

**Technical Cooperation for
The Study on Capacity Building for Enforcement of
Competition Law and Implementation of Competition
Policy in Vietnam**

**Final Report
Summary**

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Mitsubishi UFJ Research & Consulting Co., Ltd.

Abbreviation

AMA	Antimonopoly Act
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
FDI	Foreign Direct Investment
GDT	General Department of Taxation
GSO	General Statistics Office
JCIF	Japan Center for International Finance
JFTC	Japan Fair Trade Commission
MPI	Ministry of Planning and Investment
SME	Small and Medium sized Enterprises
SOE	State Owned Enterprises
TA	Technical Assistance
VCAD	Vietnam Competition Administration Department
VCC	Vietnam Competition Council
VCCI	Vietnam Chamber of Commerce and Industry
WTO	World Trade Organization

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I. Introduction

I. Introduction

1. Background

(1) Importance of Competition Law and its Effective Implementation to the National Economy

The WTO Working Group on Trade Competition Policy in December 1998¹ reports that domestic economic policies including privatization, de-regulation and anti-monopoly policy have close relation with economic development through achieving higher efficiency in economic activities within the country as well as through enhanced export/import activities. The competitive market environment will bring replacement of enterprises with higher efficiency, which results in shift of industrial structure for optimal allocation of domestic resources. Under the competitive environment, enterprises are obliged to respond quickly to the market demand by providing higher quality goods at lower price for consumers and user companies. On the other hand, those enterprises with established position in the market are tempted to take anti-competitive action, e.g., price control by use of dominant market position and collusion. The role of competition policy is to control such anti-competition action, and the competition law is to provide the major legal framework for policy implementation.

Although, a competition law is an instrument to maintain a competitive market, a market can be under anti-competitive environment by other government policy intervention to the market, such as industrial, investment and trade policies including role of state owned enterprises. In this context, a competition policy requires to be coordinated with other economic policies in the direction for free market mechanism, privatization and de-regulation, in order to realize effective competitive market system.

Under effective competition policy, the consumers' welfare will be increased through managing unfair price control by market domination, leading to efficient economic system, which enables industry to gain international competitive edge through lower domestic cost of input and services. This is particularly important for most of ASEAN countries that are making effort in strengthening export industries.

ASEAN countries are experiencing industrial structure transformation in each of the

¹ WT/WGTCP/2

respective stage. In early stage of industrialization, labor-intensive industry, e.g. textile, has comparative advantage, and then shift to capital and technology intensive industry, e.g. mechanical industry, starts to gain competitiveness by accumulation of capital and human resources². In order to accommodate those dynamic shifts in industrial structure, the government needs to provide policy environment which enables quick response to the market demand and encouraging technical innovation. In this respect, a competition policy is an effective tool to encourage enterprises for technical improvement for higher value added products, a departure from dependency on low labor cost competition.

Vietnam economy is making remarkable economic growth of 7% in the past five years, while its industrial sector is leading by 10.6% growth in 2005 and its export by 26% in the first 6 months in 2006³. One of characteristics of Vietnam industrial sector is large presence of state owned enterprises (SOE), which shares 40% of industrial output. Since the country was under central planned economy until 1986, various sub-sectors of industries are still owned and operated by central and regional governments. Although the government is proceeding with privatization of SOE, there are SOE with dominant position in the market, which requires particular attention in implementing Competition Act.

(2) Competition Law Enactment in Asian Countries

The Asian countries started to enact and implement competition laws since late 1990's. After being hit by 1997 Asian financial crisis, several countries in Asia shifted their economic policy from government direct control to market mechanism, based on recommendations by IMF and the World Bank. However, those movements in enactment of competition laws in Asian countries are based on their needs in shift to market-oriented management of their economies due to expanded domestic market and economic activities as a result of success in the respective economic development. This is particularly evident for Malaysia, Singapore, Philippines, China, and Vietnam where the enactment was taken place after 2000. In Vietnam, "Competition Law" passed the National Assembly on December 3, 2004, and put into effect as of July 1, 2005.

(3) Enactment of Competition Law in Vietnam

² Shujiro Urata, "Economic Development and Competition Policy in East Asia"

³ The World Bank site and JCIF

Before the enactment of Vietnam's Competition Law in 2004, the government has been applying several legislatures in an effort to encourage fair trade practices, including the followings.

Commercial Law (1997) stipulates protection of consumers from unfair trade practice.

Decree on Price Control (2002) control cartel for monopolizing the market.

Decree No. 54 (Intellectual Property Right) regulates false labeling as an act of unfair trade.

The enactment of Competition Law enables to provide comprehensive framework for competitive market environment by partly replacing related decisions and adding new articles in order to respond to rapidly developing economy in Vietnam.

2. The Objective and Frameworks of the Study

2.1 The Objective of the Study

The objective of the Study is to support the Vietnam Competition Administration Department, Ministry of Trade (VCAD) to enhance the capacity of the VCAD for enforcing competition law and implementing competition policy.

The objective consists of two aspects. The first aspect is *“to provide assistance to support the VCAD in constructing a foundation for substantive implementation of the competition law by strengthening its capacity (such as in formulating related guidelines, decrees and/or administrative systems) through human resource development programs”*. To this end, the Study provides two approaches. The first approach is identification of the prior issues was focused through the General Review in the present situation on the authorities, enforcement of law, and the market structure. The second approach is, reflected on the result of the first approach, the technical assistance in delivering necessary and practical knowledge & know-how for implementation and enforcement of the competition law.

The second aspect is, recognizing the significance of promoting awareness for competition law and policy in general public, *“to advocate magnitude of competition and role of the authority to industries, educational institutes, consumers as well as governmental officials”*. For this aspect, the Study provided opportunities to organize seminars and develop Website to share the planning and operational know-how.

2.2 Technical Assistance

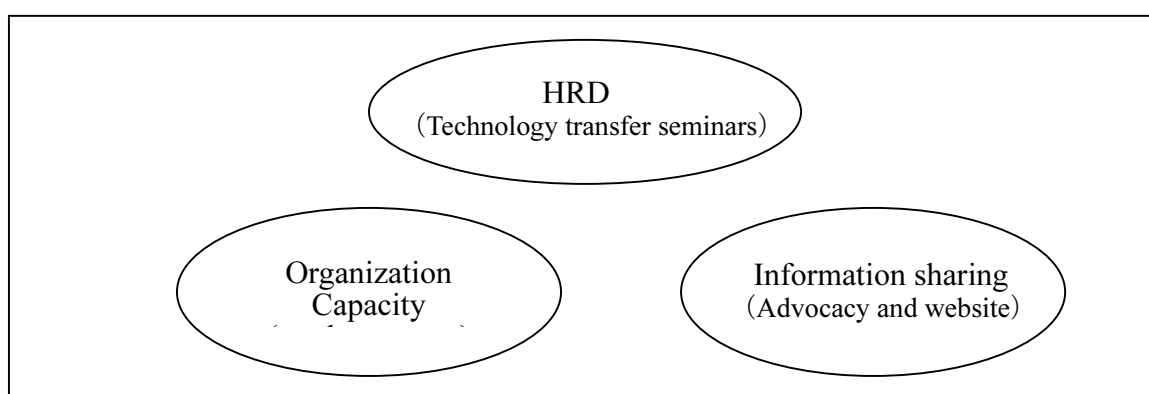
Since Competition Law is a new policy to be implemented in Vietnam, the VCAD is in need to learn from foreign countries’ experience including US, Europe and Japan. Based on this background, a request was made by Vietnamese government to Japanese government for technical assistance in this capacity building program. The technical assistance has been carried out through technical transfer seminars, advocacy seminars, market surveys, and other related activities, with due attention to the following points.

- Capacity Building Program

The capacity building program is intended to strengthen capability of the counterpart

organizations in the three elements: 1) human resource, 2) organization capacity, and 3) information sharing. While the staff training program is a key element, the organization is required to keep up with its institutional memory which sustains the knowledge shared by other staff. For this purpose, information sharing within the organization is essential; on the other hand information dissemination to business society, professional and general public is also important for the organization and legislature to be effective.

Figure 1 Elements for Capacity Building



Source: Mitsubishi UFJ Research & Consulting

- Introduction of Japanese experience

Japan Fair Trade Commission (JFTC) acts as the competition authority, a counterpart organization in Japan. This technical assistance is focusing introducing JFTC's experience in carrying out Japanese Anti-monopoly Law with cases, by inviting officials of JFTC as lecturers. In addition to JFTC officials, an expert was invited from Japanese academic circle for thorough explanation of the legal system.

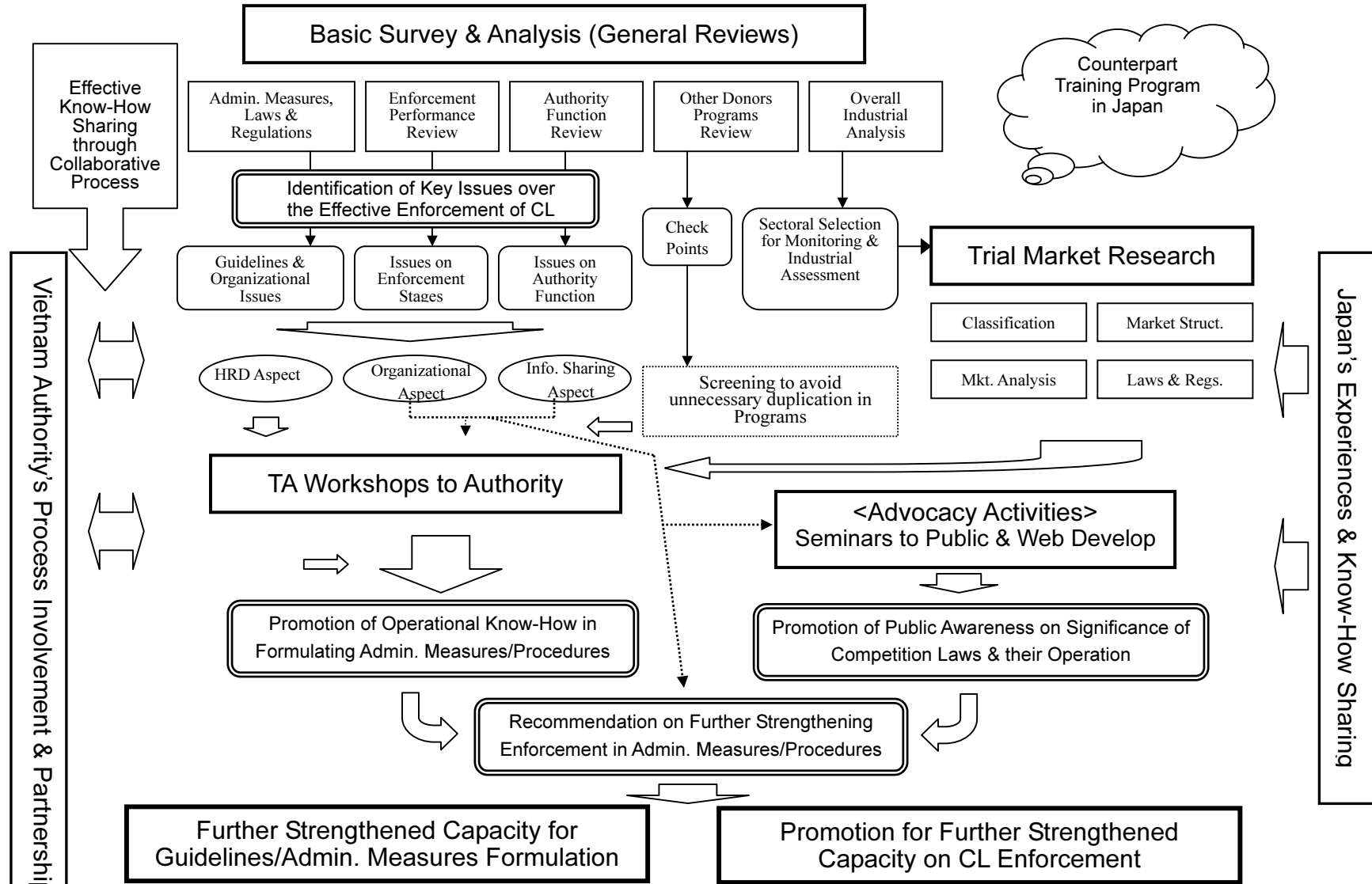
- Advocacy to Industry and Society

The beneficiaries of competition law are business sector and consumers, through realizing efficiency in the market. However, since competition laws are sometimes considered to be difficult to understand, advocacy activities are quite important to let society and industry to be aware of the fair rules in the market. The distribution of hand-out materials and development of website for detail information were incorporated in this program.

- Market Survey

Market structure of particular product is essential information needed to carry out competition regulation. However, in Vietnam, production and sales amount of particular products is not open to the public and it is not easy to measure the correct market share. Through this technical, pilot market survey was conducted for five kinds of product, considered to be important to focus.

Figure 2 Conceptual Flow of Technical Assistance Program in Vietnam



II. Result of Study and Technology Transfer Activities

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1. Basic Study

1.1 Enforcement of the Competition Law of Vietnam

(1) Outline of the Competition Law of Vietnam

The competition administration authority in Vietnam is composed of the VCAD (Vietnam Competition Administration Department) which is attached to the Ministry of Trade and the Competition Council who are nominated by the Prime Minister based on the recommendation of the trade minister. The VCAD has a function which is equivalent of the Secretariat of the Japanese Fair Trade Commission. The role and organizational structure of the implementation and enforcement agency mentioned above is defined in the provisions article 49 to 55 of the Competition Law.

As to the functions, tasks, powers and organizing structure of the Competition Council, Decree No. 05/2006/ND-CP of January 9, 2006 was published and as per to those of the VCAD, Decree No. 06/2006/ND-CP of January 9, 2006 was published.

According to those decrees, the head office of the VCAD is situated in Hanoi and representative offices will be established in Da Nang and in Ho Chi Minh City and the ministry of trade will decide the details of organizational structure.

At the start of this Capacity Building project, the Competition Council was not established, however on June 12, 2006, according to the proposal of the Minister of Trade, the Prime Minister signed Decision No 843/2006/QD-TTg on appointment of the Competition Council's members.

Following five decrees and one circular are in force as subordinates of the Competition Law in Vietnam.

- i) Decree No. 110/2005/ND-CP of August 24, 2005 on Management of Multi-Level Sale of Goods
- ii) Decree No. 116/2005/ND-CP of September 15, 2005, Detailing the Implementation of a Number of Articles of the Competition Law
- iii) Decree No. 120/2005/ND-CP of September 30, 2005, Detailing the

- Procedure to deal with the Violation of the Competition Law
- iv) Decree No. 05/2006/ND-CP of January 9, 2006, Establishing and determining functions, tasks, powers and organizing structure of the Competition Council
 - v) Decree No. 06/2006/ND-CP of January 9, 2006, Determining functions, tasks, powers and organizing structure of the Competition Administration Department
 - vi) Circular No. 19 of November 8, 2005, Quantity Ruling of Multi-Level Sales of Goods (as subordinate to i) above)

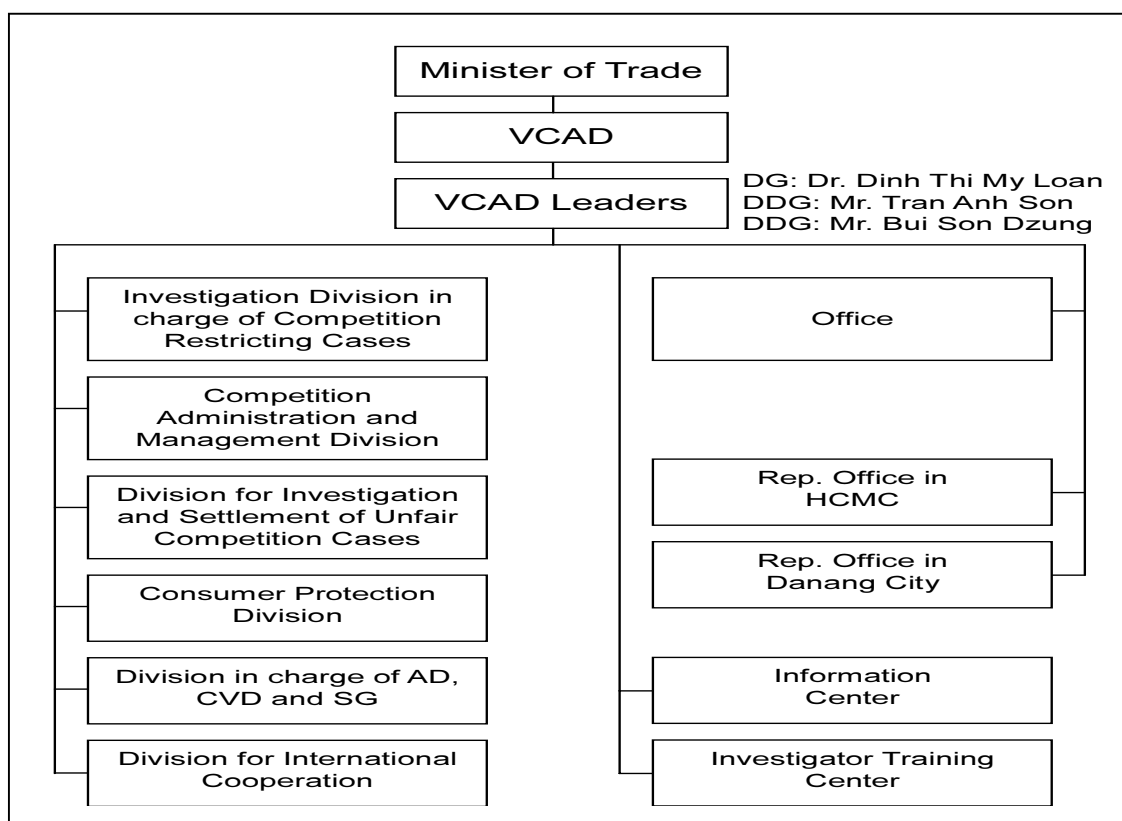
Furthermore, regulations subordinating the Competition Law are going to be introduced, including a guideline on distribution currently under drafting, to improve further implementation of the Competition Law. The all decrees above are available in English.

(2) Development of the Organization of the VCAD

The organization of the VCAD was restructured based on Decree No. 06/2006/ND-CP of January 9, 2006, Determining functions, tasks, powers and organizing structure of the Competition Administration Department. Before the restructuring, each official of the VCAD has not been assigned for a single division but has parallel tasks such as trade remedies and competition law. The recent restructuring has solved the double duty and assign each official to single division. In addition, the investigators were assigned by the Minister of Commerce in accordance with the Article 51 of the Competition Law. In accordance with the Article 52, a few officials, who have working experience of less than five years, have been assigned to the Investigation Division, but not assigned as the investigator. The organizational structure and assignment of the major officials as of July 1st, 2006, are shown in the Figure 3.

The VCAD has been also undertaking recruitment of the officials. In January 2006, five officials are newly assigned that makes total prescribed number of the officials 25. In May 2006, the VCAD were under recruitment activity to gain 10 more employment. A VCAD senior official mentioned that the VCAD seeks the scale up to the 40 officials in total before end of 2006.

Figure 3 Organizational Chart and Officials of the VCAD



Source: TA Team based on the VCAD information

(3) Characteristic Rules of Vietnamese Competition Law

(i) Competition Restriction Agreement

As per to competition restriction agreement, in the Competition Law, among the agreements prescribed in clause 1 to 8 of article 8, agreements prescribed in clause 6 to 8 of article 8 are prohibited without any exception, and clause 1,2,3,4 and 5 prohibits the agreements of which the parties have combined market share of 30% or more on the relevant market (article 9)⁴. Article 10 stipulates the cases of exemption such as rationalization of business mode, enhancement of the competitiveness of small- and medium-sized enterprises, and the enhancement of the competitiveness of Vietnamese enterprises on the international market.

According to the Vietnamese Competition Law, applying the exemption clauses needs a decision in writing of the Trade Minister (Clause 1, Article 25).

⁴ Though these types require certain proportion of market share, this is not the same with the Japanese Antimonopoly Act which requires substantial competition restriction conduct; however in the United States and the EU, the market dominant power that dominates the price is not necessary.

On the other hand, in the EU Competition Law, Clause 1, Article 81 of the EC Treaty prohibiting competition restriction agreements and concerted practices, Clause 3 of Article 81 prescribes exemption in the cases where any agreement, decision or concerted practice contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit under certain conditions.

(ii) Dominant market position and monopoly position (Article 13, article 14)

These articles are the same meaning of article 82 of EU Competition Law as a rule of unilateral exclusionary conduct by enterprise. In Japan, private monopolization (first part of Article 3 of AMA) belongs to this type, however even if it is a conduct by an enterprise which does not have market dominant power and this conduct is not a subject of prohibition of private monopolization, the prohibition of unfair business practice could apply.

While Article 11 and 12 of the Vietnamese Competition Law prescribe dominant position on the market and monopoly position on the market, Japanese Antimonopoly Act have Article 14 “ Abuse of dominant bargaining position” (Fair Trade Commission Notification No. 15 of 1982), hereinafter referred to as the general designation); however since this article prescribes relative superiority in each transaction between parties, which means a protection of the party with weaker bargaining power, it is a different regulation from dominant position and monopoly position on the market⁵.

(iii) Regulation on Merger

Economic Concentration and Exemption

Article 18 of Competition Law³ prohibits in principle economic concentration which accounts for over 50 % on the relevant market while it stipulates as exceptions the cases specified in Article 19 (clause 1: the cases where it includes an enterprises in danger of dissolution or bankruptcy; clause 2 :the case where the economic concentration has an effect of expanding export or contributing to socio-economic development, technical and technological advance) or the case where enterprises are still of small or medium size as prescribed by law after implementing economic concentration. Whether the exemption of Article 19 can apply or not, Clause 1 needs a decision by the Trade Minister and Clause 2 a decision by the Prime Minister (Article 25).

⁵ Masahiro Murakami, *The Japanese Antimonopoly Act* (Syojihomu, 2003), p. 49, p.221.

As per to the cases including a bankrupt enterprise, Article 36 Decree No. 116.2005/ND-CP prescribes the contents of bankrupt enterprise.

On the other hand, the application of exemption as a contribution to socio-economic development etc., (Clause 2, Article 19) can include political discretion besides competition. In this regards, for example, in the EC Regulation No.139/2004, Article 2 concerning Appraisal of concentration stipulates that the Commission shall take into account the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition.

(iv) Unfair Competition Acts (Article39 -48)

In the Vietnamese Competition Law, unfair competition acts include unfair business practices in the Japanese Antimonopoly Act and the conducts regulated by the Act against Unfair Competition, therefore the analysis of Vietnamese Law based on Japanese Cases needs clarifying the concepts of both laws..

1.2 Human Resource Development for Competition Administration Department

Since the VCAD is a new organization with its organization decree stipulated recently in January 2006, it has not yet started its own human resource development activities. According to the organization decree, an Investigator Training Center is to be set up, while it has not established as of March 2006. However, several foreign aid organizations (donors) are providing knowledge dissemination and capacity building assistance in the area of competition laws and regulations. Almost all staffs of the VCAD have experience in participating in the donor-sponsored program.

For JICA sponsored group training programs in the area of Anti Monopoly Act, four VCAD staffs have already sent to Japan. The recent participation was in August 2005, for one month program including visit to JFTC and lecture type training course in Osaka, focusing Japanese experience in the competition laws and policy. The VCAD is expected to use foreign donors' assistance for their human resource development in coming years.

In addition to this, two of the VCAD staff participated to Counter Part Training course in the JFTC for this Capacity Building Program in October 2006. They took training course in the JFTC and visited Sapporo Office of the JFTC as a part of training.

1.3 Current Status of Vietnamese Domestic Industry

The development in Vietnam in recent years has been remarkable progress. Over the 1990s, the economy doubled and the incidence of poverty declined by half. Before the introduction of ‘*Doi Moi*’ (Renovation) policy, there were only two major corporate types in Vietnam namely the SOE and co-operatives. Vietnam’s remarkable growth in recent years has been accompanied by the flow of foreign direct investment (FDI) and a significant increase in the size of informal economy⁶.

Private sector growth has been key to maintaining the dynamism of the Vietnamese economy and allowing the country to achieve its development objectives. However, Vietnam’s domestic private sector remains small. As of 2004, it still accounted for 20 percent of manufacturing output. On the other hand foreign investment is increasing, with 43% share of industrial output in Vietnam in 2004. In comparison, share of state owned enterprises in industrial output in on decreasing trend, marking 27% in 2004⁷ .

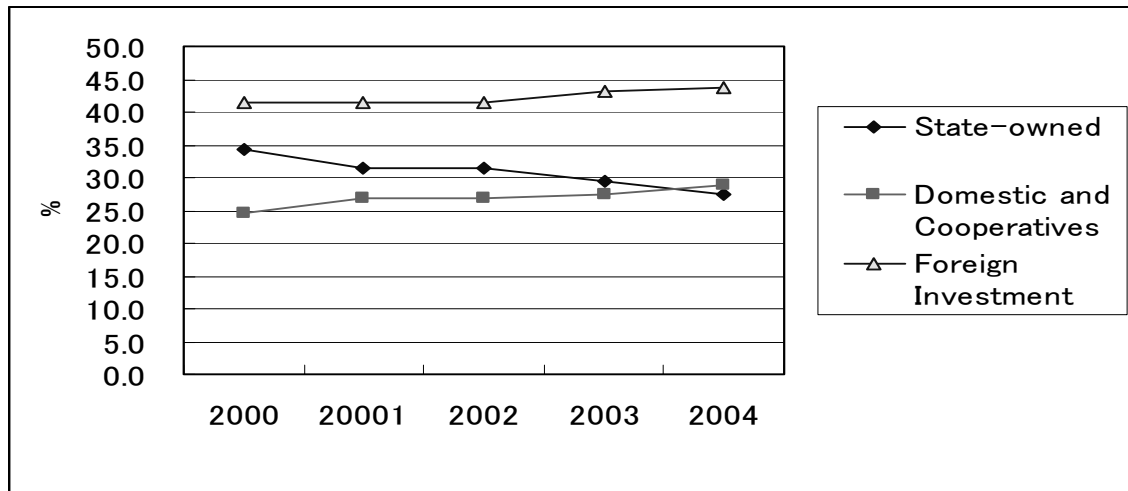
In the early 1990s, the Vietnamese government launched a SOE reform program and reduced the number of SOEs from 12,000 to about half in five years, and the total number of SOE owned by central and local government are 4,596, as of 2004. Despite of this fact, the position of SOEs in the business area has been still in an advantageous position in Vietnam. In particular, State General Corporations⁸ hold dominant position in the “strategic” industries, such as cement, petroleum, steel, sugar, fertilizer, telecommunication, airline, finance service, foreign trade and wholesale sectors, as indicated on the Table 2.

⁶ It is often estimated that half of total GDP goes unrecorded.

⁷ The SOE sector still employs 2.25million, absorbing some part of surplus labor.

⁸ State General Corporations (SGC) is established based on Prime Minister Decision No. 90 and No. 91 of 1994. SGC owns several SOEs in particular business field.

Figure 4 Share of Industrial Output by Ownership



Source: Statistical Yearbook of Vietnam 2005, General Statistics Office

Despite of the facts that SOE's dominant position in the strategic industries, foreign investment enterprises are rapidly gaining shares in various sub-sectors and widening area of economic activities, accumulating the industrial capital formation in Vietnam. The number of foreign direct investment (FDI) approval is 339 projects with the total amount of US\$260 million, in the first six months in 2006, indicating 21% increase from the previous year. The top four economies (Hong Kong, South Korea, USA and Japan) share 80% of the total investment approved⁹. The FDI projects include semi conductor manufacturing by Hong Kong, urban development by South Korea, resort development by USA and electronics by Japan. Japanese business sectors are considering Vietnam as an attractive investment destination to hedge risk in investing in China. On the occasion of APEC Meeting in November 2006, numbers of Japanese enterprise representatives visited Hanoi as Keidanren mission.

In addition, Vietnam's WTO accession by end of 2006 or 2007 will bring further liberalization of foreign trade and investment environment, which enhance a drive to induce foreign investment. These circumstances suggest Vietnam will enter new era of competition in the market economy.

⁹ JCIF report

2. Pilot Market Research

2.1 Framework of Market Research

Research Objectives

The research aims of the pilot market research under present TA were: to provide with information that serves as basic reference material for the competition authority in the selected industries; and to help building the VCAD capacity for designing and implementing market research on their own.

It is important to note that this pilot market research is not intended to be a study as part of investigation of the competition authority, but to provide competition authority with basic information of industries prior to any investigative activities.

Research Targets

Target industries have been set to include 1) Beer, 2) Soft drink, 3) Milk and Dairy products, 4) Pharmaceutical, and 5) Insurance. The selection appeared appropriate as these are relatively oligopolistic industries in Vietnam, oligopolistic in international market where multinational corporations are moving into emerging markets, and selected among the industries that needed to be reviewed in terms of the competition law.

Research Items

Structuring and sophistication of content of research per se was an important process of capacity building. To clarify how the original scope of work had been developed and to narrow down the scope of research to more realistic but still useful one, consultations have been made to TA Team members, former members in charge of market research in Vietnam and Thailand, respectively. Additional literature survey was conducted as well. The List of Research Items was developed as a result of these activities.

The List of Research Items includes standard items of competition-related market research as well as reflecting recent focus. The “standard items” are market structure, market conduct¹⁰ and market performance, denominated as S-C-P analysis. Items in prior scope of work have been sorted out and edited according to the S-C-P structure. Of particular importance among the S-C-P is market conduct, which is not included in

¹⁰ Often called “market behavior” as in the case of the List of Research Items.

regular market research outside of competition law. It looks at price behavior such as movement of price and profit margin, and non-price behavior such as sale promotion activities, diversification and influence of foreign capital. Product feature replaced introductory overview section, following the example of a market research report of JFTC¹¹. “Recent focus” corresponds to “Institutional factors affecting competition”.

Research Methods

Research methods were selected as follows:

- Secondary data: public statistics, economic and business news from websites, industry reports, financial indicators of major firms (as far as available), and relevant laws and regulations.
- Primary data: interview with key persons with insider knowledge of industry (e.g., industry experts, industry associations, competent authorities), and interview with firms in selected industries.

Research Outputs

The survey firm collected data building on the results of the scoping study as baseline. It produced five industry reports of beer, soft drink, milk and dairy products, pharmaceutical, and insurance as reference material for the VCAD.

2.2 Findings from the Pilot Market Research

Highlights of Findings from the Five Industries Relevant to Competition Administration

Highlights of findings from the five industries studied will be presented according to headings of the above “research items” (i.e., product features, S-C-P analysis, and regulatory factors).

- 1) **Product Features:** Each of the five industries has distinct features of products that tend to lead monopolization. There are features common to some industries such as
 - “Bulky and costly in terms of transportation make factory location in proximity to consumer market. This may lead to division of market by geographic boundary” (Beer; Soft Drink; Milk & Dairy Products)

¹¹ “Kodo kasen sangyo ni okeru kyoso no jittai” (Competition situation in highly oligopolistic industries), JFTC, 2002.

- “Large firms can evoke demand for their products by power marketing. This raises size of required capital as well as entry barrier, tending to lead to oligopolistic market.” (Beer; Soft Drink)

Examples of industry-specific features include:

- “prescription drugs may be more susceptible to unfair competition practice” (Pharmaceutical)
- “Insurance business depends on the law of large numbers where the larger the group, the more precise forecast of occurrence of events insured. This requires large size of corporation, raising entry barrier and leading to oligopolistic market” (Insurance)

- 2) **Market Structure:** General Statistics Office (GSO) provided statistics for calculating CR3¹², but the calculated figures indicate some difference when compared to figures suggested by news articles and industry experts.

Beer: The largest SOEs were offspring of former general corporation Vinabeco after divided into two geographic areas. They are becoming holding companies of shares of other SOEs, the fact prompting to scrutinize calculation of market share.

Three large foreign firms occupy 21 percent of the market (MOI Report 2006), making CR5 including both domestic and foreign firms around 60 percent, a highly oligopolistic market.

Soft Drink: According to news in 2006, Coca Cola 50 percent, Pepsi Cola 38 percent and Tribeco 6 percent. Non-carbonated soft drink and purified water segments are oligopolistic market of domestic firms, reportedly. No concrete figure is available. At distribution level, large producers tend to have exclusive dealing contract with first tier distributors, but this does not restrict competition among producers and among distributors.

Milk and Dairy Products: Industry information and news articles indicate that top firm Vinamilk occupies 30-40 percent or 70-75 percent of the market. Likewise, the second largest Dutch Lady’s share is 30-35 percent, reportedly. Also, distinction should be made between numbers calculated with domestic production

¹² Concentration Ratio: Total market share of top 3 enterprises in percentage. Likewise, CR5 refers to the total share of top 5 enterprises.

and those calculated with both domestic production and imported products since more than 80 percent of milk demand is satisfied with imported milk (mostly milk powder). Large domestic firms have huge distribution network. Small and medium producers without such distribution network, on the other hand, presumably distribute their products within limited geographic boundaries.

Pharmaceutical: Level of concentration appears low. Problem widely discussed is oligopoly in distribution. Five foreign firms take 50 percent of distribution, reportedly. On the other hand, three big SOEs dominate distribution of imported drugs from 40 licensed importers as the former is responsible for stockpiling medicine for emergency. Market share of the three SOEs is unknown.

Insurance: CR3 of life insurance is extraordinary 90 percent. In non-life insurance, CR3 is 75 percent. Many entered into market since 2004, mostly domestic private firms, raising number of firms to 57 as of 2005. 30 representative offices of foreign firms are waiting for licenses. In life insurance sector, policies for drivers have grown to surpass basic policies in terms of contract number, but have decreased since peak year of 2004 by number of contract and premium income.

Branch network is critical for insurance companies for marketing and claim management. In non-life insurance sector, large SOEs/equitized firms with branch network in most of provinces are in advantage against foreign firms without branch network. Petroleum business-based insurance firms utilize gas station network as agents. Some small or new firms use postal network or branch network of parent bank.

Table 2 Concentration Ratio by Sector and Source of Information

	Beer	Soft drink	Milk and dairy products	Pharmaceutica l	Insurance
# of firms	329	169	26	230	32
CR3 (GSO data)	40-45%	18-19%	12-25%	5%	76%
Other sources	38-50% (CR2)		70-75% (CR2)		
Subsector or other level		88-90% (CR2 in carbonated drink)		50% (CR5 in distribution)	90% (life) 75% (non-life)

Source: Elaborated by the pilot market research team of VCCI

3) **Market Behavior:**

Beer: In promotion activities, there was a well-known case of Cay Dua Beer Shop at HCMC People's Court. More M&A and affiliation between foreign and domestic firms took place in recent years in Vietnam while M&A in emerging market by large firms from developed economies accelerated as demand in home markets stagnated. Most notable case in Vietnam was the sale of Australian Foster brand to Singapore-based Asia Pacific Brewery (APB). The expansion of APB's market share pushes up CR3 with two SOEs to 50 plus percent. Large SOEs have vertically integrated business including beer packaging and distribution firms, enhancing market power. They also receive original equipment manufacturing (OEM) production from other firms.

Soft Drink: In carbonated drink, there was a widely reported case of predatory pricing by large foreign firms in late 1990s. More recently, retail price of 1.25/1.5 liter bottle at supermarket has dropped from 9,000-12,000 VND in 2004 to 6,000-8,500 VND in 2006. In non-carbonated drink sector, many small firms focused on non-carbonated sector to avoid competition against giants in carbonated drink segment. Such a situation requires monitoring of competition by small segment, but no such data are available.

Price war under the rising ingredient price must have jeopardized financial standing of large firms, but no relevant data were available. Sales promotion activity has an issue; reportedly, 80 percent of retail shops became exclusive agent of particular brand in exchange of monetary support. Affiliation with foreign firms often goes beyond soft drink sector to include beer, wine and dairy products. Combined market power may become an issue.

Milk and Dairy Products: Milk price of market leader has been stable over the decade (in terms of VND). Frequent problems involved display disguising real fresh milk, and alteration of ingredients by cheap substitute. Leading firm Vinamilk has diversified its business to become general food manufacturer. Combined market power should be watched out.

Pharmaceutical: Price of drugs jumped by 21 percent in 2003 while consumer price

index (CPI) increased just by three percent. Promotion activities¹³ of oligopolistic foreign distributors were among suspected reasons. Another price hike of drugs was observed in spring 2005. Administration stopped renewal of license for a large foreign distributor, and asked another foreign firm for reasons of high drug price compared to neighboring countries. Drug Administration of Vietnam (DAV) is strengthening inspection on drug promotion to control cases where benefits are overemphasized or side effects are inadequately informed, some of which violated regulations on advertisement and drug registration. There are diversification movements among pharmaceutical corporations along with increase in capital. Foreign capital has been penetrating into Vietnamese market as 100% foreign investment or joint venture.

Insurance: Commission rates are controlled, but rules are often ignored amongst competition. Sometimes, education authority, schools and police functioned as agents of large state-owned insurance companies before pupils and drivers, respectively. Foreign non-life insurance companies are not performing well due to regulatory factors.

- 4) **Market Performance**: Firm-level data are not readily available in comparable format with notable exception of insurance industry. In duopolized life insurance sector, it is notable that Bao Viet Life enjoys seven times higher level of net profit than Prudential Life despite that they are almost equal in market share. Similar analysis should be done for top four firms in non-life insurance.
- 5) **Institutional Factors**: Regulations create a high entry barrier in pharmaceutical and insurance industries; former is more problematic than the latter. Quality standards pose challenge in soft drink, milk and dairy products, and pharmaceutical industries with different degrees. Regulations on price and advertisement in pharmaceutical face implementation challenges. Government planning appears creating uneven playing field in pharmaceutical and insurance industries. General corporations as holding company of shares of other SOEs is an issue to monitor in beer and pharmaceutical industries.

¹³ For example, gift to doctors and high salary/bonus/commission for sales persons.

2.3 Evaluation of Methodology and Research Strategy

Following is the evaluation of research methods and data collection strategy on the basis of survey experience. Overall, scrutinizes are required when utilizing information from each source presented below.

1) Secondary Data

Competition authority should collect and monitor following types of secondary data on a steady basis. Outsourcing of survey such as the case of this pilot market research may be useful when starting to collect information from scratch.

i) Public statistics

Various biases have been observed during the analysis of figures in each industry, requiring cross-checking with other sources of information.

ii) Economic and business news articles

Survey revealed that considerable amount of relevant information will become available through sedulous and complete mining of news articles.

iii) Industry reports

Industry reports could provide precious information. Unfortunately, there are not many such reports available.

iv) Financial data of major firms

Insurance was a rare case where authority had a firm grip of firm-level data. Competition authority should make every effort to get hold of financial information of listed firms and those preparing for listing.

v) Relevant laws and regulations

Collecting relevant laws and regulations is labor intensive, but possible. Challenge is to do crosschecking of regulatory issues identified from news and interviews.

2) Primary Data

Experience of pilot market research was in favor of secondary data; substantial information can be collected from secondary data sources. Usability of primary data is limited as they cannot compensate deficiency in secondary data (e.g., lack of public statistics or firm-level financial data).

3. Advocacy Activities

In the advocacy activities component, there are three major tasks to be approached in order to assist in the counterpart's voluntary advocacy activities and further capacity building for its effective operation. The three major tasks are, i) Development of Advocacy Leaflet, ii) Development of Website for the VCAD (Vietnam Competition Administration Department), and iii) Organizing the Advocacy Seminars for three times.

3.1 Development of Advocacy Leaflet

Designing of Leaflet Concept

1) Introduction of Advocacy Leaflets by JFTC

At JFTC, there are several leaflets explaining related laws and function of JFTC. Among them, there are two kinds of leaflets with comprehensive coverage concerning the competition law, policy, and authorities, "Overview of Anti Monopoly Act", and "Our Living and Market Economy – Role of JFTC". The former material is designed for general public to understand structure of Japanese competition law (AMA) and policy, and the latter is designed for junior high students to overview the competition policy and law in the market economy explaining very basics of economy and competition. Although the prior target in Vietnam has been examined and discussed thoroughly at the initial stage, these two materials were referred as a good starting point to design for a Vietnamese original leaflet.

2) Current Situation of Existing Advocacy Materials with the VCAD, and Designing Concept for the VCAD Advocacy Leaflet

At present with the VCAD, it has been recognized that there is quite limited variety of advocacy materials. The identified materials for the advocacy purpose are following two.

- i) The Competition Law of Vietnam (Luật Canh Tranh - Viet-Anh-Phap -): A booklet of legal text of the Competition Law of Vietnam available in English, French and Vietnamese.
- ii) Q&A on Competition Law of Việt Nam: Introductory Q&A compilation concerning Competition Law of Vietnam available in Vietnamese.

Taking full consideration on issues described in the above, it has been reached the initial direction of concept that the priority should be put on the overall understanding of the Law, and introduction of major relationship between the provisions of the Law and the actual conducts of business. To this end, it has also identified that the targeted parties for this Leaflet should be initially counted for the Small and Medium sized Enterprises (SME), whose sectors are most active in the market and has priority to have full understanding of provisions of the Law. Besides the overall understanding of the Law, it was also stressed that the Leaflet has to include those aspects such as how to make claims and/or complaints against unfair trade practices, and how to conduct business in the market pursuant to the Law.

3) Structure of the Advocacy Leaflet

Through the discussion with the counterpart, the structure of the Leaflet had been shaped up and drafting of the text was preceded accordingly. At initial stage, TA Team proposed the drafting work of the leaflet is to be shared by TA Team and the VCAD officials in charge, by section by section, for the purpose of “Capacity Building”. However, due to difficulty faced by the VCAD side and for efficiency reason, it was agreed that TA Team to take initial lead in the drafting text with cooperation of the VCAD counterpart officials.

3.2 Website Development

At present in the existing Website of Ministry of Commerce, there is not any specific site category designed for the issue of competition law and policy. Related issues are touched in the sub-category of explanation of organization, in the articles of News, and in the legal search. However, even in the legal search, there is quite a small hit concerning competition regulations. Its function and/or data is very limited that even some Decrees which have already put on the Gazette can not be retrieved. As for the VCAD, the authority of competition law and policy, it is expected to create a new home page highlighting competition issues in pursuant to responding national and international related parties’ interest as well as promoting advocacy activities.

In this Study Project, the development process was based on the following preliminary draft of structure images and conducted on the step-by-step buildup approach. The task has also invited the key section for system in the Ministry (e-commerce Department) for the collaborative way. The actual development was sub-contracted to

the local software house, Time Universal, which was selected through open bidding. It has been also very important task to assist the VCAD in sharing know-how in terms of selection methodology and process management on sub-contractor. In general, the website development is often relied on sub-contracted parties totally, even for very vital steps of category structure development. However, in this Project as for capacity building objectives, essential steps of development were basically kept and dealt within the VCAD. In order to assist this task, the attached “Worksheet” was introduced and shared its advantages. This process will be quite beneficial for the VCAD to keep its own initiatives and sense of ownership on the Website and to facilitate strengthening its institutional orientation for further maintenance task. Thus, the Project has taken careful attention and put effort and time in this process.

3.3 Advocacy Seminar

Designing Seminar Program

According to the guidance of the Study, three regional Seminars are to be held in the Project. And the first Advocacy Seminar should be conducted under major initiative by the TA Team so that planning and designing as well as operational know-how can be well transferred to the counterpart. Then, from the second Seminar, the counterpart would be to take major initiative to conduct all operation. However, after some opportunities of organizing seminars and workshops by the VCAD themselves, through assistance programs by other donors and/or some voluntary tasks, the VCAD is considered already experienced and capable to demonstrate its initiative in planning, designing and operating not to wait for the second Seminar.

Along over the extended duration of this Project, needless to say, the initial program design at the beginning was subject for review as to the situation changed, such as accumulation of the VCAD’s experiences and know-how in conducting advocacy activities as it has operated voluntary seminar activities in parallel as well as the awareness of the general-public/business-communities developed. It corresponding to these changes, the program of Seminar in this Project has also evolved from general aspects to specific. For example, the significance of competition in the market economy was elaborated to introduce the importance of law provisions in the first Seminar. But in the second Seminar, the law provisions were more specifically explained directly and specifically referring to the each section of the Leaflet. Then, the third Seminar has introduced some of the detailed conducts to be covered by law

provisions.

3.3.1 Overview of the 1st Advocacy Seminar

(1) Program

Time & Date: 9:00 am - 5:00 pm, Wednesday, March 8, 2006

Venue : Than Long Room, Melia Hotel Hanoi

Session 1: “Introduction of Vietnam Competition Law and Implementing Guidelines”

Session 2: “The Competition in the Market Economy”

Session 3: “Preparation Steps for Implementing Competition Law”

Session 4: “Experiences in Japan - Competition Law and Policy”

(2) The Points of Q&A (Major Interests shown from the Floor)

- There is concern about reliability on data of notification/reporting to the Authority from the concerned parties due to the lack of information
- Relevance between fair price setting and price fixing based on the dominant position (i.e. sales below cost), price setting range for public services, and irregular price setting based on the government/public favorable condition
- Significance and future prospect of regional office(s) of the Competition Authority • Direction of further detailed criteria where present law provisions are not sufficiently covered (in relation to the guidelines and/or other rules)

3.3.2 Overview of the 2nd Advocacy Seminar

(1) Program

Time & Date: 09:00 - 17:00, June 13, 2006

Venue: Rex Hotel (Ho Chi Minh City)

Session 1: “Introduction of Vietnam Competition Law and Guidelines”

Session 2: “Competition in the Market Economy”

Session 3: “Preparation for implementing Vietnam Competition Law over the past time”

Session 4: “Competition Law & Enforcement of Japan”

(2) Points of Q&A (Major Interests shown from the Floor)

- the definition of the market, how to define the market, the scope of “related

- market”, etc.
- the definition and criteria of SME, the scope of exemption, the business strategy of SME after accession of WTO, etc.
- issues related to the excessive inputs of cost on advertisement in terms of legitimate scope with the Competition Law, etc.
- the concept of legal limitation for sales methodology/strategy, etc.
- procedure to claim (to the VCAD or court?), duration of investigation, cost, etc.
- neutrality/independency of the authority

3.3.3 Overview of the 3rd Advocacy Seminar

(1) Program

Time & Date: 08:40 - 17:00, September 18, 2006

Venue: Saigon Tourane Hotel (Da Nang City)

Session 1: “Introduction of Vietnam Competition Law and Guidelines (Part 1) Over-all & Chapter 2”

Session 2: “Introduction of Vietnam Competition Law and Guidelines (Part 2) Chapter 3”

Session 3: “What Conducts will be subject of Provisions? (Reflecting on Japanese Cases)”

Session 4: “How the Conducts were assessed? (Highlighting points in Japanese Cases)”

Session 5: “What Companies Want from Competition Agencies”

Session 6: “What Competition Agencies Want from the Business Community?”

(2) Points of Q&A (Major Interests shown from the Floor)

- some concerns about competition restrictive acts where public preferential treatment can be found, such as agricultural sector, interest rate in financial sector, and transportation sector
- specific provisions on the activities of trade associations
- some concerns about excessive advertisement and misleading labeling
- significance of competition between domestic and imported products, the large-scaled and small & medium sized enterprises
- roles and functions of central and regional competition authorities
- details on hearing procedure

3.3.4 Evaluation of the Advocacy Seminars

Result of Questionnaire Survey

The questionnaire survey was conducted to get feedbacks from participants after each Seminar. The following chart is indicating the results of the surveys. The framework of the questions are: Q-1 asked the range and affiliation of participants, Q-2 asked the initial knowledge level, Q-3 asked usefulness of the Seminar, Q-4 asked improvement of knowledge after the Seminar. The Q-5 is designed to evaluate each slot of presentation.

In comparison between the 1st and the 2nd Seminar, the questionnaire evaluation after the second Seminar showed 84% of the participants acknowledged the Seminar was “very useful” which improved by more than 20 points from the previous Seminar resulted with 62.9%. While the response to the question “if the clearer idea is constructed after the Seminar” scored over 90% for positive answer for both Seminars, the percentage for “very much so” improved about 6 points, from 26.5% to 32%. With regard to evaluation by the session slot, the first session, “Introduction of Competition Law”, of the second Seminar gained 38.3%, while the previous seminar has got almost general response, even score for the four sessions. It shows the second Seminar has met more to the advocacy objectives in terms of generate and promote general public’s awareness on the Competition Law.

On the contrary to the improvement on figures in the usefulness of the Seminar, the change from the second and the third Seminar scored down from “very useful (84%)” to 58%. The reception of the contents and presentation or even discussion at the time of Seminar did not show big difference, thus, this change may be due to the different range of participation between HCMC and Da Nang (i.e. Large-scaled Enterprises oriented in HCMC, and Small-Medium sized Enterprises in Da Nang.) At this respect, in future designing work on programs of the Seminars, the characteristics of regional business community should be carefully considered and the program should be met to their specific needs. In addition to contents of sessions themselves, the occasions of the second and the third Seminars provided good opportunities to strengthen the relationship between the head of Authority and future regional office extensions.

4. Technical Assistance (TA) Seminar

4.1 Purpose and Designing

Four TA Seminars under this Program were planned and held; once in the first fiscal year, and three times in the second fiscal year.

For the designing the Program as a whole and the Program of each seminar, the TA Team has continuously consult with the VCAD officials and has taken the advice and experience of the JFTC and an academic expert, and has been particularly paying attention to the needs of the VCAD side. The VCAD's needs have been progressed through the period of the program because of; i) the development of the capacity of the VCAD officials and deepening of the expectation to and interest in the Seminars, ii) the organizational/ structural and human resource development of the VCAD, and iii) development of the statutes (decrees/ decisions).

Following the success of the first seminar, which has heightened the expectation from the VCAD side, a consultation session to discuss the designing of the remaining seminars was held between the VCAD and the TA Team before the second seminar. The VCAD officials attended shared their concrete expectation and needs such as i) the three seminars in the future should cover each regulation area to eventually cover all major areas in the Competition Law, ii) 1 or 2 cases actually happened in Japan should be taken up as a material of the seminar to be introduced from the clue through investigation process to the decision with detailed practice, and iii) many questions and answers session should be included in the program. Based upon the needs, the TA Team was able to plan the designing of the remaining seminars taken the advice from the JFTC and an academic expert.

The VCAD officials have paid enormous endeavor by themselves and with the cooperation from JICA and other donors, and progressively developed their knowledge and capacity. At the same time, the organizational restructuring enabled them to concentrate to the responsible tasks. Thus, their central interest has been developed from knowing the experience of Japan, to application of the Vietnamese Competition Law, to details of the investigation skills, etc. This development was also taken into account when the detail of each seminar would be decided.

The framework and major purpose of each of the four seminars are as follows:

Table 3 Outline of the TA Seminar

First TA Seminar (March 1-3, 2006)	
Participants	Officials from the VCAD and other related ministries/ agencies (70 for Day 1, 35 for Day 2-3)
Lecturers	Prof. Shingo SERYO, Department of Law, Doshisha University Mr. Hideyuki SHIMOZU, Economic Research Office, Economic Affairs Bureau, JFTC Mr. Kazuhiro MARUYAMA, Economic Research Office, Economic Affairs Bureau, JFTC
Themes	Competition Law of Vietnam and Japanese Antimonopoly Act and Theme : Market Survey Method and Practice concerning Monopolistic Situation
Objectives	As for the introductory seminar, overview of the Japanese Antimonopoly Act is provided. Also, regulation of the Law and Guideline on monopoly/oligopoly, and market survey method are shared.

Second TA Seminar (July 19-22, 2006)	
Participants	Officials from the VCAD and other related ministries/ agencies (40 for Day 1, 26 for Day 2-4)
Lecturers	Mr. Ken KODA Senior Investigator, Forth Investigation Division, Investigation Bureau, JFTC Mr. Osamu IHORI Investigator, Fifth Investigation Division Investigation Bureau , JFTC Professor Shingo SERYO Professor of Law, Doshisha University Faculty of Law, Graduate School of Law
Themes	Unfair Trade Practice (resale price restriction and abuse of dominant position with cases on Nissan Chemical and Mitsui Sumitomo Bank)
Objectives	To transfer knowledge and techniques of case handling by providing examples of case handling in each step from clue to investigation and decision by presentations and discussions.

Third TA Seminar (September 5-8, 2006)	
Participants	Officials from the VCAD (a few from other related ministries/ Courts) 26
Lecturers	Mr. Koichi HOSODA Director General, Criminal Investigation Department, JFTC Ms. Keiko TOMOYUKI Chief Investigator for Mergers and Acquisitions, Mergers and Acquisitions Division

	Economic Affairs Bureau, JFTC Professor Shingo SERYO (Sep 5 -7) Professor of Law, Doshisha University Faculty of Law, Graduate School of Law
Theme	Private monopolization and Economic Concentration (NTT Case and Prior Consultations and Isuzu Case, etc., including market definition)
Objectives	Lectures on theory of provisions in both Japanese AMA and Vietnamese Competition Laws, case handling and application of laws, followed by “participation type” exercise to discuss the application of the Vietnamese law on a few simulated cases by group discussion and presentation. Enable deeper understanding by the group discussion and clarify and share the way to apply law and viewpoints thereof through presentation, comments from lecturers and questions and answers.

Fourth TA Seminar (November 27-29, 2006)	
Participants	Officials from the VCAD (a few from other related ministries/ Courts)
Lecturers	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
Theme	Competition Restriction Agreements (price fixing and bid rigging) Modifiers Price Cartel Case and Bid-Rigging for Tunnel Ventilation Construction are used as materials
Objective	In competition restriction agreement, the major remaining regulation area, lectures on theory and cases, followed by the participation-type workshop session (investigation simulation) are undertaken. A simulated case was role-played by the participants as the investigators and the TA Team as the suspects. The participants would experience the practical investigation, and review by the presentation and comments by the experts, viewpoints and challenge in investigation would be shared.

*All seminars were held in the Press Club, Hanoi, with simultaneous translation (Vietnamese-Japanese).

Source: TA Team

In this section, four seminars are reviewed by (1) Objective, (2) Contents (program and specific discussion) and (3) Evaluations.

4.2 First TA Seminar

Presentations and Discussions

Presentations were made on the Competition Law of Vietnam, history and importance of the Antimonopoly Law in Japan, and the role of the JFTC, the Monopoly and Oligopoly Regulation under the Antimonopoly Act and Guideline, the methodology of the market survey on concentration ratio with purpose and practical procedure, selection of the items, data analysis and utilization of the outcome.

The participants from Vietnam were actively participated in the questions and answers session. Many questions relating to the adoption of the Law have expressed. E.g., how should the Japanese experience used in practical challenges in Vietnam, how to implement the survey in Vietnam, how the organization of the JFTC functions, etc.

Evaluation

The questionnaire survey found the comments such as sharing Japanese experience is helpful since the Vietnamese Competition Law has just entered into force, it was useful for the future that the concept and basic information of Competition Laws in Vietnam and Japan were provided. At the same time, suggestion for the future improvement was also commented, such as “in the future seminars, adoption of the Vietnam Law would be more focused”, “actual cases should be taken up to explain the practical handling, with the emphasis on the investigation skills.

4.3 Second TA Seminar

Presentations and Discussions

As shared during the preparation process, the theme was abuse of dominant position and the retail price – unfair trade practice in Japanese AMA. Presentations were made on theory and cases in Japan with the emphasis on the practical skills with viewpoints and know-hows. Question and answer sessions followed.

Evaluation

The seminar found a series of active questions and answers sessions since the needs from the VCAD side was met in possible extent by introducing specific cases and investigation skills.

Mr. Dzung and Mr. Tanaka have moderated in the effective manner. A Japanese legal expert of JICA audited a part of the seminar and commented that he found the seminar

with active participation by young officials was very impressive. The TA Team found strong ownership in the VCAD side. The participants from Supreme Court or Ministry of Justice, who will work closely with the VCAD in handling and implementing the case, found the information relating to practical skills and viewpoint of the violation judgment was useful for the future. It was also noted that the participants from the National Bank and other Ministries were reminded that their industries would be also subject to the Competition Law in the future.

4.4 Third TA Seminar

Presentations and Discussions

Economic concentration and private monopolization were taken up to introduce provisions, case and procedure in Japan. At the same time, group discussions and presentations dealing with the cases in each area were introduced as the practical exercise. The flow of the program was that: first two days focused on M&A related theory, procedure, case study and practical exercise to apply the Vietnamese Law, and latter two days focused on private monopolization, which is abuse of dominant and monopolistic position in Vietnamese Law, likewise. On the final day, an interim presentation on pilot market research and delivery of the certificate also took place.

Evaluation

The questionnaire survey to the participants found that the seminar has generally highly evaluated. Some comments said that the contents were helpful and the combination of the theory and case handling exercise satisfied the participants. As for the lectures, positive comments were heard; e.g. interesting, typical cases were useful, the difference between laws of Vietnam and Japan were clarified, useful questions were heard from experts when the VCAD would get ready for the future tasks, detailed case analysis was helpful, etc. As for the case handling exercise, comments include; interesting, discussion for many different situations were helpful, good opportunity for the VCAD officials to get familiar with the case handling, etc. For the future Seminar, it is requested that actual case handling based on the Vietnam Law would be the focus, emphasis should be put on investigation skill including hearing and evidence acquisition would, deferent legal area is expected.

4.5 Fourth TA Seminar

Presentations and Discussions

Since the first seminar, the VCAD has been developed its capacity through this program and programs with other countries, as well as their own program. The VCAD is under preparation process of their fist cases. This situation has drawn their interest from tips of the practice to the comprehensive investigation procedures with a complicated simulation case. Based on the prior consultations, cartel and bid rigging were taken up. The Seminar was structured as the combination of the lectures on theory and cases and a simulated investigation practice in that the participants actually take part as investigators. Thus the participants had opportunity to experience the whole process of the investigation. The TA Team was acted as the suspected companies and parties concerned with in the simulation program.

Evaluation

The questionnaire survey to the participants found that the seminar has highly evaluated in its contents and materials. Some comments said that the simulation exercise part was helpful to grasp the whole process of actual investigation. Expectation to the future project was also shown.

Also the lectures who supported the seminar commented that the simulation practice followed by the lectures to provide the theory and the cases in Japan was effective way.

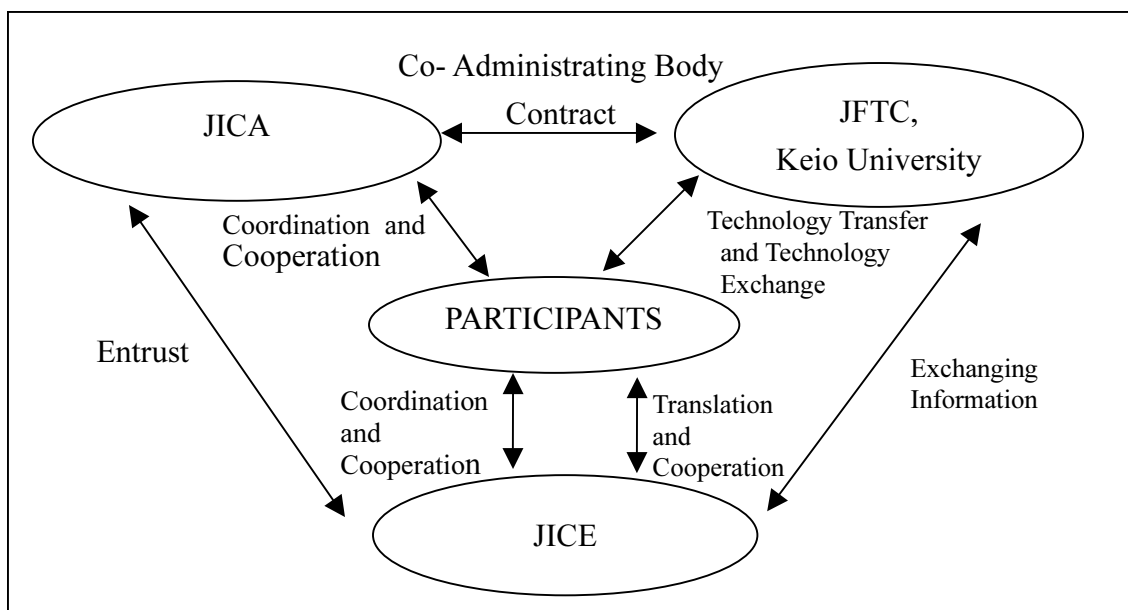
5. Counterpart Training

5.1 Counterpart Training Course Objective

The Training Course was held in October 2006 in Japan with cooperation of organization concerned (refer Figure 4) in order to enhance capabilities in executing the Competition Law in Vietnam mainly that of investigation, such as determining the market scale, implementing market survey and calculation of market share.

Participants: Mr. Doan Tu Tich Phuoc, VCAD Official
Mr. Le Than Vinh, VCAD Official

Figure 5 Structure for Counterpart Training



Source: JICA

5.2 Schedule of Counterpart Training Course

The schedule of Counterpart Training Course is as follows.

Table 4 Program of the Counterpart Training Course

Date	Activities	
	AM	PM
10/15 (Sun)	Leave Hanoi for Tokyo	
10/16 (Mon)	Arrival in Tokyo Briefing and Orientation (JICA Tokyo)	14:00-14:30 Courtesy Call to Deputy Secretary-General (JFTC) 14:30-17:00 “Practice and Technique in Investigation including Recent Enforcement Activities” (Management and Planning Division, JFTC)
10/17 (Tue)	10:00-12:30 Hearing System and Procedures (Decision and Lawsuit Office, JFTC)	14:00-15:30 Discussion concerning to Investigation on merger(Mergers and Acquisitions Division, JFTC) 15:45-16:30 Introduction of investigation cases (International Affair Division, JFTC)
10/18 (Wed)	Leave for Hokkaido from Tokyo	14:00-16:00 Role and Function of regional Office (JFTC Hokkaido Regional Office) 16:00-16:30 Q & A Session with JFTC Hokkaido Regional Office
10/19 (Thu)	Back to Tokyo from Hokkaido	15:30-17:00 Lecture by Academics in Economics and Law: (Prof. Eguchi, Keio University)
10/20 (Fri)	10:00-12:00 Case Initiation (Information Analysis Office)	13:30-15:30 Outline of the Premiums and Representations Act and its Enforcement (Consumer-Related Trade Division) 16:30-17:30 Evaluation Meeting/ Closing Ceremony (JICA Tokyo)
10/21 (Sat)	Leave for Hanoi	

III. Recommendations

III. Recommendations

The following recommendations are intended to focus on issues for the capacity building of the competition authority, Vietnam Competition Administration Department (VCAD), based on the technical assistance activities conducted in this Project. As for the over-all view (Part I), the focus was made on three key elements of capacity building; 1) Human resource development, 2) Institutional strengthening, and 3) Information sharing. In addition to the above three elements, the Team would like to add 4) Financial resource allocation, as the element to be focused considering the current situation of the VCAD. In Part II, recommendations from aspects of each component activities are presented; 1) Pilot Market Research, 2) Advocacy Activities, and 3) TA Seminar for implementation of competition law.

1. Overall Recommendations

1.1 Human Resource Development

(1) Investigators

The human resource development is particularly needed for the investigators with high priority. The investigators of the VCAD have already gained knowledge in legislation and logical process for investigation, however, the practical application in conduct of investigation seems to be in need for further training and study opportunities. For this purpose, a regular training program in learning investigation and decision in foreign countries will be effective, including SCP analysis of industrial sectors with potential need for surveillance by the VCAD. Furthermore, development of detailed guidelines will be required for qualifications of investigators defined under Article 52 (Criteria of investigators)

It should be noted that the function of the VCAD has two aspects; 1) law enforcement and 2) competition policy. While the investigators carry out law enforcement function, officials in charge of competition policy making is also needed.

In addition to the recommended regular training, the following program would be effective method in human resource development.

- A long term on-the-job training for the VCAD staff at competition authorities in advanced countries

- Workshop for exchange experiences of foreign competition authorities in dealing with competition cases for Vietnam Competition Council (VCC) members

(2) Plan and Implementation of Training Program at the VCAD

The authorities in countries with long experience in implementation of competition law, including JFTC, have their own training program to educate their own staff to become qualified officials and investigators. While this Project have provided training programs for the VCAD officials, it is important to seek further opportunities in human resource development assistance and information sharing with competition authorities of other countries through East Asia Competition Forum (EACF) and other international framework.

(3) Improvement in HRD Plan and Implementation Initiative

In order to implement the above-mentioned activities, institutional arrangement is necessary by appointing responsible division with designated mission to achieve the objectives. While the present the VCAD has a training division, its function can be enhanced with HRD planning and designing function. For instance, the general affairs division of the VCAD is mainly in charge of drafting of implementing decrees and consultation on regulations, it might be able to cover function of HRD planning as an additional mission.

1.2 Institutional Strengthening

(1) Specialization and Division of Issues to be handled at the VCAD

The VCAD had been taken a system to handle its several tasks in parallel, including competition administration, trade remedy consumer protection and international cooperation. Since July 2006, the organization has been shifted to divisions to specialize in designated tasks, however, due to limited number of staff, 24 to be increased to 34 by December 2006, there still exist duplications of work by divisions. The demarcation is particularly important among divisions for competition administration, trade remedy and consumer protection.

In competition administration, independent function is desirable to be given to sections to handle cases under Chapter II (Control of Competition Restriction Acts) and Chapter III (Unfair Competition Acts), while investigation technique and relevant information is

being shared. In particular, cases under Article 39 (Unfair Competition Acts) are expected to be increased in the future, and its organization set-up will be required including recruitment of new staff and training. In the near future, various themes of implementation decrees and guidelines are required to be prepared, by initiative of general affairs division. The responsibility for task by each division with consistency is needed to be made clear.

As for the market survey, a periodical market survey will be required in order the VCAD to monitor the market situation with its own arm. Under the current organization, the market survey function might be put under a division for trade remedy or information center. Since the strengthening function for market survey is inevitable, it can be developed as a professional, technical and neutral function under framework of the information center.

(2) Improvement of Task Force Activities

While Task Force for competition administration is already set up by relevant government offices, its function is yet to be developed. As long as the VCAD is a part of Ministry of Trade, there might be a limitation in terms of neutrality among ministries concerned for business rules and regulations. In this respect, the function of the Task Force is considered to be quite important. In particular, for cases under Article 6 (Acts that State management agencies are prohibited from performing) the coordination among Task Force members is essential before and after any decision to be made. In this regard, detailed rules and function of Task Force will be important to be defined.

(3) Preliminary Information and Claim Receipt

How to handle the claim brought to the VCAD by business community or general public is of immediate concern for the VCAD officials in charge. A standardization of procedure for formal investigation is urgently needed to be developed at practice level. The planned extension of regional offices at HCMC and Da Nang are also expected to be able to handle the primary contact for claims and violation cases, while investigation might be handled by investigators from the VCAD Hanoi. Information sharing system among three offices, Hanoi, HCMC and Da Nang, is also important to be developed with back office function of Website to be developed through this Project.

The claims to be brought to the VCAD are expected to include various issues in consumer protection. The objectives of competition policy and consumer protection

policy are suggested to be clarified in handling of the claims at the VCAD.

1.3 Information Sharing

(1) Internal Information Sharing within the VCAD

While information sharing within the VCAD, concerning received claims, investigation cases and detection, is a priority, an information management rules are also important to be developed to create safe and reliable environment of internal information sharing. On the other hand, it should be noted that confidential treatment for primary investigation phase is a practice taken at JFTC and other competition authority. The back office function of Website is a valuable vehicle for information sharing, provided that proper rule for protecting and sharing information is introduced. In this respect operation rule of Website is also required to be developed.

(2) Information Sharing Among Relevant Government Organizations

Information sharing among Task Force members will provide effective function of their activity, if the proper rules for information sharing by identifying closed and semi-open information are effectively implemented. Furthermore, the Task Force might need to be supported by a secretariat function to share information among various ministries by not relying only on Website function.

In addition to website development, the VCAD needs support for building a systematic library when it establishes the Information Center.

1.4 Financial Resource Allocation and Donors Coordination

While the government budget allocation is not supposed to be addressed here, however, consideration on international cooperation program as additional source for capacity building might be needed to be addressed. Since donors are reviewing their assistance program for more effective use of their resources, it might be difficult to expect ad-hoc type of technical assistance. It is recommended that the VCAD prepares a “road map” to indicate necessary external input by each element of capacity building; 1) Human resource, 2) Institutional strengthening, and 3) Information sharing. If the “road map” covers comprehensive capacity building program in medium to long term perspective, the potential donors might be able to consider for choosing their interested field and method for assistance in most effective timing.

2. Recommendations from Each Component Activity

2.1 Recommendations from the Pilot Market Research

As discussed elsewhere in this report, the market research is intended to provide reference material for monitoring prior to investigation. As such, it provides basic, birds-eye view of selected industries such as market structure and business practices (trade behavior). Such information and understandings are commonly shared by industry insiders, but may be quite new to outsiders including the VCAD officials. Because of these characteristics, research must go beyond macro-level statistics and firm-level data to obtain industry view on how market is structured and how business transactions are conducted at each level of the structure. Value-chain and SCP (structure-conduct-performance) analysis applied in the pilot market research served for the purpose.

The pilot market research is intended to demonstrate the VCAD what to monitor (contents), how to collect information (methodology), as well as to identify limitations in data collection in Vietnam (limitations) and how the VCAD could deal with the limitations. In the following, recommendations will be presented in the order of: overall recommendations, contents, methodology, limitations and how to deal with limitations (to be developed at a later stage), and dissemination.

(1) Overall Recommendations on the Market Research

1) Establish a Mechanism to Regularly Update Information of Oligopolistic Industries

The VCAD needs a reliable mechanism to regularly update information of selected industries of oligopolistic structure, probably more so than similar authorities in advanced economies. Competition authorities in some advanced economies do not conduct regular market research while JFTC does. The VCAD may benefit from regular market research. There are a few reasons: deficiencies in official statistics; lack of industry reports; weak monitoring function within the government; and lack of accumulated experience within the VCAD. The initial investment and running cost of such a mechanism are justified against the risk of failure to fulfill the mandate of the VCAD due to above-mentioned reasons. Failure of the VCAD functions would not only a waste of scarce state resources, but also jeopardize further participation of Vietnam into the world economy in the era of WTO.

First, the deficiencies in official statistics are an important reason why the VCAD should conduct regular update of market information. Major sources of statistics such as GSO, General Department of Taxation (GDT) and Ministry of Planning and Investment (MPI) all suffer from particular deficiencies and not an ideal source of information to quantify defined markets. Industry-wise surveys will be more suitable for the purpose, but such surveys are yet being tested. The VCAD must know what relevant statistics are available as well as limitations of these statistics. The VCAD must also know latest roadmap of official statistics and develop a strategy for a cost-effective way to deal with statistics under gradual improvement. Second, the VCAD cannot rely on existing industry reports because there are few. So far, the pilot market research identified mere two reports related to the five selected industries for the study. Information needs to be collected through regular market research, or there will be few. Third, market monitoring functions within the Government of Vietnam is too weak for the VCAD to rely on. Market monitoring function could provide useful information for competition authority. Countries including developing economies have monitoring function within the government in such areas as consumer and retail prices. In Vietnam, the government does not monitor wholesale price movement, and monitoring of consumer prices is skewed to basic consumer products, leaving most of oligopolistic industries of the VCAD interests outside of their scope. Forth, the fact that the VCAD is young institution both in terms of institutional history and staff age means that launching of any investigation will take time and energy due to lack of institutional memory and personal experience. Regular market research will provide a cost-effective shortcut to otherwise slow pickup of learning curb.

It is recommended to carry out several market researches for the purpose of further capacity building for the VCAD.

It is also recommended that the VCAD prioritize industries to monitor and research in a systematic manner. The VCAD will receive constant flow of complaints and requests from the public as well as messages from political leaders and mass media. It will be the task of the VCAD to examine these against more scientific, objective criteria to determine what degree of actions should be taken. Examples of scientific and objective criteria may include (but not necessarily limited to) the following: magnitude of economic activities in the industry, level of concentration, increasing level of concentration, tendency to natural monopoly, regulatory environment tending to monopolistic structure. Decision on priority sectors could be left to the competition

council, where results of monitoring and research will be reported as well.

In terms of organization, it is recommended that a permanent section is established for the market research. The information center to be established may be an appropriate place to house the market research (or market information) section under the broad mandate of collection, systematization, analysis and dissemination of information to facilitate the work of the VCAD. It is important to institutionalize know-how and learning with regard to market research. Another critical issue is systematization of relevant information in a shared database associated with the Advocacy Website. A permanent section dedicated for market research will be a good vehicle to accumulate and disseminate institutional know-how and memories, and to systematize and disseminate relevant information.

(2) Content-wise Recommendations

1) Follow the Contents of the Pilot Market Research

The pilot market research produced five industry reports following the structure of: product features; market structure; market conduct; market performance; and regulatory aspects. Structure-Conduct-Performance, often abbreviated as SCP, is a standard contents for surveying competition aspect of given industry. Product feature helps basic understanding of products/services of given industry, also a common content of market research for competition authorities. The regulatory aspect is of growing interests particularly in developing economies, and regulations do matter in Vietnam. The pilot market research proved that these five aspects provide basic and useful information of given industries. It is also recommendable that the authority maintains the same research items over the years for the sake of longitudinal comparability of data.

This does not mean that there is no room for modifying research items in future, though. There should be continual feedback from the investigation section to research items. The section in charge of market research should seek approval of a high level manager within the VCAD for any alteration of research items. The competition council should be the instance for endorsement of such decision as well as dissemination of the decision to concerned parties.

2) Recognize the Gap between the Market Share in the Market Research and that

Required by the Law.

It is important to distinguish between the market share reported in the market research and the market share defined in the Vietnamese competition law. The latter requires a close examination of related markets and substitutability of products to define the market according to the provisions of the law. The market research provides relevant information for the purpose such as the market share of core products (although often estimates), vertical and horizontal integration, and competition with substitute products. The information is collected broadly to serve as reference material for related markets and substitutability. However useful they may be, there is a gap between what the market research can provide and what the law requires. It is the task of investigators of the VCAD to scrutinize how to fill the gap and examine how realistic the present provisions of the law may be given the reliability of data. This issue could be addressed through capacity building activities in near future.

3) Identify Alert Triggers

Monitoring critical indicators is part of the task of the VCAD related to the market research. It will become effective only when actions are triggered when certain change is identified. It is important to identify alert triggers from numerous indicators and threshold levels from which the authority should pay closer attention to the competition situation. Threshold levels are necessary to distinguish alert level from insignificant fluctuation. Eventually, alert triggers could be programmed in a database for automatic alert. This could be part of capacity building in subsequent technical assistance.

(3) Recommendations on Research Methods

1) Make Best use of Secondary Data to Minimize Cost and Scope of Research for Interview Surveys

Budget constraint could be key impediment to conduct market research regularly. The pilot market research identified the extent to which secondary data could inform the VCAD of relevant data before engaging into interview survey. Official statistics discussed above are useful, so are news articles, industry magazines and regulatory updates in the official gazette. Annual major updates and constant monitoring will not require a sizable budget. Making best use of secondary data through regular work of assistants/interns will minimize the scope of work for annual major updates.

2) Develop Internal Capability to Deal with Secondary Data while Outsourcing Primary Data Collection

In terms of organization, it is recommended that the VCAD develops internal capability to collect, systematize and analyze secondary data (official statistics, news and industry reports, and regulations). Secondary data collection/updates will be on continuing basis. With regard to primary data collection through interview surveys, the VCAD may opt for outsourcing due to the sensitivities involved in collecting information from market players. Interview surveys will be conducted at regular intervals (e.g., a few industries annually, covering the same industries within a few years-interval).

Further capacity building on the methodology of market research will be beneficial and recommended. If such capacity building is implemented at a subsequent stage, the VCAD should be put on the driver's seat as its staff has built basis for self-initiated research through the pilot market research.

(4) Specific Problems on Data Availability/Accessibility

1) Seek Concerted Actions within the Government to Address Problems on Data Availability/Accessibility

The pilot market research identified a few specific problems on availability/accessibility of public data such as statistics (e.g., lack of harmonization among organizations and with international system) and regulations (e.g., incomplete capture of local regulations). The VCAD may try addressing some of the problems through subsequent phase of capacity building, but majority of the problems would require government-wide concerted actions. The competition law task force may be mobilized to coordinate actions to address specific problems on data availability/accessibility.

(5) Recommendations on Dissemination

1) Link Market Research to Dissemination Activities

Results of on-going monitoring and periodic market research should be strategically linked to dissemination activities. While many pieces of information produced by the market research would remain internal information of the authority, some pieces of information of public nature should be actively disseminated. The Advocacy Website being developed in the present TA is an excellent vehicle to disseminate critical information related to competition. Future update of advocacy leaflets could also carry

the same. Examples of information to be disseminated may include: concentration ratio of oligopolistic industries, size and trend of business activities in major industries, and major regulations affecting competition. Regular updating of these will signal the market that the authority is conducting monitoring function objectively and squarely, increasing the legitimacy of the VCAD work.

2.2 Recommendation from the Advocacy Activities

(1) Overall Aspects

In the Project, the coverage of Advocacy Activities included Advocacy Seminar, Leaflet Development, and Website Development. With regard to activity recommendation, the following section will elaborate respectively.

1) Mutually Complementary Program Designing/Planning

In the overall respective in terms of Advocacy Activity, the findings from the Project shall suggest that the priority should be put on the designing and conduct of comprehensive program for advocacy purpose, that is to say, the formulation of clear advocacy strategy. The designing and/or outcome of seminar programs should be corresponded to contents of leaflets or any other advocacy materials to be developed so as to contents/design/function of Website, and vice versa. It is important that the each program has to be inter-related and mutually complementary, rather than individually recognized, and formulate the Advocacy Activity as a whole.

To this end, a common understanding within the Authority on specific target of advocacy activities is essential at the very first stage of designing/planning activity. Without this common direction, it is quite a hard task to keep consistency throughout/among respective programs. For example, if the initial major target has been agreed on advocacy on the new law, the focus of respective program has to keep consistency into this area and design function of program as to the characteristics of each program, such as:

1) Seminar:

- Overall explanation on law provision and some example cases to be regulated
- Seminar materials for participants to follow up details
- Regional seminars at least 3 cities in 2006 / Business community participation 150 × 3

2) Leaflet:

- Appropriate contents to be a supplement to the seminar materials

- Designed to be easy law guide book for business person to keep at the office for reference
- 3) Website:
- Interactive Q&A gateway as for the follow up to the seminar and inquiry/comment on the leaflet
 - Maintain and develop a competition community through site-visitors management
 - to receive seeds for potential area of further advocacy (next target for seminar / leaflet)
- 4) Trade Association Workshop (example)
- feedback all the information above
 - organizing training for trainers to make regional representatives inquiry points in the region
 - preparation of trainer dispatch system (later, information and application be included in the Web-site)
- 5) Poster (example)
- develop campaign poster to promote all the programs above
 - to strengthen network ties through requesting related agencies and organization to display poster

To add the above task, the time frame of the comprehensive program is vital. It is recommended that an annual plan for targeted theme and a mid-term plan for activity system designing shall be discussed and formulated more substantively.

2) Strengthening Institutional Initiative

According to the Decree, there is not specifically addressed division (or section) to deal with advocacy activities in terms of planning and operating programs as described above. Instead of putting things open, it is better to assign the task to specific section, even internally, which should take initiative in this area. Although the Project foresees the “Office” division could take an initial role for designing plans, and “Information Center” could take initiative on operating function, the actual orientation should be considered and assigned in the short run.

(2) Program Oriented Aspects

1) Advocacy Seminar

(i) Strengthening Identification of Advocacy Seminar Targets

The initial assignment of the Project is to assist the VCAD to organize and operate seminars by themselves. However, this specific task has been accomplished at the very early stage of the Project. The VCAD has already adequate capability and

function with experienced officials to organize and operate seminars. The Project has provided “Check List Worksheet” as for their supplementary instrument to check and review the seminar organizing procedure.

The theme subject of Advocacy Seminars provided through the Project has specified from the beginning, - which is to advocate general public on newly introduced competition law. As mentioned in the above section, identification on the next target of advocacy seminar and formulation of a common agreement within the Authority on it is quite important task. The Project foresees that there may be two major directions, 1) advocacy on specific provision(s) of Law (including Decrees/Guidelines), 2) advocacy on procedural issues (including “how to complain”).

(ii) Strengthening Training Systems for Trainers

Due to the present limited number of officials in the VCAD, beside other tasks, the efficient conduct of advocacy seminar is considered vital. Especially, in the area of regional seminar - which requires more and more traveling time of officials from the VCAD and results absence in day-to-day practices at the Authority.

Strengthening trainings for trainers is suggested. That is to educate representatives from regional governmental offices, trade associations, educational institutes, and other related organizations. Instead of the VCAD officials to travel all around for lectures, it may be more realistic to invite those representatives to Hanoi (HCMC, and Da Nang in later stage when the VCAD establishes regional offices as described in the Law). Although the VCAD has already organized trainings for trainers to some extent, they are not yet systematically organized and managed. It is important that the specific methodology and continuous support program for potential trainers (representatives) to be considered and developed. It is also recommended to examine if the task could be appropriate for subject of international assistance programs.

In addition to the advocacy purpose in this task, this network can be utilized to set forth regional monitoring system to collect information on regional business conducts and/or situation of consumer protection, etc. and can be served as consultation extensions between regional representatives and the VCAD.

2) Leaflet Development

(i) Expanding Range of Category to Specific Provisions

At present with the VCAD, there is quite limited number of information hand-outs as for the advocacy tool. The Project this time has provided the overall explanation on the Law - which gives general public comprehensive idea over the new Law. As for the next step, specific provision oriented information tools will be needed such as a series of 1page/2pages pamphlets. Each subject can be described in a just 2-page spread form pamphlet and easy for interested parties to choose/pick-up based on their interest. In this way, the VCAD can prepare them one by one to expand category as to availability of resources, human-wise and budgetary-wise.

(ii) Introduction of Information Stand/Library

It is important that advocacy information tools developed has to be well recognized and utilized among general public. It is very effective way to set a corner to present leaflets, pamphlets and other information. It can be in the VCAD office, however, needless to say, those information corners have to be easily accessed by general public. Thus, consideration can be taken where to set up those corners. The potential candidates shall be VCCI branches and regional trade associations. In the long term prospect, the setting can be designed like information library together with other information such as statistics. It could serve a good information source for general public as well as business community

3) Website Development

(i) Strengthening Hub function of Mutually Complementary Program Orientation

Most of all, Website should be well recognized interactive information data base that could always include all the outcomes from the program activities described above. Information sources, such as records and materials from seminar, training methodology materials, leaflets and/or pamphlets, and others, should be systematically installed and make available for download.

(ii) Development of Maintenance and Data Uploading Orientation within the VCAD

As mentioned above section, systematic data install and even updates orientation is essential to be organized within the VCAD. Procedural management has to be centralized, or at least make workable on the common workplace, and timely and consistent data management should be conducted. Although the over all system administrator shall be depend on the E-Commerce Department, it is recommended that

the VCAD takes initiatives for contents management side. To this end, one section has to be assigned responsible to deal with contents management both in a Rule formulation and actual Operation. It is to be noted that the nature of this task is hardly fulfilled as side activities to investigation or legal consultation. The Project foresees that it will be efficient the Information Center within the VCAD has to be designed to include this function and strengthen institutional orientation. Also, it is important to take consideration on recruitment to match this requirement.

Meanwhile, the contents formulation is another vital task to be conducted after the launch of the Website. Differ from the contents management task, this task has to be conducted in each division. In order to make this task work efficiently, the common understanding over the Rule of contents management is essential. Needless to say, the sense of mission to follow the advocacy strategy in each division is essential.

(iii) Utilization of Back-end-office Function

It is useful to consider another side of advocacy through Website. That is, the advocacy among the VCAD related governmental extensions, such as future offices in HCMC and Da Nang. It is vital to have consistent perspectives within the Authority, such as information on complaint receipt, judgment on relevancy on complaint, etc. as well as interpretation of provisions of the Law, Decrees and Guidelines. The back-end-office function of the Website can be utilized in this purpose.

Also, where appropriate, the VCAD could consider making internal information available to limited governmental users through this back-end-office function. Of course, internal information, especially related to investigation, has to be strictly kept confidential. However, certain information, such as that on interpretation of provisions as the Authority's official position, could be shared among limited governmental users, such as members to the Taskforce.

(4) Development of Database on Multi Layer Sales (Further Task in the near future)

The Website developed in this Project was designed to open the advocacy window to the general public. Thus, some of the versatility described above has to be examined carefully to identify the priority for the further development. It is also important to identify which area will be initiated by the VCAD's voluntary effort and which area should be put on the consideration for further international cooperation scheme. Among variety of function to be considered for the further development, it was identified

important along the process of the activities in this Project that the operational system on the Multi Layer Sales and its data base was essential from the initial stage of the VCAD operation. It can be considered for the further assisting program from the international donor community to develop operational system and data base in this area. It is recommended that the VCAD shall take initial step to examine what specification and details the authority would expect for the new system.

2.3 Recommendation from the TA Seminar

(1) Development of Legislation and Legal Interpretation

(i) Development of Interpretation

In order for the implementation of the Competition Law, several Decrees such as Decree No. 116/2005/ND-CP dated 15/09/2005 entered into force to provide detail condition of implementation and handling violating cases, etc. Having been preparing to handle the first violating case, there seems some provisions/wordings remain yet to have established interpretation or current understanding might bring a challenge during the course of the implementation. The discussions during the series of the TA Seminars identified some issues for further interpretation or understanding is necessary; e.g. in case of several suspicious actions in a single case, prohibited acts of abusing the dominant position on the market stipulated in Article 13 of the Law would be decided by separated each action or a collective group of actions. Another example was found that whether the preliminary investigation should be subject to the notification in accordance with the articles 65 and 66 of the Decree No. 116. After several cases are actually handled, it seems that further elaboration of provisions/wordings would be needed.

(ii) Balancing Case Law Approach and Statutory Approach

The interpretation of each provision/wording of the Law and Decrees will be developed either by accumulation of the cases or legislation/guidelines. Given the significance of the interpretation, the VCAD is expected to discuss the appropriate methodology of developing interpretation, balancing case law approach and statutory approach. It would be also important to share necessary information and discussion within the VCAD and with other ministries/agencies for effective discussion of interpretation, heeding relevant laws in other areas such as criminal and civil procedures, evidence and intellectual properties. Once the interpretation is clarified, it would be also important

to publicize for the sake of transparency and predictability.

(iii) Development and Sharing Common Guiding Principle at Regular Meeting

As for one concrete way to deal with a certain interpretative discussion not able to be clarified in existing the law or the decrees, a common guiding principle could be prepared within the VCAD to give common way to handle. A regular meeting to review interpretative issues consists of selected members horizontally covering the VCAD divisions, would be helpful to discuss and share guiding principle.

The Website of the VCAD developed in the Program shall be effectively uses to publicize handled cases and decisions, Decrees and guidelines.

(2) Acceptance of Notification, Applications and Complaints

(i) Development of Standard Flow of Handling Practice

Articles 49, 58 and etc. of the Competition Law and the Decree No. 116/2005/ND-CP dated 15/09/2005 stipulate the VCAD's function to accept applications of notification, applications and complaints. Thus, the VCAD promulgated Decision 17/QD-ALCT dated July 4, 2006, to decide five forms of complaint, application and notification. As mentioned in I. 2. (3) above, acceptance of these dossiers would call for setting of a standard flow of handling and institutional practice. (c.f. During the TA seminar on economic concentration, acceptances of notification under 30% of share or handling of notification between 30%-50% remain without clarification.)

(ii) Checklist/ Manual for Accepting Dossier, Sharing Handling Flow

It is likely that rather limited number of officials would have to deal with increasing number of accepting applications, complaints and notifications. Therefore, it is important for the VCAD officials to handle applications promptly. On this purpose, it would be effective to develop a checklist and/or manual to facilitate the internal process of handling. At the same time, the VCAD officials are expected to have a certain ability to find out important dossiers and complains out of many submissions. The institutional setup would be also important; counters/windows to accept applications should be setup and announced. The VCAD would be expected to get ready for accepting different types/level of complaints by various ways of submitting applications; dossier, telephone, visit, e-mail or website, to the headquarter and to the regional offices; therefore, the internal distribution of these complaints, would be a

heavy task. It would be effective if the VCAD would setup a flow of accepting and distributing contacts from consumers and companies; whether the Office or each Division in charge would handle shall be shared within the VCAD.

(iii) Publication of Accepting Notification, Complaints and Application

The publication to consumers and companies how to apply or notify would be the key to avoid unnecessary confusion and to lessen the handling burden of the VCAD officials. Again, the Website shall be utilized for this purpose.

(3)Investigation Practice

(i) Development of Investigation Manual/Formats

The VCAD officials will accumulate the experience of investigation, which is one of the central mandates of the VCAD. The Decree 116, etc. stipulated the practice of the investigation; the TA seminars proved that the officials of the VCAD had accurate knowledge on the procedure of the investigation.

When an accidental case is handled, rather limited number of the officials would have to deal with the case handling consists of a variety of steps and tasks; from the clue of the case, information and evidence gathering through hearings and on-the-spot investigation, to proving the violence and reporting. Therefore, in order to facilitate the daily practice of investigation, it would be effective for the VCAD to prepare and share an investigation manual and some formats of documents that would be frequently used. These documents shall be also helpful for officials newly joined the VCAD. Furthermore, know-how of investigation such as checklist or points to be remembered and best practices in each stage of investigation could be shared; the back-office function of the Website shall be fully utilized for this type of internal information sharing.

(ii) Importance of Market Definition

The Competition Law of Vietnam has a feature to stipulate the nature of acts by the market share (e.g., Articles 9, 11, 20, etc.). This feature makes the market definition, which is the basis of the calculation of market share, very important in applying provisions; therefore, it would be essential that the methodology of market definition during investigation shall be established and shared. The practice of market definition to develop what stipulated in the Decree No. 116/2005/ND-CP dated 15/09/2005 would

be expected.

(iii) The Development of Officials and International Cooperation

For the sake of realizing effective investigation practice, the importance of training of investigators as mentioned in 1.1(1) above should be recalled. It seems to be worthwhile for the staff development of the VCAD to continuously make use of the experiences and methodologies developed in the other competition authorities, including JFTC, e.g. in the context of the bilateral, regional or international cooperation.

(4) Decisions and Administrative Preventive Measures

In the area of decisions and administrative preventive measures, like other areas, it would be expected that the VCAD would accumulate practices of case handling and sharing experience, based on Chapter V of the Law and the Decree No. 120/2005/ND-CP dated 30/09/2005, in the VCAD in systematic way. For this sake, concrete practices to ensure the fair enforcement of the Law should be aimed. At the same time, during the course of the implementation, the practices taken by the VCAD should not discourage the vitality of the companies that are the market players, and the importance of the development of the market should be taken into consideration. This is also an important part of the training of investigators as mentioned in 1.1(1) above, and the experiences in the other competition authorities, including JFTC, should be shared.

(5) Enhancement of Institutional Engagement and Utilization of International Cooperation

Sharing experience of the know-how and skills of investigation practice and other tasks is a value for the development of the VCAD officials. It is expected that the VCAD would continue its effort in training and other activities for the sake of the official development, utilizing the cooperation programs of the international organization and other agencies.

One important mission would be to discuss and develop some internal rules (guiding principles, manuals, checklists and/or formats) that would cover necessary practices not prescribed in the existing law or orders. An institutional setting to discuss the rules (e.g., regular meetings mentioned in 1. above) would help. Furthermore, one option that can be taken into consideration is that the VCAD would utilize cooperation from the foreign competitions authorities or international donor for a certain period of time in

order to develop some specified rules. (In case of working with (an) external expert(s), the expert(s) must be familiar with the background in legal, economical and social context. Also, the VCAD would be expected to provide some internal information based on the duty of confidentiality.)