission of the act of violation.

5. Profit earned from the commission of the act of violation.

6. Extenuating circumstances and aggravating circumstances as specified in Article 8 of this Decree.

**Article 8.-** Extenuating circumstances and aggravating circumstances

1. For acts of violations of provisions on control of competition-restricting acts and unfair competition acts, competent agencies may apply extenuating and aggravating circumstances specified in Section 6, Chapter III of Decree No. 116/2005/ND-CP of September 15, 2005, detailing the implementation of a number of articles of the Competition Law.

2. For acts of violation of other provisions of competition law, competent agencies may apply extenuating and aggravating circumstances specified in Articles 8 and 9 of the Ordinance on Handling of Administrative Violations.

**Article 9.-** Statute of limitations for lodging complaints about competition cases, statute of limitations for issuing investigation decisions in cases where the competition-managing agency detects signs of violation of competition law

1. The statute of limitations for lodging complaints about competition cases and the statute of limitations for issuing investigation decisions in cases where the competition-managing agency

detects signs of violation of competition law as provided for in Clause 2, Article 65 of the Competition Law are two years as from the date of commission of acts of violation.

2. Within the period specified in Clause 1 of this Article, if organizations or individuals commit new acts of violation of competition law or deliberately shirk or obstruct the handling by competent agencies, the statute of limitations stated in Clause 1 of this Article shall be re-counted from the time new acts of violation of competition law are committed or from the time acts of shirking or obstructing the handling stop.

#### Chapter II

### ACTS OF VIOLATION OF COMPETITION LAW, FORMS AND EXTENT OF HANDLING

#### Section 1. ACTS OF VIOLATION OF PROVISIONS ON COMPETITION RESTRICTION AGREEMENTS

**Article 10.-** Acts of agreement to directly or indirectly fix prices of products or services

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by each of enterprises being parties to an agreement, which have a combined share of 30% or more on the relevant market, shall be imposed for one of the following acts:

a/ Agreement to apply a single price to some or all customers;

b/ Agreement to increase or decrease prices at a given level;

c/ Agreement to apply a common pricing formula;

d/ Agreement to sustain a fixed price rate of the relevant product;

e/ Agreement to offer no price discount or apply a uniform price discount;

f/ Agreement to offer credit quotas to customers;

g/ Agreement to offer no price decrease if other parties to the agreement are not notified thereof;

h/ Agreement to use a uniform price at the time when price negotiations start.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by each of enterprises being parties to an agreement, which have a combined share of 30% or more on the relevant market, shall be imposed for one of the acts specified in Clause 1 of this Article in one of the following cases:

a/ Relevant products or services are food, foodstuffs, medical equipment, medicines for human disease prevention and treatment, veterinary drugs, fertilizers, animal feeds, plant protection drugs, plant varieties, animal breeds, and medical and healthcare services;

b/ Violating enterprises act as organizers, inducing other subjects to participate in the agreement.

3. In addition to fines imposed under the provisions of Clauses 1 and 2 of this Article, violating enterprises may be subject to the application of one or some of the following additional sanctioning forms and remedies:

a/ Confiscation of exhibits and means employed for the commission of the violation, including confiscation of all profits earned from the commission of the violation;

b/ Forcible removal of illegal terms in the

contract or business transaction concerned.

**Article 11.-** Acts of agreement to share outlets, sources of supply or products or services

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by each of enterprises being parties to an agreement, which have a combined share of 30% or more on the relevant market, shall be imposed for one of the following acts:

a/ Agreement on the volume or place for purchase and sale of products or services, or on the group of customers for each party to the agreement;

b/ Agreement to the effect that each party may purchase products or services only from one or some given sources.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by each of enterprises being parties to an agreement, which have a combined share of 30% or more on the relevant market, shall be imposed for one of the acts specified in Clause 1 of this Article in one of the cases specified in Clause 2, Article 10 of this Decree.

3. In addition to fines imposed under Clauses 1 and 2 of this Article, violating enterprises may be subject to the application of one or some of the additional sanctioning forms and remedies specified in Clause 3, Article 10 of this Decree.

**Article 12.-** Acts of agreement to restrict or control produced, purchased or sold quantities or volumes of products or services

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by each of enterprises being

parties to an agreement, which have a combined share of 30% or more on the relevant market, shall be imposed for one of the following acts:

a/ Agreement to cut or reduce the produced, purchased or sold quantity or volume of products or services on a relevant market, compared to before;

b/ Agreement to fix the produced, purchased or sold quantity or volume of goods or services at a level sufficient to create their scarcity on a market.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by each of enterprises being parties to an agreement, which have a combined share of 30% or more on the relevant market, shall be imposed for one of the acts specified in Clause 1 of this Article in one of the cases specified in Clause 2, Article 10 of this Decree.

3. In addition to fines imposed under Clauses 1 and 2 of this Article, violating enterprises may be subject to the application of one or some of the additional sanctioning forms and remedies specified in Clause 3, Article 10 of this Decree.

**Article 13.-** Acts of agreement to restrict technical and technological development, restrict investments

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by each of enterprises being parties to an agreement, which have a combined share of 30% or more on the relevant market, shall be imposed for one of the following acts:

a/ Agreement to purchase inventions, utility solutions or industrial designs for destruction or non-use thereof;

b/ Agreement not to increase capital for

production expansion or improvement of the product or service quality or for other expansion or development.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by each of enterprises being parties to an agreement, which have a combined share of 30% or more on the relevant market, shall be imposed for one of the acts specified in Clause 1 of this Article in one of the cases specified in Clause 2, Article 10 of this Decree.

3. In addition to fines imposed under Clauses 1 and 2 of this Article, violating enterprises may be subject to the application of one or some of the additional sanctioning forms and remedies specified in Clause 3, Article 10 of this Decree.

**Article 14.-** Acts of agreement to impose on other enterprises conditions on signing product or service purchase or sale contracts or to force other enterprises to accept obligations not directly connected with the object of such contracts

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by each of enterprises being parties to an agreement, which have a combined share of 30% or more on the relevant market, shall be imposed for one of the following acts:

a/ Agreement to impose one or some of the following pre-conditions before signing a contract:

- Restriction of production or distribution of other products; purchase or provision of other services not directly related to the commitments of the agent according to the provisions of law on agency;

- Restriction of the place for re-sale of products, except for products on the list of those subject to conditional business or restricted business

according to the provisions of law;

- Restriction of customers who can purchase products for resale, except for products on the list of those subject to conditional business or restricted business according to the provisions of law;
- Restriction of the form and quantity of products to be supplied.

b/ Agreement binding another enterprise, when purchasing or selling a product or service with any enterprise being a party to the agreement, to purchase other products or services from a designated supplier or person or to perform one obligation or some obligations unnecessary for the contract performance.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by each of enterprises being parties to an agreement, which have a combined share of 30% or more on the relevant market, shall be imposed for one of the acts specified in Clause 1 of this Article in one of the cases specified in Clause 2, Article 10 of this Decree.

3. In addition to fines imposed under Clauses 1 and 2 of this Article, violating enterprises may be subject to the application of one or some of the additional sanctioning forms and remedies specified in Clause 3, Article 10 of this Decree.

**Article 15.-** Acts of agreement to prevent, restrain or prohibit other enterprises from entering the market or developing business

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by each of enterprises being parties to an agreement shall be imposed for one of the following acts:

- a/ Agreement not to transact with enterprises

being other than parties to the agreement;

b/ Agreement to request, appeal, induce one's customers not to purchase products from, sell products to, or not to use services of enterprises being non-parties to the agreement;

c/ Agreement to purchase or sell products or services at prices sufficient for rendering enterprises not being parties to the agreement unable to enter the relevant market;

d/ Agreement on request, appeal, induce distributors or retailers that are transacting with the parties to the agreement to discriminate, when purchasing or selling products, against enterprises not being parties to the agreement in a way that causes difficulties to these enterprises in consuming their products;

e/ Agreement to purchase, sell products or services at prices sufficient for rendering enterprises not being parties to the agreement unable to expand its business operation.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by each of enterprises being parties to the agreement shall be imposed for one of the acts specified in Clause 1 of this Article in one of the cases specified in Clause 2, Article 10 of this Decree.

3. In addition to fines imposed under Clauses 1 and 2 of this Article, violating enterprises may be subject to the application of one or some of the additional sanctioning forms and remedies specified in Clause 3, Article 10 of this Decree.

**Article 16.-** Acts of agreement to eliminate from the market enterprises not being parties to the agreement

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission

of acts of violation by each of enterprises being parties to an agreement shall be imposed for one of the following acts:

a/ Agreement not to enter into transactions with enterprises not being parties to the agreement while requesting, appealing or inducing their customers not to purchase from, or sell products to, or use services of, these enterprises;

b/ Agreement not to enter into transactions with enterprises not being parties to the agreement while purchasing or selling products or services at prices sufficient for rendering these enterprises to withdraw from the relevant market.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year when acts of violation are committed by each of enterprises being parties to the agreement shall be imposed for one of the acts specified in Clause 1 of this Article in one of the cases specified in Clause 2, Article 10 of this Decree.

3. In addition to fines imposed under Clauses 1 and 2 of this Article, violating enterprises may be subject to the application of one or some of the additional sanctioning forms and remedies specified in Clause 3, Article 10 of this Decree.

**Article 17.-** Acts of collusion to help one or all of the parties to an agreement to win bids for supply of products or provision of services

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by each of enterprises being parties to an agreement shall be imposed for one of the following acts in biddings:

a/ Agreement to the effect that one or more parties to the agreement withdraw from participating in the bidding or retract their bids already submitted so that one or more parties to the agreement win

the bid;

b/ Agreement to the effect that one or more parties to an agreement cause difficulties to non-parties to the agreement, which participate in a bidding, by refusing to supply raw materials or to sign subcontracts or otherwise;

c/ Agreement to the effect that all parties to an agreement agree to offer non-competitive bids or competitive bids accompanied with conditions unacceptable to the bid inviter so as to pre-determine one or more parties that will win the bid;

d/ Agreement to the effect that all parties to an agreement pre-determine the number of times each party will win the bid within a given period of time.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by each of enterprises being parties to an agreement shall be imposed for one of the acts specified in Clause 1 of this Article in one of the cases specified in Clause 2, Article 10 of this Decree.

3. In addition to fines imposed under Clauses 1 and 2 of this Article, violating enterprises may be subject to the application of one or some of the additional sanctioning forms and remedies specified in Clause 3, Article 10 of this Decree.

**Section 2. ACTS OF VIOLATION OF PROVISIONS ON ABUSE OF DOMINANT MARKET POSITION, ABUSE OF MONOPOLY POSITION**

**Article 18.-** Acts of selling products, providing services below total costs of production in order to eliminate competitors

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises having dominant

market positions or each enterprise belonging to a group of enterprises having dominant market positions shall be imposed for their acts of selling products or providing services below total costs of production in order to eliminate competitors.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises having dominant market positions shall be imposed for one of the acts specified in Clause 1 of this Article in one of the following cases:

a/ Relevant products or services are those specified at Point a, Clause 2, Article 10 of this Decree;

b/ Violating enterprises hold a share of 50% or more on the relevant market.

3. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by an enterprise belonging to a group of enterprises having dominant market positions shall be imposed for one of the acts specified in Clause 1 of this Article in one of the following cases:

a/ Being the enterprise holding the biggest share among the group on the relevant market

b/ Being the enterprise acting as organizer, inducing other enterprises in the group having dominant positions to jointly commit the violation.

4. In addition to fines imposed under the provisions of Clauses 1, 2 and 3 of this Article, enterprises violating provisions on abuse of dominant market positions may be subject to the application of one or some of the following additional sanctioning forms and remedies:

a/ Confiscation of exhibits and means employed for the commission of the violation, including confiscation of all profits earned from the

commission of the violation;

- b/ Forcible removal of illegal terms in the contract or business transaction concerned;
- c/ Forcible restructuring of enterprises having dominant market positions.

**Article 19.-** Acts of imposing irrational purchase prices, sale prices of products or services or fixing minimum re-sale prices, causing damage to customers

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises having dominant market positions or each enterprise belonging to a group of enterprises having dominant market positions shall be imposed for one of the following acts:

- a/ Imposing irrational purchase prices, sale prices of products or services, causing damage to customers;
- b/ Fixing the minimum resale price, causing damage to customers.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises having dominant market positions shall be imposed for one of the acts specified in Clause 1 of this Article, in one of the cases specified in Clause 2 of Article 18 of this Decree.

3. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises belonging to a group of enterprises having dominant market positions shall be imposed for one of the acts specified in Clause 1 of this Article, in one of the cases specified in Clause 3 of Article 18 of this Decree.

4. In addition to fines imposed under the provisions of Clauses 1, 2 and 3 of this Article, enterprises violating provisions on abuse of dominant market positions may be subject to the application of one or some of the additional sanctioning forms and remedies specified in Clause 4, Article 18 of this Decree.

**Article 20.-** Acts of restricting production, distribution of products, services, limiting markets, obstructing technical and technological developments, causing damage to customers

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises having dominant market positions or each enterprise of a group of enterprises having dominant market positions shall be imposed for one of the following acts:

- a/ Cutting or reducing the volume of a product or service supplied on the relevant market compared to the previously supplied volume of the product or service while there is no significant fluctuation in the demand-supply relation; there is no economic crisis, natural calamity or enemy sabotage; there is no big technical incident; or there is no state of emergency;
- b/ Fixing the supplied volume of a product or service at a level sufficient for creating a scarcity on the market;
- c/ Stockpiling a product to destabilize the market;
- d/ Supplying a product or service only within one or some certain geographical areas;
- e/ Buying a product or service only from one or some certain supplying sources, except for the case where other supplying sources fail to meet reasonable conditions imposed by the buyer in conformity with normal practices;

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises belonging to a group of enterprises having dominant market positions shall be imposed for one of the acts specified in Clause 1 of this Article, in one of the cases specified in Clause 2 of Article 18 of this Decree.

3. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises belonging to a group of enterprises having dominant market positions shall be imposed for one of the acts specified in Clause 1 of this Article, in one of the cases specified in Clause 3 of Article 18 of this Decree.

f/ Buying an innovation, utility solution or industrial design for destruction or non-use;

g/ Threatening or compelling those who are doing a research for technical or technological development to stop or cancel such research.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises having dominant market positions shall be imposed for one of the acts specified in Clause 1 of this Article, in one of the cases specified in Clause 2 of Article 18 of this Decree.

3. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises of a group of enterprises having dominant market positions shall be imposed for one of the acts specified in Clause 1 of this Article, in one of the cases specified in Clause 3 of Article 18 of this Decree.

4. In addition to fines imposed under the provisions of Clauses 1, 2 and 3 of this Article, enterprises violating provisions on abuse of dominant market positions may be subject to the application of one or some of the following additional sanctioning forms and remedies:

- a/ Additional sanctioning forms and remedies specified in Clause 4, Article 18 of this Decree;
- b/ Forcible use or sale of inventions, utility solutions or industrial designs which have been bought but left unused;
- c/ Forcible cancellation of measures of preventing and restraining other enterprises from entering the market or developing business;
- d/ Forcible restoration of technical and technological conditions which the enterprises have obstructed.

**Article 21.-** Acts of imposing different trading conditions under similar transaction conditions in order to create unfair competition

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises having dominant market positions or each enterprise belonging to a group of enterprises having dominant market positions shall be imposed for their acts of discriminating against other enterprises regarding purchase or sale conditions, price, payment deadline and quantity in transactions of purchasing or selling products or services which are similar in value or characteristics so as to place one or some enterprises in a competition position more advantageous than other enterprises.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises having dominant market positions shall be imposed for one of the acts specified in Clause 1 of this Article, in one of the cases specified in Clause 2 of Article 18 of this Decree.

3. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises belonging to a group of enterprises having dominant market positions shall be imposed for one of the acts specified in Clause 1 of this Article, in one of the cases specified in Clause 3 of Article 18 of this Decree.

4. In addition to fines imposed under the provisions of Clauses 1, 2 and 3 of this Article, enterprises violating provisions on abuse of dominant market positions may be subject to the application of one or some of the additional sanctioning forms and remedies specified in Clause 4, Article 18 of this Decree.

**Article 22.-** Acts of imposing conditions on other enterprises to sign contracts for purchase or sale of products or services or forcing other enterprises to accept obligations not directly related to the objects of contracts

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises having dominant market positions or each enterprise belonging to a group of enterprises having dominant market positions shall be imposed for one of the following acts:

a/ Imposing the following pre-conditions before signing contracts for product or service purchase or sale:

- Restrictions on production or distribution of other products; purchase or provision of other services not directly related to the commitments of the agents according to the provisions of law on agency;

- Restrictions on places for resale of products, except for goods on the list of those subject to business conditions and goods subject to restricted business according to the provisions of law;

- Restrictions on customers that buy products for resale, except for goods on the list of those subject to business conditions and goods subject to restricted business according to the provisions of law;

- Restrictions on the form and quantity of products allowed to be supplied.

b/ Binding other enterprises, when purchasing from or selling products or services to any enterprise being a party to the agreement, to purchase another product or service from a designated supplier or person or to perform one or more obligations unnecessary for the contract performance.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises having dominant market positions shall be imposed for one of the acts specified in Clause 1 of this Article, in one of the cases specified in Clause 2 of Article 18 of this Decree.

3. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises belonging to a group of enterprises having dominant market positions shall be imposed for one of the acts specified in Clause 1 of this Article, in one of the cases specified in Clause 3 of Article 18 of this Decree.

4. In addition to fines imposed under the provisions of Clauses 1, 2 and 3 of this Article, enterprises violating provisions on abuse of dominant market positions may be subject to the application of one or some of the additional sanctioning forms and remedies specified in Clause 4, Article 13 of this Decree.

**Article 23.-** Acts of preventing new competitors from entering the market

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises having dominant market positions or each enterprise belonging to a group of enterprises having dominant market positions shall be imposed for one of the following acts:

a/ Requesting one's customers not to enter into transactions with new competitors;

b/ Threatening or forcing distributors and retail shops not to distribute products of new competitors;

c/ Selling products at prices sufficient for rendering competitors unable to enter the market.

which, however, does not fall into the case specified in Clause 1, Article 19 of this Decree.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises having dominant market positions shall be imposed for one of the acts specified in Clause 1 of this Article, in one of the cases specified in Clause 2 of Article 18 of this Decree.

3. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises of a group of enterprises having dominant market positions shall be imposed for one of the acts specified in Clause 1 of this Article, in one of the cases specified in Clause 3 of Article 18 of this Decree.

4. In addition to fines imposed under the provisions of Clauses 1, 2 and 3 of this Article, enterprises violating provisions on abuse of dominant market positions may be subject to the application of one or some of the additional sanctioning forms and remedies specified in Clause 4, Article 18 of this Decree.

**Article 24.-** Acts of abusing monopoly positions

1. A fine of up to 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violations by enterprises having monopoly positions shall be imposed for one of the following acts:

a/ Acts specified in Clause 1, Article 18; Clause 1, Article 19; Clause 1, Article 20; Clause 1, Article 21; Clause 1, Article 22; and Clause 1, Article 23 of this Decree;

b/ Imposing unfavorable conditions on customers;

c/ Unilaterally modifying or canceling signed contracts without having to notify in advance customers thereof and without facing any penalty;

d/ Unilaterally modifying or canceling signed contracts on the basis of one or more grounds not related to the conditions necessary for the continued performance of the contract, without facing any penalty.

2. In addition to fines imposed under the provisions of Clause 1 of this Article, enterprises abusing their monopoly positions may be subject to the application of one or some of the following additional sanctioning forms and remedies:

a/ Confiscation of exhibits and means employed for the commission of the violation, including all profits earned from the commission of the violation;

b/ Forcible removal of illegal terms from the contract or business transaction;

c/ Forcible restoration of technical and technological conditions which the enterprise have obstructed;

d/ Forcible removal of unfavorable conditions already imposed on customers;

e/ Forcible restoration of contractual terms which have been modified without plausible reasons;

f/ Forcible restoration of contracts which have been cancelled without plausible reasons.

### Section 3. ACTS OF VIOLATION OF PROVISIONS ON ECONOMIC CONCENTRATIONS

**Article 25.-** Banned acts of merger of enterprises

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by merging enterprises and

merged enterprises shall be imposed for acts of merger banned under the provisions of Article 18 of the Competition Law.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by merging enterprises and merged enterprises shall be imposed for acts of merger specified in Clause 1 of this Article in cases where merging enterprises compel merged enterprises to merge.

3. In addition to fines imposed under the provisions of Clauses 1 and 2 of this Article, merging enterprises may be forced to be divided or separated into merged enterprises and merging ones as before merger.

**Article 26.** - Banned acts of consolidation of enterprises

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by consolidated enterprises shall be imposed for acts of consolidation banned under the provisions of Article 18 of the Competition Law.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by consolidated enterprises shall be imposed for acts of merger specified in Clause 1 of this Article in cases where such consolidation has resulted in significant increases in product or service prices on the relevant market.

3. In addition to fines imposed under the provisions of Clauses 1 and 2 of this Article, consolidated enterprises may be subject to the application of one or some of the following additional sanctioning forms and remedies:

a/ Withdrawal of business registration certificates already granted to consolidated

enterprises;

b/ Forcible division or separation of consolidated enterprises.

**Article 27.** - Banned acts of acquisition of enterprises

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by acquiring enterprises shall be imposed for acts of acquisition of part or all of assets of other enterprises banned under the provisions of Article 18 of the Competition Law.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by acquiring enterprises shall be imposed for acts of acquisition specified in Clause 1 of this Article in cases where acquiring enterprises compel acquired enterprises to sell all or part of their assets.

3. In addition to fines imposed under the provisions of Clauses 1 and 2 of this Article, acquiring enterprises may be forced to sell the assets that they have acquired.

**Article 28.** - Banned acts of joint venture among enterprises

1. A fine of up to 5% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by each party to the joint venture concerned shall be imposed for acts of acquisition of part or all of assets of other enterprises banned under the provisions of Article 18 of the Competition Law.

2. A fine of between 5% and 10% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by each party to the joint venture concerned shall be imposed for acts of joint venture specified in Clause 1 of this

Article in cases where their joint ventures have resulted in significant product or service price increases on the relevant market.

3. In addition to fines imposed under the provisions of Clauses 1 and 2 of this Article, joint-venture enterprises may have their business registration certificates withdrawn.

**Article 29.** - Acts of failure to notify economic concentrations

A fine of between 1% and 3% of total turnover generated in the fiscal year preceding the year of commission of acts of violation by enterprises specified in Clause 1, Article 25; Clause 1, Article 26; Clause 1, Article 27; and Clause 1, Article 28 of this Decree shall be imposed for acts of economic concentration without performing the obligation to notify thereof under the provisions of Article 20 of the Competition Law.

#### Section 4. ACTS OF VIOLATION OF PROVISIONS ON UNFAIR COMPETITION

**Article 30.** - Acts of misleading indication

1. A fine of between VND 5,000,000 and VND 10,000,000 shall be imposed for one of the following acts:

a/ Using instructions containing information causing confusions about trade names, business motives, business logos, packings, geographical indications to mislead customers about goods or services of their own and other enterprises for the purpose of competition;

b/ Trading in products or services using misleading indications as specified at Point a of this Clause.

2. A fine of between VND 10,000,000 and VND

20,000,000 shall be imposed for acts of misleading indication specified in Clause 1 of this Article in one of the following cases:

a/ Relevant products or services are those specified at Point a, Clause 2, Article 10 of this Decree;

b/ Products or services are circulated or supplied in two or more provinces or centrally run cities;

3. In addition to fines imposed under Clauses 1 and 2 of this Article, violating enterprises may be subject to the application of one or some of the following additional sanctioning forms and remedies:

a/ Confiscation of exhibits and means employed for the commission of the violation, including all profits earned from the commission of such violation;

b/ Forcible public rectification.

**Article 31.** - Acts of infringement upon business secrets

1. A fine of between VND 5,000,000 and VND 10,000,000 shall be imposed for one of the following acts:

a/ Accessing and collecting information belonging to business secrets by counteracting the security measures applied by lawful owners of such business secrets;

b/ Disclosing, using information belonging to business secrets without permission of owners of such business secrets;

c/ Breaching security contracts or deceiving or taking advantage of the trust of persons having the security duty in order to access, collect or disclose information belonging to business secrets of owners of such business secrets;

d/ Accessing, collecting information belonging

to business secrets of other persons when such persons carry out procedures according to the provisions of law on business, carry out procedures for product circulation, or by counteracting the security measures applied by state agencies, or using such information for business purposes or for application for licenses relating to business or product circulation.

2. A fine of between VND 10,000,000 and VND 20,000,000 shall be imposed for acts of infringing upon business secrets specified in Clause 1 of this Article in one of the following cases:

a/ Using business secrets for production and circulation of products or provision of services in two or more provinces or centrally run cities;

b/ Disclosing, supplying business secrets to competitors of owners of such business secrets.

3. In addition to fines imposed under Clause 1 of this Article, violating enterprises may be subject to confiscation of exhibits and means employed for the commission of the violation, including all profits earned from the commission of such violation.

#### Article 32.- Acts of constraint in business

1. A fine of between VND 5,000,000 and VND 10,000,000 shall be imposed for acts of constraint of customers or business partners of other enterprises by threatening or forcing them to refrain from or stop conducting transactions with such enterprises.

2. A fine of between VND 10,000,000 and VND 20,000,000 shall be imposed for acts of constraint in business specified in Clause 1 of this Article in case of constraint of the biggest customers or business partners of competitors.

3. In addition to fines imposed under Clauses 1 and 2 of this Article, violating enterprises may be

and 2 of this Article, violating enterprises may be subject to confiscation of exhibits and means employed for the commission of the violation, including all profits earned from the commission of such violation.

#### Article 33.- Acts of discrediting other enterprises

1. A fine of between VND 5,000,000 and VND 10,000,000 shall be imposed for acts of indirectly issuing untruthful information on other enterprises, badly affecting the latter's reputation, financial status and business operations.

2. A fine of between VND 10,000,000 and VND 20,000,000 shall be imposed for acts of directly issuing untruthful information on other enterprises, badly affecting the latter's reputation, financial status and business activities.

3. In addition to fines imposed under Clauses 1 and 2 of this Article, violating enterprises may be subject to one or some of additional sanctioning forms and remedies specified in Clause 3, Article 30 of this Decree.

#### Article 34.- Acts of disturbing business operations of other enterprises

1. A fine of between VND 5,000,000 and VND 10,000,000 shall be imposed for acts of disturbing business operations of other enterprises by directly or indirectly preventing, disrupting the latter's business operations.

2. A fine of between VND 10,000,000 and VND 20,000,000 shall be imposed for acts of disturbing business operations of other enterprises, making the latter unable to carry out their business operations in a normal way.

3. In addition to fines imposed under Clauses 1 and 2 of this Article, violating enterprises may be

subject to one or some of additional sanctioning forms and remedies specified in Clause 3, Article 30 of this Decree.

Article 35.- Acts of advertisement for unfair competition purposes

1. A fine of between VND 15,000,000 and VND 25,000,000 shall be imposed for one of the following advertisement acts:

a/ Comparing their products or services directly with those of the same kind of other enterprises;

b/ Imitating other advertising products to mislead customers;

c/ Issuing false or misleading information to customers on one of the following contents:

- Prices, quantities, quality, utilities, designs, categories, packings, date of manufacture, use duration, product origin, manufacturers, places of manufacture, processors, places of processing;

- Usage, mode of servicing, warranty duration;

- Other false or misleading information.

2. A fine of between VND 30,000,000 and VND 50,000,000 shall be imposed for one of the acts specified in Clause 1 of this Article in one of the following cases:

a/ Relevant products or services are those specified at Point a, Clause 2, Article 10 of this Decree;

b/ Advertisement is conducted in two or more provinces or centrally run cities.

3. In addition to fines imposed under Clauses 1 and 2 of this Article, violating enterprises may be subject to one or some of additional sanctioning forms and remedies specified in Clause 3, Article 30 of this Decree.

Article 36.- Acts of sale promotion for unfair

competition purposes

1. A fine of between VND 15,000,000 and VND 25,000,000 shall be imposed for one of the following advertisement acts:

a/ Organizing sale promotion with prize frauds;

b/ Organizing sale promotion which is dishonest or causes confusion about products or services in order to cheat customers;

c/ Discriminating between similar customers at different sale promotion places under the same sale promotion program;

d/ Presenting products free to customers for trial use but requesting customers to use their goods in exchange for similar goods manufactured by other enterprises and currently used by such customers.

2. A fine of between VND 30,000,000 and VND 50,000,000 shall be imposed for one of the acts specified in Clause 1 of this Article in one of the following cases:

a/ Products or services under promotion are those specified at Point a, Clause 2, Article 10 of this Decree;

b/ Promotion is organized in two or more provinces or centrally run cities.

3. In addition to fines imposed under Clauses 1 and 2 of this Article, enterprises that have carried out sale promotion activities for unfair competition may be subject to one or some of additional sanctioning forms and remedies specified in Clause 3, Article 30 of this Decree.

Article 37.- Acts of discrimination by associations

1. A fine of between VND 15,000,000 and VND 25,000,000 shall be imposed for one of the following advertisement acts:



a/ Refusing to admit enterprises, eligible for admission or refusing to allow enterprises to withdraw from the associations in a discriminatory way, placing such enterprises at a competitive disadvantage;

b/ Irrationally restricting business activities or other business-related activities of member enterprises.

2. A fine of between VND 30,000,000 and VND 50,000,000 shall be imposed for one of the acts specified in Clause 1 of this Article in one of the following cases:

- a/ Having committed acts of violation many times against one enterprise;
- b/ Having committed acts of violation against many enterprises at a time;
- c/ Having imposed irrational restrictions, causing member enterprises to withdraw from the associations.

#### Article 38.- Illegal multi-level sale acts

1. A fine of between VND 50,000,000 and VND 70,000,000 shall be imposed on multi-level sale enterprises for one of the following acts:

- a/ Requesting those who wish to participate to pay a deposit for the right to participate in the multi-level sale network;
- b/ Requesting those who wish to participate to buy an initial volume of goods or pay a sum of money for the right to participate in the multi-level sale network;
- c/ Requesting those who wish to participate to pay a sum of money or any charge for attending training courses, workshops, social activities or otherwise for the right to participate in the multi-level sale network, except for expenses for documents specified in Clause 2, Article 6 of the

Government's Decree No. 110/2005/ND-CP of August 24, 2005, on management of multi-level sale;

- d/ Not committing to allow participants to return products and receive the sums of money already transferred to the enterprises as provided for in Article 11 of the Government's Decree No. 110/2005/ND-CP of August 24, 2005, on management of multi-level sale;

e/ Obstructing participants to return products as result of termination of contracts for participation in multi-level sale;

f/ Giving participants commissions, bonuses or other economic benefits which are gained mostly from the enticement of other people to participate in the multi-level sale network;

g/ Supplying false information on the benefits of the participation in the multi-level sale network in order to entice other people to participate in the multi-level sale;

h/ Supplying false information on the nature and utilities of goods in order to entice other people to participate in the multi-level sale.

2. A fine of between VND 70,000,000 and VND 100,000,000 shall be imposed for one of the acts specified in Clause 1 of this Article in cases where multi-level sale activities are carried out in two or more provinces or centrally run cities.

3. In addition to fines imposed under Clauses 1 and 2 of this Article, enterprises that have carried out sale promotion activities for unfair competition may be subject to one or some of additional sanctioning forms and remedies specified in Clause 3, Article 30 of this Decree.

#### Section 5. ACTS OF VIOLATION OF OTHER PROVISIONS OF COMPETITION LAW

Article 39.- Acts of violation of provisions on supply of information and documents

1. A caution shall be served or a fine of between VND 500,000 and VND 1,000,000 shall be imposed for one of the following acts:

a/ Failing to supply or supplying insufficient information and documents to one's knowledge at the request of competent agencies;

b/ Supplying information and documents later than as requested by competent agencies;

c/ Deliberately supplying false information or documents or distorting information or documents;

d/ Forcing other persons to supply false information or documents;

e/ Hiding or destroying information and documents relating to competition cases.

2. A fine of between VND 1,000,000 and VND 3,000,000 shall be imposed for one of the acts specified in Clause 1 of this Article in cases where information or documents requested to be supplied are specially important for the correct settlement of competition cases.

3. In addition to fines imposed under the provisions of Clauses 1 and 2 of this Article, violating organizations or individuals may be forced to supply sufficient information and documents.

Article 40.- Acts of violation of other provisions concerning the process of investigation and handling of competition cases

1. A caution shall be served or a fine of between VND 500,000 and VND 1,000,000 shall be imposed for one of the following acts:

a/ Intentionally or unintentionally disclosing information or documents classified as investigation secrets;

b/ Causing disturbances at hearings.

2. A fine of between VND 1,000,000 and VND 3,000,000 shall be imposed for one of the acts specified in Clause 1 of this Article in cases where disclosed information or documents are specially important for the correct settlement of competition cases.

3. In addition to fines imposed under Clauses 1 and 2 of this Article, violating organizations or individuals shall have exhibits and means employed for the commission of their violations confiscated.

Article 41.- Acts of agreement on competition restriction or economic concentration committed before exemption-granting decisions are issued by competent agencies

1. A fine of between VND 30,000,000 and VND 50,000,000, which, however, must not exceed 3% of total turnover generated in the year preceding the year of commission of acts of violation by each of enterprises being parties to an competition restriction agreement, which have a combined share of 30% or more on the relevant markets, shall be imposed for competition-restricting acts eligible for exemptions under the provisions of Article 10 of the Competition Law pending the issuance of exemption-granting decisions by the Trade Minister.

2. A fine of between VND 30,000,000 and VND 50,000,000, which, however, must not exceed 3% of total turnover generated in the year preceding the year of commission of acts of violation by merging enterprises and merged enterprises, shall be imposed for acts of merger eligible for exemptions under the provisions of Article 19 of the Competition Law, pending the issuance of exemption-granting decisions by the Prime Minister or the Trade Minister.

3. A fine of between VND 30,000,000 and VND 50,000,000, which, however, must not exceed 3% of total turnover generated in the year preceding the year of commission of acts of violation by consolidated enterprises, shall be imposed for acts of consolidation eligible for exemptions under the provisions of Article 19 of the Competition Law, pending the issuance of exemption-granting decisions by the Prime Minister or the Trade Minister.

4. A fine of between VND 30,000,000 and VND 50,000,000, which, however, must not exceed 3% of total turnover generated in the year preceding the year of commission of acts of violation by acquiring enterprises, shall be imposed for acts of acquisition eligible for exemptions under the provisions of Article 19 of the Competition Law, pending the issuance of exemption-granting decisions by the Prime Minister or the Trade Minister.

5. A fine of between VND 30,000,000 and VND 50,000,000, which, however, must not exceed 3% of total turnover generated in the year preceding the year of commission of acts of violation by joint venture parties, shall be imposed for acts of joint venture eligible for exemptions under the provisions of Article 19 of the Competition Law, pending the issuance of exemption-granting decisions by the Prime Minister or the Trade Minister.

#### Chapter III

### COMPETENCE, PROCEDURES FOR HANDLING VIOLATIONS OF COMPETITION LAW

#### Section 1. COMPETENCE TO HANDLE VIOLATIONS OF COMPETITION LAW

Article 42.- Powers of the competition-

managing agency and its head

1. For acts of violation of provisions on unfair competition and other acts of violation of other provisions of competition law specified in Section 5, Chapter II of this Decree, the competition-managing agency shall have the following powers:

- a/ To issue cautions;
  - b/ To impose fines;
  - c/ To confiscate exhibits and means employed in the commission of violations;
  - d/ To force violators to make public rectification.
2. The head of competition-managing agency shall have powers to decide to apply, change or cancel administrative preventive measures pending transfer of competition case dossiers to the Competition Council for handling.

Article 43.- Powers of the Competition Council, competition case-handling panels

For acts of violations of provisions on control of competition-restricting acts, the Competition Council and competition case-handling panels shall have the following powers:

1. To issue cautions.
2. To impose fines.
3. To confiscate exhibits and means employed in the commission of violations.
4. To apply measures specified at Points c, d, e, f, g, h, i and j, Clause 4, Article 4 of this Decree.
5. To request competent agencies to withdraw business registration certificates; to deprive of the right to use practice certificates or permits.
6. To request competent agencies to apply measures specified at Points a and b, Clause 4, Article 4 of this Decree.

Article 44.- Powers of the chairman of the Competition Council

The chairman of the Competition Council shall have powers to decide to apply, change or cancel administrative preventive measures after receiving competition case dossiers.

Article 45.- Powers of other agencies

Other agencies' powers to sanction acts of violation of provisions on unfair competition related to intellectual property rights shall be defined under the provisions of law on handling of administrative violations.

#### Section 2. PROCEDURES FOR HANDLING VIOLATIONS OF COMPETITION LAW

Article 46.- Procedures for handling of violations of competition law

Procedures for handling of violations of competition law comprise the following procedures:

1. Procedures for handling of violations of provisions on control of competition-restricting acts and unfair competition.
2. Procedures for application, change and cancellation of administrative preventive measures.
3. Procedures for handling of violations of other provisions of competition law.

Article 47.- Procedures for handling of violations of provisions on control of competition-restricting acts and unfair competition

The handling of acts of violation of provisions on control of competition-restricting acts and unfair competition must follow the order and procedures in competition proceedings provided for in Chapter V of the Competition Law and the provisions of

Chapter III of the Government's Decree No. 116/2005/ND-CP of September 15, 2005, detailing the implementation of a number of articles of the Competition Law.

Article 48.- Procedures for application, change and cancellation of administrative preventive measures

Procedures for application, change and cancellation of administrative preventive measures shall comply with the provisions of Article 61 of the Competition Law and the provisions of Section 7, Chapter III of the Government's Decree No. 116/2005/ND-CP of September 15, 2005, detailing the implementation of a number of articles of the Competition Law.

Article 49.- Making of records on acts of violation of other provisions of competition law

1. Upon detecting acts of violation of other provisions of competition law specified in Section 5, Chapter II of this Decree, competent persons must order prompt termination of such acts and make records thereon:

2. A record shall contain the following details:
  - a/ Date and place of making of the record;
  - b/ Full name, position of the record maker;
  - c/ Full name, address, occupation of the violating individual or name and address of the violating organization;

d/ Date and place of commission of the violation;

e/ An account of the act of violation;

f/ Measures to prevent the administrative violation (if any);

g/ Conditions of exhibits and means seized (if any);

h/ Statements of the violating individual or the

representative of the violating organization;

*h* Full names, addresses of witnesses, damaged persons or representatives of damaged organizations (if any).

3. A record must be made in at least two copies, and signed by its maker and the violating individual or the representative of the violating organization; if there are witnesses, damaged persons or representatives of damaged organizations, such persons must also sign the record; where a record consists of many pages, the persons mentioned in this Clause must sign on each of such pages. If the violating individual, the representative of the violating organization, a witness, a damaged person or a representative of a damaged organization refuses to sign the record, the record maker must clearly write the reason therefor in the record.

4. One copy of the completed record must be handed to the violating individual or organization; if the violation falls beyond the handling power of the record maker, he/she must send the record to a competent person for handling.

**Article 50.** - Time limit for issuance of decisions on handling violations of other provisions of competition law

1. The time limit for issuance of decisions on handling violations of other provisions of competition law is 10 days, as from the date of making of records on the violations; this time limit shall be 30 days for complicated cases.

2. Where it is necessary to have more time for verifying and collecting evidence, competent persons must report in writing such to their immediate superiors, ask for permission to extend this time limit only once for no more than 30 days; extension must be decided in writing. Beyond this

time limit, persons with handling competence must not issue violation-handling decisions. If violation-handling decisions are not issued within this time limit due to their faults, they shall be handled according to the provisions of law.

**Article 51.** - Decisions on handling violations of other provisions of competition law

1. A decision on handling a violation of other provisions of competition law shall contain the following details:

*a* Date of issuance of the decision;

*b* Full name and position of the decision maker;

*c* Full name, address and occupation of the violating individual or name and address of the violating organization;

*d* Act of violation; circumstances related to the settlement of the violation; applied articles and clauses of legal documents;

*e* The principal sanctioning form, additional sanctioning form (if any), remedies (if any);

*f* Time and place for execution of the decision and signature of the decision maker;

*g* The right to complain about the decision according to the provisions of law.

2. Decisions on handling violations of other provisions of law must clearly state that the handled individuals or organizations shall be forced to execute the decisions if they do not voluntarily comply with them.

3. Decisions on handling violations of other provisions of law shall take effect from the date of their signing, unless other effective dates are indicated therein.

4. Decisions on handling violations of other provisions of law must be sent to handled individuals or organizations and fine-collecting

agencies within 3 working days after the date such decisions are issued.

**Article 52.** - Transfer of dossiers in cases where competition cases show criminal signs

If seeing that acts of violation show criminal signs, competent agencies must transfer dossiers, exhibits, and means employed in the violations to criminal proceeding-conducting agencies according to the provisions of Article 94 of the Competition Law. Where violation-handling decisions have been issued, the issuing agencies must issue decisions to cancel such decisions. Within 3 working days after canceling violation-handling decisions, the issuing agencies must transfer dossiers of the violations to criminal proceeding-conducting agencies.

**Section 3. PROCÉDURES FOR EXECUTING COMPETITION CASE-HANDLING DECISIONS, DECISIONS ON HANDLING VIOLATIONS OF OTHER PROVISIONS OF COMPETITION LAW**

**Article 53.** - Compliance with competition case-handling decisions, decisions on handling violations of other provisions of competition law

1. Enterprises handled for violations must comply with competition case-handling decisions of competition case-handling panels or the competition-managing agency within 30 days as from the date such decisions take legal effect.

2. Organizations or individuals handled for violations of other provisions of competition law in Section 5, Chapter II of this Decree must comply with decisions on handling violations of other provisions of competition law within 10 days as from the date they are handed over such decisions.

3. At the expiration of the time limit specified in

Clause 1 or Clause 2 of this Article, if the handled organizations or individuals fail to voluntarily comply with the decisions, forcible execution of such decisions shall be applied to them under the provisions of Articles 55 and 56 of this Decree.

**Article 54.** - Place of payment of fines

Organizations and individuals that are fined under competition case-handling decisions or decisions on handling of violations of other provisions of competition law must pay fines at State treasuries as indicated in such decisions.

**Article 55.** - Forcible execution of competition case-handling decisions

1. After the expiration of the time limit specified in Clause 1, Article 53 of this Decree, if organizations or individuals handled for violations fail to voluntarily comply with competition case-handling decisions or do not initiate lawsuits before courts under the provisions of Section 7, Chapter V of the Competition Law, the parties in favor of whom the decisions are executed may make written requests, asking competent agencies defined in Clause 2 or 3 of this Article to organize the execution of the decisions which fall within the scope of the functions, tasks and powers of such agencies.

2. Competent agencies shall have to withdraw business registration certificates, deprive of practice permits or certificates they have granted to the enterprises violating provisions of competition law at the request of competition case-handling panels made in competition case-handling decisions.

3. Other competent agencies shall have to organize the application of the following measures: forced restructuring of enterprises abusing

dominant market positions, division or separation of merged or consolidated enterprises or forced sale of purchased enterprise sections at the request of competition case-handling panels made in competition case-handling decisions.

4. Civil judgment enforcement agencies of provinces or centrally run cities where the parties that must comply with competition case-handling decisions have their head offices, places of residence or property shall have to organize the execution of such decisions' property-related contents at the request of the parties in favor of whom such decisions are executed.

**Article 56.-** Forcible execution of decisions on handling violations of other provisions of competition law

After the expiration of the time limit specified in Clause 2, Article 53 of this Decree, if organizations or individuals handled for violations fail to voluntarily comply with decisions on handling of violations of other provisions of competition law, they shall be subject to forcible execution according to the procedures provided for in Articles 66 and 67 of the Ordinance on Handling of Administrative Violations and Decree No. 37/2005/ND-CP of March 18, 2005, providing for procedures for application of measures to forcible execution of decisions on sanctioning of administrative violations.

#### Chapter IV

#### SETTLEMENT OF COMPLAINTS AND DENUNCIATIONS

**Article 57.-** Complaints, denunciations

1. Organizations or individuals handled for violations of competition law or their lawful

representatives may lodge complaints with competent agencies about competition case-handling decisions or decisions on handling violations of other provisions of competition law issued by competition case-handling panels or the competition-managing agency when they have grounds to believe that such decisions are illegal and harmful to their legitimate rights and interests.

2. Organizations or individuals subject to the application of administrative preventive measures may lodge complaints with competent agencies about decisions on application of such measures issued by the chairman of the Competition Council or the head of the competition-managing agency when they have grounds to believe that such decisions are illegal and harmful to their legitimate rights and interests.

3. Every citizen may denounce to competent agencies acts of violation committed in the process of handling of violations of competition law, causing damage or threatening to cause damage to State interests or legitimate rights and interests of agencies, organizations or individuals.

4. All organizations or individuals that have made untruthful complaints or denunciations, thus affecting the prestige of the complained or denounced persons shall be handled according to the provisions of law.

**Article 58.-** Settlement of complaints about competition case-handling decisions issued by competition case-handling panels or the competition-managing agency

The settlement of complaints about competition case-handling decisions issued by competition case-handling panels or the competition-managing agency shall comply with the provisions of Section 7, Chapter V of the Competition Law and those of

#### Chapter V

#### IMPLEMENTATION PROVISIONS

Section 10, Chapter III of the Government's Decree No. 116/2005/ND-CP of September 15, 2005, detailing the implementation of a number of articles of the Competition Law.

**Article 59.-** Settlement of complaints about decisions on handling violations of other provisions of competition law, decisions on application of administrative preventive measures

The settlement of complaints about decisions on handling violations of other provisions of competition law, decisions on application of administrative preventive measures shall comply with the provisions of law on complaints and denunciations.

**Article 60.-** Settlement of denunciations

The settlement of citizens' denunciations on acts of violation committed in the process of handling of violations of competition law shall comply with the provisions of law on complaints and denunciations.

**Article 61.-** Initiation of administrative lawsuits

1. If disagreeing with complaint-settling decisions of competent agencies under the provisions of Article 58 of this Decree, the related parties may initiate administrative lawsuits concerning some or all of the contents of such decisions according to the provisions of Article 115 of the Competition Law.

2. If disagreeing with complaint-settling decisions of competent agencies under the provisions of Article 59 of this Decree, the related parties may initiate administrative lawsuits concerning some or all of the contents of such decisions according to the provisions of law on complaints and denunciations and procedures for settlement of administrative cases.

**Article 62.-** Implementation effect

This Decree takes effect 15 days after its publication in "CONG BAO".

**Article 63.-** Implementation responsibilities

1. The Trade Minister shall have to organize the implementation of this Decree.

2. Ministers, heads of ministerial-level agencies, heads of Government-attached agencies, and presidents of People's Committees of provinces and centrally run cities shall have to implement this Decree.

*On behalf of the Government*

*Prime Minister*

PHAN VAN KHAI

DECREE No. 121/2005/ND-CP of September 30, 2005, detailing, and guiding the implementation of a number of articles of the Law on Emulation and Commendation and the Law Amending and Supplementing a Number of Articles of the Law on Emulation and Commendation

This Decree takes effect 15 days after its publication in "CONG BAO".

Section 10, Chapter III of the Government's Decree No. 116/2005/ND-CP of September 15, 2005, detailing the implementation of a number of articles of the Competition Law.

*Article 59.-* Settlement of complaints about decisions on handling violations of other provisions of competition law, decisions on application of administrative preventive measures

The settlement of complaints about decisions on handling violations of other provisions of competition law, decisions on application of administrative preventive measures shall comply with the provisions of law on complaints and denunciations.

*Article 60.-* Settlement of denunciations

The settlement of citizens' denunciations on acts of violation committed in the process of handling of violations of competition law shall comply with the provisions of law on complaints and denunciations.

*Article 61.-* Initiation of administrative lawsuits

1. If disagreeing with complaint-settling decisions of competent agencies under the provisions of Article 58 of this Decree, the related parties may initiate administrative lawsuits concerning some or all of the contents of such decisions according to the provisions of Article 115 of the Competition Law.

2. If disagreeing with complaint-settling decisions of competent agencies under the provisions of Article 59 of this Decree, the related parties may initiate administrative lawsuits concerning some or all of the contents of such decisions according to the provisions of law on complaints and denunciations and procedures for settlement of administrative cases.

#### Chapter V

#### IMPLEMENTATION PROVISIONS

*Article 62.-* Implementation effect

This Decree takes effect 15 days after its publication in "CONG BAO."

*Article 63.-* Implementation responsibilities

1. The Trade Minister shall have to organize the implementation of this Decree.

2. Ministers, heads of ministerial-level agencies, heads of Government-attached agencies, and presidents of People's Committees of provinces and centrally run cities shall have to implement this Decree.

*On behalf of the Government*

*Prime Minister*

PHAN VAN KHAI

DECREE No. 121/2005/ND-CP of September 30, 2005, detailing and guiding the implementation of a number of articles of the Law on Emulation and Commendation and the Law Amending and Supplementing a Number of Articles of the Law on Emulation and Commendation

This Decree takes effect 15 days after its publication in "CONG BAO."

**GOVERNMENT**  
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No : **05/2006/NŞ-**  
CP

**SOCIALIST REPUBLIC OF VIET NAM**  
**Independence - Freedom - Happiness**  
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*Hà Nội, January 9, 2006*

**DECREE**  
**On establishment, functions, duties, powers and**  
**organizational structure of Vietnam Competition Council**

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**GOVERNMENT**

Pursuant to the Law on Organization of the Government dated 25 December 2001;

Pursuant to the Law on Competition dated December 3, 2001;

Pursuant to the Decree No 86/2002/NĐ-CP dated November 05, 2002 by the Government on functions, duties, powers and organizational structure of ministries, ministerial-level agencies;

Pursuant to the Decree No 29/2004/NĐ-CP dated January 16, 2004 by the Government on functions, duties, powers and organizational structure of the Ministry of Trade;

Upon the request of the Minister of Trade,

**DECREE :**

**Article 1. Establishment of Vietnam Competition Council**

Vietnam Competition Council shall be established. Its transaction name in English shall be Vietnam Competition Council, which shall be abbreviated as VCC.

The Vietnam Competition Council shall have the legal status, a stamp imprinted with the national coat of arms, be allowed to open its bank account in the State Treasury as stipulated by law.

The fund for the operation of the Vietnam Competition Council shall be allocated from the state budget and prepared in the annual estimated budget of the Ministry of Trade.

### **Article 2. Position and function**

The Vietnam Competition Council is an independent executive agency, has the function of handling limited competition acts.

### **Article 3. Duties and powers**

The Vietnam Competition Council shall have the following duties and powers:

1. to organize the handling of affairs related to limited competition acts as stipulated by law.
2. to establish a Council for handling competition cases which will handle a concrete case
3. to request the concerned organizations, individual people to provide information, documents needed to implement the assigned duties.
4. to decide on application, change, abolishment of administrative prevention measures after receiving a file of competition case as stipulated by law.
5. to handle complaints, denunciations against competition cases related to limited competition acts as stipulated by law.
6. to do other duties, powers as stipulated by law.

### **Article 4. Organizational structure**

1. The Vietnam Competition Council shall have from 11 to 15 members who are appointed, deappointed by the Prime Minister upon the request of the Minister of Trade. The members of the Vietnam Competition Council shall have to fully meet the requirements provided for in Article 55 of the Law on Competition.

The members of the Vietnam Competition Council shall work on basis of a 5-year term and may be re-appointed.

2. The Vietnam Competition Council shall be assisted by a Secretariat. Functions, duties, organizational structure of the Secretariat of the Vietnam Competition Council shall be specified by the Minister of Trade.

3. The Vietnam Competition Council shall be responsible for elaborating a regulation on its organization and operation and submit it to the Minister of Trade for approval.

### **Article 5. Leadership of the Vietnam Competition Council**

The Vietnam Competition Council shall be headed by a Chairman. The Chairman of the Vietnam Competition Council shall be appointed, de-

appointed among the members of the Vietnam Competition Council by the Prime Minister upon the request by the Minister of Trade.

The Chairman of the Vietnam Competition Council shall be responsible for organizing its operation.

### **Article 6. Implementation effect**

This Decree shall take effect 15 days after the date of its publishment on the Gazette.

### **Article 7. Implementation responsibility**

The Minister of Trade, the ministers, the heads of the ministerial-level agencies, the heads of the Government-affiliated agencies, the chairmen of the People's Committee or the provinces, the centrally-run cities shall be responsible for implementing this Decree./.

**ON BEHALF OF THE GOVERNMENT  
PRIME MINISTER**

***Recipients:***

**Phan Văn Khải – Signed**

- Central Party Secretariat;
- Prime Minister, Deputy Prime Ministers;
- Ministries, ministerial-level agencies, Government-affiliated agencies;
- People's Councils, People's Committees of provinces, centrally-run cities;
- Central Party Office and Party Committees;
- President Office;
- Ethics Council and Committees of National Assembly;
- National Assembly Office;
- Supreme People's Court;
- Supreme People's Procuracy;
- Central offices of associations;
- National Public Administration Academy
- Government Office: BTCN, TBNC, c,c PCN, BNC,
- Management Board of Programme 112;
- Spokeman of Prime Minister, attached departments, units, Gazette;
- Archives: Filing clerk, Organization and Personnel Department (5 copies), Hoà (315b).



**GOVERNMENT**  
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No : **06/2006/NŞ-**  
CP

**SOCIALIST REPUBLIC OF VIET NAM**  
**Independence - Freedom - Happiness**  
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*Hà Nội, January 9, 2006*

**DECREE**  
**On functions, duties, powers and organizational structure of Vietnam**  
**Competition Administration Department**

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**GOVERNMENT**

Pursuant to the Law on Organization of the Government dated 25 December 2001;

Pursuant to the Law on Competition dated December 3, 2001;

Pursuant to the Ordinance on Protection of Rights of Customers dated April 27, 1999;

Pursuant to the Ordinance on Self Defense in Importing foreign goods into Viet Nam dated May 25, 2002;

Pursuant to the Ordinance on Combat against Dumping of Goods Imported into Viet Nam dated April 29, 2004;

Pursuant to the Ordinance on Combat against Subsidy for Goods Imported into Viet Nam dated August 20, 2004;

Pursuant to the Decree No 29/2004/NĐ-CP dated January 16, 2004 by the Government on functions, duties, powers and organizational structure of the Ministry of Trade;

Upon the request of the Minister of Trade,

**DECREE :**

**Article 1. Position and functions**

1. The Vietnam Competition Administration Department shall be an organization affiliated to the Ministry of Trade, have a function of assisting the Minister of Trade to exercise the state management over the competition, combat against dumping, combat against subsidy, application of self defense measures

towards goods imported into Viet Nam; protecting rights of customers; coordinating with enterprises, goods industry associations to deal with lawsuits in international trading, which are related to the breaking of prices, the subsidy and the application of self defense measures.

The Vietnam Competition Administration Department has the transaction name in English as Vietnam Competition Administration Department, which is abbreviated as VCAD.

2. The Competition Administration Department shall have a legal status, a stamp imprinted the national coat of arms, be allowed to open its bank account, to use its respective stamp for its transaction as stipulated by law. Fund for the operation of the Vietnam Competition Administration Department shall be allocated from the state budget.

The Vietnam Competition Administration Department shall have its headquarter located in Ha Noi City and representative offices in provinces, other cities.

The establishment of its representative offices shall be decided by the Minister of Trade.

## **Article 2. Duties, powers**

The Vietnam Competition Administration Department shall exercise duties, powers according to the legislation on competition, combat against dumping, combat against subsidy, protection of customers' rights and the following duties, powers:

1. To elaborate and submit to the Minister of Trade legal documents on competition, combat against dumping, combat against subsidy, application of self defense measures towards goods imported into Viet Nam, protection of customers' rights; to organize the implementation of the legal documents after they are issued.

2. To instruct to examine, evaluate and synthesize the implementation of legal documents, approved planning, plans, programmes, projects of the work areas falling under the function of the competition administration agency.

3. To investigate and request the concerned agency(ies) to handle, within their competence, the legal documents of which the contents do not conform with the legislation on competition, combat against dumping, combat against subsidy, application of self defense measures towards goods imported into Viet Nam, protection of customers' rights

4. With regard to competition:

a. To handle, to organize the investigation of competition cases related to limited competition acts for the Competition Council to handle as stipulated by law.

b. To organize investigation of competition cases related to unhealthy competition acts and the acts that violate the legislation on competition as stipulated by law.

c. To evaluate files of requests for being entitled to an exception according to the legislation and submit them to the Minister of Trade or to the Prime Minister for decision.

d. To supervise the process of economic centralization.

đ. To build up, to manage a system of information about dominant enterprises in the market, mono-power enterprises, competition principles applied to associations, exception cases.

5. With regard to handling cases (vu viec) of combat against dumping, combat against subsidy and application of self defense towards goods imported into Viet Nam.

a. To take the main responsibility for and coordinate with the concerned agencies to organize the implementation of the legal provisions on combat against dumping, combat against subsidy and application of self defense towards goods imported into Viet Nam.

b. To receive, to organize the investigation of the importing of foreign goods into Viet nam and propose measures of combat against dumping, combat against subsidy and self defense as stipulated by law.

c. To make request to the Minister of Trade to give decision on application of tax on combat against dumping, combat against temporary subsidy and application of self defense measures as stipulate by law.

d. To report the results of the investigation to the Council for Handling Cases, to make a report to the Minister of Trade for decision on application or non application of measures for combat against dumping, combat against temporary subsidy and self defense towards goods imported into Viet Nam.

đ) To take the main responsibility for and coordinate with the concerned agencies to guide and review the implementation of the decisions on application of measures for combat against dumping, combat against subsidy and self defense.

6. To coordinate with enterprises, goods industry associations in handling complaints related to combat against dumping, combat against temporary subsidy and self defense towards goods imported into Viet Nam.

7. To handle complaints, denouncements falling under competence and violations of the legislation on protection of customers' rights.

8. To carry out international co-operation activities in elaborating and implementing the legislation on competition, combat against dumping, combat against temporary subsidy, application of measures of self defense and protection of customers' rights.

9. To request organizations, individual people to provide necessary information, documents for the implementation of the assigned duties; to be entitled to using local and foreign consultants in a necessary circumstance as stipulated by law.

10. To apply administrative prevention measures, administrative violation punishment forms and consequence resolving measures as stipulated by law.

11. To propagadize, to educate, to disseminate the legislation and the policies related to competition, combat against dumping, combat against subsidy, application of self protection towards goods imported into Viet Nam and protection of customers' right.

12. To organize training, upgrading for improved professional qualification to the officials implementing management over competition, combat against dumping, combat against subsidy, application of self protection and protection of customers' right.

13. To manage the organization, the contingent of public servants, public officials, property, finance assigned as stipulated and delegated by the State.

14. To organize, to develop a database, to manage and to provide information for state agencies, organizations, individual people having a demand for as stipulated by the legislation on competition.

15. To do other duties assigned by the Minister of Trade.

### **Article 3. Organizational structure**

1. The assistant apparatus to the Head of the Vietnam Competition Administration Department:

- Committee of Limited Competition Investigation

- Committee of Competition Supervision and Management
- Committee of Unhealthy Competition Investigation
- Committee of Customer Protection
- Committee of Handling of Combat Against Dumping, Combat Against Subsidy and Protection
- Committee of International Cooperation
- Office

2. Service delivery organizations affiliated to the Vietnam Competition Administration Department

- Information Center.
- Center for Training of Investigators

3. Other units affiliated to the Vietnam Competition Administration Department, including:

- Representative Office in Da Nang.
- Representative Office in Ho Chi Minh City.

Functions, duties, powers and organizational structure of the units affiliated to the Vietnam Competition Administration Department shall be specified according to the decision by the Minister of Trade.

The representative offices of the Vietnam Competition Administration Department shall have their own seals and be entitled to opening an account in the State Treasury as stipulated by law.

#### **Article 4. Leadership**

The Vietnam Competition Administration Department shall have a director and a number of deputy directors. The Director of the Vietnam Competition Administration Department shall be appointed, deappointed at the proposal of the Minister of Trade and be accountable to the Minister of Trade for all the operation of the Vietnam Competition Administration Department.

The Deputy Directors, the Heads of the representative offices of the Department shall be appointed, deappointed by the Minister of Trade at the

proposals of the Director of the Department and be accountable to the Director of the Department for their assigned work.

### **Article 5. Staff**

The staff of the Vietnam Competition Administration Department shall be decided on among all the staff of the Ministry of Trade by the Minister of Trade

### **Article 6. Implementation effect**

This Decree shall take effect 15 days after the date of its publishment on the Gazette. The previous provisions contrary to this Decree shall be annulled.

### **Article 7. Implementation responsibility**

The Minister of Trade, the minister, the heads of ministerial-level agencies, the heads of the Government-affiliated agencies, the chairmen of the People's Committees of provinces, centrally-run cities and the Director of the Vietnam Competition Administration Department are responsible for implementing this Decree./.

## **ON BEHALF OF THE GOVERNMENT PRIME MINISTER**

#### ***Recipients:***

- Central Party Secretariat;
  - Prime Minister, Deputy Prime Ministers;
  - Ministries, ministerial-level agencies, Government-affiliated agencies;
  - People's Councils, People's Committees of provinces, centrally-run cities;
  - Central Party Office and Party Committees;
  - President Office;
  - Ethics Council and Committees of National Assembly;
  - National Assembly Office;
  - Supreme People's Court;
  - Supreme People's Procuracy;
  - Central offices of associations;
- National Public Administration Academy  
(Signed)
- Government Office: BTCN, TBNC, c,c PCN, BNC,  
- Management Board of Programme 112;

#### **Phan Văn Khải**

- Spokeman of Prime Minister, attached departments, units, Gazette;
- Archives: Filing clerk, TCCB (5 copies)

<b>THE MINISTRY OF TRADE</b>  <hr style="width: 10%; margin: 0 auto;"/> No.19/2005/TT-BTM	<b>SOCIALIST REPUBLIC OF VIETNAM</b>  <b>Independence- Freedom- Happiness</b>  <hr style="width: 80%; margin: 0 auto;"/> <i>Hanoi, November 8, 2005</i>
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## CIRCULAR

### **Guiding a number of contents in the Government's Decree No. 110/2005/ND-CP dated August 24, 2005, on management of multi-level sale of goods**

Pursuant to Decree No. 29/2004/ND-CP of January 16, 2004 of the Government, defining the functions, tasks, powers and organizational structure of the Ministry of Trade;

Pursuant to Decree No. 110/2005/ND-CP dated August 24, 2005, on management of multi-level sale of goods,

The Ministry of Trade hereby guides a number of contents in Decree No. 110/2005/ND-CP as follows:

#### **1. Subjects applying for multi-level sale registration papers**

Subjects applying for multi-level sale registration papers are enterprises established in Vietnam under the provisions of law on enterprises and wishing to organize multi-level sale after the effective date of Decree No. 110/2005/ND-CP dated August 24, 2005, on management of multi-level sale of goods.

#### **2. Agencies granting multi-level sale registration papers**

Agencies granting multi-level sale registration papers are provincial/municipal Trade Services or Trade-Tourism Services with which enterprises applying for multi-level sale registration papers have made their business registrations.

#### **3. Responsibilities of the agencies granting multi-level sale registration papers**

- a) To post up instructions on the conditions, order, time and administrative procedures for granting multi-level sale registration papers at their head offices;
- b) To grant multi-level sale registration papers to enterprises, which have dossiers satisfying the conditions specified in Article 14 of Decree No. 110/2005/ND-CP;

- c) To consider the grant of multi-level sale registration papers within the time limit provided for in Article 16 of Decree No. 110/2005/ND-CP and under the guidance in this Circular;
- d) To collect, manage and use the fee for grant of multi-level sale registration papers under the guidance of the Ministry of Finance;
- e) To report in writing to the competition-managing office of the Ministry of Trade on the grant, additional grant or re-grant of multi-level sale registration papers according to the provisions of Clause 4, Article 16 of Decree No. 110/2005/ND- CP;
- f) After granting multi-level sale registration papers, to assume the prime responsibility for, and coordinate with other competent state agencies in, inspecting and supervising the organization of multi-level sale according to the granted multi-level sale registration papers; to detect violations of provisions of law on management of multi-level sale activities and apply measures to handle such violations according to their competence or report them to competent authorities for handling;
- g) To fully comply with regulations on archive of dossiers of application for multi-level sale registration papers, dossiers of application for supplementation of multi-level sale registration papers and dossiers of application for re-grant of multi-level sale registration papers according to the provisions of law on archives;
- h) Other responsibilities provided for by law.

#### **4. Dossiers of application for multi-level sale registration papers**

- a) A dossier of application for a multi-level sale registration paper shall comprise the documents specified in Article 15 of Decree No. 110/2005/ND-CP.
- b) Applications for multi-level sale registration papers shall be made according to form MD-1 in Appendix II to this Circular (not printed herein).
- c) Heads of enterprises defined in Clause 5, Article 15 of Decree No. 110/2005/ND-CP include owners of private enterprises, partners of partnerships, members of members' councils, chairpersons of companies, members of managing boards, directors (general directors) and other important managerial posts defined in the charters of limited liability companies or joint stock companies.

#### **5. Principal contents of the model contract on participation in multi-level sale**

- a) The name, address of the head office and at-law representative of the multi-level sale enterprise;
- b) The full names, registered places of permanent residence (or registered places of sojourn, for foreigners), registered places of temporary residence, numbers of identity



cards (or numbers of passports, for foreigners) of participants; numbers of working permits of participants being foreigners;

c) The origin, category, quality, price, utility and usage of goods on sale, reselling price of goods warranty, conditions and scope for goods (if any);

d) The method of calculating commissions, bonuses and economic benefits to be enjoyed by participants for their goods marketing and sale activities and by subordinate participants in the networks organized by participants themselves and accepted by the multi-level sale enterprise;

e) Rights and obligations of the multi-level sale enterprise and participants, including the responsibility of the multi-level sale enterprise to pay damages to consumers or participants;

f) Cases of contract termination and liquidation.

## **6. Procedures for grant of multi-level sale registration papers**

a) Receipt of dossiers of application for multi-level sale registration papers

- The agencies granting multi-level sale registration papers shall have to receive dossiers of application for multi-level sale registration papers.

- The dossier-receiving agencies must write dossier receipts. A dossier receipt shall be made in two copies according to form MTB-1 in Appendix II to this Circular (not printed herein). One copy shall be handed to the enterprise applying for a multi-level sale registration paper while the other shall be kept at the agency granting multi-level sale registration papers.

- For incomplete and invalid dossiers of application for multi-level sale registration papers, the dossier-receiving agencies shall, within three working days after receipt of such dossiers, ask in writing the enterprises to amend and complete their dossiers according to form MTB-2 in Appendix II to this Circular (not printed herein).

- Enterprises may request the dossier-receiving agencies to clearly explain the required amendment to and completion of dossiers while the dossier-receiving agencies shall have to satisfy such request of enterprises.

- Where no amendment to dossiers is required, the time limit for examination of dossiers shall be counted from the date of receipt of dossiers.

b) Examination of dossiers before making decision to grant multi-level sale registration papers

- Within 15 working days after the date of receipt of complete and valid dossiers, the

agencies competent to grant multi-level sale registration papers shall, on the basis of relevant current provisions of law, examine such dossiers before deciding to grant or not to grant multi-level sale registration papers.

- In case of refusal to grant multi-level sale registration papers, agencies competent to grant multi-level sale registration papers shall have to reply in writing, clearly stating reasons therefor.

c) Multi-level sale registration papers

- Multi-level sale registration papers shall be made according to form MG-1 in Appendix II to this Circular (not printed herein).

- A multi-level sale registration paper shall be made in two original copies. One copy shall be granted to the applying enterprise while the other shall be kept at the agency granting the multi-level sale registration paper.

- Agencies granting multi-level sale registration papers shall write the serial numbers of registration papers according to the following regulations:

+ Provincial codes: two-digit numbers (specified in Appendix I to this Circular, not printed herein).

+ Enterprise type codes: 01 denotes private enterprises, 02 denotes limited liability companies with two members or more, 03 denotes joint-stock companies, 04 denotes one-member limited liability companies, 05 denotes partnerships, 06 denotes cooperatives, 07 denotes joint-venture enterprises, 08 denotes enterprises with 100% foreign investment capital, and 09 denotes state enterprises.

+ Ordinal numbers of enterprises: 6-digit numbers, from 000001 to 999999.

+ Codes and numbers are joined with hyphens.

An example of the numbering of a multi-level sale registration paper: A private enterprise which makes its business registration in Hanoi shall have its multi-level sale registration paper numbered as follows:

01-01-000002 (multi-level sale registration paper granted to the second private enterprise in Hanoi).

d) Collection of the fee for grant of multi-level sale registration papers

Before handing multi-level sale registration papers to the applying enterprises, the agencies granting multi-level sale registration papers shall collect a fee for grant of multi-level sale registration papers under the guidance of the Ministry of Finance.

## **7. Supplementation of multi-level sale registration papers**

a) A dossier of application for supplementation of a multi-level sale registration paper shall comprise:

- An application for supplementation of a multi-level sale registration paper, made according to form MD-2 in Appendix II to this Circular (not printed herein);
- The original multi-level sale registration paper granted by a competent agency;
- Documents related to changes in the sale program.

b) The procedures for supplementation of multi-level sale registration papers shall comply with the guidance in Clause 6 of this Circular.

Agencies which approve the supplementation of multi-level sale registration papers shall only write the additionally registered contents and certifications on the multi-level sale registration papers already granted to enterprises.

## **8. Re-grant of multi-level sale registration papers**

a) Re-grant of multi-level sale registration papers in cases where they are lost

- When losing their multi-level sale registration papers, enterprises shall have to promptly declare the loss to the commune-level police offices of the places where their multi-level sale registration papers are lost and notify such to the agencies which have granted the multi-level sale registration papers.

- Within seven working days after making declarations to the police offices, the enterprises shall have to request the agencies which have granted the multi-level sale registration papers to re-grant multi-level sale registration papers to them.

- A dossier of application for re-grant of a multi-level sale registration paper comprises:

+ An application for re-grant of a multi-level sale registration paper, made according to form MD-3 in Appendix II to this Circular (not printed herein);

+ The commune-level police office's certification that the enterprise has declared the loss of its multi-level sale registration paper.

b) Re-grant of multi-level sale registration papers in cases where they are torn or ragged

- Where their multi-level sale registration papers are torn or ragged, enterprises may apply for re-grant thereof.

- A dossier of application for re-grant of a multi-level sale registration paper comprises:

+ An application for re-grant of a multi-level sale registration paper, made according to form MD-3 in Appendix II to this Circular (not printed herein);

+ The torn or ragged original multi-level sale registration paper.

c) Procedures for re-grant of multi-level sale registration papers in cases where they are lost, torn or ragged

- Upon receiving the dossiers of enterprises in the cases specified at Points a and b of this Clause, the agencies granting multi-level sale registration papers shall have to write dossier receipts. A dossier receipt shall be made in two copies according to form MTB-1 in Appendix II to this Circular. One copy shall be handed to the applying enterprise while the other shall be kept at the agency granting multi-level sale registration papers.

- Within five working days after the date of receipt of complete and valid dossiers, the agencies granting multi-level sale registration papers shall re-grant multi-level sale registration papers, made according to form MG-1 in Appendix II to this Circular, to enterprises. The serial numbers of re-granted multi-level sale registration papers shall be those of the lost, torn or ragged ones. Re-granted multi-level sale registration papers must specify the re-granting time.

- Before handing multi-level sale registration papers to enterprises which apply for re-grant thereof, the agencies granting multi-level sale registration papers shall collect a fee therefor under the guidance of the Ministry of Finance.

d) Re-grant of multi-level sale registration papers in cases where they are withdrawn or their use right is deprived of.

For enterprises which have their multi-level sale registration papers withdrawn or their right to use such papers deprived of, their dossiers of application for re-grant of multi-level sale registration papers shall not be considered by the agencies granting multi-level sale registration papers within one year after the date of issue of the withdrawal or right deprivation decisions.

- The re-grant of multi-level sale registration papers to enterprises, which have had their multi-level sale registration papers withdrawn or their right to use such papers deprived of by competent state agencies shall be conducted as for the grant of new multi-level sale registration papers.

## **9. Multi-level sale network member cards**

a) Within seven working days after entering into a contract on participation in multi-level sale, a multi-level sale enterprise shall have to grant multi-level sale network member cards to the participants.

b) A multi-level sale network member card shall contain the following basic information:

- The name of the multi-level sale enterprise;
- The address of the head office and telephone number of the multi-level enterprise;
- The full name and the number of the identity card (or passport) of the participant;
- The serial number of the multi-level sale network member card;
- A 4 cm x 6 cm photo of the participant taken within six months before the contract on participation in multi-level sale is entered into;
- The date of grant of the card, the signature and seal of the multi-level sale enterprise's at-law representative;
- Rules for the card holder.

c) Multi-level sale network member cards shall be laid out according to form MT-1 in Appendix III to this Circular.

d) Multi-level sale enterprises shall renew old cards or grant new cards to participants in the following cases:

- Cards are torn, ragged or lost;
- One or several contents specified at Point b of this Clause is/are changed.

e) Multi-level sale enterprises shall have to withdraw multi-level sale network member cards upon termination of contracts on participation in multi-level sale according to the provisions of Article 10 of Decree No. 110/2005/ND-CP.

#### **10. Notification of multi-level sale when multi-level sale enterprises develop their sale networks**

a) When a multi-level sale enterprise develops its sale network to provinces or centrally-run cities other than the province or centrally-run city where it is headquartered, it shall have to notify the Trade Services or Trade and Tourism Services of such provinces or centrally-run cities of such development. Such notice shall be made according to the form of multi-level sale organization notice (MTB-3) set in Appendix III to this Circular (not printed herein).

b) After receiving multi-level sale notices of enterprises, the provincial/municipal Trade Services or Trade and Tourism Services shall have to inspect and supervise multi-level sale activities in their respective localities and handle violations of law provisions on management of multi-level sale activities according to their competence or report them to competent authorities for handling.

## 11. Organization of implementation

a) Provincial/municipal Trade Services or Trade and Tourism Services shall base themselves on the provisions of law and the guidance in this Circular to assist provincial/municipal People's Committees in organizing the grant of multi-level sale registration papers; and regularly inspect, supervise and handle violations in multi-level sale activities in their localities.

b) Before January 15 every year, provincial/municipal Trade Services or Trade and Tourism Services shall have to report to the competition-managing office of the Trade Ministry on the inspection, supervision and handling of violations in multi-level sale activities in their localities.

c) In case of necessity, provincial/municipal Trade Services or Trade and Tourism Services shall have to report on matters related to multi-level sale activities in their localities at the request of the competition-managing office of the Ministry of Trade.

This Circular takes effect 15 days after its publication in CONG BAO. Any problems arising in the course of implementation should be promptly reported by the concerned branches and localities to the Ministry of Trade for study, amendment or supplement.

	<p><b>FOR THE MINISTER OF TRADE</b></p> <p><b>VICE MINISTER</b></p> <p><i>(Signed and sealed)</i></p> <p><b>Le Danh Vinh</b></p> <p><i>(This translation is for reference only)</i></p>
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Comparative Chart of Competition Laws: Viet / Jpn

	M&A	Monopolization	Cartel	Unfair Trade Practices
Vietnam Competition Law (No.27/2004/QH11)	Art. 16-24 Economic Concentration	Art. 11-15 Abuse of Monopoly Position	Art. 8-10 Competition Restriction Agreements	Section III Art. 39-48 Unfair Trade Practices
	Sec.9-16	Sec.3	Sec.3	Sec.19
Japan Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 14 April 1947)	Restriction of Business Combination	<b>Prohibition of Private Monopolization or Unreasonable Restraint of Trade</b>	<i>Prohibition of Private Monopolization or Unreasonable Restraint of Trade</i>	Prohibition of Unfair Trade Practices
	- Guidelines	- Guidelines	- Guides.	- Designation of Unfair Trade Practices, June 18, 1982 ie) - Dsiscriminatory Treatment - Unjust Pricing - Abuse of Dominant <b>BARGAINING</b> Position - Unjust Customer Inducement
				Other Laws such as Law for Preventing Misleading, Representation, Act Against Unfair Competition, etc.

\* : Business activities, such as Concerted Refusal to Deal listed in the Designation, could be applicable under the provision of Unreasonable Restraint of Trade when such activities cause a **substantial restraint of competition**.

Advocacy Leaflet Outline  
(initial draft: as of Dec. 2, '05)

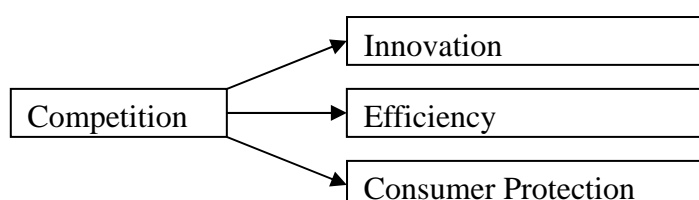
Target: Major target focus is SME

Objectives: - to promote awareness on the Competition Law to SME

- to guide SME how to conduct their business activities  
(how to behave in the market)
- to advocate how to make claim and/or complaint  
against unfair trade practices  
(procedure for complaints)

Contents:

1. Overview of Market Economy and Transitional Economy (2 pages)
  - background of market development in Vietnam  
up to the Doi Moi starts and since then up to present (maybe pictures)
  - SME data to explain the current situation of SME (chart, figures)
  - explaining current situation of competition in Vietnam
2. Significance of Competition (1 page)
  - <exapmle> chart oriented explanation



3. Background and Overview of Introduction of Competition Law (1 page)
  - why Vietnam has introduced Competition Law
  - structure: how many articles, scope, subject, legal system (law, decree, guideline),  
related regulation (decree, guideline, decision)
4. Breakdowns of Regulated Areas in terms of Provisions of Competition Law
  - impact and reason of these 4 areas
- 4-1 Restriction Agreement + Example Business Practice (2 pages)
- 4-2 Abuse of Dominant Position + Example Business Practice (2 pages)



4-3 Economic Concentration (M&A), Exemption

+ Example Business Practice (2 pages)

4-4 Unfair Trade Practices (referring Art.39 1-9) + Example Business Practice

(“multi-level sales” may require a full page) (2 pages)

5. Procedure (2 pages)

- chart of from filing, investigation to court

6. Function of CAD and Council (1 page)

7. What if Violate Law (1 page)

- explain penalty

8. What SME should act in the Business Activities? (1 page)

- how to claim/make complaint when face to the unfair trade

- how to follow the provision of Law (ie. consult with CAD in advance)

9. Who to be Contact (1 page)

**Drafting Schedule**  
(by the end of Dec. '05)

Dec.15, 2005

Subject	CAD	TA	Viet	Eng	Name
1. Overview of Market Economy and Transitional Economy (2 pages)	Check	Draft	2	1	Ishida Hien
2. Significance of Competition (1 page)	Draft Points	Draft	2	1	Ishida Hien
3. Background and Overview of Introduction of Competition Law (1 page)	Draft	Draft Points	1	2	
4. Breakdowns of Regulated Areas in terms of Provisions of Competition Law	-	-	-	-	-
4-1 Restriction Agreement + Example Business Practice (2 pages)	Draft	Case Points	1	2	
4-2 Abuse of Dominant Position + Example Business Practice (2 pages)	Draft	Case Points	1	2	
4-3 Economic Concentration (M&A), Exemption+ Example Business Practice (2 pages)	Draft	Case Points	1	2	
4-4 Unfair Trade Practices (referring Art.39 1-9) + Example Business Practice (“multi-level sales” may require a full page) (2 pages)	Draft	Case Points	1	2	
5. Procedure (2 pages)	Draft		1	2	
6. Function of CAD and Council (1 page)	Draft		1	2	
7. What if Violate Law (1 page)	Draft		1	2	
8. What SME should act in the Business Activities? (1 page)	Draft	Draft Points	1	2	
9. Who to be Contact (1 page)	Draft		1	2	

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## **SUMMATION OF COMMENTS ON THE BOOKLET (DRAFT 1<sup>ST</sup>)**

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The first draft was translated into Vietnamese and circulated to relevant officials (12) in the VCAD on 6<sup>th</sup>, February 2006. The original English version was necessarily attached with the Vietnamese version as to minimize the negativity of mistranslation.

On 10<sup>th</sup> February 2006, all comments were collected and synthesized as follow:

### **I. GENERAL COMMENTS**

In general, the draft was well prepared with necessary information related to the Competition Law. The draft reveals a great effort of the elaborating team in conveying complicated legal terms to readers through such simple languages and illustrating examples. This strong point should be developed further in revised drafts.

Nevertheless, to further serve the advocacy purpose of the booklet, the followings should be taken into account.

### **II. SPECIFIC CONSIDERATIONS**

#### **1. Comments on the structure of the booklet**

There was a consensus on the need of revising the structure of the booklet. A number of comments pointed out that the structure of the booklet could be improved to focus more on the goal of advocating the Competition Law.

A majority of comments agreed on removing part 1 of the draft since it seems to focus more on providing an overview of the economy and major economic achievements following the introduction of “doi moi” policy in 1986 and some basic concepts on market economy and economy in transition included in the part might not be adequate and necessary for Competition Law advocacy purpose. Other parts are necessary and relevant however, a new structure of the draft was recommended as follow:

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**Background and Overview of Competition Law (6 pages)**


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1. Significance of Competition (1 page)
  - <The “Fair and Open Competition”>
  - <Why is the “Fair and Open Competition” important?>
2. Background of the Introduction of Competition Law (1 page)
3. Overview of the Competition Law (2 page)
  - <The Law>
  - <The Objectives>
  - <Subjects of Application>
  - <Scope of Application>
    - <<Conducts in Restriction of Competition>>
    - <<Unfair trade practices>>
  - <Structure of the Law> (1 page)
4. Implementation guidelines of the Competition Law (2 page)
  - <Decree 05/2006/ND-CP on determining functions, tasks, powers, and organization structure of the Competition Council dated January 9, 2006>
  - <Decree 06/2006/ND-CP on determining functions, tasks, powers, and organization structure of the Competition Administration Department dated January 9, 2006>
  - <Decree 116/2005/ND-CP on setting forth detailed provisions for implementing a number of provisions of the Competition Law dated September 15, 2005>
  - <Decree No.120/2005/ND-CP on administrative offences in the field of competition dated September 30, 2005>
  - <Decree No.110/2005/ND-CP on management of multi-level sale of goods dated August 24, 2005>
  - <Circular No. 19/2005/TT-BTM of November 8, 2005 guiding a number of contents in the Government’s Decree No. 110/2005/ND-CP>

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**Conducts fall within the scope of application of the Competition Law (11 pages)**


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1. General concepts (1 page)
  - <What are Conducts in Restriction of Competition? What do they include? Why do they fall within the scope of application?>
  - <What are Unfair competition acts? What do they include? Why do they fall within the scope of application?>
  - <Difference between the two categories with regards to their impact on competition environment and forms of sanctions?>

## 2. *Conducts in Restriction of Competition & competition acts in greater details*

*<agreements in restriction of competition <example>> (2 pages)*

*<<prohibited agreements>>*

*<<exemptions>>*

*<<examples>>*

*<abuse of dominance position, abuse of monopoly<example>> (2 pages)*

*<<prohibited conducts>>*

*<<exemptions>>*

*<<examples>>*

*<economic concentration<example>> (2 pages)*

*<<prohibited cases>>*

*<<exemptions>>*

*<<examples>>*

*<Unfair competition acts (6 pages)>*

*<<Misleading indications>>*

*<<Infringement upon business secrets>>*

*<<Constraint in business>>*

*<<Discrediting other enterprises>>*

*<<Disturbing business activities of other enterprises>>*

*<<Advertising for the purpose of unfair competition>>*

*<<Sale promotion for the purpose of unfair competition>>*

*<<Discrimination by associations>>*

*<<Illicit multi-level sale>>*

*<<Other unfair competition acts according to the criteria determined in clause 4, Article 3 of the Competition Law and prescribed by the Government>>.*

### ***Enforcing agencies of the Competition Law (4 pages)***

#### 1. Competition Managing Agency

*<Establishment>*

*<Organization>*

*<Tasks & Powers>*

#### 2. Competition Council

*<Establishment>*

*<Organization>*

*<Tasks & Powers>*

#### 3. The relationship between Competition Managing Agency and Competition Council

#### 4. Competition Law enforcement activities

<b><i>Procedure for handling of competition cases (2 pages)</i></b>	<Ministry of Trade Procedure> <Court Procedure>
<b><i>Forms of sanctions (1-2 pages)</i></b>	<Conducts in Restriction of Competition > <Unfair competition acts> <Criminal Offences>
<b><i>What should enterprises act? (1-2 pages)</i></b>	<to ensure the compliance with the Law> <to be protected from anti-competitive acts>
<b><i>Contact Information (1 page)</i></b>	
<b><i>Recommended Readings (1 page)</i></b>	<Competition Law & its Implementation guidelines> <The Competition Act of Canada and observations, 2004, Ministry of Trade of Vietnam> <“Enforcement of Fair Trade Law in Taiwan – Selected Cases”, 2005, National Political Publishing House> <“The policy and practice of competition law of French Republic”, 2005, National Political Publishing House> <“Guidelines of Canadian Competition Act”, 2006, National Political Publishing House> <“Q&A on Competition Law of Việt Nam”, National Political Publishing House>

## **2. Specific comments on included contents**

- In general, terms used should be consistent with those used in law texts.

- “Anti-competition acts” does not refer to acts in restriction of competition only, but also unfair competition acts. In the booklet (page 7), this term is used as competition restriction act. Also, please bear in mind that the term “Anti-competition acts” is not officially used in the Competition Law.

- The term “dominating market share” (used in page 17) should be replaced by the term “dominant position on the market”.

- When using examples, it is necessary to spell out that the example only illustrates a single form of infringements, for instance: “*this example illustrates one type of price fixing only*”. Also, please provide a short explanation of the example used in written language.

- The Competition Law No. 27/2004/QH11 was passed by the National Assembly on December 3, 2004 and came into effect on July 1, 2005. Thus please revise paragraph 2 of part 3 of the draft (page 6).

- The concept of SME in page 18 should not be used since relevant provisions are likely to be amended in future.

- The organization chart, functions & powers of the two competition authorities must accordingly follow 2 Decrees that was passed recently.

- Summarization of provisions is necessary, however please check to ensure the compatibility with the original provisions.

- Where applicable, please use short highlight in bullet form instead of essay paragraph. This would draw readers’ attention to most important points.

- Please make sure that overlaps are avoided in the booklet.

Above is summation of comments of VCAD officials on the booklet draft 1<sup>st</sup> for your consideration.

VCAD Web-Site Designing Worksheet  
(version 1.13)

Public		Backend			Category	Sub-Category	3rd layer			Contents Frameworks	Contents Availability	Contents Source Access	
General	Membership	Users		Admin.			Pull-downs	Contents to be retrieved / Remarks	In the page navigation (Headings w/abstracts)				Contents to be retrieved / Remarks
Page Search (Index Search?)	Member Search (Index + Full-text Search)	Search by Category (Ind. + FTxt)	Add., Del., Modify	Full Control + Log Tracking									
↑		↑	↑	↑	About us			History	Backgroud history of Competition Law & Policy, the Authority (VCAD)	- Development of Policy - Development of Law - Development of VCAD	Need to rewrite and draft.	Draft>Mr.?? Approve>DG. Loan	
								General Introduction (Default)	General remarks from VCAD (word from DG?)	This contents can be re-arranged, to updates significance of competition, trade remedy and roles of business communities, consumers, and authority. Also meaning of WTO activities.			
								Mandates	Mandate of VCAD	Need to touch upon the Decree 05/06?		Replace from MOT HP + ?	
								Organization Chart	- Role & functions of each divisions	updates			
								Contact Information	Address, e-mail, tel #, ect.	updates			
								What's New in VCAD	Organizational Events: ie recruitment info., VCAD Events etc	updates on event schedule for public (main forcus is not VCAD internal activities. Should be something related to the public, such as recruitment, seminar for advocacy, etc)			
								Forum		Need to think			
								Contact us		link to contact info?			
								Help		Need to think			
								Sitemap		updates			Draft by Time Univ ??
					News Update	News Update	- Contents are for Default Indication in the Center Area - List (with abstract) 4-6 newest items - (Full test) as for a link button to lead full text	Full text (@ each news)	Full text of each news	updates			
						News Backnumbers		News Backnumbers (in the page navigation)	Indication reference: Center Area column below contents	updates			
					Competition	General Introduction	Contents			Need to elaborate the function of Competition and System and VCAD function focusing on COMPETITION.			
						Notices	Contents on - Notices on Cases - Notices on VCAD Activities (one page rayout at beginning)			Example announcement needed. (Instead of just put "under construction", we need something like, "in the future, the following information will be projected in this page." in this page.			
						Legal resources	Contents on - Laws - Decrees - Guidelines - Leagal Search (link to Category) (one page rayout at beginning)			We need all the legal texts in digital form, (Vietnamese & English) Need to prepare "Index" of each text.			
						Unfair Competition		- Introduction to Unfair Competition Acts - Illicit multi-level sale - How to complain > Procedures > Proforma > Submit information online - Unfair competition case updates - Feedbacks	Contents -> link to MLS website (need to be discussed) www.vcad.gov.vn/MLS/index.html?? Contents ("." to top heading, ">" to title heading)	updates expanation contents mentioning Decee procedural chart, explanation contents			
					Competition Restriction		- Introduction to Competition Restricting Acts > Competition Restricting Agreement > Abuse of Dominance/Monopoly > Economic concentration	Contents ("." to top heading, ">" to title heading)	updates				
							- How to complain > Procedures > Proforma > Submit information online	Contents ("." to top heading, ">" to title heading)	procedural chart, explanation contents				



		TA Seminar			ADV Seminar		
		Timing	Remarks	In Charge	Timing	Remarks	In Charge
Invitation	List						
	Dispatch						
	Confirmation						
	- List of Participants						
Materials	Draft Collection						
	Translation						
	- JPN>ENG						
	- ENG>VN						
	(- VN>ENG)						
	Binding						
	- Design Check						
	> Due Design						
	> Due Approval						
	- index (English)						
	> Program						
	> CV						
	> Opening Remarks Texts ?						
	> Slot Materials (PP)						
	> Appendix						
> Questionnaire							
- index (Vietnamese)							
> CV							
> Opening Remarks Texts ?							
> Slot Materials (PP)							
> Appendix							
> Questionnaire							
Back Drop	Banner Text						
	Logo C/P						
	Logo JICA						
	Banner Design						
	Banner Arrangement						
Layout	Participants Seats						
	Opening Layout						
	Lecturers Desk Setting						
	- # of chairs						
- podium							
	Reception Table						
Stationary	Direction Sign						
	Name Plates on the table						
	Name Tags						
	Pen & Pad						
PA	# of standing mic.						
	# of lecturers mic.						
	# of pin mic.						
	# of wireless mic.						
	LCD Projector						
	- Screen						
	LCD Table						
	LCD Connector						
	Lap Top PC for LCD						
	Lazor Pointer						
	White Board w/Color Markers						
OHP	- Screen						
	- OHP Sheets						
	- Color Marker						
Interpreter	Simul Booth						
	Simul Equipments						
	- Head sets #						
	- Booth setting equip.						
	VN><JPN Interpreter						
Reception	# of receptionists						
	- Participants Check						
Proceeding	MC						
	Moderator						
	Opening Remarks						
	Closing Remarks						
Others	Parking						

**QUESTIONNAIRE FOR PARTICIPANTS**

----- (in Vietnamese) -----

1. Profile of Participant/

Which sector are you from? (tick one)

Government

Private

Professional/NGO

- Name of Organization: \_\_\_\_\_  
\_\_\_\_\_

- Position / Title, Section: \_\_\_\_\_  
\_\_\_\_\_

2. Basic Knowledge/

Did you know well and/or were you familiar with Competition Law?

Know Very well

Partly Knew

Knew title only

Did not know

3. Evaluation 1/

Is this Seminar useful for you?

Very much useful

Fairly useful

Acceptable

Not at all useful

4. Evaluation 2/

After this Seminar, do you have a clearer idea about Competition Law and its structure?

Very much so

Fairly so

Acceptable

Not yet clear

5. Evaluation 3/

Which slot of the Seminar do you think informative to you?

- Significance of Competition Law (the First Slot by Vietnamese Official)
- Competition in the Market Economy ( the Second Slot by Japanese Official)
- Overview of Structure & Points of Competition Law in Vietnam (the Third Slot by Vn Expert)
- Experiences in Japan (Competition Law / Policy) (the Forth Slot by Jpn Official)

6. Comments/

Please write down any comments. (use back side of this sheet, if necessary)

*( Please fill in the questionnaire and give it to the Organization Board at the end of March 8<sup>th</sup>, 2006)*

**QUESTIONNAIRE FOR PARTICIPANTS**

----- (in Vietnamese) -----

1. Profile of Participant/

Which sector are you from? (tick one)

Government

Private

Professional/NGO

- Name of Organization: \_\_\_\_\_  
\_\_\_\_\_

- Position / Title, Section: \_\_\_\_\_  
\_\_\_\_\_

- Business Sector: (ex. Textile Industry) \_\_\_\_\_

2. Basic Knowledge/

Did you know well and/or were you familiar with Competition Law?

Know Very well

Partly Knew

Knew title only

Did not know

3. Evaluation 1/

Is this Seminar useful for you?

Very much useful

Fairly useful

Acceptable

Not at all useful

4. Evaluation 2/

After this Seminar, do you have a clearer idea about Competition Law and its structure?

Very much so

Fairly so

Acceptable

Not yet clear

5. Evaluation 3/

Which slot of the Seminar do you think informative to you?

- Introduction of Vietnam Competition Law and Guidelines  
(the First Slot by Vietnamese Official)
- Competition in the Market Economy ( the Second Slot by Japanese Official)
- Preparation for Implementing Vietnam Competition Law Over the past  
time (the Third Slot by Vn Expert)
- Competition Law & Enforcement of Japan  
(the Forth Slot by Japanese Official)

6. Comments/

Please write down any comments. (use back side of this sheet, if necessary)

*( Please fill in the questionnaire and give it to the Organization Board at the end of  
June 13, 2006)*

**QUESTIONNAIRE FOR PARTICIPANTS**

----- (in Vietnamese) -----

1. Profile of Participant/

Which sector are you from? (tick one)

Government

Private

Professional/NGO

- Name of Organization: \_\_\_\_\_  
\_\_\_\_\_

- Position / Title, Section: \_\_\_\_\_  
\_\_\_\_\_

- Business Sector: (ex. Textile Industry) \_\_\_\_\_

2. Basic Knowledge/

Did you know well and/or were you familiar with Competition Law?

Know Very well

Partly Knew

Knew title only

Did not know

3. Evaluation 1/

Is this Seminar useful for you?

Very much useful

Fairly useful

Acceptable

Not at all useful

4. Evaluation 2/

After this Seminar, do you have a clearer idea about Competition Law and its structure?

Very much so

Fairly so

Acceptable

Not yet clear

5. Evaluation 3/

Which slot of the Seminar do you think informative to you?

Introduction of Vietnam Competition Law and Guidelines (Part 1)  
(the First Slot by Vietnamese Official in the AM)

Introduction of Vietnam Competition Law and Guidelines (Part 2)  
(the Second Slot by Vietnamese Official in the AM)

What Conducts will be subject of Provision?

<Competition Law & Enforcement of Japan (Part 1) >  
(the Third Slot by Japanese Official in the AM)

How the Conducts were assessed?

<Competition Law & Enforcement of Japan (Part 2: Cases)  
(the Forth Slot by Japanese Official in the PM)

What Companies Want from Competition Agencies  
(the Fifth Slot by Vietnamese Official in the PM)

What Competition Agencies Want from the Business Community  
(the Sixth Slot by Japanese Official in the PM)

6. Comments/

Please write down any comments. (use back side of this sheet, if necessary)

*( Please fill in the questionnaire and give it to the Organization Board at the end of  
Sept.18, 2006)*

## TRAINING COURSE (1)

Technical Cooperation for the Study on Capacity Building for Enforcement of  
Competition Law and Implementation of Competition Policy in Vietnam  
(The Press Club, Hanoi, 1st - 3rd March 2006)

Moderator: Mr. Tran Anh Son, Deputy Director-General, Vietnam Competition Administration  
Dept. (CAD)

Co-moderator: Mr. Hidekazu TANAKA, JICA TA Team

## Speakers:

Mr. Hideyuki SHIMOZU

Researcher, Economic Research Office, Economic Affairs Bureau  
Japan Fair Trade Commission (JFTC)

Mr. Kazuhiro MARUYAMA

Official, Economic Research office, Economic Affairs Bureau  
Japan Fair Trade Commission (JFTC)

Professor Shingo SERYO

Professor of Law, Doshisha University Faculty of Law, Graduate School of Law

Theme : Market Survey Method and Practice concerning Monopolistic Situation

Objective: Introduction of Competition Law to related ministries and other governmental  
institutions and Technology transfer concerning market survey to CAD officials

## Participants

1<sup>st</sup> Day : For CAD, other related ministries and other governmental institutions (70)

Theme : Competition Law of Vietnam and Japanese Antimonopoly Act

2<sup>nd</sup> , 3<sup>rd</sup> Day : For CAD officials (35)

1 <sup>st</sup> March	Theme : Competition Law of Vietnam and Japanese Antimonopoly Act	Presentation
08:30 - 09:00	Registration	
09:00 - 09:30	Opening and Introduction - Mr. Tran Anh Son-DDG of VCAD - Mr. Yasuhiro Tojo, Senior Deputy Resident Representative, JICA Vietnam Office - Mr. Hideyuki SHIMOZU Researcher, Competition Policy Research Center, JFTC	VCAD JICA JFTC
09:30 - 10:30	Competition Law & Policy in Vietnam	Mr. Le Sy Giang Official-VCAD
10:30 - 11:00	Coffee Break	
11:00 - 12:00	Background and History of Japanese Antimonopoly Act (AMA) (1) - Outline of Japanese AMA and JFTC	Prof. Seryo
12:00 - 13:30	Lunch Break	
13:30 - 14:30	Background and History of Japanese Antimonopoly Act (AMA) (2) - Outline of Japanese AMA and JFTC	Prof. Seryo



	(Comments by JFTC Officials)	
14:30 - 15:30	Vietnam Competition Administration Department and Competition Investigation Procedures	Mr. Le Thanh Vinh Official of VCAD
15:40 - 16:10	Coffee Break	
16:00 - 16:30	Q&A Session	VCAD/JFTC/Prof. Seryo

2 <sup>nd</sup> March	Theme : Market Survey Method and Practice concerning Monopolistic Situation	
08:30-09:00	Registration	
09:00-09:30	Opening	
09:30-10:30	Monopoly and Oligopoly Regulation under the Antimonopoly Act - Negative effect caused by monopoly and oligopoly in the course of domestic market growth - • Definition of monopolistic situation (Section2(7)(8)) • Guidelines concerning “monopolistic situations” <MATERIALS> - Corresponded articles ( including decrees) - Guidelines concerning the interpretation of “ Specific business field” as defined in the provisions of “monopolistic situations” in the Antimonopoly Act	Mr. Hideyuki SHIMOZU
10:30-11:00	Coffee break	
11:00-12:00	Monopoly and oligopoly regulation under the Antimonopoly Act - Measures against a monopolistic situation - - Guidelines concerning “monopolistic situations” (cont.) & related decrees - Measures against a monopolistic situation( Section 8-4) <MATERIALS> - Corresponded articles ( including decrees) - Guidelines concerning the interpretation of “ Specific business field” as defined in the provisions of “monopolistic situations” in the Antimonopoly Act	Mr. Hideyuki SHIMOZU
12:00-13:30	Lunch Break	
13:30-15:00	Monopoly and oligopoly regulation under the Antimonopoly Act - Application of the provisions concerning a monopolistic situation - Measures against a monopolistic situation( Section 8-4) (cont.) - Procedural regulations and its characteristics up to application of the provisions - Historical background at the time of the introduction of provisions concerning monopolistic situation (Why this provision was needed and how it evolved to be such a complex provision ) <MATERIALS> - Corresponded articles ( including decrees) - Guidelines concerning the interpretation of “ Specific business field” as defined in the provisions of “monopolistic situations” in the Antimonopoly Act - Figure of Procedures against a monopolistic situation	Mr. Hideyuki SHIMOZU
15:00-15:30	Coffee Break	
15:30-16:00	Recent Discussions on the Monopoly and Oligopoly Regulation under the Antimonopoly Act - Recent discussions on Section 8-4 <MATERIALS> - Report of Study Group on Antimonopoly Act (2003 October) (Abstract) - Figure of “Revision of Monopoly/Oligopoly Regulations”	Mr. Hideyuki SHIMOZU
16:00-16:30	Q&A Session	

3 <sup>rd</sup> March	Theme : Market Survey Method and Practice concerning Monopolistic Situation	
08:30-09:00	Registration	
09:00-09:10	Opening	
09:10-10:30	Market Survey Method on Monopolistic Situation (1) - Outline of the concentration ratio survey - - Background of the survey - Significance and objectives of the survey - Survey method on concentration ratio - - Operating procedures - Method of selecting targeted items - Framing of questionnaire design <MATERIALS> -The method of market survey against a monopolistic situation -Questionnaire of concentration(A,B,C,D1,D2), Instructions of the questionnaire (A,B,C,D1,D2) -Material 1,2,3,4,5	Mr. Kazuhiro Maruyama
10:30-11:00	Coffee Break	
11:00-12:00	Market Survey Method on Monopolistic Situation (2) - Subject matter of the survey - Method of collecting and compiling data - Utilization of the results for JFTC activities <MATERIALS> -The method of market survey against a monopolistic situation -Questionnaire of concentration(A,B,C,D1,D2), Instructions of the questionnaire (A,B,C,D1,D2) -Material 1,2,3,4,5	Mr. Kazuhiro Maruyama
12:00-13:30	Lunch Break	
13:30-15:30	Q&A Session	JFTC/Prof Seryo
15:30-16:00	Coffee Break	
16:00-16:30	Q&A session	JFTC/Prof Seryo

### TRAINING COURSE (2)

- Case Handling Skills -

Technical Cooperation for the Study on Capacity Building for Enforcement of  
Competition Law and Implementation of Competition Policy in Vietnam

(The Press Club, Hanoi, 19th - 22nd June 2006)

Moderator: DG Dr. Dinh Thi My LOAN, Vietnam Competition Administration Dept. (CAD)

Co-moderator: Mr. Hidekazu TANAKA, JICA TA Team

Speakers:

Mr. Ken KODA

Senior Investigator, Forth Investigation Division, Investigation Bureau  
Japan Fair Trade Commission (JFTC)

Mr. Osamu IHORI

Investigator, Fifth Investigation Division Investigation Bureau  
Japan Fair Trade Commission (JFTC)

Professor Shingo SERYO

## Professor of Law, Doshisha University Faculty of Law, Graduate School of Law

Monday, 19 June (DAY 1)		
08:30 - 09:00	Registration	
09:00 - 09:30	Opening - Dr. Dihn Thi My Loan, Director General, CAD - Mr. Hidekazu TANAKA, TA Team	
09:30 - 10:30	Flow of Procedure for Handling Illegal Cases in JFTC (Overview)	Mr. KODA Senior Investigator
10:30 - 10:45	Questions and Answers	
10:45 - 11:00	Coffee Break	
11:00 - 11:30	Abuse of Dominant Position in Vietnamese Competition Law	Mr. Le Thanh Vinh Official - VCAD
11:30 - 12:00	Questions and Answers	
12:00 - 14:00	Lunch Break	
14:00 - 15:00	Development of Japanese Antimonopoly Law focusing on "Resale Price Maintenance" and "Abuse of Dominant Bargaining Position" and its Implication to Vietnam (1)	Prof. SERYO
15:00 - 15:15	Questions and Answers	
15:15 - 15:30	Coffee Break	
15:30 - 16:30	Development of Japanese Antimonopoly Law focusing on "Resale Price Maintenance" and "Abuse of Dominant Bargaining Position" and its Implication to Vietnam (2) Questions and Answers	

Tuesday, 20 June (DAY 2)		
09:00 - 10:00	Nissan Chemical Industries, Ltd. Case ( 1 ) - Case Overview	Mr. KODA Senior Investigator
10:00 - 10:15	Questions and Answers	
10:15 - 10:30	Coffee break	
10:30 - 11:30	Nissan Chemical Industries, Ltd. Case (2) - Investigation Process	
11:30 - 12:00	Questions and Answers	
12:00 - 14:00	Lunch	
14:00 - 15:00	Nissan Chemical Industries, Ltd. Case (3) - Investigation Methods and Decisions of Measures	
15:00 - 15:15	Questions and Answers	
15:15 - 15:30	Coffee break	
15:30 - 16:30	Nissan Chemical Industries, Ltd. Case (4) - Measures, etc.	
16:30 - 16:45	Questions and Answers	

Wednesday, 21 June (DAY 3)		
09:00 - 10:00	Mitsui Sumitomo Banking Corporation Case (1) - Case Overview	Mr. IHORI Investigator
10:00 - 10:15	Questions and Answers	
10:15 - 10:30	Coffee break	
10:30 - 11:30	Mitsui Sumitomo Banking Corporation Case (2)	

11:30 - 12:00	- Investigation Process Questions and Answers	
12:00 - 14:00	Lunch	
14:00 - 15:00	Mitsui Sumitomo Banking Corporation Case (3) - Investigation Methods and Decisions of Measures	
15:00 - 15:15	Questions and Answers	
15:15 - 15:30	Coffee break	
15:30 - 16:30	Mitsui Sumitomo Banking Corporation Case (4) - Measures, etc.	
16:30 - 16:45	Questions and Answers	

Thursday, 22 June (DAY 4)		
09:00 - 10:00	Recent Cases of Unfair Trade Practices (1)	Mr. KODA Mr. IHORI
10:00 - 10:15	Questions and Answers	
10:15 - 10:30	Coffee break	
10:30 - 11:30	Recent Cases of Unfair Trade Practices (2)	Mr. KODA Mr. IHORI Prof. SERYO
11:30 - 12:00	Questions and Answers (incl. Q & A for whole seminar)	
12:00 - 14:00	Lunch	
14:00 - 15:00	Questions and Answers for whole seminar (cont.) Summing up comments	Mr. KODA Mr. IHORI Prof. SERYO
15:00-15:30	Closing - Dr. Dihn Thi My Loan, Director General, CAD - Mr. TANAKA, Leader, TA Team	

### TRAINING COURSE (3)

Technical Cooperation for the Study on Capacity Building for Enforcement of  
Competition Law and Implementation of Competition Policy in Vietnam  
"Monopoly Position, Economic Concentration and Simulated Case Handling"  
("Le Monde", 1st fl. of the Press Club, Hanoi, 5th – 8th September 2006)

Moderator: DDG Mr. Dzung, Vietnam Competition Administration Dept. (VCAD)

Co-moderator: Mr. Hidekazu TANAKA, JICA TA Team

Speakers:

Mr. Koichi HOSODA

Director General, Criminal Investigation Department  
Japan Fair Trade Commission (JFTC)

Ms. Keiko TOMOYUKI

Chief Investigator for Mergers and Acquisitions, Mergers and Acquisitions Division  
Economic Affairs Bureau, Japan Fair Trade Commission (JFTC)

Professor Shingo SERYO

Professor of Law, Doshisha University Faculty of Law, Graduate School of Law

Purpose:

Technical and information transfer relating to the implementation of the competition law to the officials of the VCAD

- use two cases, one of them is a case on merger that includes discussion of market definition
- enhance understanding of the adoption to the Vietnamese Competition Law through participation-type workshop session (called “simulation case handling”)

Participants: 20 officials in total (VCAD officials and a few officials from agencies closely relating to the implementation of Competition Law, such as Legislating Division of Ministry of Commerce, Ministry of Justice, Prosecutors’ Office and Courts)

Tuesday, 5 September (DAY 1)		
08:30-09:00	Registration	
09:00-09:30	Opening - Representative from VCAD - Mr. Hidekazu TANAKA, TA Team	
09:30-10:30	Market Concentration (M&A) Regulations in Japanese AMA and the Guideline (in comparison with Vietnamese Competition Law)	Prof. SERYO/ TA Team
10:30-10:45	Coffee Break	
10:45-11:50 11:50 -12:00	Market Concentration Review Procedure (1) Questions and Answers	Ms. Tomoyuki
12:00-13:30	Lunch Break	
13:30-14:30 14:30-14:45	Market Concentration Review Procedure (2) Questions and Answers	Ms. Tomoyuki
14:45-15:00	Coffee Break	
15:00-16:00 16:00-16:15	Market Concentration Review Procedure (3) Questions and Answers	
16:15-16:30	Preparation for Simulated Case Handling Exercise on DAY2 (explanation on simulated M&A case, etc.)	TA Team

Wednesday, 6 September (DAY 2)		
08:30-10:00	Simulated Case Handling Exercise on M&A - Presentation of the rule and methodology of the exercise - Group Discussion	TA Team/ VCAD  Lecturers as advisors
10:00-10:15	Coffee break	
10:15-12:00	Group Discussion	
12:00-13:30	Lunch	
13:30-15:00	Group Discussion/Group Presentation	
15:00-15:15	Coffee break	
15:15-16:30	Group Presentation (continued) Comments/advice from lecturers	

Thursday, 7 September (DAY 3)		
08:30-09:30	Private Monopolization Regulations in Japanese AMA and Recent Cases (in comparison with Vietnamese Competition Law)	Prof. SERYO/ TA Team
09:00-10:30	Private Monopolization Regulations and the NTT Case (1)	Mr. Hosoda
10:30-10:45	Coffee break	
10:45-11:45 11:45-12:00	NTT Case (2) Questions and Answers	Mr. Hosoda
12:00-13:30	Lunch	
13:30-14:30 14:30-14:45	NTT Case (3) Questions and Answers	Mr. Hosoda
14:45-15:00	Coffee break	
15:00-15:45 15:45-16:00	NTT Case (4) Questions and Answers	Mr. Hosoda
16:00-16:30	Preparation for Simulated Case Handling on DAY4 (explanation on simulated private monopolization case, etc.)	TA Team

Friday, 8 September (DAY 4)		
08:30-10:30	Simulated Case Handling Exercise Group Discussion	TA Team/ VCAD Lecturers
10:30-10:45	Coffee break	
10:45-12:00	Group Presentation Comments/ advice from lecturers	TA Team/ VCAD Lecturers
12:00-13:30	Lunch	
13:30-15:30	Group Presentation (continued) Comments/ advice from lecturers (continued) Q&A for whole seminar	
15:30-15:45 15:45-16:00	Interim Presentation on Trial Market Research Questions and Answers	TA Team (Mr. Kagohashi)
16:00-16:30	Closing <ul style="list-style-type: none"> <li>- Representative from CAD</li> <li>- Mr. TANAKA, Leader, TA Team</li> <li>- Summing up comments</li> <li>- Presentation of certificates</li> </ul>	

Technical Cooperation for the Study on Capacity Building for Enforcement of  
 Competition Law and Implementation of Competition Policy in Vietnam  
 "Competition Restriction Agreement and Simulated Investigation"  
 ("Le Monde", 1st fl. of the Press Club, Hanoi,  
 27th - 29th Nov. 2006

Co-moderators: Mr. Tran Anh SON, DDG, VCAD  
 Mr. Hidekazu TANAKA, JICA TA Team

## Speakers:

Mr. Yoshinori MAEDA

Deputy Director, Investigation Division II, Investigation Bureau, JFTC

Mr. Kiyohito UCHIDA (Attorney)

Chief Investigator for Hearing Procedures, Management and Planning Division  
Investigation Bureau, JFTC

Professor Shingo SERYO

Professor of Law, Doshisha University Faculty of Law, Graduate School of Law

## Purpose:

Technical and information transfer relating to the implementation of the competition law to the officials of the VCAD.

## Targeted Topic(s):

"Chapter II, Section 1: Competition Restriction Agreements"

- Horizontal Agreement (cartel) -> Art. 8.1 of Vietnamese law
- Bid-rigging (cartel to receive order) -> Art 8.8 of Vietnamese law (interested sectors: construction, IT, etc.)

## Style:

Combination of theory and overview, case introduction from Japanese AMA side by lectures, and application to the Vietnamese Competition Law through participation-type workshop session (called "investigation simulation")

Program

(DAY 1) Monday, 27 Nov.		
08:30-9:00	Registration	
09:00-09:20	Opening - Representative from VCAD - Mr. Hidekazu TANAKA, TA Team	
09:20-10:20	Competition Restriction Agreement in Japanese Antimonopoly Act and Recent Cases (in comparison with Vietnamese Competition Law)	Prof. SERYO
10:20-10:30	Questions and Answers	
10:30-10:45	Coffee Break	
11:45-12:00	Experience of Investigation in Cartel Case (Cartel by Producers of Modifier for polyvinyl chloride)	JFTC
12:00-13:30	Lunch Break	
13:30-14:45	Experience of Bid-Rigging Case (Bid-Rigging on Jet Fan for Highway Tunnel)	
14:45-15:00	Coffee Break	
15:00-16:15	Discussion and Questions and Answers relating to Case Handling with the emphasis of investigation => <a href="#">Viewpoint of Discussion</a>	

16:15-16:30	Presentation regarding the Simulated Investigation Exercise	TA Team
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**(DAY 2) Tuesday, 28 Nov.**

Simulated Investigation Exercise (Facilitator: TA Team)		
08:30 - 09:00	Explanation of the mission by TA Team	TA Team/VCAD <ul style="list-style-type: none"> <li>• A simulated case on cartel or bid-rigging with evidences is prepared by the TA Team.</li> <li>• TA Team members play roles of suspect-companies; VCAD groups will play the roles of investigators.</li> <li>• The clue -&gt; information/evidence gathering (e.g. hearings) -&gt; application of law -&gt; reporting and decision shall be conducted by each group.</li> <li>• VCAD is in charge of groupings</li> <li>• Lecturers are asked to make comments/ advice</li> </ul>
09:00 - 10:15	Exercise	
10:15 - 10:30	Coffee break	
10:30 - 12:00	Exercise	
12:00 - 13:30	Lunch	
13:30 - 15:00	Interim Presentation by Groups	
15:00 - 15:15	Coffee break	
15:15 - 16:30	Exercise	

**(DAY 3) Wednesday, 29 Nov.**

08:30 - 10:30	Simulated Investigation Exercise Presentation by Groups Comments from Lecturers	
10:30 - 10:45	Coffee break	
10:45 - 11:15 11:15 - 12:00	Questions and Answers Session Closing - VCAD Representative - JICA Representative - Presentation of certificate	
12:00 - 13:30	(Lunch)	



**Third TA Seminar  
Simulated Case Handling Exercise**

Following documents were prepared for Simulated Case Handling on DAY 2 (M&A) and DAY 4 (Abuse of dominant position):

**DAY 2 Simulated Case on Business Combination of Pharmaceutical Companies**

**I Mission Letter**

**II Fact Sheet**

**III Background Data**

**Additional Mission**

**DAY 4 Simulated Case on Private Monopolization by Newspaper Publisher**

**I Mission Letter**

**II Fact Sheet**

**III Background Data**

## DAY 2 Simulated Case on Business Combination of Pharmaceutical Companies

This set of material consists of:

- I. Mission Letter (what your team is required to do),
- II. Fact (what the companies did), and
- III. Background data of the market.

### I. MISSION LETTER

As the competition-managing agency, Your Team is in charge of accepting economic concentration notification dossier and examining whether the notified case of business combination is consistent with the Competition Law of Vietnam.

Use every possible details in your Law and in the given Fact and Background data.

Try to be concrete as possible.

#### 1. Group Discussion

During the Group Discussion (before lunch)

Your Team is expected to identify following points:

(1) Confirm the procedure stipulated by the Law, using actual date in "II. Fact".

(2) Discuss and decide application of the law

- What is your decision (existence of violation) ?
- Which provision(s) shall be applied?

(3) Reasoning of the application above

- What is the reasoning of application?
- Which fact(s) shall be taken into consideration?
- What is the further evidence/ information to strengthen your decision?

(4) Possibility of application of alternative provisions?

- Is there any room to apply other provision(s)?
- In such case what kind of fact(s)/evidence(s) can help?

All these discussion shall be recorded in writing.

2. Presentation

After Discussion, Reporter of each group shall make presentation to explain 1.(1)-(4) above.

Your can use any visual tools.

(Lecturers will make some comments.)

3. Drafting written notice

Your Team is expected to draft a written notice to reply the dossier-submitting enterprises.

## II. Fact

August 3, 2007

Your Team has received following dossier from one of the pharmaceutical companies.

<b>Form MTB-1</b> ( Promulgated with Decision No. 17/QD-QLCT of the Director General of VCAD dated 4 July,2006) (Partly omitted)  <i>1st of August, 2007</i>
<b>Notification on economic concentration</b> <b>To: Competition Administration Department</b>
<b>1. Information on enterprise intending to participate in economic concentration</b>
A. Name of the second enterprise: <i>First Drag Corporation</i> Name of the enterprise in short: <i>First Corp.</i> Business sector: <i>R&amp;D, import, manufacture and sale of pharmaceutical products</i> Head office's address: <i>HCMC</i>
B. Name of the first enterprise: <i>Three Pharmaceutical Corporation</i> Name of the enterprise in short: <i>Three Corp.</i> Business sector: <i>R&amp;D, import, manufacture and sale of pharmaceutical products</i> Address of the head office: <i>Hanoi</i>
<b>2. Description of the economic concentration that both sides intend to carry out</b> <i>We, First Corp. and Three Corp., have reached a consensus to establish a common shareholding company under which pharmaceutical business will be integrated.</i>
We kindly request the VCAD to consider the notification on economic concentration and the attached dossier and reply by official document whether the economic concentration is prohibited or not in accordance with regulations of Competition Law. We pledge to take full responsibility before the law on the truth and accuracy of the content of this notification on economic concentration and attached dossier.
<b>Enterprises notifying the economic concentration</b>

(Signed and sealed)

To: Competition Administration Department

Attached: business information (omitted)

August 10, 2007

Your Team has sent request to the dossier-submitting enterprises to submit supplemental information regarding details of the products and sales thereof.

August 25, 2007

Your Team has gathered following information.

1. Market condition of three important drugs demanded by medical institutions (hospitals, etc.) are as follows.

(1) Anti-ACE (angiotensin-converting enzyme) drug

Total Sales: \$ 900 million

Number of competitors: 47 companies

Share and ranking of the share of First Corp.: 10% (4th)

Share and ranking of the share of Three Corp.: 15% (3rd)

(2) Wound Healing drug

Total Sales: \$ 100 million

Number of competitors: 37 companies

Share and ranking of the share of First Corp.: 10% (3rd)

Share and ranking of the share of Three Corp.: 5% (15th)

(3) Nonsteroidal drug

Total Sales: \$ 910 million

Number of competitors: 88 companies

Share and ranking of the share of First Corp.: 10% (3rd)

Share and ranking of the share of Three Corp.: 35% (1st)

2. Your Team has interviewed a few competitors and found out that:

(1) It is relatively easy for the competitors to increase production of drugs 1.(1)-(3) above. Therefore, the competitors have excess supply capacity.

(2) There seems no significant difference between the products among competitors, including those produced by First Corp. and Three Corp.

(3) One of the competitors has a plan to sell a new type of nonsteroidal drug, which is already sold in the other countries and expected to gain a certain share in domestic market.

(4) The other competitor started to sell a new wound healing drug since 2 years ago, and has been expanding the share up to now.

3. Your Team has also interviewed a few hospitals and found out that:

(1) Because of the current tendency of saving medical expense, the hospitals try to procure less expensive drugs. All pharmaceutical companies, therefore, try to offer their products by competitive price.

(2) Instead of anti-ACE drugs, similar drugs called ABR drugs have been offered by a few companies. Some hospitals are switching their procurement of anti-ACE drugs to ABR drugs.

4. Vitamin B6 and Vitamin C, food additives sold to general consumers via drug stores without prescription by doctor, are also imported and sold by First Corp. and Three Corp. as follows:

(1) Vitamin B6

Total Sales Quantity: 18 tons

Share and ranking of the share of First Corp.: 15% (2nd)

Share and ranking of the share of Three Corp.: 5% (10th)

(2) Vitamin C

Total Sales Quantity: 7,000 tons

Share and ranking of the share of First Corp.: 10% (3rd)

Share and ranking of the share of Three Corp.: 5% (7th)

### III. Background Data

#### 1. Anti-ACE (angiotensin-converting enzyme) drug market

Ranking	Company name	Market Share
1	Company A	30%
2	Company B	17%
3	Three Corp.	15%
4	First Corp	10%
5	Company C	7%

#### 2. Wound Healing drug market

Ranking	Company name	Market Share
1	Company A	20%
2	Company B	17%
3	First Corp.	10%
7	Three Corp.	5%

#### 3. Nonsteroidal drug market

Ranking	Company name	Market Share
1	Three Corp.	35%
2	Company A	16%
3	First Corp.	10%
4	Company B	7%
5	Company C	6%

#### 4. Vitamin B6 market

Ranking	Company name	Market Share
1	Company A	22%
2	First Corp.	15%
3	Company B	10%
10	Three Corp.	5%

## 5. Vitamin C market

Ranking	Company name	Market Share
1	Company A	20%
2	Company B	18%
3	First Corp.	10%
7	Three Corp.	5%

As for the Vitamin C, public trust in quality of products exported from Country D is rapidly increasing. The products are less expensive than the products originally distributed in domestic market.



## DAY 2 Simulated Case on Business Combination of Pharmaceutical Companies

### Additional Mission

### III. Background Data was different!!

#### Different Situation 1

##### 3. Nonsteroidal drug market

Ranking	Company name	Market Share
1	Three Corp.	<b>49%</b>
2	Company A	5%
3	Company C.	4%
4	Company B	4%
5	First Corp	<b>2%</b>

#### Different Situation 2

##### 4. Vitamin B6 market

Ranking	Company name	Market Share
1	First Corp.	<b>32%</b>
2	Three Corp.	<b>29%</b>
3	Company A	17%
10	Company B	1%

#### Different Situation 3

##### 3. Nonsteroidal drug market

Ranking	Company name	Market Share
1	Three Corp.	<b>49%</b>
2	Company A	38%
3	Company C.	7%
4	Company B	3%
5	First Corp	<b>2%</b>

#### Different Situation 4

##### 4. Vitamin B6 market

Ranking	Company name	Market Share
1	Company A	35%

2	First Corp.	29%
3	Three Corp.	22%
4	Company B	5%
5	Company B	1%

## **DAY 4 Simulated Case on Private Monopolization by Newspaper Publisher**

This set of material consists of:

- I. Mission Letter (what your team is required to do),
- II. Fact (what the companies did), and
- III. Background data of the market.

### **I. MISSION LETTER**

As the competition-managing agency, Your Team is in charge of investigating abuse of dominant and/or monopolistic position according to the Competition Law of Vietnam.

Use every possible details in your Law and in the given Fact and Background data.

Try to be concrete as possible.

Try to figure out missing information in "II. Fact", e.g. dates, intention of parties, etc.

#### 1. Group Discussion

During the Group Discussion (before lunch)

Your Team is expected to identify following points:

(1) Investigation procedure stipulated by the Law, using actual date in "II. Fact".

(2) Discuss and decide application of the law

- What is your decision (existence of violation) ?
- Which provision(s) shall be applied?

(3) Reasoning of the application above

- What is the result of official investigation?
- What is the reasoning of application?
- Which fact(s) shall be taken into consideration?
- What is the further evidence/ information to strengthen your decision?

(4) Possibility of application of alternative provisions?

- Is there any room to apply other provision(s)?
- In such case what kind of fact(s)/evidence(s) can help?

All these discussion shall be recorded in writing.

### 2. Presentation

After Discussion, Reporter of each group shall make presentation to explain 1.(1)-(4) above.

Your can use any visual tools.

(Lecturers will make some comments.)

### 3. Drafting written notice

Your Team is expected to draft the competition case-handing decision with concrete items of order.

## II. Fact

August 3, 2007

Your Team has received the following note from one of your colleagues working for VCAD's HCMC Office.

*3rd of August, 2007*

**Suspicious Case by HCMC Newspaper**  
**To: Hanoi Headquarter of Competition Administration Department**  
**From: HCMC Office**

It is probable that the HCMC Newspaper Co., Ltd. (hereafter HCMC Newspaper) has been trying to block new entry of the competitors into newspaper market. The competitors came to our office asking for informal consultations and told us about several acts and measures taken by HCMC Newspaper. For example, the competitors said that HCMC has been blocking "wire reports entities" to provide the news reports to them. Also, HCMC Newspaper has registered all the possible names of the newspapers to the Patent Office so that the competitors cannot use such names.

Shall we go ahead?

                    , 2007

Preliminary investigation started.

                    , 2007

Decision made to conduct official investigation.

                    , 2007

Decision made to conduct official investigation.

                    , 2007

Hearings undertaken.

Through the hearings and other means of investigation, following facts were identified.

1.1. HCMC Newspaper has a fear that their system to sell morning and evening editions as a set, because in some other areas, other publishers of evening newspapers are stronger than HCMC News.

1.2. HCMC Newspaper was aware that there was a sign of establishment of a new newspaper publishing company, which is Phu Nhuan Press Co., Ltd. (PH Press), since August 2003.

1.3. In October 2003, the Board of Director Meeting of HCMC Newspaper decided that HCMC set up a Council to take measures for HCMC/ Phu Nhuan Area in order to observe such sign of establishment of a new company.

1.4. Each concerned department of HCMC Newspaper would discuss detailed measures to decelerate new establishment of competitor.

1.5. In September 2005, the Board of Director Meeting of HCMC Newspaper decided to take following action so that PH Press cannot develop their business in HCMC/ Phu Nhuan Area:

- i) the measure for newspaper title
- ii) the measures for wire agency
- iii) the measures for advertisement soliciting activities
- iv) the measure for TV commercial.

Details of the measures are as follows:

- i) the measure for newspaper title

HCMC Newspaper selected all possible newspaper titles that might be used in the case of publication of newspaper in the HCMC/ Phu Nhuan Area.

HCMC Newspaper applied for registration of trademark to the Patent Office regarding nine possible newspaper titles such as "Phu Nhuan Evening", etc., intending to make it impossible for a newspaper publishing company to be newly established in the HCMC/ Phu Nhuan Area to use such titles. HCMC Newspaper itself has no concrete plan to use the registered titles.

- ii) the measures for wire agency

As the existing client of BB News Service, HCMC Newspaper expressed BB News Service that HCMC Newspaper has no intention approve delivery of wire reports to PH Press by BB News Service.

BB News answered that BB News would not execute a wire reports contract with PH Press without obtaining an approval of HCMC Newspaper by its policy.

Therefore, PH Press has not been able to execute a wire reports contract with BB News Service since the first publication of PH Press in June 2006, and waiting for the decision by the VCAD.

- iii) the measures for advertisement soliciting activities

HCMC Newspaper has been issuing a local information edition as a separately printed pages attached to the evening edition, in order to attempt to expand papers for the HCMC Area competing with the signs of starting publication of new evening newspaper in the HCMC/ Phu Nhuan Area.

HCMC Newspaper has been discounting the advertisement charge for medium and small business entities to be inserted in such local information edition. [Discount of advertisement charge]

50% discount from advertisement charge inserted in the main newspaper was given since November 2002.

iv) the measure for TV advertisement

A TV advertisement was started to announce the new publication of PH Press via TV HCMC Channel.

HCMC Newspaper, then, demanded to TV HCMC Channel not to accept PH Press's request for the advertisement broadcasting.

As the result, PH Press gave up the advertisement broadcasting regarding via TV HCMC Channel.

### III. Background Data

#### 1. HCMC Newspaper Co., Ltd. (HCMC Newspaper)

- 1.1. A company of publication business of general daily newspaper.
- 1.2. The sales area is HCMC; the share in the area is a majority of the total number of issue of the morning edition.
- 1.3. HCMC Newspaper sells not only at the store or street, but also by delivery to the consumers house directly every morning and evening.
- 1.4. Their policy is to contract with each consumers as a set of morning and evening edition.
- 1.5. In Phu Nhuan area, which is a part of HCMC, the number of issues of HCMC Newspaper has a large percentage of the total numbers of both morning edition and evening edition.

#### 2. Phu Nhuan Press Co., Ltd. (PH Press)

A company issues only evening edition in HCMC/ Phu Nhuan Area, started in 2006 June.

#### 3. Naming of the newspapers

- Local news papers select the name of newspapers (title, such as "HCMC Newspaper" or "Phu Nhuan Press") connected with the name of the area or city.
- The purpose of such naming is (i) profess the newspaper to the local newspaper, and (ii) make use of such titles as a way to acquire subscribers.

#### 4. Wire reports and local newspapers

- Wire reports (from domestic and foreign news agencies) are essential to issue newspapers. The newspaper companies such as HCMC Newspaper and PH Press need to buy some articles/news from wire report agencies.
- There are Major entities to provide wire reports in HCMC Area: AA Wire Service and BB News Service

Details of the wire reports entities are as follows:

##### AA Wire Service

Any entity which desires to receive wire reports from AA Wire Service shall, in principle, become a member of AA Wire Service and bear a part of operational expenses to receive all of its wire reports.

Spot supply is basically not available. In order to receive wire reports selecting necessary reports not under principle of "Member System" above, approval by the board of directors of AA Wire Service is especially required.



It is difficult to receive wire reports on spot supply basis. Therefore, it is difficulty for an entity which newly starts the publication business of general daily newspaper.

#### BB News Service

BB News Service's policy is to give priority to existing contractors; to receive wire reports service from BB News Service is only possible upon obtaining such existing contractor's consent.

BB News Service provides only necessary wire reports for a newspaper company.

HCMC Newspaper is in the position of the existing contractor in HCMC. Furthermore, HCMC Newspaper is the main customer of BB News Service and the biggest receiver of wire reports in HCMC Area.

#### 5. Advertising Income

- Generally, main source of the income of the publication business of newspaper are: (i) sales of newspaper, and (ii) advertising income. The size of the advertising income has significant effect on newspaper companies' operating revenue.

## II. Fact

August 3, 2007

Your Team has received following dossier from one of the pharmaceutical companies.

<b>Form MTB-1</b> ( Promulgated with Decision No. 17/QD-QLCT of the Director General of VCAD dated 4 July,2006) (Partly omitted)
<i>1st of August, 2007</i>
<b>Notification on economic concentration</b> <b>To: Competition Administration Department</b>
<b>1. Information on enterprise intending to participate in economic concentration</b>
A. Name of the second enterprise: <i>First Drag Corporation</i> Name of the enterprise in short: <i>First Corp.</i> Business sector: <i>R&amp;D, import, manufacture and sale of pharmaceutical products</i> Head office's address: <i>HCMC</i>
B. Name of the first enterprise: <i>Three Pharmaceutical Corporation</i> Name of the enterprise in short: <i>Three Corp.</i> Business sector: <i>R&amp;D, import, manufacture and sale of pharmaceutical products</i> Address of the head office: <i>Hanoi</i>
<b>2. Description of the economic concentration that both sides intend to carry out</b> <i>We, First Corp. and Three Corp., have reached a consensus to establish a common shareholding company under which pharmaceutical business will be integrated.</i>
We kindly request the VCAD to consider the notification on economic concentration and the attached dossier and reply by official document whether the economic concentration is prohibited or not in accordance with regulations of Competition Law. We pledge to take full responsibility before the law on the truth and accuracy of the content of this notification on economic concentration and attached dossier.
<b>Enterprises notifying the economic concentration</b>

(Signed and sealed)

To: Competition Administration Department

Attached: business information (omitted)

August 10, 2007

Your Team has sent request to the dossier-submitting enterprises to submit supplemental information regarding details of the products and sales thereof.

August 25, 2007

Your Team has gathered following information.

1. Market condition of three important drugs demanded by medical institutions (hospitals, etc.) are as follows.

(1) Anti-ACE (angiotensin-converting enzyme) drug

Total Sales: \$ 900 million

Number of competitors: 47 companies

Share and ranking of the share of First Corp.: 10% (4th)

Share and ranking of the share of Three Corp.: 15% (3rd)

(2) Wound Healing drug

Total Sales: \$ 100 million

Number of competitors: 37 companies

Share and ranking of the share of First Corp.: 10% (3rd)

Share and ranking of the share of Three Corp.: 5% (15th)

(3) Nonsteroidal drug

Total Sales: \$ 910 million

Number of competitors: 88 companies

Share and ranking of the share of First Corp.: 10% (3rd)

Share and ranking of the share of Three Corp.: 35% (1st)

2. Your Team has interviewed a few competitors and found out that:

(1) It is relatively easy for the competitors to increase production of drugs 1.(1)-(3) above. Therefore, the competitors have excess supply capacity.

(2) There seems no significant difference between the products among competitors, including those produced by First Corp. and Three Corp.

(3) One of the competitors has a plan to sell a new type of nonsteroidal drug, which is already sold in the other countries and expected to gain a certain share in domestic market.

(4) The other competitor started to sell a new wound healing drug since 2 years ago, and has been expanding the share up to now.

3. Your Team has also interviewed a few hospitals and found out that:

(1) Because of the current tendency of saving medical expense, the hospitals try to procure less expensive drugs. All pharmaceutical companies, therefore, try to offer their products by competitive price.

(2) Instead of anti-ACE drugs, similar drugs called ABR drugs have been offered by a few companies. Some hospitals are switching their procurement of anti-ACE drugs to ABR drugs.

4. Vitamin B6 and Vitamin C, food additives sold to general consumers via drug stores without prescription by doctor, are also imported and sold by First Corp. and Three Corp. as follows:

(1) Vitamin B6

Total Sales Quantity: 18 tons

Share and ranking of the share of First Corp.: 15% (2nd)

Share and ranking of the share of Three Corp.: 5% (10th)

(2) Vitamin C

Total Sales Quantity: 7,000 tons

Share and ranking of the share of First Corp.: 10% (3rd)

Share and ranking of the share of Three Corp.: 5% (7th)

### III. Background Data

#### 1. Anti-ACE (angiotensin-converting enzyme) drug market

Ranking	Company name	Market Share
1	Company A	30%
2	Company B	17%
3	Three Corp.	15%
4	First Corp	10%
5	Company C	7%

#### 2. Wound Healing drug market

Ranking	Company name	Market Share
1	Company A	20%
2	Company B	17%
3	First Corp.	10%
7	Three Corp.	5%

#### 3. Nonsteroidal drug market

Ranking	Company name	Market Share
1	Three Corp.	35%
2	Company A	16%
3	First Corp.	10%
4	Company B	7%
5	Company C	6%

#### 4. Vitamin B6 market

Ranking	Company name	Market Share
1	Company A	22%
2	First Corp.	15%
3	Company B	10%
10	Three Corp.	5%

## 5. Vitamin C market

Ranking	Company name	Market Share
1	Company A	20%
2	Company B	18%
3	First Corp.	10%
7	Three Corp.	5%

As for the Vitamin C, public trust in quality of products exported from Country D is rapidly increasing. The products are less expensive than the products originally distributed in domestic market.

The Simulated Investigation Practice in the 4th TA seminar of  
the JICA Capacity Building for Enforcement of Competition Law

Receiving the Dossier, participants, as the members of the Investigation Team consists of 5 - 7 members proceeded the investigation process in accordance with the Mission Letter. For each step, following Forms and evidences were prepared by the TA Team:

1. Clue

- FORM 2, to describe the points to be clarified to the complainant
- Dossier
- Enhanced Dossier to be submitted after the confirmation of the complainant.

2. Preliminary Investigation

- FORM 3, Investigation Strategy Plan A
- Record of Road Construction Bidding of Hai Phong City Construction Department (attached)
- Profiles of Companies A, B, C and D
- Business Relation of Road Construction from a research company
- Market share from another research company
- FORM 4, Internal Report on the Preliminary Investigation

3. On-the-spot Investigation

- FORM 5, Investigation Strategy Plan B
- Company A's internal documents
- Company B's internal documents
- Company C's internal documents
- Mr. Ahn's Schedule
- Mr. Boom's Schedule memo
- Planned amount of each bidding
- Mail folder report of 4 sales managers
- Telephone record
- Data in Mr. Ahn's Secretary

4. Interviews to the related parties

- FORM 6, Investigation Strategy Plan C
- FORM 7. Investigation Minutes

5. Sum up and reporting

- FORM 8, Investigation Report

FORMs are prepared to facilitate the simulation exercise. The participants are also encourage to fill the FORM 1(Investigation Procedure) to take note of the issues to be further discussed/ developed.

All FORMs and one of the evidences "Record of Road Construction Bidding of Hai Phong City Construction Department" and the background calculation thereof are attached.

Mission Letter

to the participants of the Simulated Investigation Practice in the 4th TA seminar of the JICA Capacity Building for Enforcement of Competition Law

You are a member of an Investigators' Team in the VCAD.

You are expected to handle the case in accordance with the Competition Law and the Decrees.

This Case is relating to a suspicious bid-rigging in the road construction. You can find some background and the names of related companies in the end of this letter. You have to get other information during the course of investigation.

Trigger

Having received an anonymous complaint on February 2nd of 2006 that the road constructions procured by the City of Hai Phong could be suspected collusion on bidding by the road construction companies in the region, the VCAD has been watching the development.

On 20th of March 2006, one Company operating in north-east of the Hai Duong, neighboring to the Hai Phong, submitted the Dossier saying that it has been asked for cooperation in reception of an order by one of the companies operating the construction in Hai Phong City when it entered into the market in Hai Phong City.

1. Information - Clue

Your case handling will start by receiving a Dossier that causes a clue of the case. Please discuss and identify whether there is lack of information or not. You are invited to write down the result of the discussion over the Dossier on the FORM 2 and show it to the Submitter of the Dossier, including request for additional information to the Submitter.

2. Preliminary Investigation

This process shall be proceeded by following two actions:

- Gather information from public source (You will ask the Public Person)
- When necessary, contact related parties.

(1) Planning of the Strategy of the Preliminary Investigation

Preliminary Investigation must be planned in order to think about the way to get information to identify what should be proved or brought out, and to determine whether the case can be subject to the official investigation. For this sake, the "Investigation Strategy Plan A" (FORM 3) should be developed to identify further steps including;

- i) What are the points to be proved/ verified



- ii) What kind of information you needed; in which places and how you get the information, and who in the Team get the information.
- iii) why the Team thinks that ii) is established by i), and
- iv) proceeding schedule for the whole investigation.

#### (2) Implementation of Preliminary Investigation

Contact related parties. You can start when you are ready. You cannot change your way to do the investigation by looking what the other Teams would do and success/ fail of the others , but you are required to stick on your Strategy Plan A

#### (3) Review and Report on the Preliminary Investigation

Each Team is expected to draft the Internal Report FORM 4 to submit to the DG of the VCAD in order to facilitate her decision to stop or conduct official investigation.

■Comments from the Lecturers on the strategy, implementation and result of the Preliminary Investigation

### 3. Strategy Planning of the Official Investigation

Before the conduct of the Official Investigation, each Team will discuss and draft "Investigation Strategy Plan B" (FORM 5).

The Official Investigation mainly consists of on-the-spot investigation and interviews.

"Investigation Strategy Plan B" includes issues to be proved, how to prove and expected confiscations acquired by the on-the-spot investigation.

### 4. Conduct On-the-Spot Investigation

The Team readily prepared will conduct the on-the-spot investigation based on the "Investigation Strategy Plan B" (FORM 5). Again, you cannot change your Strategy Plan B or how to conduct the investigation by looking what the other Teams would do and success/fail of the others. You have to stick to what you planned in your Investigation Strategy Plan B.

### 5. Organizing and Compiling the Outcome of the On-the-Spot Investigation and Review of the Strategy Plan

Each Team will organize and analyze the confiscations - materials and information seized by the on-the-spot investigations. Based upon the outcome, the investigation strategy is reviewed and elaborated. Then, "Investigation Strategy Plan C" (FORM 6) will be drafted. FORM 6 includes anticipated interviewees and questions.

### 6. Interviews

(1) Implement interviews in accordance with you plan described in FORM 6. You cannot change your plan by looking at what the other Teams have done before you Team.

(2) Investigation Minutes

Draft Investigation Minutes in accordance with the Law (FORM 7)

7. Investigation Report

Draft the Investigation Report based on the facts proved by confiscations and interviews (FORM 8).

■Presentation and Comments 2

Each Team will make a presentation including following issues.

- i) issues in investigation report stipulated in Article 93.2
  - a/ brief account of the case;
  - b/ Verified circumstances and evidences;
  - c/ Proposed handling measures
- ii) contents and development of Investigation Planning Sheet (A) to (C)
- iii) possible tasks, issues/ information that should be shared and/or accumulated (by referring to FORM 1 and others)

As the additional task, you are expected to identify the detailed flow of the practical procedures beyond what stipulated in the Competition Law or the Decrees. For this sake, you are expected to fill out the NOTE (blank) in the FROM !as you come across the following points and share during your presentation at the end of the Simulated Investigation Practice:

- Provisions/ wordings that may need further interpretation or clarification
- Necessity of introducing anticipated guidelines or accumulation of the know-hows, if any
- Usability of format of the document prepared and shared within the VCAD
- Other questions, points to keep in mind and shared

Background Information 1

Road construction companies and subcontractors/related companies in Hai Phong City consist of the followings:

Road Construction Companies

Company A
Company B
Company C
Company D

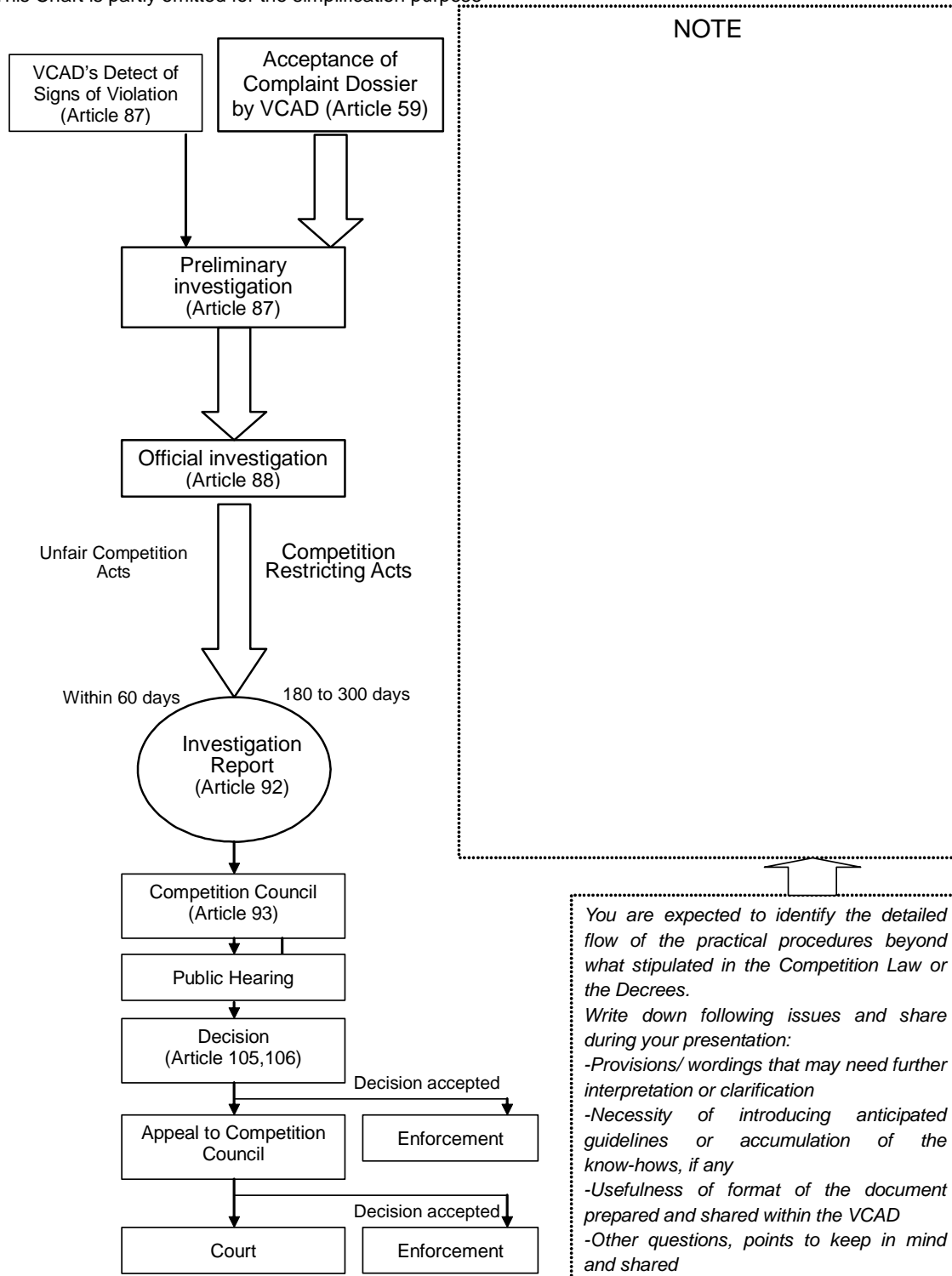
Subcontractor/ Related Companies

small builders office	electric facility	readymixed concrete	heavy machinery
Komkom	Tokyo Electric	Apple Concrete	Sugar Heavy Machinery
Tamtam	Osaka Electric	Orange Concrete	Coffee Heavy Machinery
Pampam	Sapporo Electric	Melon Concrete	Cream Heavy Machinery

**FORM 1: Investigation Procedure**

TEAM NAME \_\_\_\_\_

Steps subject to the Simulated Exercise is emphasized in large letters and bold lines  
 This Chart is partly omitted for the simplification purpose



**FORM 2: Review of the Dossier**

TEAM NAME \_\_\_\_\_

Please write down the result of the discussion over the Dossier on the FORM 2 and show it to the Submitter of the Dossier, including request for additional information to the Submitter.

FORM 3: Investigation Strategy Plan A

TEAM NAME \_\_\_\_\_

"Investigation Strategy Plan A" (FORM 3) should be developed to identify: i) What are the points to be proved/ verified; ii) What kind of information you needed; in which places and how you get the information, and who in the Team get the information; iii) why the Team thinks that ii) is established by i); and iv) proceeding schedule for the whole investigation.

i) Points/ issues to be proved/ verified; - - -
--

ii) Information to acquire				iii) reasoning why ii) on left prove i) above
what	where	how	(by whom of your team)	
-				
-				
-				
-				
-				

iv) Proceeding Schedule for the Whole Investigation - time frame?  - due date  - others
--

FORM 4: Internal Report of Preliminary Investigation to DG of the

VCAD

TEAM NAME \_\_\_\_\_

Please review your Preliminary Investigation and draft the Internal Report to submit to the DG of the VCAD in order to facilitate her decision to stop or conduct official investigation.

FORM 5: Investigation Strategy Plan B

TEAM NAME \_\_\_\_\_

Before the conduct of the Official Investigation, each Team will discuss and draft "Investigation Strategy Plan B". The Official Investigation mainly consists of on-the-spot investigation and interviews. "Investigation Strategy Plan B" includes issues to be proved, how to prove and expected confiscations acquired by the on-the-spot investigation.

i) Points/ issues to be proved/ verified; - - -
--

Summary of the expected confiscations acquired by on-the-spot investigation	
(1)	(4)
(2)	(5)
(3)	...

ii) Information to acquire				iii) reasoning why ii) on left prove i) above
what	where	how	(by whom of your team)	
-				
-				
-				
-				
-				

iv) Proceeding Schedule for the Whole Investigation - time frame? - due date - others
--

FORM 6: Investigation Strategy Plan C

TEAM NAME \_\_\_\_\_

Please organize and analyze the confiscations - materials and information seized by the on-the-spot investigations. Based upon the outcome, the investigation strategy is reviewed and elaborated. Then, "Investigation Strategy Plan C" (FORM 6) will be drafted. FORM 6 includes anticipated interviewees and questions.

i) Points/ issues to be proved/ verified; - - -
--

ii) Information already acquired			iii) reasoning why ii) on left prove i) above
what	where	how	
-			
-			
-			
-			

iii) Anticipated interviewees and questions (issues to be induced)			iv) reasoning why iii) on left prove i) above
who (interviewees)	what	how	
-			
-			
-			
-			

iv) Proceeding Schedule for the Whole Investigation - time frame, etc
--



**FORM 7: Investigation Minutes (1)**

TEAM NAME \_\_\_\_\_

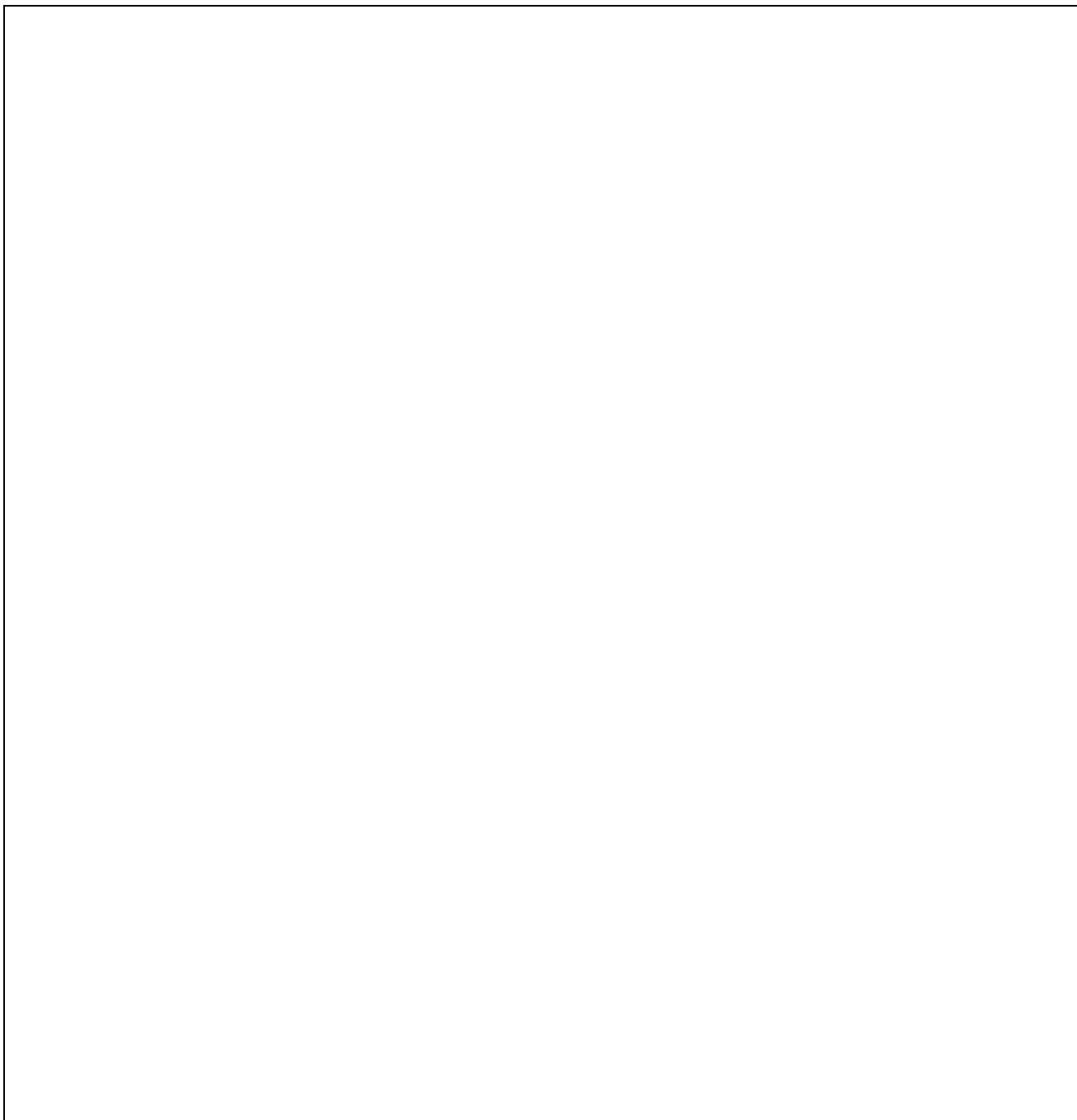
Draft Investigation Minutes in accordance with the Law (FORM 7)

(Minutes 2, 3,....)

**FORM 8: Investigation Report**

TEAM NAME \_\_\_\_\_

Draft the Investigation Report based on the facts proved by confiscations and interviews

A large, empty rectangular box with a thin black border, occupying the central portion of the page. It is intended for the student to draft the investigation report based on the provided facts.

Hai Phong City Construction Department  
Record of Road Construction Bidding

Bid Announcement	participated company and bid amount * bid winner
#1182, 11/9, 2005, Bid: 11/30, Contract: 12/15 Full scale road construction in North Hai Phong City	Company A 15,121,657,000 VDN* Company B 15,238,866,500 VDN Company C 15,246,870,000 VDN
#1201, 11/21, 2005, Bid: 12/5, Contract: 12/20 Road repairing in South Hai Phong City	Company C 700,000,000 VDN Tam tam 460,000,000 VDN*
#1235, 12/9, 2005, Bid: 12/28, Contract: 1/20, 2006 Highway construction project in South Hai Phong City	Company A 36,022,000,700 VDN Company B 36,246,759,000 VDN Company C 36,157,699,000 VDN Company D 35,964,743,200 VDN*
#1002, 1/10, 2006, Bid: 1/31, Contract: 2/15 Full scale industry road construction in East Hai Phong City	Company A 17,237,500,000 VDN Company B 17,325,000,000 VDN Company C 17,185,000,000 VDN*
#1014, 1/20, 2006, Bid: 2/3, Contract: 2/10 Safety construction (guard rails and signals) in South Hai Phong	Company C 892,500,000 VDN Tokyo Electric 688,500,000 VDN Sapporo Electric 612,000,000 VDN*
#1067, 2/20, 2006, Bid: 3/3, Contract: 3/10 Safety construction (guard rails and signals) in North Hai Phong	Company C 1,034,320,000 VDN Tokyo Electric 720,330,000 VDN Osaka Electric 627,980,000 VDN* Sapporo Electric 692,625,000 VDN
#1085, 3/10, 2006, Bid: 3/31, Contract: 4/14 Full scale industry road construction in mid Hai phong City	Company A 18,438,136,200 VDN Company B 18,289,141,160 VDN* Company C 18,475,384,960 VDN Company D 18,531,258,100 VDN
#1105, 3/20, 2006, Bid: 4/5, Contract: 4/10 Safety construction (guard rails and signals) in West Hai Phong	Company C 540,000,000 VDN Tokyo Electric 337,500,000 VDN Osaka Electric 292,500,000 VDN* Sapporo Electric 351,000,000 VDN
#1113, 4/20, 2006, Bid: 5/5, Contract: 5/12 Safety construction (guard rails and signals) in East Hai Phong	Company C 630,000,000 VDN Tokyo Electric 480,000,000 VDN Osaka Electric 408,000,000 VDN*
#1125, 5/10, 2006, Bid: 5/31, Contract: 6/15 Highway construction project in South Hai Phong City (2)	Company A 49,204,665,800 VDN* Company B 49,763,242,698 VDN Company C 49,509,338,653 VDN Company D 49,255,444,609 VDN
#1140, 5/20, 2006, Bid: 6/5, Contract: 6/12 Road repairing in West Hai Phong	Komkom 308,000,000 VDN Tamtam 288,000,000 VDN*

## Appendix D-3

	Pampam	340,000,000 VDN
#1141, 5/20, 2006, Bid: 6/5, Contract: 6/12 Road repairing in mid Hai Phong	Komkom	258,400,000 VDN*
	Tamtam	285,000,000 VDN
	Pampam	315,400,000 VDN
#1162, 6/20, 2006, Bid: 7/5, Contract: 7/10 Safety construction (guard rails and signals) in Mid-West Hai Phong	Company C	300,000,000 VDN
	Tokyo Electric	255,000,000 VDN
	Osaka Electric	212,500,000 VDN*
	Sapporo Electric	262,500,000 VDN
#1172, 7/10, 2006, Bid: 7/31, Contract: 8/15 Full scale road construction in North-West Hai Phong	Company A	37,100,800,000 VDN
	Company B	37,213,000,000 VDN
	Company C	36,876,400,000 VDN*
#1182, 8/21, 2006, Bid: 9/5, Contract: 9/11 Road repairing in south-east Hai Phong	Komkom	490,000,000 VDN*
	Tamtam	532,000,000 VDN
	Pampam	644,000,000 VDN
#1215, 9/11, 2006, Bid: 9/30, Contract: 10/6 Highway construction project in South Hai Phong City (3)	Company A	53,245,890,000 VDN
	Company B	52,979,660,550 VDN
	Company C	52,819,922,880 VDN
	Company D	52,447,201,650 VDN*
#1227, 10/10, 2006, Bid: 10/31, Contract: 11/15 Full scale industry road construction in mid-east Hai phong City	Company A	38,379,529,864 VDN*
	Company B	38,729,140,966 VDN
	Company C	38,651,449,610 VDN
#1237, 10/20, 2006, Bid: 11/3, Contract: 11/10 Road repairing in north-westt Hai Phong	Komkom	779,000,000 VDN
	Tamtam	741,000,000 VDN*
	Pampam	836,000,000 VDN

\* 1.4 billion VDN = 860 USD =10 million JPY

Appendix D-3

2005	Estimated Price	A	B	C	D			
#1182	15,430,262,245	15,121,657,000	15,238,866,500	15,246,870,000				
		98.00%	98.76%	98.81%				
#1201	5,500,000			7,000,000		4,600,000		
				127.27%		83.64%		
#1235	36,512,429,645	36,022,000,700	36,246,759,000	36,157,699,000	35,964,743,200			
		98.66%	99.27%	99.03%	98.50%			
Total	51,086,400,200	15,121,657,000			35,964,743,200			
Share	100.00%	29.60%	0.00%	0.00%	70.40%			
2006	Estimated Price	A	B	C	D			
#1002	17,500,000,000	17,237,500,000	17,325,000,000	17,185,000,000	0			
		98.50%	99.00%	98.20%				
#1014	850,000,000			892,500,000		688,500,000	612,000,000	
				105.00%		81.00%	72.00%	
#1067	923,500,000			1,034,320,000		720,330,000	627,980,000	692,625,000
				112.00%		78.00%	68.00%	75.00%
#1085	18,624,380,000	18,438,136,200	18,289,141,160	18,475,384,960	18,531,258,100			
		99.00%	98.20%	99.20%	99.50%			
#1105	450,000,000			540,000,000		337,500,000	292,500,000	351,000,000
				120.00%		75.00%	65.00%	78.00%
#1113	600,000,000			630,000,000		480,000,000	408,000,000	
				105.00%		80.00%	68.00%	
#1125	50,778,808,875	49,204,665,800	49,763,232,698	49,509,338,653	49,255,444,609			
		96.90%	98.00%	97.50%	97.00%			
#1140	400,000,000					308,000,000	288,000,000	340,000,000
						77.00%	72.00%	85.00%
#1141	380,000,000					258,400,000	285,000,000	315,400,000
						68.00%	75.00%	83.00%
#1162	250,000,000			300,000,000		255,000,000	212,500,000	262,500,000
				120.00%		102.00%	85.00%	105.00%
#1172	37,400,000,000	37,100,800,000	37,213,000,000	36,876,400,000				
		99.20%	99.50%	98.60%				
#1182	700,000,000					490,000,000	532,000,000	644,000,000
						70.00%	76.00%	92.00%
#1215	53,245,890,000	52,713,431,100	52,979,660,550	52,819,922,880	52,447,201,650			
		99.00%	99.50%	99.20%	98.50%			
#1227	38,845,678,000	38,379,529,864	38,729,140,966	38,651,449,610				
		98.80%	99.70%	99.50%				
#1237	950,000,000					779,000,000	741,000,000	836,000,000
						82.00%	78.00%	88.00%
Total	212,381,938,474	87,584,195,664	18,289,141,160	54,061,400,000	52,447,201,650			
Share	100.00%	41.24%	8.61%	25.45%	24.69%			
Adjust Total	263,468,338,674	87,584,195,664	69,375,541,360	54,061,400,000	52,447,201,650			
Adjust Share	100.00%	33.24%	26.33%	20.52%	19.91%			