

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

Final Report

December 2006

Japan International Cooperation Agency

Mitsubishi UFJ Research & Consulting Co., Ltd.

Preface

In response to the request of the Government of the Socialist Republic of Vietnam, the Government of Japan decided to conduct the Study on Technical Cooperation for the Study on Capacity Building for Enforcement of Competition Law and Implementation of Competition Policy in Vietnam with the Vietnam Competition Administration Department (VCAD), Ministry of Trade, and entrusted the study to the Japanese International Cooperation Agency (JICA).

JICA selected and dispatched a study team to the Socialist Republic of Vietnam nine times over the period from November 2005 to December 2006. The technical assistance (TA) team consists of the members of the Mitsubishi UFJ Research & Consulting Co., Ltd and is headed by Mr. Hidekazu Tanaka.

The TA team had discussions with the VCAD counterpart and studied and analyzed the Competition Law, related regulations and organization, and selected major issues to be focused. The series of capacity seminars/workshops were conducted based on three selected issues. This report summarizes the TA activities conducted under this Study.

I wish this study contributes to enhance to form fair market competition, and to further promote friendship between the two nations.

Finally, I wish to express my sincere appreciation to all those who assisted and participated in this technical assistance.

15 December, 2006

IZAWA Tadashi

Vice-President

Japan International Cooperation Agency (JICA)

December 2006

Mr. Tadashi Izawa, Vice President
Japan International Cooperation Agency

Letter of Transmittal

We are pleased to submit the Final Report of the Technical Cooperation for the Study on Capacity Building for Enforcement of Competition Law and Implementation of Competition Policy in Vietnam. This report compiles results of technical assistance (TA) activities and recommendations for further capacity building for implementation of the Competition Law.

The goal of this Program is to assist strengthening the knowledge base and capacity of the Vietnam Competition and Administration Department (VCAD), through knowledge and experiences sharing with Japanese Competition authorities and experts, and enhancement of counterpart's self-sustainable capacity building activities. JICA assigned to Mitsubishi UFJ Research & Consulting Co., Ltd. for implementation of study activity, based of the Scope of Work signed on October 11, 2005. The study activity started in November 2005 and concluded with the fourth TA seminar held in Hanoi in November and the presentation of Market Survey and Website development planning which were held on December 4, 2006.

We believe this Study has contributed to human resource and institutional development of the VCAD through technical transfer activities by holding seminars and workshops. Furthermore, it covered transfer of Japanese experience in Competition area, by inviting Japanese officials and experts as guest lecturers. It is expected that the VCAD will make further effort in the capacity building for further implementation of the Competition Law.

We would like to take this opportunity to express our gratitude to the Japanese officials concerned of JICA, Japan Fair Trade Commission, a professor from the academic society and other relevant government organizations. We also wish to express our sincere gratitude to the officials concerned of the Vietnam counterparts, namely the Competition Administration Department, Ministry of Trade, and other relevant organizations.

Hidekazu Tanaka

Team Leader

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

Abbreviation

| | |
|-------|---|
| AMA | Antimonopoly Act |
| APEC | Asia-Pacific Economic Cooperation |
| ASEAN | Association of Southeast Asian Nations |
| CIDA | Canadian International Development Agency |
| CIEM | Central Institute for Economic Management |
| CUTS | Consumer Unity and Trust Society |
| DFID | Department for International Development |
| FDI | Foreign Direct Investment |
| GSO | General Statistics Office |
| JCIF | Japan Center for International Finance |
| JFTC | Japan Fair Trade Commission |
| MOT | Ministry of Trade |
| 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 |

Table of Contents

| | |
|---|-----|
| I. Introduction | 1 |
| 1. Background..... | 1 |
| 2. The Objective and Frameworks of the Study | 7 |
| 2.1 The Objective of the Study | 7 |
| 2.2 Framework of the Study from Technical Aspects..... | 7 |
| 3. Outline of the Study and Technology Transfer Activity and Schedule | 11 |
| 3.1 The 1 st Field Survey (November 6 to December 3, 2005)..... | 11 |
| 3.2 The 2 nd Field Survey (December 11, 2005 to January 7, 2006) | 12 |
| 3.3 The 3 rd Field Survey (January 15 to January 28, 2006)..... | 12 |
| 3.4 The 4 th Field Survey (February 14 to March 13, 2006)..... | 13 |
| 3.5 The 5 th Field Survey (May 22 to June 28, 2006) | 13 |
| 3.6 The 6 th Field Survey (July 10 to July 15, 2006) | 15 |
| 3.7 The 7 th Field Survey (August 2 to August 10, 2006)..... | 16 |
| 3.8 The 8 th Field Survey (August 14 to October 7, 2006) | 17 |
| 3.9 The 9 th Field Survey (November 21 to December 8, 2006) | 18 |
| II. Result of Study and Technology Transfer Activities | 19 |
| 1. Basic Study | 19 |
| 1.1 Enforcement of the Competition Law of Vietnam | 19 |
| 1.2 Human resource Development and Foreign Assistance for the VCAD | 23 |
| 1.3 Current Status of Vietnamese Domestic Industry..... | 27 |
| 2. Pilot Market Research | 34 |
| 2.1 Framework of Market Research | 34 |
| 2.2 Findings from the Pilot Market Research..... | 41 |
| 2.3 Evaluation of Methodology and Research Strategy | 55 |
| 3. Advocacy Activities | 60 |
| 3.1 Development of Advocacy Leaflet..... | 60 |
| 3.2 Website Development..... | 65 |
| 3.3 Advocacy Seminar..... | 68 |
| 4. Technical Assistance (TA) Seminar | 88 |
| 4.1 Purpose and Designing | 88 |
| 4.2 First TA Seminar..... | 91 |
| 4.3 Second TA Seminar | 94 |
| 4.4 Third TA Seminar | 102 |
| 4.5 Fourth TA Seminar | 110 |

| | |
|---|-----|
| 5. Counterpart Training | 114 |
| 5.1 Counterpart Training Course Objective..... | 114 |
| 5.2 Schedule of Counterpart Training Course | 115 |
| III. Recommendations | 116 |
| 1. Overall Recommendations | 116 |
| 1.1 Human Resource Development | 116 |
| 1.2 Institutional Strengthening | 117 |
| 1.3 Information Sharing..... | 119 |
| 1.4 Financial Resource Allocation and Donors Coordination in Mid to Long Term | 119 |
| 2. Recommendations from Each Component Activity | 120 |
| 2.1 Recommendations from the Pilot Market Research..... | 120 |
| 2.2 Recommendation from the Advocacy Activities | 125 |
| 2.3 Recommendation from the TA Seminar | 130 |

Appendix

A. Project Schedule

B. Documents Related to Findings of Baseline Survey

- B-1 Competition Law
- B-2 Decree No. 110/2005/ND-CP of August 24, 2005
- B-3 Decree No. 116/2005/ND-CP of September 15, 2005
- B-4 Decree No. 120/2005/ND-CP of September 30, 2005
- B-5 Decree No. 05/2006/ND-CP of January 9, 2006
- B-6 Decree No. 06/2006/ND-CP of January 9, 2006
- B-7 Circular No. 19 of November 8, 2005
- B-8 Comparative Chart of Competitions Laws Vietnam/Japan

C. Documents Related to Advocacy Activities

- C-1 Leaflet Work Step and Allocation Worksheet
- C-2 Initial Comments on the First Draft of Leaflet from the VCAD
- C-3 Website development Category Structure Worksheet
- C-4 Seminar Operation Step and Work Allocation Worksheet
- C-5 Questionnaire Sheet
 - C-5-a) The 1st Advocacy Seminar
 - C-5-b) The 2nd Advocacy Seminar
 - C-5-c) The 3rd Advocacy Seminar

D. Documents Related to TA seminars

- D-1 TA seminar programs
- D-2 Third TA Seminar: Simulated Case Handling Exercise
- D-3 The Simulated Investigation Practice in the 4th TA seminar

Table and Figure

| | | |
|--------------|--|-----|
| Figure 1-1-1 | Share of Industrial Output by Ownership..... | 2 |
| Table 1-1-2 | Competition Laws in North-East and South-East Countries | 3 |
| Figure 1-1-3 | Elements for Capacity Building | 5 |
| Figure 1-2-1 | Conceptual Flow of Technical Assistance Program in Vietnam..... | 9 |
| Figure 2-1-1 | Organizational Chart and Officials of the VCAD | 21 |
| Table 2-1-2 | GDP/Employment by Type of Economic Activities | 28 |
| Table 2-1-3 | Industrial Output by Ownership and Growth Rate | 29 |
| Table 2-1-4 | Statistics of Enterprises by Type of Ownership in 2004 | 30 |
| Table 2-1-5 | Market Share of State General Corporations in Strategic Industries | 32 |
| Box 2-2-1 | List of Research Items for Market Survey | 37 |
| Table 2-2-2 | Concentration Ratio by Sector and Source of Information..... | 48 |
| Table 2-2-3 | Assessment on Usefulness of Information Source..... | 58 |
| Table 2-3-1 | Comparative Table of Major Points in the Leaflets | 61 |
| Table 2-3-2 | Target of Advocacy Activities..... | 62 |
| Table 2-3-3 | The Structure of the Leaflet | 63 |
| Box 2-3-4 | Outline of the Website Designing | 66 |
| Table 2-3-5 | The Program of the First Advocacy Seminar..... | 70 |
| Table 2-3-6 | The Program of the Second Advocacy Seminar | 71 |
| Table 2-3-7 | The Program of the Third Advocacy Seminar | 72 |
| Box 2-3-8 | Major Interests shown from the Floor..... | 78 |
| Box 2-3-9 | Major Interests shown from the Floor..... | 80 |
| Box 2-3-10 | Major Interests shown from the Floor..... | 82 |
| Table 2-3-11 | The Result of Questionnaire Survey from Advocacy Seminars..... | 85 |
| Table 2-4-1 | Outline of the TA Seminar | 89 |
| Table 2-4-2 | Details of the First TA Seminar..... | 92 |
| Table 2-4-3 | Two Cases Presented during the Second TA Seminar..... | 96 |
| Table 2-4-4 | Details of the Second TA Seminar | 98 |
| Table 2-4-5 | Details of the Third TA Seminar | 104 |
| Table 2-4-6 | Details of the Fourth TA Seminar | 111 |
| Figure 2-5-1 | Structure for Counterpart Training | 114 |
| Table 2-5-2 | Program of the Counterpart Training Course..... | 115 |

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.

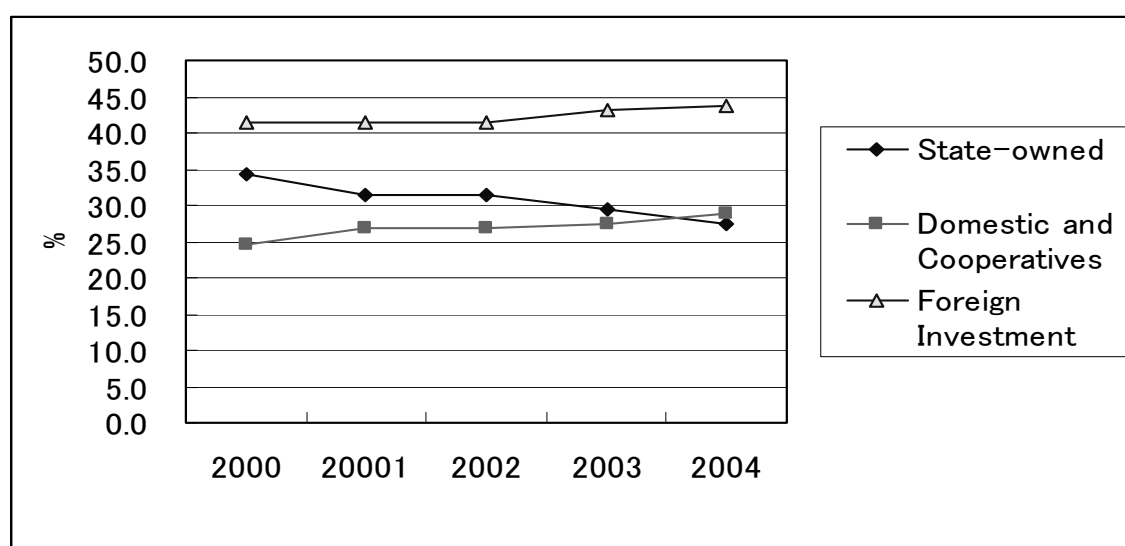
ASEAN countries are experiencing industrial structure transformation in each of the

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 2006.³ 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.

Figure 1-1-1 Share of Industrial Output by Ownership



Source: Statistical Yearbook of Vietnam 2005, General Statistics Office

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

³ The World Bank site and JCIF

(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.

Table 1-1-2 Competition Laws in North-East and South-East Countries

| | Competition of Law (Year of Enactment and Revision) | Authority |
|---------------------|--|---|
| (North-East Asia) | | |
| (1) Korea | "Law on Monopoly Regulation and Fair Trade" (Enacted: 1980; Revised: 1986, 1990, 1992, 1994, 1996, 1998, 1999) | Korean Fair Trade Commission |
| (2) Taiwan | "Law on Fair Trade" (Enacted: 1991) | Taiwan Fair Trade Commission |
| (3) China | "Anti-Fair Competition Prevention Law" (Enacted: 1993) "Price Law" (Enacted: 1998) | National Industry and Commerce Administration (Price Law by National Development Planning Commission) |
| (4) Mongol | "Law on Prevention of Unfair Competition" (Enacted: 1993) | National Development Agency |
| (South-East Asia) | | |
| (5) The Philippines | "Law on Monopoly and Merger" (Enacted: 1925, moved to Criminal Law Article in 1957) | Department of Justice |
| (6) Thailand | "Trade Competition Act" (Enacted: 1999, replacing "Price Control and Anti-monopoly Act of 1979) | Trade Competition Commission |
| (7) Indonesia | "Law on Prohibition of Monopoly and Unfair Competition" (Enacted: 1999) | Enterprise Competition Supervision Commission |
| (8) Singapore | "Competition Law" (Enacted: 2004) | Competition Commission of Singapore |
| (9) Vietnam | "Competition Law" (Enacted: 2004) | Competition Management Agency and Competition Commission |

Source: "Transition to market economy and competition in Asia", Noboru Honjo (Japanese); Unofficial English translation by TA Consultant Team

(3) Enactment of Competition Law in Vietnam

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) controls 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.

(4) 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. According to the JICA mission report of June 2005, the VCAD as a counterpart indicated five priority areas as listed below.

- 1) Assistance for preparing implementing regulations
- 2) Capacity building of officers in charge of investigation
- 3) Market survey of several selected sectors
- 4) Advocacy seminars in central and regional areas
- 5) Preparation of materials for advocacy activities

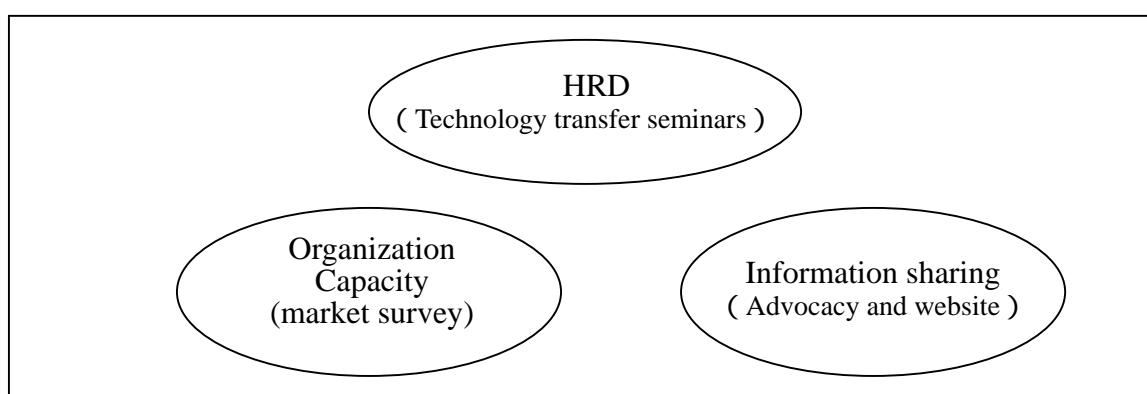
The technical assistance has been carried out through technical transfer seminars, advocacy seminars, market surveys, and other related activities, with due attention to the following points. The contents and results of the program conducted are explained in the next section.

● 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 1-1-3 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 web-site 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.

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 CAD 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 Framework of the Study from Technical Aspects

The Study placed importance on sharing Japanese experiences and know-how in implementation and enforcement of competition law. It also focused on the significance of collaborative task between counterparts and TA Team to share the process know-how in conducting activities in the Study – which contributed counterparts further to conduct self-sustainable capacity building activities within the authority.

(1) Draw on Experiences and Knowledge of the Japan Fair Trade Commission (JFTC)

The Study focused on delivering practical and procedural knowledge and know-how concerning implementation of competition law. To this end, the program drew upon, at most, the experiences and knowledge of the JFTC officials, especially in the area of investigation procedure, drafting guidelines as well as market analysis.

The Study also took a full advantage to share JFTC's experiences in networking and organizing related industries, consumers and experts in the area of advocacy activities.

It is expected the relationship between two authorities has become closer and that it will benefit both authorities in fruitful exchange of information and further cooperation.

(2) Collaborative Project Framework and Substantiation of Ownership

All program activities were decided upon close consultation and collaboration with the counterpart, the VCAD, taking full respect for the counterpart's sense of program ownership (refer to the chart in next page).

Thus, the Study took importance in organizing collaborative project framework by both sides, counterparts and TA Team. A core taskforce was set forth as a Steering Committee. The followings list members of the Steering Committee. As for the working level collaborative task, the Study invited members from both sides to set up Working Teams for each program theme described below.

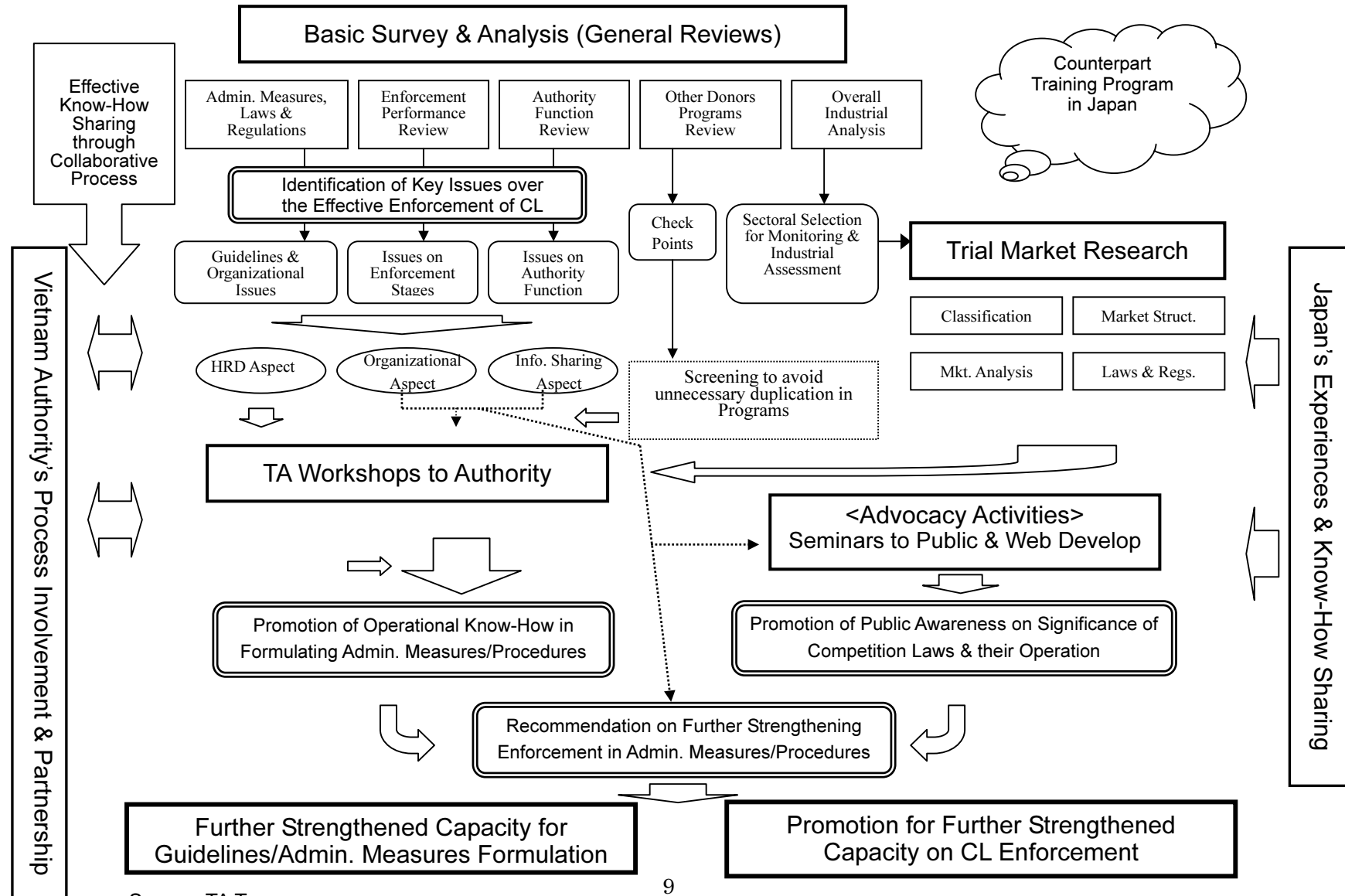
Steering Committee

- Director General, Competition Management Agency, Ministry of Trade (chair)
- Director General, Department of Domestic Market Policy, Ministry of Trade
- Ministry of Planning and Investment
- General Statistics Office
- JICA (TA Team)

Working Team

- Pilot Market Survey
- Advocacy Activity
- Technical Assistance Seminars

Figure 1-2-1 Conceptual Flow of Technical Assistance Program in Vietnam



Source: TA Team

(3) Evaluation for Future In-House Activities

Since the Study is designed to share intangible assets, it is difficult to evaluate concrete achievements after the activities have been conducted. It is, however, important to use this opportunity to promote continuous in-house capacity building activities. Thus, summary of program evaluation was prepared for future reference, by conducting brief questionnaire surveys and interviews to the participants.

The Study also took importance on continuous communication among participating lectures, officials, and experts even after the Study. As for the convenience of counterparts, all the materials utilized throughout the programs were translated into Vietnamese when necessary.

3. Outline of the Study and Technology Transfer Activity and Schedule

3.1 The 1st Field Survey (November 6 to December 3, 2005)

(1) The Explanation and Discussion regarding Inception Report

On November 8, 2005, a kick-off meeting with the counterpart, the Vietnam Competition Administration Department (VCAD), was held for a presentation and explanation of draft Inception Report by TA Consultant Team. Based the comments presented by the VCAD regarding mainly on the market survey coverage and technical transfer seminar program, TA Consultant Team revised the Inception Report and translated into Vietnamese language, then presented both English and Vietnamese versions to the VCAD which were distributed to relevant government organizations. On November 28, an Inception Report presentation meeting was held at the VCAD together with members of the steering committee. As the result, the contents in the Inception Report were agreed by the VCAD, and the Minutes of Meeting for the Inception Meeting was signed on November 29, 2005.

(2) Start-up of Basic Survey

As a start-up of the Basic survey, a questionnaire was prepared for the VCAD, regarding organization of VCAD, relevant laws and regulations, data and information regarding the market, while TA Consultant Team made a survey on these issues on its own networks. The main contacts were made with General Statistics Office (GSO), Vietnam Chamber of Commerce and Industry (VCCI), JICA Industrial Statistics Team and Vietnam Japan Human Resource Cooperation Center (VJCC). In addition, visits to Da Nang and Ho Chi Minh City were made in order to grasp economic activities in regional cities and also studied sites for Advocacy Seminars in those cities.

(3) Discussion with the VCAD regarding TA Seminars

TA Seminars are planned to be held for four times during the conduct of this program. Since the VCAD considers high priority on market survey method, the first seminar is being requested to take up market survey method by JFTC, and started to coordinate with JFTC about contents to be delivered. The first TA Seminar is for three days, while the first day is to target not only for the VCAD officials but for those from other relevant government offices, in order to disseminate competition law of Vietnam besides experience of Japanese Anti Monopoly Law.

(4) Discussion with the VCAD regarding Advocacy Activities

The division of responsibility and scheduling were discussed with the VCAD officials in charge, for preparation of advocacy seminars to be held for three times, in Hanoi, Da Nang and Ho Chi Minh City, advocacy leaflet publication and web site development. The discussion meetings were held for several times during this period.

3.2 The 2nd Field Survey (December 11, 2005 to January 7, 2006)

(1) Continuation of the Basic Survey

The information of the relevant laws and regulations, decrees on organization for MOT and the VCAD were collected through the VCAD and JICA legal expert team. For the market related study, interviews were made to Central Institute for Economic Management (CIEM) and foreign life insurance company. Concerning activities of other donors in the field of competition law, information collection was done regarding Consumer Unity and Trust Society (CUTS; Indian NGO with UK and Switzerland support), Canadian CIDA and German technical cooperation.

(2) Preparation for Seminars

The meetings with the VCAD staff were held for three times, during mid-December to January 2006, for discussing schedule, venues, program details, distribution materials and other necessary details for seminars for TA and Advocacy planned in March.

The TA Seminar was decided to be held on three days in early March 2006, and the venue was also discussed for possibility to use MOT facility, hotels and Press Club conference room. An interview was made to candidate interpreter, with legal background, for simultaneous interpretation between Japanese and Vietnamese, for both TA and Advocacy Seminars. The date for the Advocacy seminar was decided also on early March 2006 and the venue was reserved at a hotel in Hanoi, which has been confirmed with the VCAD.

3.3 The 3rd Field Survey (January 15 to January 28, 2006)

(1) Continuation of the Basic Survey

The recent market situation was reviewed on potential business sectors for the trial market survey. The documents for requesting proposals for the candidate sub-contractors were prepared. Listing up of the candidate sub-contractors is to be

prepared in consultation with the VCAD. The final listing is considered to be for three to five firms.

(2) Preparation for Seminars

A meeting was held on January 25, for confirmation on details for TA Seminar and Advocacy Seminar.

For TA Seminar, the distribution material will require large amount of translation work for more than 150 pages, from English to Vietnamese, and preparation for translation, copying and folder binding work were discussed. In addition, the VCAD is to prepare invitation letters, preparation of LCD projectors and allocation of reception staff.

For Advocacy Seminar as well, preparation situation and schedule were discussed and confirmed with the VCAD. A draft of the advocacy leaflet, prepared by the TA Team was explained and the VCAD is to study, check Vietnamese translation and process for their authorization.

3.4 The 4th Field Survey (February 14 to March 13, 2006)

(1) The First TA Seminar

The first TA Seminar was successfully held on three days, March 1 to 3, 2006. (Refer to the report part for details)

(2) The First Advocacy Seminar in Hanoi

On March 8, 2006, the Advocacy Seminar in Hanoi was successfully conducted. (Refer to the report part for details)

(3) Preparation and Submission of Progress Report 1

3.5 The 5th Field Survey (May 22 to June 28, 2006)

(1) Meetings with the VCAD

The number of meetings with the VCAD counterpart during the 5th field survey counted as 14 times, covering the issues listed below.

- (1) Overall schedule for the 2nd fiscal year period
- (2) Preparation for the 2nd Advocacy Seminar

- (3) Preparation for the 2nd TA Seminar
- (4) Contents of the trial market research and selection of a subcontractor
- (5) Contents of Advocacy leaflet and its design and printing
- (6) The VCAD Website development and selection of candidate subcontractors

(2) Trial Market Research

The details of trial market research were discussed with the VCAD. While the VCAD is interested in studying anti-competitive acts in the selected five business areas, it was agreed that the trial market research is to collect market data and conduct analysis for studying market structure of the selected five sectors or products.

Regarding the selection of a subcontractor for conducting the study, Vietnam Chamber of Commerce and Industry, VCCI, was finally selected, after the careful review of the proposal for implementing the study through several discussion meetings with the VCAD side.

(3) The Second Advocacy Seminar

The 2nd Advocacy Seminar was held in Ho Chi Minh City on June 13, 2006. (Refer to the report part for details)

(4) Advocacy Leaflet

The contents for the advocacy leaflet have been prepared in the 1st fiscal year period. As the next step design drafts were prepared and discussed with the VCAD team. Finally, printing of Vietnamese version was completed, while the English version is under preparation for completion in middle July. The leaflets in Vietnamese were distributed to all participants to the Advocacy Seminar in Ho Chi Minh City.

(5) VCAD Website Development

The VCAD Web development was in the process of coordination with other relevant government offices, regarding the website structure and contents. As for selecting candidate subcontractors, “Request for Proposal” was sent to 5 candidate firms including recommended firms by the VCAD.

(6) The Second TA Seminar

The second Technical Transfer Seminar was held for four days from June 19 to 22, 2006, in Hanoi. As guest speakers from Japan, two JFTC investigators and one

academician participated for presenting Japanese experience. The attendants for the seminar were from the VCAD and related government offices, counted for 70 for the first day and 35, mostly from the VCAD, from the second to the last day. (Refer to the report part for details)

(7) Competition Regulation and Organization

The up-date on the implementation regulation, circular and organization and staffing of the VCAD were made based on information through the VCAD and other sources.

(8) Other Relevant Activities

The contacts were made with JICA Legal Cooperation Project Team, assisting Ministry of Justice, in order to exchange views in conducting effective technical cooperation in Vietnam, particularly in the field of legal and regulatory control. The contacts with other donor projects⁴ in legal field were also made by participating in the legal donors' meeting. An introduction of JICA project and exchange of information with other donors were made. These contacts with other team and donors are to be continued during the field activity.

The report visits to JICA Vietnam office were made on May 23, June 6 and June 23 for initial, interim and final reporting, respectively, of the consultant team's activity during the 5th Field Survey.

3.6 The 6th Field Survey (July 10 to July 15, 2006)

(1) Advocacy Activities

As to the website development, the presentation for GUI version (Graphic Interface) in the early stage was held on 12 July where it was decided that the "α version" in October and the process that follows was to be concretized.

(2) Discussion with the VCAD

Coordination has made concerning advocacy activities, market research, and TA Seminar. The Progress Report II was submitted to the counterpart for the verification of its content.

⁴ EU, UNDP, Canada, France etc

3.7 The 7th Field Survey (August 2 to August 10, 2006)

(1) Meetings with the VCAD

In preparation for the 3rd Advocacy Seminar, TA Seminar, the meeting was held to confirm the progress of advocacy activities and activities related to TA Seminar and to discuss and coordinate the concrete activities. In addition to this, several meetings were held with 2 participants to the counterpart training course to be held in October.

(2) Advocacy Activities

Several meetings were held with the VCAD (and Website Design Company, Time Universal) in relation to the preparation for Advocacy Seminar(18 September, Da Nang), Website development, and advocacy leaflets(English version was completed following the Vietnamese version)

As per to the website development, a presentation of the “ α version” by the web design company was held in the Ministry of Trade which was assisted by about 10 persons concerned. The schedule hereinafter was confirmed as encouraging the coordination inside the VCAD to decide the Website structure.

Concerning leaflets, following the Vietnamese version in June, the English version was completed, which had been ameliorated its design and its content. In addition to this, the accessories for publicity were also discussed further.

(3) Preparations for TA Seminar

Several meetings were held between TA Team and the VCAD based on the seminar programme (draft) which was elaborated after the coordination with lecturers of JFTC and academics.

(4) C/P Training

Several meetings were held with 2 participants to the C/P training.

3.8 The 8th Field Survey (August 14 to October 7, 2006)

(1)The Third TA Seminar

The 3rd TA Seminar was held on four days, 5th September to 8th September. (Refer to the report part for details)

The review for the 3rd TA Seminar and the discussion for the fourth TA Seminar were held.

(2)Trial Market Research

The monitoring of correction of Inception Report for the Pilot Market Research submitted on 31 July (especially the collection of the secondary data and its analysis) , coaching the start-up of interview survey and the presentation and report of its progress during the 3rd TA seminar.

(3)Website Development

Proceeding the VCAD and concerned departments of the Ministry of Trade, further coordination with the subcontracted company has been made. Further discussion was made concerning the presentation of β version, which would be held in accordance with the handing ceremony in the next field survey.

As per to the production of Website contents, the VCAD proceeds compiling materials to be listed on the web site. As per to their translation into English, it was agreed that taking into consideration of each priority, the contents to be translated are analyzed and translate them in the frame of budget.

(4)Advocacy Leaflet

Further coordination was made for the form and its intended purpose of the advocacy leaflets of both Vietnamese and English version. Having received the request from the VCAD, it was decided to make A4 sized folders with pockets in which a leaflet and other materials can be put.

(5)The Third Advocacy Seminar

On September 18, 2006, the Advocacy Seminar in Da Nang was successfully conducted. (Refer to the report part for details)

(6)Other Relevant Activities

The exchange of activities' progress and information was conducted with the Legal

Cooperation Team of JICA. TA team participated to the meeting of the persons concerned to legal cooperation.

(7) Discussion and Coordination for Redaction of Draft Final Report

TA team discussed and coordinated with the VCAD for redaction of Draft Final Report.

3.9 The 9th Field Survey (November 21 to December 8, 2006)

(1) The fourth TA Seminar

The 4th TA Seminar was held for three days, from 27 to 29 November 2006, by inviting two officials from JFTC and one academician from Japanese University. The main subjects covered were cartel and bid rigging.

(2) Draft Final Report Presentation and Discussion

The Draft Final Report was prepared by TA Team and its presentation and discussion with the VCAD was held on December 1, 2006.

(3) Trial Market Research

The results of the Trial Market Research for five sectors were presented the VCAD officials by TA Team on December 4, 2006.

(4) VCAD Website Development

The Website development was completed and the final version was presented to the VCAD by TA Team on December 4, 2006.

(5) The Final Meeting

On the occasion of the completion of JICA TA Team's activities in Vietnam, the final meeting and reception was held on December 4, 2006.

II. Result of Study and Technology Transfer Activities

II. Result of Study and Technology Transfer Activities

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)

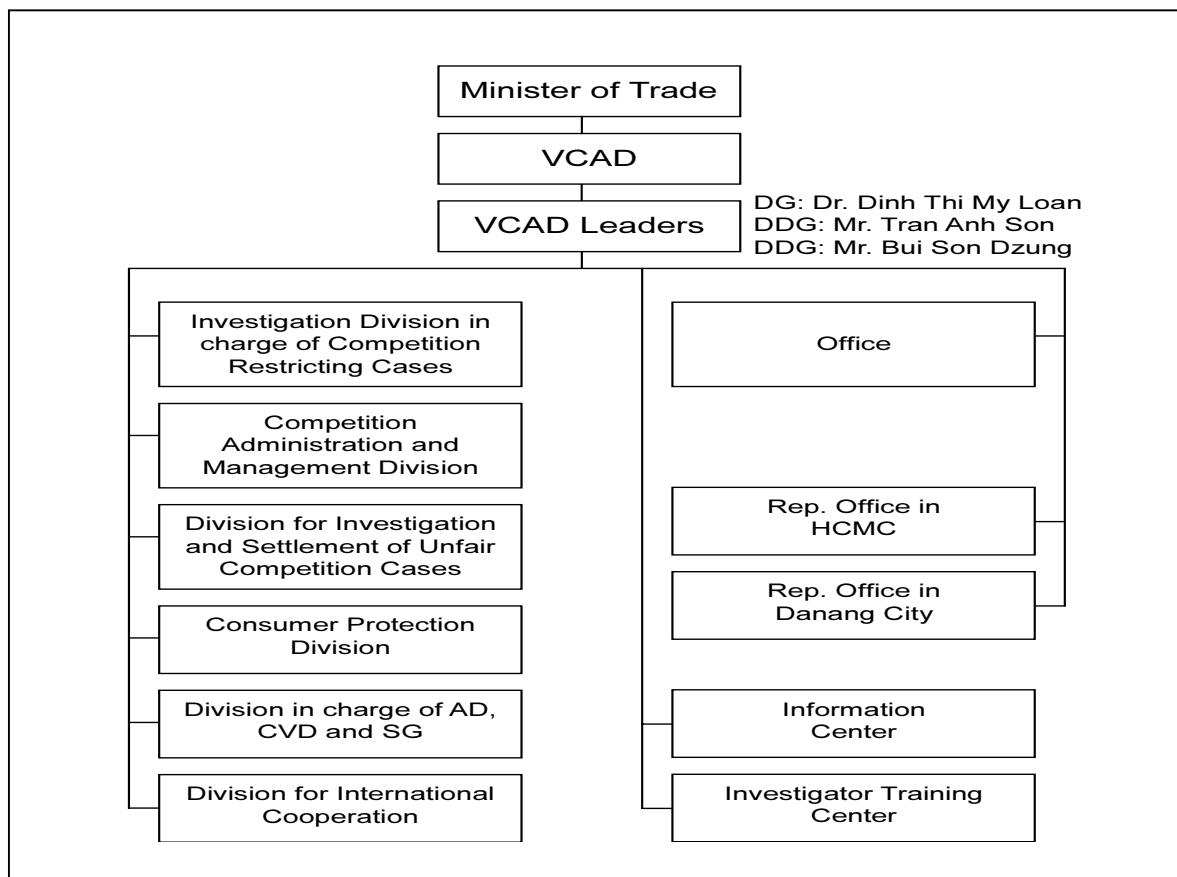
Furthermore, regulations subordinating the Competition Law are going to be introduced, including a guideline on distribution currently under drafting, to improve further implementation of the Competition Law. The all decrees above are available in English.

(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 Figure2-1-1.

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 2-1-1 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)⁵. 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

⁵ 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.

a decision in writing of the Trade Minister (Clause 1, Article 25).

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 market⁶.

(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

⁶ Masahiro MURAKAMI, “The Japanese Antimonopoly Act” (Syojihomu, 2003), p. 49, p.221.

(Article25).

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. (See Appendix B-8, Comparative Chart of Competition Laws: Viet / Jpn).

1.2 Human resource Development and Foreign Assistance for the VCAD

(1) Human Resource Development at the VCAD

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 programme

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.

(2) Other Donors' Assistance

(i) CUTS

Consumer Unity and Trust Society (CUTS) is a Indian NGO with its head office located in Jaipur. It was established in 1983 for supporting rural development, however, the current activity focus on human resource development in the areas of consumer protection, international trade and investment, economic legal system (such as competition law and investment law), and it extends the assistance to Asian and African countries. The number of its members counts approx. 1,500 including individual and institutional members. The organization is supported by over 100 staff and 300 volunteers. CUTS claims its vision as “to protect consumers’ rights and social justice within and outside of the country”, and for the competition law area, the activity emphasize on advocacy for consumer protection. CUTS cooperate with Indian government (Ministry of Industry and Trade, Ministry of Consumer and Food), and being recognized by international organizations including UNCTAD, WTO, OECD, The World Bank. Furthermore, CUTS collaborates with bilateral agencies and NGO, including DFID of UK, Swedish SIDA, Norway’s NADC and Oxfam. According to the website of CUTS⁷, eight thematic centers are being established to support its activities. Among these centers, Center for Competition, Investment and Economic Regulation (C-CIER) was established in 2003, specializing economic regulations including competition laws and regulations.

“7Up2” Project

“Advocacy and Capacity Building on Competition Policy and Law in the Asia” (7Up2) is a name of a project under CUTS actively extending assistance in competition area in Vietnam. This project is conducted by C-CIER, being supported by Indian government (State Secretariat for Economic Affairs) , Swiss Competition Commission (COMCO) and Department for International Development (DFID) of UK. The project covers six countries, Vietnam, Laos, Cambodia, Bangladesh, Nepal and India, promoting better understanding on competition policy and regulations, for the period of two years. There are two Vietnamese counterparts for this 7Up2 Project, which are

⁷ www.cuts-international.org

Central Institute for Economic Management (CIEM) and Vietnam Standard and Consumer Association (VINASTAS)⁸.

The current program for three South East Asian countries, Vietnam, Laos and Cambodia, started in April 2004. The members of the Project Advisory Committee includes donors representatives, COMCO (Swiss) and DFID of UK, international organizations, UN ESCAP and ASEAN Secretariat, and regional professional organizations, TDRI of Thailand and MPI of Vietnam.

Seminar Activities

7Up2 Project sponsored four seminars in Vietnam, since April 2005. The first seminar is intended to discuss contents of draft of Decree for 2004 Competition Law, and the second to fourth seminars are capacity building program. The VCAD cooperated as co-organizer or participate in all of those seminar events, as listed below.

-
-
- 1) Seminar Inviting Comments on the Draft Decree Setting forth Detailed Regulations for Implementing the Competition Law 2004 in Vietnam (April 25-26, 2005)
Organizers: CUTS International and VCAD
Participants: 90 (Vietnamese enterprises (private and state-owned), associations, law offices, university, news media and researchers)
 - 2) Training Workshop on M&As Evaluation Skill for Competition Authority Officials (August 13-14, 2005, Hai Phong)
Organizers: CUTS International and VCAD
Participants: 32 (CAD (13), MOT (5), Other government (8), Academics (3), SBV (1), GSO (1), Hai Phong City (1))
 - 3) Raising Consumers Awareness on Competition Policy and Law in Vietnam (August 22-23, 2005, Thanh Hoa)
Organizers: CUTS International and VINASTAS (Vietnam Standard and Consumers Association)
Participants: 30 (VINASTAS regional offices(24), VINASTAS head office (4), VCAD (2))
Contents: 1) Anticompetitive practices, unfair competition practices and their implications on consumer welfare, 2)The Competition Law 2004 of Vietnam, other relevant subordinate regulations and enforcement institutions, 3) The local consumer organizations in promotion of competition and protecting consumer interest in Vietnam, 4) Consumer redress, 5) Consumer education and information
 - 4) Raising Consumers Awareness on Competition Policy and Law in Vietnam (October 13-14, 2005, Vun Tau)
Organizers: CUTS International and VINASTAS (Vietnam Standard and Consumers Association)

⁸ VINASTAS is an organization authorized by the Vietnamese government for labeling standard for consumer products. The labeling standard established by VINASTAS is being applied for products used in Vietnam and periodical market test is conducted by regional braches of VINASTAS.

Participants: 69 (regional government trade and tourism offices (16), regional consumer protection offices (32), VINASTAS (8), news media (10), VCAD (2), others (3))

Contents of the Workshop: 1) Competition Policy and Law in Vietnam, 2) Competition Litigation, 3) The role of consumers and consumer organizations in the promotion and implementation of the competition law and policy, 4) Consumer complaints handling, an active contribution to competition law implementation, 5) Information and education to consumers, 6) The consumer movement in Vietnam, 7) The participation of provinces sub-dept of Trade in the local consumer movement

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Report on Vietnam Market Competition

7Up2 Project prepares reports on competition policy, consumer protection policy and market conditions for each recipient country. The first draft of report on Vietnam, Vietnam Country Advocacy Document (32pages)⁹, has been prepared in August 2005. This report summarizes conditions of market competition and legal environment, together with consumer protection laws and regulations.

(ii) CIDA (Canada)

Canadian International Development Agency (CIDA) provided technical assistance for drafting stage of Vietnamese Competition Law, from viewpoint of Legal Normative Document (LND), which ended in the middle of 2004. CIDA sends Canadian experts to the needs identified at the counterpart agencies, based on comprehensive technical cooperation program agreed between the recipient country and CIDA. For the Competition Law drafting, a special fund for Policy Implementation Assistance Program (PIAP) was utilized, for capacity building activities for MOT and relevant staff. The subjects covered by the capacity building included understanding on the market economy and importance of law in the market economy. CIDA is mainly assisting Vietnam for WTO accession through PIAP facility

(iii) InWEnt (German)

Capacity Building International Germany (InWEnt) was established in 2002 by merger of two German organizations for international technical assistance¹⁰. Its activity is mainly financed by the German government, Federal Ministry of Economic Cooperation and Development, in a form of sub-contract, for TA activities in East Europe and other developing countries.¹¹ Its offices are located in Bonn and Berlin, and its activities, with annual budget of approx. 130 million euro, are focusing on

⁹ www.cuts-international.org

¹⁰ Carl Duisberg Gesellschaft e.V. and German Foundation for International Development

¹¹ www.inwent.org

international human resources development, advanced training and dialogue inviting about 35,000 participants from all over the world.

InWent has conducted a seminar on Competition Law with MOT as a counterpart, from 5th to 9th December, 2005. The seminar was a two-day program in two locations, Hanoi and Ho Chi Minh City. The outline of the seminars is listed below.

Title: Competition Law and Policies in the Era of Globalization

Organizer: Ministry of Trade and InWent

Period: December 8-13, 2005

Location: Hanoi (Dec.8-9), Ho Chi Minh City (Dec. 12-13)

Participants: VCAD staff and high level staff of relevant government offices and experts

Sessions:

1. The Rationale for Competition Law and Policies
 2. The Definition of Relevant Market
 3. The Main Area of Applying Competition Law
 4. Investigatory Rights and Problems in Reality
 5. Tools, Techniques and Skills of Investigation Work
 6. Specific Problems of Implementing Competition Law in Developing Countries
-

(iv) Vietnam Chamber of Commerce and Industry (VCCI)

Besides the above activities, the Chamber of Commerce and industry of Vietnam (VCCI), with cooperation of its regional offices, has been organizing advocacy seminars and workshops. For example, VCCI Da Nang Branch organized one day seminar in Quy Nhon City to the executives of regional enterprises and officials of regional department in Binh Dinh Province - which counted approx. 60 participants. It focused on the competition law and anti-dumping measures. A similar workshop was reported to be held in Da Nang the next day.

1.3 Current Status of Vietnamese Domestic Industry

(1) Overview of Vietnam's Industry

Looking at the composition of GDP and employment by type of economic activities, mining/manufacturing business has been shown a remarkable growth and its composition rates of GDP has been up from 22.0% in 1994 to 34.4% in 2004. At the same time, construction sector has achieved high growth rates since 1990s, although

the growth rates were negative due to the slowdown of FDI triggered by the Asian financial crisis. On the other hand, under the liberalization of economy, the composition rates of service sector were up until mid 1990s, and growth rates have been slowed down gradually.

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 economy¹².

Table 2-1-2 GDP/Employment by Type of Economic Activities

| | (Unit: %) | | | | | | | | | | |
|---|-----------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 |
| Agriculture, Forestry, Fishing | 28.7 | 27.2 | 27.8 | 25.8 | 25.8 | 25.4 | 24.5 | 23.2 | 23.0 | 22.5 | 21.8 |
| Mining, Quarrying, Manufacturing, Electricity/Gas/Water Sup | 22.0 | 21.9 | 23.2 | 25.5 | 26.7 | 29.1 | 31.4 | 32.3 | 32.7 | 33.4 | 33.8 |
| Construction | 7.6 | 6.9 | 6.5 | 6.5 | 5.8 | 5.4 | 5.4 | 5.9 | 5.9 | 6.0 | 6.3 |
| Wholesale and Retail Trade, Hotel and Restaurant | 13.6 | 20.1 | 19.4 | 19.2 | 18.9 | 18.2 | 17.5 | 17.3 | 17.3 | 16.6 | 16.8 |
| Transportation, Storage and Communication | 4.1 | 4.0 | 3.8 | 4.0 | 3.9 | 3.9 | 3.9 | 4.0 | 3.9 | 4.0 | 4.3 |
| Financial Intermediation | 2.0 | 2.0 | 1.9 | 1.7 | 1.9 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 0.6 |
| Others | 22.0 | 17.9 | 17.4 | 17.3 | 16.1 | 15.5 | 15.5 | 15.5 | 15.4 | 15.6 | 16.4 |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

Source: GSO [2005], Statistical Yearbook 2004 and others.

GDP Growth Rates by Kind of Economic Activity

| | (Unit: %) | | | | | | | | | | |
|---|-----------|------|------|------|------|------|------|------|------|------|------|
| | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 |
| Agriculture, Forestry, Fishing | 3.9 | 5.1 | 4.4 | 4.3 | 3.5 | 5.2 | 4.6 | 3.0 | 4.2 | 3.6 | 3.5 |
| Mining, Quarrying, Manufacturing, Electricity/Gas/Water Sup | 12.9 | 14.0 | 13.9 | 13.1 | 11.3 | 9.3 | 10.8 | 9.7 | 9.2 | 10.4 | 10.5 |
| Construction | 19.4 | 13.7 | 16.1 | 11.3 | -0.5 | 2.4 | 7.5 | 12.8 | 10.6 | 10.6 | 9.0 |
| Wholesale and Retail Trade, Hotel and Restaurant | 9.0 | 11.2 | 9.8 | 6.9 | 4.4 | 2.1 | 5.9 | 7.0 | 7.2 | 6.6 | 8.2 |
| Transportation, Storage and Communication | 7.0 | 11.0 | 7.4 | 8.9 | 3.9 | 6.3 | 5.8 | 6.6 | 7.1 | 5.5 | 8.1 |
| Financial Intermediation | 22.8 | 27.6 | 11.4 | 4.3 | 5.8 | 10.0 | 6.1 | 6.3 | 7.0 | 8.0 | 8.1 |
| Others | 10.3 | 8.9 | 7.6 | 7.3 | 6.0 | 0.6 | 4.4 | 4.9 | 5.5 | 6.4 | 6.3 |
| Total | 8.8 | 9.5 | 8.2 | 9.3 | 5.8 | 4.8 | 6.8 | 6.9 | 7.1 | 7.3 | 7.7 |

Source: GSO [2005], "Statistical Yearbook 2004" and others.

Employment by Kind of Economic Activity

| | (Unit: %) | | | | | | | | | | |
|---|-----------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 |
| Agriculture, Forestry, Fishing | 72.3 | 72.3 | 70.7 | 70.1 | 69.5 | 68.9 | 68.2 | 67.2 | 61.1 | 58.4 | N.A |
| Mining, Quarrying, Manufacturing, Electricity/Gas/Water Sup | 10.8 | 11.2 | 8.9 | 9.0 | 9.1 | 9.2 | 9.3 | 9.4 | 15.0 | 17.0 | N.A |
| Construction | 3.2 | 2.7 | 2.4 | 2.5 | 2.5 | 2.5 | 2.6 | 2.8 | | | N.A |
| Wholesale and Retail Trade, Hotel and Restaurant | 4.3 | 5.6 | 6.1 | 6.4 | 6.7 | 7.1 | 7.4 | 7.7 | 23.8 | 24.7 | N.A |
| Transportation, Storage and Communication | 1.8 | 1.7 | 2.3 | 2.4 | 2.4 | 2.5 | 2.5 | 2.7 | | | N.A |
| Financial Intermediation | 0.3 | 0.3 | 0.2 | 0.2 | 0.2 | 0.2 | 0.2 | 0.2 | | | N.A |
| Others | 7.4 | 6.3 | 9.3 | 9.4 | 9.6 | 9.6 | 9.8 | 9.9 | | | N.A |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

Source: GSO [2005], "Statistical Yearbook 2004" and Ministry of Labour [2004], "Labour-Employment in Vietnam 1996-2003".

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

¹² It is often estimated that half of total GDP goes unrecorded.

in recent years has been accompanied by the flow of foreign direct investment (FDI) and a significant increase in the size of informal economy¹³.

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 is on decreasing trend, marking 27% in 2004.¹⁴

According to the GSO (General Statistics Office) statistics¹⁵, there are currently 91,755 enterprises of different types of ownership operating, as of 2004, in Vietnam. Most of them are private small and medium enterprises that have recently established and mainly operated in commercial and trading activities rather than manufacturing. The average size of those firms is smaller and less competitive compared to foreign invested firms and joint stock firms with partial ownership by state, which are able to compete with state owned enterprises.

Table 2-1-3 Industrial Output by Ownership and Growth Rate

| | 2000 | 20001 | 2002 | 2003 | 2004 |
|-----------------------------|---------|---------|---------|---------|---------|
| | (in %) | | | | |
| State-owned | 34.2 | 31.5 | 31.5 | 29.4 | 27.4 |
| Domestic and Cooperatives | 24.5 | 27.0 | 27.0 | 27.5 | 29.0 |
| Foreign Investment | 41.3 | 41.5 | 41.5 | 43.1 | 43.6 |
| Production Amount (VD bill) | 198,326 | 227,342 | 261,092 | 305,080 | 355,624 |
| Growth rate | 17.5 | 14.6 | 14.8 | 16.8 | 16.6 |

Note: Production Amount in 1994 Constant Price

Source: Statistical Yearbook of Vietnam 2005, General Statistics Office

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 Corporations¹⁶ hold dominant position in the "strategic" industries, such as cement, petroleum, steel, sugar,

¹³ It is often estimated that half of total GDP goes unrecorded.

¹⁴ The SOE sector still employs 2.25million, absorbing some part of surplus labor

¹⁵ General Statistical Office [2005], Statistical Yearbook 2004.

¹⁶ State General Corporations (SGC) were established based on Prime Minister Decision No. 90 and No. 91 of 1994. SGC owns several SOEs in particular business field.

fertilizer, telecommunication, airline, finance service, foreign trade and wholesale sectors, as indicated on the Table 2-1-5.

Despite of the facts that SOE's dominant position in the strategic industries, foreign investment enterprises are rapidly gaining shares in various sub-sectors, widening area of economic activities and 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 form previous year. The top four economies (Hong Kong, South Korea, USA and Japan) share 80% of the total investment approved¹⁷. 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.

Table 2-1-4 Statistics of Enterprises by Type of Ownership in 2004

| | | Number of Enterprises | | Employment | | Capital | | Net Turnover | |
|--------------------------------------|-------------------------------------|-----------------------|--------------|------------------|--------------|------------------|--------------|------------------|--------------|
| | | number | % | number | % | VND billion | % | VND billion | % |
| State Owned Enterprise | | 4,596 | 5.0% | 2,249,902 | 39.0% | 1,128,483 | 57.4% | 708,045 | 41.2% |
| | Central | 1,967 | 2.1% | 1,517,391 | 26.3% | 968,447 | 49.3% | 532,381 | 31.0% |
| | Local | 2,629 | 2.9% | 732,511 | 12.7% | 160,036 | 8.1% | 175,664 | 10.2% |
| Non-state Enterprise | | 84,003 | 91.6% | 2,475,448 | 42.9% | 422,892 | 21.5% | 637,371 | 37.1% |
| | Collective | 5,349 | 5.8% | 157,831 | 2.7% | 12,771 | 0.6% | 11,560 | 0.7% |
| | Private | 29,980 | 32.7% | 431,912 | 7.5% | 43,222 | 2.2% | 135,715 | 7.9% |
| | Collective Name | 21 | 0.0% | 445 | 0.0% | 124 | 0.0% | 40 | 0.0% |
| | Limited Co.. | 40,918 | 44.6% | 1,393,713 | 24.2% | 204,534 | 10.4% | 354,641 | 20.6% |
| | Joint Stock Co. with state capital | 815 | 0.9% | 184,050 | 3.2% | 76,992 | 3.9% | 62,688 | 3.6% |
| | Joint Stock Co. without state capit | 6,920 | 7.5% | 307,497 | 5.3% | 85,249 | 4.3% | 72,727 | 4.2% |
| Foreign Investment Enterprise | | 3,156 | 3.4% | 1,044,851 | 18.1% | 414,789 | 21.1% | 373,985 | 21.8% |
| | 100% Foreign Capital | 2,335 | 2.5% | 865,175 | 15.0% | 217,653 | 11.1% | 184,711 | 10.7% |
| | Joint Venture | 821 | 0.9% | 179,676 | 3.1% | 197,136 | 10.0% | 189,274 | 11.0% |
| TOTAL | | 91,755 | | 5,770,201 | | 1,966,164 | | 1,719,401 | |

Source: Statistical Yearbook of Vietnam 2005, General Statistics Office

| | | Number of Enterprises | | Employment/firm | | Capital/firm | | Net Turnover/firm | |
|--------------------------------------|---------------------------------------|-----------------------|--|-----------------|--|--------------|--|-------------------|--|
| | | number | | number | | VND billion | | VND billion | |
| State Owned Enterprise | | 4,596 | | 490 | | 245.5 | | 154.1 | |
| | Central | 1,967 | | 771 | | 492.3 | | 270.7 | |
| | Local | 2,629 | | 279 | | 60.9 | | 66.8 | |
| Non-state Enterprise | | 84,003 | | 29 | | 5.0 | | 7.6 | |
| | Collective | 5,349 | | 30 | | 2.4 | | 2.2 | |
| | Private | 29,980 | | 14 | | 1.4 | | 4.5 | |
| | Collective Name | 21 | | 21 | | 5.9 | | 1.9 | |
| | Limited Co.. | 40,918 | | 34 | | 5.0 | | 8.7 | |
| | Joint Stock Co. with state capital | 815 | | 226 | | 94.5 | | 76.9 | |
| | Joint Stock Co. without state capital | 6,920 | | 44 | | 12.3 | | 10.5 | |
| Foreign Investment Enterprise | | 3,156 | | 331 | | 131.4 | | 118.5 | |
| | 100% Foreign Capital | 2,335 | | 371 | | 93.2 | | 79.1 | |
| | Joint Venture | 821 | | 219 | | 240.1 | | 230.5 | |
| TOTAL | | 91,755 | | 63 | | 21.4 | | 18.7 | |

Source: Statistical Yearbook of Vietnam 2005, General Statistics Office

¹⁷ JCIF report

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.

(3) The Liberalization of Business Sector and Anti-competitive Practices

In December 2005, the two critical business laws were passed at the National Assembly. The Unified Enterprise Law establishes a uniform legal framework for enterprises of different legal forms, regardless of their ownership profiles. On the other hand, the Common Investment Law replaced both the Law for Domestic Investment Promotion and the Foreign Investment Law, with the goal of creating a unified legal framework for investment in Vietnam. The new law eliminates most of limitations, giving foreign investors the same kinds of opportunities that domestic investors already enjoy.

Despite of the progress of establishing a better legal framework, the field survey in Ho Chi Minh, Da Nang and Hanoi implies that there are still various types of unfair and anti-competitive practices in the Vietnam's business sector.

Table 2-1-5 Market Share of State General Corporations in Strategic Industries

| Industry | Market Share (%) |
|--|------------------|
| <i>Mining and Quarries</i> | |
| Coal | 97 |
| Oil and Gas | 100 |
| <i>Utilities and Services</i> | |
| Electricity generation | 98 |
| Water | 100 |
| Railway (Cargo and passengers) | 100 |
| Air (Cargo and passengers) | 90 |
| Mobile | 95 |
| Fixed Line | 95.5 |
| Internet services | 49 |
| Commercial Banking (4 state-owned banks) | 70-80 |
| Non-life insurance | 52 |
| Life insurance | 40 |
| <i>Manufacturing</i> | |
| Chemical fertilizers | 90 |
| Basic Chemicals | 99 |
| Paper | 70 |
| Rubber | 69 |
| Cement | 55 |
| Steel | 52 |
| Plastics | 23 |
| Cigarettes | 55 |

Source: 7Up2 Project [August 2005], "Advocacy and Capacity Building on Competition Policy and Law in Asia: Vietnam Country Advocacy Document".

Price Fixing and Other Cartel Arrangement.

It is indicated that some businesses show a tendency of cartel behavior. The simplest form is an agreement on the price to be charged on some or all customers. The agreements among taxi firms to fix uniform tariffs in Ho Chi Minh City and agreements among banks on setting the lending and borrowing interest rates in the financial markets are typical examples of price fixing.

Bid Rigging

Bid rigging practice is widely prevalent, especially in the construction and supply sector, where contractor or suppliers decide the price at which one contractor or supplier will receive the contract. For instance, in Van Lam-Son Hai II Road Construction project, there were four companies participating in the tendering process. Company 98 was selected and awarded as winner. It was, however, later discovered that all the four bidders were the same, in the sense that three other companies were used by Company 98 to participate in 'tendering' just to create a 'competitive' image for the whole episode. These three 'ghost' companies offered the prices higher than

the price of the tendering package and ‘accepted’ being losers so that Company 98 could be awarded as a winner. Having arranged ‘in advance’, Company 98 was awarded as winner at the price of VND 1,560,900,000 as compared to the price of VND 1,560,900,141 of the tendering package, which was less than by only 141 VND.¹⁸

Abuse of Dominance

Monopolistic firms have a strong temptation to abuse their market power and engage in predatory behavior. Sometimes, this is done to accrue unjust economic rents and to preserve their monopoly positions.

Most common vertical arrangements include tied selling and exclusive dealing. The tied selling occurred in many motorcycle shops. Example of exclusive dealing is the contract between Vietnam's Beer Factory and the owner of “Cay Dua” restaurant¹⁹.

Structural offences refer to abusive conducts related to dominant and monopolistic positions, unlawful maintenance of monopoly or monopolization, mergers and acquisitions that may restrict competition in the market, etc. A highly concentrated or monopolistic market structure may induce the incumbent enterprises, who face no effective competition, to charge higher prices and produce less or lower quality output. The consumers, having no viable alternatives, will therefore be exploited unjustly by the anticompetitive conducts. Another remarkable feature of structural offences in the Vietnam market is the use of exclusive distribution channels or sole representative status to mark up prices, such as the practice used by pharmaceutical companies recently.

Some other subtle forms of abuses of dominance in Vietnam include the followings: a) Price discrimination²⁰, and b) Predatory pricing²¹.

¹⁸ Source: 7Up2 Project [August 2005], “Advocacy and Capacity Building on Competition Policy and Law in Asia: Vietnam Country Advocacy Document” .

¹⁹ Cay Dua Case: According to the contract, the restaurant owner must commit to Vietnam's Beer Factory for exclusive selling, sale promotion, advertising, and selling only the beer brands Tiger, Heineken, and Bivina. Due to this, a new market entrant, Laser beer by Tan Hiep Phat Co., has been foreclosed from the retailing market completely.

²⁰ This happens when a manufacturer or a supplier of goods or services charge, for the same or similar product and service, a higher price from one dealer and a lower price from another. The discrimination in price can be made either through fixing or charging different prices from different buyers or classes of buyers or by granting discount, commission, allowance or rebate at different rate to different buyers or class of buyers.

²¹ This is the practice of pricing products or services below the cost of production with the intention to drive out competitors from the market. For example, the Beverage Coca-Cola and the International Beverage Company (IBC) abused their dominant position to reduce the price of products in order to drive out smaller competitors from

2. Pilot Market Research

2.1 Framework of Market Research

Activities of Phase I and II

Preparatory activities for the pilot market research were conducted during the Phase I of the TA. Scoping study was carried out. General scope of the pilot market research was agreed with the VCAD. Candidate survey firms were short-listed and requested to present proposal. The scoping study collected basic information of eight industries which might have repercussions from competition point of view. The information was collected through websites, news media, and interview with corporations, organizations and the VCAD. On the basis of the collected information and presumed competition situation, five industries have been selected as target industry to study under the pilot market research. They include: beer, soft drink, milk and dairy products, pharmaceutical, and insurance. The VCAD agreed to the selection of the five industries. As for methodology, the first TA Seminar for the VCAD introduced the market research method of the Japan Fair Trade Commission (JFTC), which drew much attention of the VCAD.

Based on the results of the scoping study, phase II implemented pilot market research through Vietnam Chamber of Commerce and Industry (VCCI), the selected survey firm to conduct local survey. The result of the pilot market research was compiled as market research report of the five selected industries. Besides that, progress and final reporting were made at TA seminar in September 2006 and market research presentation session in December 2006, respectively. In future, the result of research will also be posted on the website being developed as part of advocacy assistance activities.

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. The latter, roadmap for information development, will clarify how to develop presently non-existent data sets in future on

the market. The rigorous price reductions and promotion schemes recently exercised by Viettel in the mobile service market were also argued by some analysts to be a case of predatory pricing.

the basis of assessment of what data could be collected from what data source and research method. It is of particular importance in Vietnam where national and corporate data development and disclosure is behind its peers and nascent competition authority is yet to develop organizational capacity to conduct periodic monitoring of market which is one of the essential functions of the competition authority.

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 as discussed above.

Soft drink was formerly labeled as carbonated beverage. The reasons of changing its title are as follows. First, the SSNIP²² logic tells that non-carbonated drinks are in the same market as carbonated drinks from competition law's point of view because the former easily substitutes the latter when the price of the latter increases. Second, Vietnam Standard Industry Classification (VSIC) does not have subcategory such as carbonated beverage, but category as soft drink which also include non-carbonated beverage.

However, the pilot market research does not deal with SSNIP test because defining market clearly using SSNIP test is not required for a study such as this. As stated above, this is not a study as part of competition authority's investigation, but a study to provide basic information prior to any investigative activities. What this pilot market research will provide include description of activities according to VSIC's classification in production and distribution activities and analysis of vertical- as well

²² SSNIP (small but significant and non-transitory increase in price) test is a standard way to define market among competition authorities in US and Europe. It presumes a monopolistic firm and examines the case where given monopolistic firm makes small but significant and non-transitory increase in price, e.g., maintains five percent higher price for a year. Concerned market is defined in terms of geographic boundary and group of products when such a price increase does not cause switch to substitute product.

as horizontal-integration of main players of the market. This should be basic but sufficiently useful information for competition authority.

Research Items

Structuring and sophistication of content of research per se was an important process of capacity building. The initial scope of work presumed at the moment of request for proposal at the end of Phase I had several shortcomings. There was a question regarding accessibility to quantitative data because public statistics is underdeveloped and corporate financial data are mostly undisclosed in Vietnam.

Besides these, there was an over-expectation as to what could be achieved through the pilot market research. Examples of over-expectation include: proposal to survey all the businesses in given sectors to fill the incompleteness of existing statistics; and dig up cases that could be breaching the law using the same criteria of the competition authority.

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 presented in Box 2-2-1 is the end result of these efforts.

The List of Research Items includes standard items of competition-related market research as well as reflecting recent focus. Detailed items are modeled after a sample market research of JFTC. Making logical structure much clearer than before, it contributed to improving understanding and commitment of the VCAD. The research framework was presented in a session at the TA Seminar in September 2006. It has deepened understanding of VCAD staff, who did not have clear image of market research to conduct as competition authority.

The “standard items” are market structure, market conduct²³ 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 regular market research outside of competition law. It looks at price behavior such as movement of price and profit

²³ Often called “market behavior” as in the case of the List of Research Items.

margin, and non-price behavior such as sale promotion activities, diversification and influence of foreign capital (3.3 Anticompetitive practices will be discussed later in this section).

Product feature replaced introductory overview section, following the example of a market research report of JFTC.²⁴ This part addresses key questions to detect product characteristics leading to natural monopoly. “Recent focus” corresponds to “Institutional factors affecting competition.” There are three reasons of choosing regulations for this market research. First, how regulations including both governmental regulations and self-regulations by industry groups affect competition is becoming a focus in the implementation of competition law in developing countries. Second, regulations are also a focus on improving overall business environment. Third, Vietnam as a transitional economy arguably has more regulations concerning market function than many other developing countries. The section covers not only regulations on market entry and price, but also regulations on other issues such as quality, safety, environment and tax. The coverage of types of regulations followed the discussion on competition law by the World Bank.²⁵

Box 2-2-1 List of Research Items for Market Survey

- 1 Product Features
 - 1.1 Type of Industry (e.g., VSIC classification)
 - 1.2 Type and feature of goods and/or services
 - Key Q.) Easy to differentiate goods/services? (i.e., price becomes more important in undifferentiated product market)
 - Key Q.) Does the product/service tend to have local advantage of small geographic boundary? (i.e., leads to localized monopolies)
 - Key Q.) Is substantial upfront investment required? (i.e., natural entry barrier)
 - Key Q.) Does production/distribution require substantial use of infrastructure services? (e.g., substantial consumption of electricity, water, gas could limit the location choice, creating entry barriers)
- 2 Market Structure
 - 2.1 Overview of the Market
 - 2.1.1 Generic subsector map (i.e., chart of all players from raw material to distribution to the final market along the value chain) Market size and trend
 - 2.1.2 Historical origin and development of the subsector
 - 2.1.3 Latest production and shipment figures and longitudinal data (of past 10 years)
 - 2.1.4 Latest import and export figures and longitudinal data (of past 10 years)
 - 2.2 Data on market entry and exit (of past 10 years)

²⁴ “Kodo kasen sangyo ni okeru kyoso no jittai” (Competition situation in highly oligopolistic industries), JFTC, 2002.

²⁵ World Bank (2002) “Chapter 7. Competition,” World Development Report 2002.

| | |
|---------|---|
| 2.3 | Level of concentration (best-effort basis, may use estimation or be descriptive if data are not available) |
| 2.3.1 | CR3 ²⁶ -CR5 in terms of production and/or shipment (of past 10 years) |
| 2.3.2 | Production concentration in terms of HHI (of past 10 years) |
| 2.4 | Production features (compare among big players as well as between big and small players) |
| 2.4.1 | Sourcing of materials and parts |
| 2.4.2 | Technologies of production |
| 2.4.3 | Size of production units (e.g., factory size) |
| 2.4.4 | Location of production units |
| 2.4.5 | Level of differentiation |
| 2.5 | Distribution features (of each distinct distribution channel) |
| 2.5.1 | Structure of distribution and distinct features |
| 2.5.2 | Relationship between producers and distributors |
| 3 | Market Behavior |
| 3.1 | Price behavior (of past 10 years) |
| 3.1.1 | Level and movement of wholesale price |
| 3.1.2 | Level and movement of profit margin (of whole industry) |
| | <ul style="list-style-type: none"> • Key Q.) How price is determined at production, wholesale and retail level? • Key Q.) Is there simultaneous price movement? |
| 3.2 | Non-price behavior |
| 3.2.1 | Sales promotion activities |
| | <ul style="list-style-type: none"> • Key Q.) What are types of sales promotion activities and recent trend? |
| 3.2.2 | Diversification (compare among big players as well as between big and small players) |
| 3.2.2.1 | List of other product lines |
| 3.2.2.2 | Percentage of each product line in terms of sales |
| 3.2.2.3 | Diversification strategy of major firms |
| | <ul style="list-style-type: none"> • Key Q.) What are reasons of (different levels of) diversification of firms? |
| 3.2.3 | Foreign capital |
| 3.2.3.1 | Business of foreign firm subsidiaries |
| 3.2.3.2 | Equity participation to domestic firms |
| 3.2.3.3 | Association/Affiliation between foreign firms and domestic firms |
| | <ul style="list-style-type: none"> • Manufacturing license • Sales contract • Others |
| 3.3 | Anticompetitive practices (describe if dubious) |
| | <ul style="list-style-type: none"> • Key Q.) Is there any indication of the following? If so, describe as “according to news of ...” or “reportedly.” |
| 3.3.1 | Competition restriction acts |
| | <ul style="list-style-type: none"> • Competition restriction agreements (see detailed list in p.7 of leaflet) • Dominant position on the market (see detailed list in p.12 of leaflet) • Monopoly position (see detailed list in p.14 of leaflet) • Economic concentration (see detailed list in p.15 of leaflet) |
| 3.3.2 | Unfair competition acts (see detailed list in p.18 of leaflet) |
| 4 | Market Performance (of each major players plus selected small players) |
| 4.1 | Financial standing (i.e., latest financial statement) |
| 4.2 | Level and movement of <i>sales and general administrative expenses and advertising and</i> |

²⁶ CR3(Concentration Ratio): Total Market share of top 3 enterprises in percentage. Likewise, CR% refers to total share of top 5 enterprises.

| | |
|---|--|
| | <i>publicity expenses</i> (of past 10 years) |
| | 4.2.1 Ratio of <i>sales and general administrative expenses</i> to gross sales |
| | 4.2.2 Ratio of <i>advertising and publicity expenses</i> to gross sales |
| 4.3 | Level and movement of profit margin (of past 10 years) |
| | 4.3.1 Gross sales |
| | 4.3.2 Total liabilities and net worth |
| | 4.3.3 Equity capital |
| | 4.3.4 Operating income to sales |
| | 4.3.5 Return on equity (ROE) |
| 5 | Institutional Factors Affecting Competition (both government regulations and private sector practices such as self-regulations by business associations) |
| 5.1 | Types of rules affecting competition in the industry (list all the following if any) |
| | <ul style="list-style-type: none"> • Entry regulations (e.g., licensing/general screening of opening evaluation) • Price/Fee regulations • Regulations on quality and/or quantity of goods/services (e.g., standards and accreditations) • Health and safety regulations • Environmental regulations • Tax regulations • Labor regulations (could raise cost of exit from market) • Budget subsidies/Lost loans/Permission for delayed tax and other payments • Others (if any) |
| <p><u>Note:</u> Coverage of data indicates recommended coverage on best effort basis. It is presumed that the best case in Vietnam would be to cover a few years, while the worst case would be no data at all or the only available data is estimation by industry experts.</p> <p><u>Source:</u> Elaborated by TA Consultant Team of MURC</p> | |

Above list of research items and its structure have been discussed with the VCAD. VCAD staff appreciated this version as much clearer than earlier ones. Through the discussion, “3.3 anticompetitive practices” has been modified to follow the structure of the Vietnamese competition law. The VCAD requested the modification because it was important for survey firm to fully appreciate each and every clause of the competition law, and for the competition authority to create reference of business practices commonly observed in particular industry, not those of particular firm or specific case, in relation to relevant clauses in the competition law.

Nevertheless, there is a risk of signaling the market that the authority is investigating particular industry with certain doubts. Emitting such a signal must be avoided at any cost. To do so, reports and survey of the pilot market research will not follow 3.3. as they are. Indeed, it is not necessary to include 3.3. in survey because all the information is covered elsewhere in the market research report. Should the VCAD wish to have relevant section such as 3.3., it could be written more objectively as basic

reference information by using analytical concepts instead of wording of legal provisions.

TA Team also reconfirmed that it was a task of the VCAD to analyze basic information in market research reports in the light of legal provisions, not a task of this pilot market research. To make it clear in public, TA team prepared a letter that said that this market research was a pilot effort to compile basic information of some of the key industries in Vietnam as part of JICA study aimed at assisting capacity building efforts of the competition authority of Vietnam.

Research Methods

The request for proposal presupposed that data collection methods would be centered on questionnaire survey by mail and interview, and qualitative questionnaire interview with industry associations besides accessing to public statistics. TA team has discussed with the VCAD and survey firm the best mix of data collection methods for each research item to overcome difficulties in accessing and collecting necessary data in Vietnam.

As a result, 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.

The latter aimed at confirming/complementing/modifying information obtained from secondary data. Because of this, questionnaire was semi-structured where open-ended questions were explored as necessary, instead of using structured questionnaire for statistical significance.

It was agreed with the survey firm that census type complete count survey by firm visit may be used in a couple of highly oligopolistic industries or where number of firms is relatively small. In other industries, complete survey may not be necessary or feasible. As a result, insurance industry became the target for a complete count survey.

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

Within the research aims “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,” the former corresponds to the five industry reports developed through survey firm. Hence, it will suffice referring to issues the competition authority should have in mind when reviewing the five industries. From the viewpoint of the latter as capacity building, the author provides with meta-evaluation of research methodology and research strategy leaving from the contents of findings.

Highlights of Findings from the Five Industries Relevant to Competition Administration

Following part presents highlights of findings from the five industries studied that are relevant to competition administration. They will be presented according to headings of the above “research items” (i.e., product features, S-C-P analysis, and regulatory factors). Product features are the same worldwide, hence its description reflects views of TA Team knowing the context of Vietnam but not using field survey results. Description of the remaining four categories reflects results of field survey and additional analysis by TA Team.

- 1) **Product Features:** Each of the five industries has distinct features of products that tend to lead monopolization.

Beer:

- i) Bottled and canned beer requires investment in production facilities that can meet peak demand in summer because it has relatively short validity period, are not suitable for lengthy storage. The large size of required investment raises entry barrier, tending to lead to monopolization of the market.²⁷

²⁷ On the other hand, “Bia Hoi,” a cheap draft beer variation in Vietnam, must be consumed within the same day of production. This characteristics allows a large number of small producers capturing small geographic boundaries by locating in or nearby consumer market.

- ii) 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.
- iii) 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 market²⁸.

Soft Drink:

- i) Entry barrier is low in terms of required investment size (approx. US\$200,000 initial investment)
- ii) 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.
- iii) Number of water sources appropriate for mineral water production is limited, which further facilitate tendency of ii).
- iv) 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.
- v) Beverages such as cola are difficult to differentiate, susceptible for price competition. This could lead to oligopolistic market by large firms with financial strength.

Milk and Dairy Products:

- i) Milk Beverages excluding powder milk and long-life milk require investment in cold chain in distribution and processing facility to meet peak demand because it has relatively short validity period, are not suitable for lengthy storage. The large size of required investment raises entry barrier, tending to lead to monopolization of the market.
- ii) Milk Beverages excluding powder milk and long-life milk are bulky and costly in terms of transportation, making factory location in proximity to consumer market. This may lead to division of market by geographic boundary.

Pharmaceutical:

- i) International new drugs market is becoming more and more oligopolistic

²⁸ Note that expensive marketing activities per se are not anti-competitive as is often criticized in Vietnamese mass media. The problem arises only when marketing activities do involve anti-competitive acts.

through merger and acquisition (M&A) among mega corporations in search of further investment in research and development (R&D).

ii) Expansion of scale through M&A is sought after to expand marketing network.

iii) Apart from patent protected new drugs, development of generic drugs and oriental medicine markets are subject to government regulations and health insurance system, which alter entry cost and advantages against new drugs. Level of oligopolization is function of these factors.

iv) Different from over-the-counter (OTC) drugs that do not require prescription by doctors, selection of prescription drugs depends largely on relationship between medical doctors and pharmaceutical firms. Hence, prescription drugs may be more susceptible to unfair competition practice.

Insurance:

i) 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.

ii) Insurance business demands highly technical knowledge, raising entry barrier.

iii) Non-life insurance often involve reinsurance contracts to average out and decentralize risk because insurance covers large-scale properties and casualty with huge losses that go far beyond a single insurance company can cover. Naturally, international reinsurance firms with large capital are called in, where oligopolization is the trend.

iv) Life insurance and non-life insurance are two unrelated products without substitutability. However, cross-category M&As are taking place to strengthen financial standing under deregulated international market. This is another factor leading to more oligopolistic structure.

v) Insurance has traditionally been regulated business. Oligopoly by large domestic firms is often the case in pre-WTO economies where government limits activities of foreign corporations.

2) Market Structure:

Beer:

GSO' revenue data indicate that CR3²⁹ of beer industry oscillate between 40 and 45 percent. However, data from other sources indicate the two largest SOEs

²⁹ CR3 refers to total market share of top three firms.

occupy 38 percent (MOI Report 2006) or even 50 percent. 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.

Regarding distribution, no structural problem was identified except for control of retailers (to be discussed under 3) Market Behavior). Large firms depend of external distributors beyond a small number of branches. SAB Miller signed a contract with milk giant, former SOE Vinamilk for the use of its nationwide distribution network.

Soft Drink:

Soft drink sector can be divided into carbonated beverages, non-carbonated soft drink, purified water and mineral water. Substitutability between subcategories is low, hence the question is level of concentration within each subcategory. GSO data at subcategory level were not available.

The industry association estimates that two foreign giants capture 62 percent of carbonated beverage market. A news in 2006 provided different figures; Coca Cola 50 percent, Pepsi Cola 38 percent and Tribeco 6 percent (VIR-news 19-10-2006). 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. On the other hand, retailers' relationship with wholesalers (and sometimes with producers) often is not on the basis of clear-cut contract; some see that retailers are put in a weak position (See 3. Market Behavior). In 2006, it is reported that Coca Cola sued many small agents to return huge number of bottles.

Milk and Dairy Products:

GSO' revenue data indicate that CR3 of this industry oscillate between 14 and 25

percent over the last five years. Tendency is on decline. These figures are dubious and probably understatement. Industry information and news articles indicate that top firm Vinamilk occupies 30-40 percent or 70-75 percent of the market, according to the products. Likewise, the second largest Dutch Lady's share is 30-35 percent, reportedly. Regarding stock market listed firms such as Vinamilk, verification of numbers should be done, e.g., putting financial data of the firm as numerator and whole industry data of GSO as denominator. Also, distinction should be made between numbers calculated with domestic production 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).

By the same token, dairy firms in statistics include both producers and traders. There are about a dozen major firms in milk and dairy sector in Vietnam. Seven of them entered milk market since 2001, some foreign and others domestic firms. It is because dairy market is fast expanding at a rate of 25 percent annually on revenue basis bolstered by growing population and economy. Still, there are just 37 registered milk producing firms throughout the country.

Large domestic firms have huge distribution network. Vinamilk provides its products to 90,000 retailers through 220 distributors located in all of the 64 provinces. Hanoi Milk, another large firm deals with 100 wholesalers and 100,000 retailers. Small and medium producers without such distribution network, on the other hand, presumably distribute their products within limited geographic boundaries.

Pharmaceutical:

GSO' revenue data indicate that CR3 of this industry was less than 5 percent in 2004 and 2005. Level of concentration appears low indeed, given that there are 460 pharmaceutical producers including both western and oriental medicines, out of which 174 are modern western drug producers, and even those with GMP certificate, an indicator of well developed management, are as many as 59. Note, however, that consolidated results should be calculated in the case of Vietnam Pharmaceutical Corporation (Vietpharm). The firm holds all other SOEs under it. Besides these, number of trading companies that can broker production contracts between foreign and domestic pharmaceutical firms is regulated by the Drugs

Administration of Vietnam (DAV).

Vietnam imports 90% of raw material for pharmaceutical production (mainly from France and Singapore). It produces only generic drugs that are not protected by patents such as new drugs, as well as oriental medicine. 50-60 percent of drugs are imported (mostly generic drugs from India). The figure goes up to 70-80 percent when it comes to drugs prescribed at hospitals.³⁰ Small amount is exported not only to traditional market in Eastern block, but also to Japan, Southeast Asia and Africa. Exports are mainly raw material of oriental medicine. Composition of import-export may change substantially as TRIPS agreement restricts generic drug production in India.³¹

Currently, small oriental medicine producers are exempt from GMP certification and able to do inexpensive manufacturing with one 25th to one 50th of investment size of GMP certified manufacturers.

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. At the level of drug brands, nearly 1,000 foreign brands are said to be traded by exclusive dealers. Foreign firms trading with domestic importers/distributors are required to have trading license, with which change of domestic importers/distributors are made difficult.

Insurance:

Insurance is entirely licensed business, well controlled by Insurance Department of Ministry of Finance. Analysis is easy with good access to firm level data. CR3 of life insurance is extraordinary 90 percent, with foreign capital Prudential Life (41%) and domestic Bao Minh CMG Life (38%) creating duopoly situation (2005 data). In non-life insurance, CR3 is 75 percent; top four firms (Bao Viet, an SOE; Bao Minh, a privatized former SOE; Petrolimex, another privatized former SOE; and PVI, an SOE) take up 87 percent of the market.

³⁰ There are always several figures for one thing. It is not clear which is closer to reality.

³¹ India and Brazil have been the main supplier of copy drugs before expiration of patents to developed nations. TRIPS agreement discredited such practice with exception of LDCs. Accordingly, India has adopted new pharmaceutical law harmonized with TRIPS agreement.

There have been only 15 insurance firms till 2002. 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 with anticipation of deregulation (especially in non-life insurance) with trade agreement with US and accession to WTO. Meanwhile, German-based Allianz, the world's largest non-life insurance firm, has exited Vietnamese market in 2005.

In life insurance sector, policies for drivers have grown to surpass basic policies in terms of contract number. Nonetheless, both have decreased since peak year of 2004 by number of contract and premium income. Some attribute this to market saturation, others to campaign of bank deposit as substitute product. Endowment insurance³² still accounts around 90 percent of premium income.

In the non-life insurance sector, major types of insurance include: motor vehicle insurance (31%), property and casualty insurance (20%), and personal accident and health insurance (16%). Growing products in terms of premium are: public liability insurance, business interruption insurance, motor vehicle insurance, personal accident and health insurance, and hull and P&I insurance. There are products on declining trend such as: financial risk insurance, agriculture insurance, and aviation insurance.

Formerly SOE, VINARE, the only firm in Vietnam specializing reinsurance, was privatized in 2004. Other insurance companies deal outward reinsurance with foreign reinsurance firms or VINARE, while they also receive inward reinsurance. Typical examples with reinsurance needs are aviation insurance, hull insurance and insurance for large scale projects. These types of large scale insurance/reinsurance contracts are intermediated by brokers. Brokers negotiate with several insurance/reinsurance firms for the sake of clients. There are three foreign and three domestic brokers in Vietnam.

Life insurance, and smaller scale non-life insurance without brokers involvement are sold by agents. There are 130,000 agents in Vietnam, 73 percent of which are life insurance agents.

³² Insurance combining survivor's insurance and mortality insurance. Maturity insurance amount will be paid when insured person outlived insurance period. Death benefit will be paid if insured person deceases before the end of insurance period. It is considered substitute product to bank deposit due to savings-based feature of survivor's insurance.

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 2-2-2 Concentration Ratio by Sector and Source of Information

| | Beer | Soft drink | Milk and dairy products | Pharmaceutical | 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:

Retail data of GSO indicate that there has been a gradual price increase over the last nine years for premium beer of foreign firms and cheap Bia Hoi while price of the mid-market beer of two major SOEs has gone down by 13 percent as of 2005 compared to the peak year of 2001. No implication has been drawn in terms of competition administration. Further analysis is difficult without having profit margin movement of firms in question.

In promotion activities, there was a well-known case of Cay Dua Beer Shop at HCMC People's Court. There was a claim that Laser Beer was driven out by a joint venture with a large foreign firm through exclusive contract with Cay Dua. The court rejected the claim in 2004, saying that contract was legal. Note that there was not yet the competition law at the moment.

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 Aisa Pacific Brewery (APB).³³ Prior to purchase of Foster, APB held 10 percent of beer market with Dutch brand Heineken and Singaporean brand Tiger Beer. Now adding 5 percent market share of Foster brand, expansion of APB's market share pushes up CR3 with two SOEs to 50 plus percent.

Among the world's top five breweries, InBev (Belgian) and Anheuser-Busch (US) have not joined Vietnamese market although the latter entered into cooperation agreement with Sabeco, the largest beer company in Vietnam. Carlsberg Brewery, second to APB among foreign brands in Vietnam, has signed a strategic agreement with another SOE giant, Habeco. Meanwhile, SAB Miller (UK) built joint venture factory with milk giant Vinamilk. Alliance between foreign and domestic firms could still bring substantial change in market share.

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. This requires further scrutiny of market share.

Soft Drink:

In carbonated drink, there was a widely reported case of predatory pricing by large foreign firms in late 1990s. Mass media focused on the case when a local carbonated drink brand was driven out of the market. 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. This has happened against backdrop of rising price of ingredients by 20 percent. On top of this, campaigns of "buy one, get one" type have effectively lowered the price further. The entry of RC Cola brand by Royal Crown International (US) into Vietnamese market may have affected the declining price.

In non-carbonated drink sector, number of types has quadrupled to reach 200

³³ Precisely, Foster was sold to Vietnam Brewery Ltd., a joint venture between APB and Ho Chi Minh City Food Company.

types over the last four years. Many small firms focused on non-carbonated sector to avoid competition against giants in carbonated drink segment. These small firms tend to provide cheap beverages in rural market. Meanwhile, healthy drink and energy drink categories are growing in urban market. 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. Repayment is requested when retailers carry other brands. In addition, sales promotion campaign is source of another concern. Cases were reported where promised prize was not handed over, or wholesale price had been increased prior to launch of campaign.

Affiliation with foreign firms often goes beyond soft drink sector to include beer, wine and dairy products. Combined market power may become an issue. Meanwhile, details of affiliation are unknown.

Mass media tend to criticize large foreign firms. There appears confusion between simple business strategy and disputes, and cases where legal/regulatory issues are involved.

Milk and Dairy Products:

Milk price of market leader has been stable over the decade (in terms of VND). It is often pointed that buying price of milk from farms is the least in the world, and retail price of milk is the highest in the world. However, level of price needs to be scrutinized as much milk is produced from imported powder milk, which adds up cost of 10-40 percent tariff. Ministry of Agriculture indicates that real fresh milk represents only 2 percent of milk in the market. Remaining are products of mixed milk between fresh and powder milk, or simply milk powder diluted in water. Frequent problems involved display disguising real fresh milk, and alteration of ingredients by cheap substitute. The authority intensified inspection to address these problems.

Profit margin reported by GSO data was at maximum 2.6% over the last five years, but it is suspected as underreporting. Profit margin of Vinamilk was more than 10 percent, and An Phuoc, an SOE, close to 6 percent.

Leading firm Vinamilk has diversified its business to become general food manufacturer. Its diversification include: instant cereal, non-carbonated soft drink, purified water, snacks, coffee, and beer (JV with SAB Miller). Combined market power should be watched out.

Foreign firms have six factories in Vietnam. In terms of equity participation, F&N Dairy Investment of Singapore acquired 11 percent strong share of Vinamilk since listing in stock exchange. Vinamilk, on the other hand, has set up a joint venture with Campina, further enhancing market power in dairy market.

Pharmaceutical:

Price of drugs jumped by 21 percent in 2003 while consumer price index (CPI) increased just by three percent. Mass media criticized the price hike by pointing 100-290 percent of profit margin for imported drugs from Asia, or distributors sold drugs 30-347 percent higher than import price. The price hike was obviously abnormal value when compared to other years. Promotion activities³⁴ of oligopolistic foreign distributors was among suspected reasons (other reasons included: misapplication of tariff, exchange rate, and over-prescription by doctors.) 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 reasons of high drug price compared to neighboring countries.

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. The inspection found counterfeit drugs (less than one percent of inspected drugs), as well as drugs failed to meet required standards (three percent strong). Korea, India and Australia ranked top among countries of origin of substandard drugs. 16 batches of drugs have been recalled. Proliferation of similar, confusing

³⁴ For example, gift to doctors, and high salary/bonus/commission for sales persons.

trademarks is another issue. Despite that, high-ticket brand drugs are being prescribed constantly.

There are diversification movements among pharmaceutical corporations along with increase in capital. Examples of diversification include: production and trading of medical equipments, industrial chemicals, chemical cosmetics, functional foods, wine, and milk; and operation of maternity home.

Foreign capital has been penetrating into Vietnamese market as 100% foreign investment or joint venture. They are Sanofi Aventis of France (formerly Safofi Synthelabo) (the second in the world in terms of sales in 2005), Rhone-Poulenc of France, Glaxo SmithKline of UK (the third in 2005), Novartis of Swiss (the fourth), Roche of Swiss (the eighth), Zuellig Farme of the Philippines, Bristol-Myers Squibb of US (the tenth), Hisamitsu of Japan, and Rohto of Japan. As of September 2006, 312 foreign firms hold drug license, mostly from Korea, China, India and Pakistan.

Insurance:

Vietnam Insurance Association has set the floor rate of premium as 0.1 percent. While average premium rate is 0.2 percent, sometimes it can go as low as 0.05 percent amongst competition. Commission to agents is set at 5-12 percent of annual premium amount by the government, and commission to brokers at 15 percent. Nonetheless, commission to agent can become 50 percent in case of motorbike insurance.

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 discussed in the next section. Reason of exit of Allianz is suspected the same. The notable exceptions are Japanese insurance companies attending Japanese corporations investing in Vietnam.

4) Market Performance:

Beer:

Data not available for analysis in terms of longitudinal change nor in comparable

forms among top firms.

Soft Drink:

Data not available for analysis in terms of longitudinal change nor in comparable forms among top firms.

Milk and Dairy Products:

Data not available for analysis in terms of longitudinal change nor in comparable forms among top firms. Vinamilk is regarded as one of the most excellent companies in Vietnam, having paid 45 percent of dividends for the last 13 months in December 2004, and recording ROE of 15 percent for the last three years.

Financial report of Vinamilk, a listed company, reveals that sales and marketing cost to cost of goods sold was 14-15 percent, while general administrative expenses to cost of goods sold was 2-3 percent. Judging these figures requires comparison to other dairy firms or major firms in other industries, as well as movement of price in the market. The same applies to other financial indicators.

Pharmaceutical:

GSO data show that ROE of pharmaceutical firms are 15-18 percent since 2001, not a bad level. Unfortunately, firm-wide financial data are not available in comparable format, yet.

Insurance:

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. In addition to these, financial indicators should be monitored longitudinally, both for life and non-life sectors.

5) Institutional Factors:

Beer:

There is a policy for developing two large SOEs, currently functioning as share holding companies for other SOEs, into general corporations combining wine, beer and soft drink sectors. The market share and behavior of these should be monitored.

Soft Drink:

Government has announced not to admit new investment by foreign firms in carbonated drink facilities due to lowering of capacity utilization ratio to 70-80 percent in the context of declining demand in carbonated drink.

Problems of hygiene and quality standards are identified at both small and large firms. Some small manufacturers reportedly produce instant drink powder that does not meet hygienic criteria, thereby earning higher profit than other firms complying with regulations (e.g., 40-50 percent vis-à-vis 20 percent). Inspection by HCMC Department of Health and Environment in 2006 found expired ingredients at the Coca Cola warehouse.

Milk and Dairy Products:

Government supports dairy farms by taxing imports and subsidizing farm inputs to promote local fresh milk production. A calculation revealed that many small and medium farms would run deficits without government supports.

There are quality standards for milk, but they are often not observed as seen above.

Pharmaceutical:

DAV regulates certificates for individuals and business entities dealing with drug business. Stringent requirements such as degree from university and experiences in the industry create high entry barriers. Regulations on relationship between foreign and domestic firms such as drug manufacturing contracts and import license seem contributing to oligopolistic distribution structure.

With regard to quality standard, problem in enforcement would benefit offenders at the sacrifice of observers. Because a series of GMP and related quality certification are in transition period, there are transitory problems such as favoring past certified parties and those exempt from certifications.

Price regulations and advertisement regulations face implementation challenge as discussed above.

Decision to set up specialized oriental medicine hospitals in all provinces as promotional measure to oriental medicine appears contributing to growing sales

of oriental drug manufacturers.

Insurance:

Insurance is licensed business supervised by Department of Insurance of Ministry of Finance. Foreign firms in non-life insurance sector are not allowed to do business with public institutions and individuals, putting them into disadvantageous position. This is expected to change through gradual deregulation after accession to WTO.

There are number of compulsory insurance set by Ministry of Finance, bolstering development of non-life insurance market. They include: motor vehicle owners insurance, domestic waterway insurance, fire insurance (to be promulgated soon), overseas travel insurance (to be promulgated soon), seamen's insurance, construction company's insurance against force major, corporate insurance for consultants and developers.

2.3 Evaluation of Methodology and Research Strategy

The situation competition authorities of developing countries face is quite different from the situation such as Japan where research section is independent from investigation section, access to statistical and financial data is relatively easy, and the competition authority has accumulated research experience. Developing countries introduced competition law recently, to start with. They have small sized competition authority with only dozens of staff members without separate research section. Statistics is under development. Corporate financial data is hardly accessible and, if available, there are rooms for questions in many cases. In addition to these, the case of Vietnam is that informal sector is large, company registration does not necessarily means they are in operation, standard industrial classification is not fine sorted, and access to production and sales figures would be extremely difficult except for a small number of listed companies. As such, it was anticipated that challenge would be unavailability of data required to define market.

Following is the evaluation of research methods and data collection strategy on the basis of survey experience.

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. There are several considerations in using each type of data.

i) Public statistics:

GSO statistics was found closest to reality after comparison among statistics of tax office and MPI. However, various biases have been observed during the analysis of figures in each industry. Crosschecking with ii), iii) and iv) is indispensable as elimination of biases will not be realized through on-going fine sorting of VSIC.

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. When utilizing information from new articles, it is important to: detach from views of media such as foreign versus domestic firms, and analyze with objective point of view; do some back research and confirm information with original sources; analyze reasons of discrepancy between figures in news and those in other sources such as i), iii) and iv).

iii) Industry reports:

Industry reports could provide precious information that complement defective statistics and financial data. Unfortunately, there are not many such reports available. The same scrutiny discussed in ii) should be exercised when using information from industry reports.

iv) Financial data of major firms:

Insurance was a rare case where authority had a firm grip of firm-level data. Soft drink was other extreme, where neither CR3 nor financial data of major firms were readily available, forcing to use information from mass media almost exclusively.

Competition authority should make every effort to get hold of financial information of listed firms and those preparing for listing. Comparability among firms is key, but non-standardized interpretation of financial terms is not rare, and standard set of financial indicators may not be readily available. Help of accountants may prove useful.

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).

i) Interviews with key persons (industry experts, industry associations, competent authorities):

This type of interviews is useful, but it would be best utilized after complete collection and analysis of secondary data. Including industry experts in research team should be a good alternative.

ii) Interviews with firms in the industry

This type of interview may be used only as complementary to secondary data, not as substitute. Complete count survey does not add value especially under circumstances where information provision cannot be enforced nor crosschecking of obtained information is limited. i) should be prioritized, too. Cautious implementation is required to avoid emitting wrong message to the market. Outsourcing is recommended.

Table 2-2-3 Assessment on Usefulness of Information Source

- Very useful (V/U)
- Partially useful (P/U)
- Not useful (N/U)

| | GSO data | Industr y reports | News articles | Interviews w/ firms and experts | Notes |
|--|---------------------|----------------------------------|--------------------------|--|---|
| 1. Product Features | | | | | |
| 1.1 Type of Industry | V/U | N/U | N/U | N/U | |
| 1.2 Type and feature of goods and services | P/U | V/U | N/U | V/U | Opinions of expert is very important |
| 2. Market Structure | | | | | |
| 2.1 Overviews of the market | | | | | |
| 2.1.1 Sub-sector map | P/U | P/U | P/U | P/U | Combine all sources |
| 2.1.2 Historical Origin and Development of the sub-sector | N/U | V/U | P/U | N/U | |
| 2.1.3 Latest production and shipment figures and longitudinal data | P/U | V/U | P/U | P/U | (Trend analysis is important. Include any information that indicates trends and abrupt changes.) |
| 2.1.4 Latest import and export figure and longitudinal data | P/U | P/U | N/U | P/U | (Trend analysis is important. Include any information that indicates trends and abrupt changes.) Interviews of business association may be good . Data of Custom Office may help |
| 2.2 Data of market exits and entry | P/U | P/U | P/U | N/U | (Data is required at industry level as well as entry and exit of major firms.) |
| 2.3 level of concentration | P/U | V/U | V/U | P/U | Data on CR3 are available upon special request to GSO, but requires scrutiny. |
| 2.4 Production features | | | | | |
| 2.4.1 Sourcing of materials and parts | N/U | V/U | P/U | V/U | |
| 2.4.2 Technologies of production | N/U | V/U | N/I | V/U | Interviews Experts is very useful |
| 2.4.3 Size and location of production units | N/U | V/U | P/U | V/U | |
| 2.4.4 Level of differentiation | N/U | P/U | P/U | V/U | |
| 2.5 Distribution features | | | | | |
| 2.5.1 Structure of distribution and distinct | N/U | P/U | P/U | V/U | |

| | | | | | |
|--|-----|-----|-----|-----|---|
| feature | | | | | |
| 2.5.2 Relationship between producers and distributors | N/U | P/U | P/U | V/U | |
| 3. Market Behavior | | | | | |
| 3.1 Price behavior | V/U | P/U | P/U | V/U | Interviews will be useful if they are conducted after collection of secondary data |
| 3.2 Non-price behavior | | | | | |
| 3.2.1.Sales promotion activities | N/U | N/U | V/U | V/U | |
| 3.2.2 Diversification | N/U | N/U | V/U | V/U | |
| 3.2.3.Foreign capital | P/U | V/U | V/U | V/U | |
| 3.2.4 Issues in Competition | N/U | N/U | V/U | V/U | |
| 4. Market Performance | | | | | (Here, the analysis focuses on movement of financial indicators of major firms.) |
| 4.1Financial standing | V/U | V/U | P/U | P/U | |
| 4.2 Level and movement of sales and general administrative expenses and advertising and publicity expenses | P/U | P/U | P/U | V/U | |
| 4.3 Level and movement of profit margin | P/U | P/U | P/U | V/U | |
| 5. Institutional Factors Affecting Competition | N/U | V/U | P/U | P/U | (Pay attention on Ministries level regulation and interviews Association and Governmental organization.) |
| Market entry regulations | N/U | V/U | P/U | P/U | |
| Qualification standards | N/U | V/U | P/U | P/U | |
| Price regulations | N/U | V/U | P/U | P/U | |
| Regulations on commercial operation | N/U | V/U | P/U | P/U | (This category is Vietnam specific and not universal. Whatever the category may be, things to watch include: health and safety regulations, environmental regulations and labor regulations.) |
| Tax and financial rules | N/U | V/U | P/U | P/U | |
| Sector planning by the Government | N/U | V/U | P/U | P/U | (Look at budget subsidies, treatment of lost loans, permission for delayed tax and other payments.) |

Source) Elaborated by the pilot market research team of VCCI with notes of MURC

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

The Advocacy Leaflet is to be designed, drafted and compiled to make public aware of the significance of competition law, policy, and its authorities. The Study has been taking much effort to provide necessary knowledge and know-how to develop advocacy materials as well as planning know-how for further programs as well as final publication.

(1) 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.

Besides above two materials, there are four materials available in Vietnamese provided through assistance from Canada, Taiwan and France. However, these materials are basically focusing on the donors' side competition laws, policies and/or major cases. Thus, practically these are not specifically designed for advocacy purpose concerning the Competition Law of Vietnam.

Taking into consideration of above situation and reference on the major focus points of JFTC's advocacy materials, the initial concept for the Advocacy Leaflet of this Study has been discussed and designed.

Table 2-3-1 Comparative Table of Major Points in the Leaflets

| Subject Issues Highlighted in the JFTC's Leaflets | | Points may be Highlighted in the CAD Leaflets ³⁵ |
|--|---|--|
| Overview of Anti Monopoly Act (AMA) Target: general public | Our Living and Market Economy – Role of JFTC Target: junior high students | Target: SME ? |
| 1. Economic Structure and AMA | 1. What is Market Economy? | 1. Market Economy and Transitional Economy |
| 2. Fair and Free Competition 3. Consumers and AMA 4. Industries and AMA | 2. What is Competition? | 2. The Significance of Competition > activation of industries by innovation and efficiency > facilitation of FDI environment |
| | 3. What is Monopolization? | 3. The Impact of Monopolization to the Market |
| 5. The History of AMA 6. The Structure of AMA 7. Regulatory Provisions on Cartel 8. Regulatory Provisions on Monopoly/Oligopoly 9. Regulatory Provisions on Unfair Trade Practices 10. Regulatory Provisions on | 5. What is AMA? 4. What is Cartel? | 4. The Structure of Competition Law |

³⁵ Points for VCAD Leaflets are initially presented as tentative idea by TA Team.

| | | |
|-----|--|--|
| M&A | | |
| | 6. What is “Law for Preventing Unjustifiable Extra or Unexpected Benefit and Misleading Representation”? | |

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.

Table 2-3-2 Target of Advocacy Activities

| |
|--|
| <p>Target: Major target focus is SME</p> <p>Objectives: - to promote awareness on the Competition Law to SME</p> <ul style="list-style-type: none"> - to guide SME how to conduct their business activities (how to behave in the market) - to advocate how to make claim and/or complaint against unfair trade practices (procedure for complaints) |
|--|

In the meantime, the initial purpose of the publication of the leaflet is to utilize them at the advocacy seminars in the Study program. Thus, number of leaflets was presented 1,000 for Vietnamese language version and 50 for English version. However, in order to take advantage of full utilization of the leaflets for the counterpart even after the Study, the number of copies was to be subject to consideration for increase according to the appropriateness of utilization and budgetary requirement through discussion with TA Team and JICA. Thus, it was increased and ended up with 3,000 copies for Vietnamese and 1,000 for English.

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”. , (the task sheet discussed is attached as Appendix C-1). 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.

Through translation process from English to Vietnamese as well as reflection of all the comments collected from the officials concern at the VCAD, the draft text has been revised by deleting the introductory section of Vietnamese economic history and adding new section for reference material, such as relevant publications and web-site information. As for the introductory section, it was explained by the counterpart that the historical background of Vietnamese economy is general information already known by the Vietnamese SME, and a priority should be put on the Competition Law and directly related issues, for the main purpose of the advocacy. The structure of the Leaflet has also modified upon the comments from the VCAD. In the second draft after the reflection of all the comments, the VCAD took initiative to draft a new section for the activities related to Implementation of the Law. (The VCAD comments in detail is attached in Appendix C-2.)

Table 2-3-3 The Structure of the Leaflet

| <i>Back ground and Overview of Competition Law (6 pages)</i> | |
|--|---|
| 1. | Significance of Competition (1 page) <i><The “Fair and Open Competition”></i> <i><Why is the “Fair and Open Competition” important?></i> |
| 2. | Background of the Introduction of Competition Law (1 page) |
| 3. | Overview of the Competition Law (2 page) <i><The Law></i> <i><The Objectives></i> <i><Subjects of Application></i> <i><Scope of Application></i> <i><<Conducts in Restriction of Competition>></i> <i><<Unfair trade practices>></i> <i><Structure of the Law> (1 page)</i> |
| 4. | Implementation guidelines of the Competition Law (2 page) <i><Decree 05/2006/ND-CP on determining functions, tasks, powers, and organization structure of the Competition Council dated January 9, 2006></i> <i><Decree 06/2006/ND-CP on determining functions, tasks, powers, and organization structure of the Competition Administration Department dated January 9, 2006></i> |

<Decree 116/2005/ND-CP on setting forth detailed provisions for implementing a number of provisions of the Competition Law dated September 15, 2005>

<Decree No.120/2005/ND-CP on administrative offences in the field of competition dated September 30, 2005>

<Decree No.110/2005/ND-CP on management of multi-level sale of goods dated August 24, 2005>

<Circular No. 19/2005/TT-BTM of November 8, 2005 guiding a number of contents in the Government's Decree No. 110/2005/ND-CP>

Conducts fall within the scope of application of the Competition Law (11 pages)

1. General concepts (1 page)

<What are Conducts in Restriction of Competition? What do they include? Why do they fall within the scope of application?>

<What are Unfair competition acts? What do they include? Why do they fall within the scope of application?>

<Difference between the two categories with regards to their impact on competition environment and forms of sanctions?>

2. Conducts in Restriction of Competition & competition acts in greater details

<agreements in restriction of competition <example>> (2 pages)

<<prohibited agreements>>

<<exemptions>>

<<examples>>

<abuse of dominance position, abuse of monopoly<example>> (2 pages)

<<prohibited conducts>>

<<exemptions>>

<<examples>>

<economic concentration<example>> (2 pages)

<<prohibited cases>>

<<exemptions>>

<<examples>>

<Unfair competition acts (6 pages)>

<<Misleading indications>>

<<Infringement upon business secrets>>

<<Constraint in business>>

<<Discrediting other enterprises>>

<<Disturbing business activities of other enterprises>>

<<Advertising for the purpose of unfair competition>>

<<Sale promotion for the purpose of unfair competition>>

<<Discrimination by associations>>

<<Illicit multi-level sale>>

<<Other unfair competition acts according to the criteria determined in clause 4, Article 3 of the Competition Law and prescribed by the Government>>.

Enforcing agencies of the Competition Law (4 pages)

1. Competition Managing Agency

<Establishment>

<Organization>

<Tasks & Powers>

2. Competition Council

<Establishment>

<Organization>

<Tasks & Powers>

3. The relationship between Competition Managing Agency and Competition Council

| | |
|---|---|
| 4. Competition Law enforcement activities | |
| <i>Procedure for handling of competition cases (2 pages)</i> | |
| | <Ministry of Trade Procedure> <Court Procedure> |
| <i>Forms of sanctions (1-2 pages)</i> | |
| | <Conducts in Restriction of Competition > <Unfair competition acts> <Criminal Offences> |
| <i>What should enterprises act? (1-2 pages)</i> | |
| | <to ensure the compliance with the Law> <to be protected from anti-competitive acts> |
| <i>Contact Information (1 page)</i> | |
| <i>Recommended Readings (1 page)</i> | |

(2) Major Refinements in the Leaflet Development

With regard to design of the Leaflet, the major focus was taken the Leaflet to be visually studied and easy to understand for any type of readers. In general, especially as for the government publication, the report style publication is often found; however, the Study project has chosen to more general user oriented way in designing the Leaflet. The refinement is found with the Leaflet such as the color-coded cut-in thumb index separators whose color corresponds to respective section, and inclusion of many illustrations and charts that make users grasp the concept easily. Also, in order to be handy for everyone, the size of B5 is used instead of using A4 that can be found typical report-type publication.

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 web 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 (Appendix C-3). 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.

Box 2-3-4 Outline of the Website Designing

| |
|--|
| 1. Objectives |
| 1) To develop and improve website design of the current MOT website |
| 2) To develop new pages in addition to the current website in two languages (Viet/Eng) |
| 3) To develop new pages according to the client's (users') requests |
| 2. Expectation Impact and Benefit |
| 1) To enhance common understanding of the vital importance of competition policy, laws and regulations. |
| 2) To provide knowledge and information about competition policy and cases in foreign countries. |
| 3) To increase communication channels with the general public, including private sector and consumers. |
| 3. Project boundary |
| 1) The website expansion/development in dynamic type (Both in Vietnamese and in English). |
| <i>approx. number of pages: 100 ~ 150 GUI pages each</i> |
| 2) The online manual is to be provided. |
| 4. Project Development |
| 1) The company will develop the website by gathering user's requirements, analyze, design and develop the website. |

- 2) The company will provide the online manual for users
- 3) The company will warrantee the website, in case the problem and damage occurred during maintenance period after approving the website by the users (client).
- 4) The company will develop, complete and install the website within () weeks after commitment date.

5. Technique

- 1) Graphic User Interface (GUI)
- 2) Website Application
- 3) In order to enter the backend user must have User Id and Password
- 4) There must have the backend function that can increase data, delete data and edit data.
- 5) There must have the backend function that can determine the working authorization areas of user to manage the website.
- 6) It is the dynamic type of website.

8. Framework of the Website

1) Website Structure:

Main Page Menu
 About the Authority
 Competition Policies/Laws
 Organization Structures
 Administrative Procedures
 Capacity Building and Technical Assistance
 Statistical Data
 Competition Cases
 Related Website Link
 Educate about Competition Issues which are put separately
 Economic Theory
 Glossary
 To Communicate with the Authority's Information
 Enquires
 Website Board
 Activities
 Hot issues
 What's New

2) Website Backend Management:

Category Management
 Insert/ edit/ delete category
 Content Management
 Insert/ edit/ delete content
 User Management
 Edit/ delete user
 User status control
 User authentication
 Website Board Management
 Edit/ delete
 Mailing List (if requested)
 Edit/ delete

3.3 Advocacy Seminar

(1) 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.

With regard to the program designing, taking into consideration of the concept of the Advocacy Leaflet of which target was set for the SMEs, the major focus was put on constructing the program of advocacy for the SMEs. Namely, it tries to approach for the issues like, why the competition is important for business activities of the SMEs, and what actual conducts could be subject to prohibition among their day to day business activities.

As for the information concerning to participants, there is already data stock with PC at the VCAD and list of participants and relative information related them are available. The information could also available from other related organizations, such as VCCI. The invitation to the Seminar was selected from those information sources as well as taking contacts with other relevant organizations.

The content of program is indicated as follows. It has been designed to fit to the SMEs' practical needs. However, the range of interests and level of awareness on competition law varies among the SMEs. Some may have no detailed information on the law while they are aware of existence of the law. Some may have comprehensive understanding about the law. Thus, the program was designed to match both ends by introducing comparative aspects of Japanese experiences and cases. For those who have limited detailed information, it should be easy to understand; and for those with comprehensive knowledge, it should serve as a good reviewing opportunity.

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. The actual programs are indicated as follows.

Table 2-3-5 The Program of the First Advocacy Seminar

The 1st ADVOCACY SEMINAR ON VIETNAM COMPETITION LAW AND POLICY
-- SHARING EXPERIENCES OF JAPAN --

(Hanoi, 8 March 2006)

| Time Frame | Subject | Name & Title of Key Note Speaker | Points of Contents |
|--------------------------|--|---|---|
| 8:30-9:00 | Registration | | |
| 9:00-9:15 | Opening Remarks from Vietnam Side | Dr. Dinh Thi My Loan, Director General, Vietnam Competition Administration Department | |
| 9:15-9:30 | Opening Remarks from Japan Side | Mr. Yasuhiro TOJO, Senior Deputy Resident Representative of JICA Vietnam Office | |
| 9:30-10:45 Session 1 | Introduction of Vietnam Competition Law and Guidelines | Mr. Le Sy Giang, VCAD Official | |
| 10:45-11:00 | Coffee Break | | |
| 11:00-11:30 Session 2 | Competition in the Market Economy | Mr. Shinji OMOTO, Senior Planning Officer, General Affairs Division, Secretariat, JFTC | Significance of Competition & Overview of the Structure Competition Law. |
| 11:30-12:00 | Q&A Session | | |
| 12:00-13:30 | Lunch Breaks | | |
| 13:30-14:30 Session 3 | Preparation for implementing Vietnam Competition Law | Mr. Trinh Anh Tuan, VCAD Official | |
| 14:30-14:45 | Q&A Session | | |
| 14:45-15:00 | Coffee Break | | |
| 15:00-16:00 Session 4 | Experiences in Japan (Competition Law/Policy) | Mr. Shinji OMOTO, Senior Planning Officer, General Affairs Division, Secretariat, JFTC | Explanation of History of Law Development in Japan & References of Cases. |
| 16:00-16:30 | Q&A Session (overall) | | |
| 16:30-16:40 | Closing Remarks from Vietnam Side | Dr. Dinh Thi My Loan, Director General, Vietnam Competition Administration Department | |
| 16:40-16:50 | Closing Remarks from Japan Side | Mr. Hidekazu TANAKA, Team Leader, JICA TA Consultant Team | |
| 16:50 | Close of Session | | |

Table 2-3-6 The Program of the Second Advocacy Seminar

IMPLEMENTATION OF VIETNAM COMPETITION LAW

-- SHARING EXPERIENCES OF JAPAN --

(Ho Chi Minh City, 13 June 2006)

| Time Frame | Subject | Name & Title of Key Note Speaker | Points of Contents |
|--------------------------|--|--|--|
| 8:30-9:00 | Registration | | |
| 9:00-9:20 | Opening Remarks | Mr. Tran Anh Son, Deputy Director General, VCAD | |
| | | Mr. Hidekazu TANAKA, Team Leader, JICA TA Consultant Team | |
| 9:20-10:15 Session 1 | Introduction of Vietnam Competition Law and Guidelines | Mr. Cao Xuan Hien, VCAD Official | |
| 10:15-10:30 | Q&A Session | | |
| 10:30-10:45 | Coffee Break | | |
| 10:45-11:15 Session 2 | Competition in the Market Economy | Mr. Shinji OMOTO, Senior Planning Officer, General Affairs Division, Secretariat, JFTC | Significance of Competition & Overview of the Structure Competition Law. |
| 11:15-11:45 | Q&A Session | | |
| 11:45-14:00 | Lunch Breaks | | |
| 14:00-15:00 Session 3 | Preparation for implementing Vietnam Competition Law over the past time | Mr. Trinh Anh Tuan, VCAD Official | |
| 15:00-15:15 | Q&A Session | | |
| 15:15-15:30 | Coffee Break | | |
| 15:30-16:30 Session 4 | Competition Law & Enforcement of Japan | Mr. Shinji OMOTO, Senior Planning Officer, General Affairs Division, Secretariat, JFTC | Explanation of the Provisions and Conducts to be Regulated Comparable to Vietnamese Law. - Introduction of Some of the Actual Cases. |
| 16:30-16:45 | Q&A Session | | |
| 16:45-17:00 | Closing Remarks | Mr. Tran Anh Son Deputy Director General, VCAD | |
| | | Mr. Hidekazu TANAKA, Team Leader, JICA TA Consultant Team | |
| 17:00 | Close of Session | | |

Table 2-3-7 The Program of the Third Advocacy Seminar

The 3rd IMPLEMENTATION OF VIETNAM COMPETITION LAW
-- SHARING EXPERIENCES OF JAPAN --
(Da Nang City, 18 September 2006)

| Time Frame | Subject | Name & Title of Key Note Speaker | Points of Contents |
|--------------------------|--|---|--|
| 8:30-9:00 | Registration | | |
| 9:00-9:15 | Opening Remarks | Dr. Dinh Thi My Loan, Director General, VCAD | |
| | | Da Nang Trade Rep. Office | |
| | | Mr. Hidekazu TANAKA, Team Leader, JICA TA Consultant Team | |
| 9:15-10:00 Session 1 | Introduction of Vietnam Competition Law and Guidelines (Part 1) Over-all & Chapter 2 | Mr. Cao Xuan Hien, VCAD Official | Over-all explanation & Rest.Acts/Procedures of Chapter 2 |
| 10:00-10:20 | Q&A Session | | |
| 10:20-10:35 | <i>Coffee Break</i> | | |
| 10:35-11:10 Session 2 | Introduction of Vietnam Competition Law and Guidelines (Part 2) Chapter 3 | Mr.Doan Tu Tich Phuoc, VCAD Official | Explanation on Rest.Acts/Procedures of Chapter 3 |
| 11:10-11:30 | Q&A Session | | |
| 11:30-12:00 Session 3 | What Conducts will be subject of Provisions? (Reflecting on Japanese Cases) | Mr. Shinji OMOTO, Senior Planning Officer, General Affairs Division, Secretariat, JFTC | Introductory Overview of Cases |
| 12:00-13:30 | <i>Lunch Breaks</i> | | |
| 13:30-14:30 Session 4 | How the Conducts were assessed? (Highlighting points in Japanese Cases) | Mr. Shinji OMOTO, JFTC | Providing examples of cases to foresee future cases in Viet. |
| 14:30-15:00 | Q&A Session | | |
| 15:00-15:15 | <i>Coffee Break</i> | | |
| 15:15-16:00 Session 5 | What Companies Want from Competition Agencies | Dr. Dinh Thi My Loan, Director General, VCAD | |
| 16:00-16:20 Session 6 | What Competition Agencies Want from the Business Community | Mr. Shinji OMOTO, JFTC | To reflect Viet situation on Japanese situation |
| 16:20-16:45 | Q&A Session | | |
| 16:45-17:00 | Closing Remarks | Dr. Dinh Thi My Loan, Director General, VCAD | |
| | | Mr.Hidekazu TANAKA, Team Leader, JICA TA Consultant Team | |
| 17:00 | Close of Session | | |

(2) Development of Seminar Materials

According to the initial plan of the Study, the Advocacy Leaflet was supposed to be the only material used at the Seminar. However, during the process of designing the program, it has been reviewed and reached at recognition that specifically customized materials are essential prepared for each Seminar besides the Leaflet. The sole utilization of one set Leaflet at the Seminar may undermine distinctiveness of each Seminar (such as reflecting difference nature of rationality, participated group range, speakers, etc.). At the same time, the general versatility of the Leaflet for the advocacy purpose may have limitation if the Leaflet is designed specifically for three Seminars in the Study.

Thus, in the Advocacy Seminar program, specifically designed materials are compiled together with materials from speakers of both side and other supplemental materials from JFTC besides the Leaflet. In this way, the objectives of the initial plan have been more effectively performed.

Also, the refinement was introduced by bringing design in the form of materials. The former style was often simple binding of reports and papers from the keynote speakers. However, in this task, supplemental documents were included in the separate section from the presentation materials and numbering separator was used in the hard-cover binder – which made a bit of improvement for usability for after the Seminar use.

3.3.1 Overview of the 1st Advocacy Seminar

| | |
|------------------------|--|
| Time & Date | : 9:00 am - 5:00 pm, Wednesday, March 8, 2006 |
| Venue | : Than Long Room, Melia Hotel Hanoi |
| Number of Participants | : 110 |
| Participants Range | : Small & Medium sized Enterprises, Trade Organizations, VCCI, VINASTAS, Governmental Organizations, Academics, Journalism, Law Firms and relative organizations, etc. |
| Moderator | : Dr. Dinh Thi My Loan, Director General, Vietnam Competition Administration Department |
| Keynote Speakers | : Mr. Shinji OMOTO, Senior Planning Officer, General Affairs Division, Secretariat, JFTC Mr. Le Sy Giang, VCAD Official Mr. Trinh Anh Tuan, VCAD Official |

(1) Session1: “Introduction of Vietnam Competition Law and Implementing Guidelines”

The keynote speech started with the overview of the structure of the Law by introducing the nature of provisions such as regulated/prohibited acts, the power/function of the Authority, and the case handling procedures. Outline of the presentation is referred as follows.

In the Law, there are 2 major areas of restricted acts, “Competition Restricted Acts” and “Unfair Competition Acts.” The former area consists of 3 sub-areas and Exemption provisions and the latter provides 10 patterns of acts as break down. Those are, i) Competition Restriction Agreements, ii) Abuse of Dominant Position on the Market, Abuse of Monopoly Position, iii) Economic Concentration, for the former, and Article 39 indicates, i) Misleading Indications, ii) Infringement upon Business Secrets, iii) Constraint in Business, iv) Discrediting other Enterprises, v) Disturbing Business Activities of other Enterprises, vi) Advertising for the Purpose of Unfair Competition, vii) Sale Promotion for the Purpose of Unfair Competition, viii) Discrimination by Associations, ix) Illicit Multi-Level Sale, and x) Other Unfair Competition Acts, for the latter. The details of each act above were elaborated in the presentation.

With regard to the organization, the position, function, and power of the VCAD and the Council were introduced according to the new Decree passed in this past January. And the procedure on hearing and case handling were overviewed.

In addition to the overall introduction of the Law, the outlines of Decrees were also overviewed. At present, there are 5 Decrees and 1 Circular has been passed. The coverage of Decrees includes Detailed Provisions of the Law, Management of Multi-Level Sales, Administrative Offenses, Detailed Provisions of the Authorities.

The presentation was closed by suggesting future prospects and needs for further implementation of the Law in 4 points. Those are, strengthening organizational capacity of the authorities, human resource development, improvement on awareness and understanding of the Law in variety of areas, and international cooperation.

(2) Session 2: “The Competition in the Market Economy”

Reflecting on the comparative aspect of two Nations situations, and in order to substantiate the understanding of the Competition Law of Vietnam and the importance

of competition in the market, the following subjects were presented by Mr. Omoto; the significance of the competition, the benefit derived from the competition in the market, the restricted areas of acts according to Japanese Anti-Monopoly Act, development of Japanese economy in terms of introducing the competition. The major focus was put on that the competition policy had been one of the core elements to contribute Japanese economic development in the past.

With regard to the significance of the competition, referring to the successful case of the mobile phone and the example of adverse effect of cartel, the explanation of the benefit derived from the market mechanism elaborated the increase of opportunities in the market not only for the business communities but also consumers. Also, the importance of the relationship between the competition and globalization was mentioned.

With regard to the overview of the Japan Anti-Monopoly Act, the function and activities of the Japan Fair Trade Commission was overviewed. For the restricted areas in the AMA, the following subjects were elaborated in comparison with the Vietnamese Competition Law. Those were; Provisions of Monopoly/Oligopoly, Cartels, Bid-rigging, Business Combination, etc. The problems that those acts may cause were also highlighted. In the area of bid-rigging, referring to the case of bid-rigging involved with open tendering by public entities, the presentation pointed out the adverse effect of anti-competitive act to the public welfare as well as damages for the business activities. For the case related business combination, the importance of guideline was focused - which meets requirement of detailed criteria for the act. The other acts related to the unfair trade practices were also highlighted by touching some example patterns from the 16 patterns of conducts indicated in the Designation of Unfair Trade Practices, such as Control Refusal to Deal, Deceptive Customer Inducement, Abuse of Dominant Bargaining Position.

The presentation was closed by explaining the case handling procedure.

(3) Session 3: “Preparation Steps for Implementing Competition Law”

In this session, the VCAD reported the undertakings supporting implementation of the Law and elaborated the prospect for the future direction. With regard to the undertakings they have done including introduction of the 5 Decrees and 1 Circular

explained in the previous session, the active involvement of related ministries and organizations was stressed, such as Ministry of Justice, regional governments, enterprises and trade associations. Focus was also put on the activities such as publication related to the Competition Law/Policy, advocacy activities took part in regional governments, other advocacy activities through TV programs and internet, the achievements of open interviews and public hearing.

The activities related VCAD covered the study missions to China, USA, Japan and other countries that have contributed to the drafting process of the Law, and the participation to the seminars and workshops in the international forum like APEC. The assistance programs provided JICA, FSP, PIAP and others were also highlighted. Those programs were contributed in training investigators and elaborating market research methodologies.

As for the future direction, the following elements were stressed for the further development. Those are; continuous human resource development, organizational strengthening, advocacy activities, and international cooperation.

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

In this session, Mr. Omoto has elaborated the history and background of AMA, and the current activities of JFTC. After the overview of these subjects, some example cases were introduced in the area of price fixing, abuse of dominant bargaining position, and business combination.

With regard to the history and background following points were introduced. At the beginning when the AMA was introduced, it was considered too strict as it was designed to be more substantiated from the model provisions of the US Anti-Trust Act. Thus, in 1950's, there were 2 occasions of amendment introducing exemption provisions. In terms of implementation of the Law, legalistically speaking, it might be considered a regressive period of the competition law. However, as the other aspects to consider favor to the vulnerable positioned parties were examined, the balance to the Law provisions may be formed during this period, on the other hand. In 60's and 70's when Japan experienced the Oil Shock and related price escalation, the growing tendency of price cartel was recognized often especially in the petroleum, chemical, steel industries. In 1977, due to respond this adverse tendency, the surcharge system has been introduced

to strengthen the Law. In the latter half of 1980's, the issues of trade friction highlighted the closed nature of Japanese market. Reflecting on this trend, the further strengthening competition policy was directed. After 90's, the priority has been put on the market mechanism and, for the Law, variety of measures were introduced, such as increase of surcharge amount, introduction of criminal procedure, and removal of exemption provisions. The authority, JFTC, has also been further strengthened in this period. In 2005, the recent major amendment was conducted, such as further increase of surcharge amount, introduction of leniency program, and introduction of compulsory powers for criminal investigation.

Through this background, JFTC has been strengthened. The number of officials increased from 474 in 1990 to 706 in 2005. After 80's, the number of handling cases has increased steadily. Cease and Desist Orders counted 35 cases, 472 parties, annually. Surcharge payment orders amounted 11.15 billion Japanese Yen in 2004. Other activities with related laws and agencies have been active as well, such as consumer protection with implementation of the Premiums and Representations Act, and supporting SME with the Subcontract Act.

After the presentation on the subjects above, Mr. Omoto introduced following three cases as for the actual example of the restricted acts.

- 1) A recommendation to manufacturers of cold-rolled stainless steel sheets on price fixing: a case for price fixing
- 2) A recommendation to Company A: a case for abuse of dominant bargaining position
- 3) Business consolidation by Japan Airlines Co. Ltd. and Japan Airsystem Co. Ltd. through establishment of a holding company: a case for business combination

(5) The Points of Q&A

As the Seminar was held in the Capital city, there were many government related organizations and agencies participated as well as participation from business community. It reflecting on the range of participation, the focus at the question was put on both relationship between business activities & law provisions and that between private business activities & public sector such as in setting a certain price range. Also, responding to the keynote speech from Japan side, some of the interests were observed as questions in the prospect of the Authority's upcoming feature and directions. Major

points of questions are as follows.

Box 2-3-8 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 (ie. 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

| | |
|------------------------|---|
| Time & Date | : 09:00 - 17:00, June 13, 2006 |
| Venue | : Rex Hotel (Ho Chi Minh City) |
| Number of Participants | : 143 including the non-listed member |
| Participants Range | : Private Sectors of business community, Trade Associations, Academics, media, etc. |
| Moderator | : Mr. Tran Anh Son, Deputy Director General, Vietnam Competition Administration Department |
| Keynote Speakers | : Mr. Shinji OMOTO, Senior Planning Officer, General Affairs Division, Secretariat, JFTC Mr. Cao Xuan Hien, VCAD Official Mr. Trinh Anh Tuan, VCAD Official |

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

As for the first key note speech by Mr. Hien of the VCAD, the presentation covered basic structure of the Vietnam Competition Law focusing on the Anti-competition Agreements, Economic Concentration, Abuse of Dominant Position, and Unfair Trade Practices including related 5 Decrees.

In the presentation, the images and concept presented in the Leaflet were well incorporated onto the presentation slides. The detailed explanation was delivered over the designated conducts such as Price Fixing, Market Allocation, Restrictive

Arrangement on Sales, Exemption, Bid-rigging, Abuse of Dominant Position, Economic Concentration. (This task has been quite successful in making participants understand contents more easily showing information access into the Leaflet as a useful reference more effectively.)

The major message derived from the presentation was well extended to ensure the participants' awareness that the thorough understanding of Competition Law and Policy would contribute for the better business strategy in the business activities of all the sector including SME. It has stressed that the business community will take advantages to have positions to claim its right for the fair and open environment in business activities as well as to take precaution measures not to be regulated under unfavorable complaints by competitors and/or consumers.

(2) Session 2: "Competition in the Market Economy"

From Japan side, taking consideration on the major messages of the previous presentation by Mr. Hien, the presentation was touched upon the Japanese experiences in this area by Mr. Omoto of JFTC. It referring to the actual statistic figures, overall history and benefits derived from promotion of competition in Japan was introduced to substantiate the previous presentation.

(3) Session 3: "Preparation for implementing Vietnam Competition Law over the past time"

This session reviewed overall undertakings by the VCAD up to the current stage. The presentation by Mr. Tuan of the VCAD included potentially competition-law- related cases, advocacy activities by the VCAD, training task within the VCAD including human resource development, and international cooperation activities, as well as the current development of the Competition Law. The recent development of the VCAD activities was also introduced touching upon tasks related to research works over oligopoly situation in telecom sector, price arrangement in automobile sector, and multi-layer sales business areas.

(4) Session 4: "Competition Law & Enforcement of Japan"

The presentation by Mr. Omoto elaborated the framework of Anti-Monopoly Act of

Japan. Then, it overviewed the Guideline of Distribution Sector which could provide good legal references to business practices in Vietnam in the near future. The referential Japanese recent cases were also introduced as to give clearer idea what conducts would be subject to the provisions of the Competition Law - which included the case related price cartel in the stainless steel industry, abuse of dominant bargaining position in the large-scaled retailers, and merger of airliners.

(4) Points of Q&A

(5)

Apart from the previous Seminar, the range of participation of the second Seminar was holding mainly from business community. Thus, the major attention to the Competition Law was relatively more practical and related to the business activities. It should be noted that the awareness of its significance seemed to be more understood and attention in the business community was drawn to prepare for how they should deal with the change in terms of introduction of new scheme, fair and open competition environment. This is reflected by the fact that many questions were raised from the floor in the Q & A sessions so as to some of the sessions had to extend its slot time.

Among others, much attention was taken on the idea of fair and open competition in the area of sales channels (i.e. relationship among sales agents, sole agent and non-agents) and advertisement, competition with foreign capitals, and upcoming business strategy/preparation of SME.

Box 2-3-9 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

| | |
|------------------------|---|
| Time & Date | : 08:40 - 17:00, September 18, 2006 |
| Venue | : Saigon Tourane Hotel (Da Nang City) |
| Number of Participants | : 118 including the non-listed member |
| Participants Range | : Small & Medium Sized companies in Da Nang, Regional Trade Association, Governmental Regional Office, etc. |
| Moderator | : Dr. Dinh Thi My Loan, Director General, Vietnam Competition Administration Department |
| Keynote Speakers | : Mr. Shinji OMOTO, Senior Planning Officer, General Affairs Division, Secretariat, JFTC Mr. Cao Xuan Hien, VCAD Official Mr. Doan Tu Tich Phuoc, VCAD Official |

(1) Overview of Sessions

With regard to designing the program in the third Seminar, although the basic concept is same as the previous ones, the following three points were focused namely. These are three pillars: i) detailed explanation on the Vietnam Competition Law, ii) introduction of clear example cases subject for regulation corresponding to explanation of law provisions and iii) deliver message to the business communities on expected relationship between private sectors and the Authority. As for the first pillar, the Leaflet developed was fully utilized into specific issues such as areas of Competition Restriction Acts, and Unfair Trade Acts. The head of in-charged-division has elaborated each area. As for the example cases, the JFTC took very important role to introduce examples by referring to the actual cases in Japan, as the VCAD has not yet closed the first case. In addition to the JFTC's case introduction, it elaborated some of the key aspects and points to be regulated in the law provisions so that the business communities could take precaution not to take unfair acts. (They were, at the same time, good references for the Authority when they regulate anti-competitive conducts of business activities from the Authority's side.)

In the first and second sessions in the morning, each head of division, Mr. Hien and Mr. Phuoc, explained in detail on the provisions of Vietnam Competition Law in the area of Competition Restriction Acts and Unfair Trade Acts respectively. By corresponding to the explanation, Mr. Omoto of JFTC introduced example cases in the area of Price Cartel, Abuse of Dominant Position, and M&A in the morning session. And in the afternoon session, the other cases were introduced in the areas of Refusal of Deal, Interference of Deal, and Dealing on Restrictive Terms. Toward the end of Seminar

after the presentation from Dr. Loan, the Authority's message was delivered to business community that fair trade environment will be realized efficiently not by regulatory bodies but by the effort of business communities – which statement was presented from both sides of Authorities. It was also presented from JFTC side that precautional consultation function is also very important task of the Authority, as JFTC is taking this role, thus, business communities will be welcomed for the consultation to take effort to follow the fair trade.

(2) Points of Q&A

As the seminar was organized with a full support from the regional Trade Representative Office in Da Nang, the active participation was recognized in the floor for each Q&A session. From the Trade Representative related organizations, the questions were raised about the relationship between central authority and regional offices, their roles and function, and the way of information-sharing, as well as questions on the law provisions. From the business community side, the some concern was shown in the areas of dominant position of large-scaled enterprises, governmental preferential treatment for them, and low price sales by the large-scaled enterprises. As most of business community in Da Nang area basically consists of the small and medium sized enterprises, the major points of questions were recognized in relation to the large-scaled enterprises and/or public sector. It was also pointed out from the floor that, considering the business activities in Da Nang in general, special attention should be required for excessive advertisement, misleading labeling, etc.

Box 2-3-10 Major Interests shown from the Floor

- some concerns about competition restrictive acts where public preferential treatment can be found, such as agrichemical 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

The details of evaluation have been referred based on the survey on the questionnaire and have been feed-backed to substantiate more on the programs for the subsequent Advocacy Seminars. They are also designed to contribute the VCAD to further designing their voluntary advocacy activities.

The initial scope of the Advocacy Seminar activities, as agreed, indicated to have it on same programmed Seminar at three regional sites. Thus, the major structure of the program was remained same. As for the second Seminar, same as the first one, there were two sessions in the morning; “Introduction of Vietnam Competition Law and Guidelines”, “Competition in the Market Economy”, and two sessions in the afternoon; “Preparation for implementing Vietnam Competition Law over the past time”, “Competition Law & Enforcement of Japan.” As for the third Seminar, the structure was remained same but more in details and concentrated specific provisions of law. Thus, with regard to the evaluation as follows, the percentage shown in the chart is not represented as from the same criteria. It is for the referential use for the further designing and planning of programs.

(1) 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. (Please refer to the questionnaire sheet attached Appendix C-5).

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 (ie. 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.

Table 2-3-11 The Result of Questionnaire Survey from Advocacy Seminars

The 1st Advocacy Seminar

| | | | | | |
|---------|----------------|--------------|--------------|--------------|--------|
| Q-1 | Government | Private | Professional | | Total |
| | 23 | 6 | 7 | | 36 |
| | 63.9% | 16.7% | 19.4% | | 100.0% |
| Q-2 | Know Very Well | Partly Knew | Title only | Did not know | Total |
| | 3 | 24 | 9 | 1 | 37 |
| | 8.1% | 64.9% | 24.3% | 2.7% | 100.0% |
| Q-3 ev1 | Very much | Firly useful | Acceptable | Not useful | |
| | 22 | 12 | 1 | 0 | 35 |
| | 62.9% | 34.3% | 2.9% | 0.0% | 100.0% |
| Q-4 ev2 | Very much | Firly so | Acceptable | Not clear | |
| | 9 | 23 | 2 | 0 | 34 |
| | 26.5% | 67.6% | 5.9% | 0.0% | 100.0% |
| Q-5 ev3 | Session 1 | Session 2 | Session 3 | Session 4 | |
| | 19 | 19 | 19 | 21 | 78 |
| | 24.4% | 24.4% | 24.4% | 26.9% | 100.0% |

The 2nd Advocacy Seminar

| | | | | | |
|---------|----------------|--------------|--------------|--------------|--------|
| Q-1 | Government | Private | Professional | | Total |
| | 25 | 15 | 7 | | 47 |
| | 53.2% | 31.9% | 14.9% | | 100.0% |
| Q-2 | Know Very Well | Partly Knew | Title only | Did not know | Total |
| | 5 | 41 | 4 | 0 | 50 |
| | 10.0% | 82.0% | 8.0% | 0.0% | 100.0% |
| Q-3 ev1 | Very much | Firly useful | Acceptable | Not useful | |
| | 42 | 8 | 0 | 0 | 50 |
| | 84.0% | 16.0% | 0.0% | 0.0% | 100.0% |
| Q-4 ev2 | Very much | Firly so | Acceptable | Not clear | |
| | 16 | 33 | 1 | 0 | 50 |
| | 32.0% | 66.0% | 2.0% | 0.0% | 100.0% |
| Q-5 ev3 | Session 1 | Session 2 | Session 3 | Session 4 | |
| | 44 | 23 | 19 | 29 | 115 |
| | 38.3% | 20.0% | 16.5% | 25.2% | 100.0% |

The 3rd Advocacy Seminar

| | | | | | | |
|---------|----------------|---------------|--------------|--------------|---------------------|--------|
| Q-1 | Government | Private | Professional | | | Total |
| | 17 | 9 | 0 | | | 26 |
| | 65.4% | 34.6% | 0.0% | | | 100.0% |
| Q-2 | Know Very Well | Partly Knew | Title only | Did not know | | Total |
| | 1 | 12 | 19 | 0 | | 32 |
| | 3.1% | 37.5% | 59.4% | 0.0% | | 100.0% |
| Q-3 ev1 | Very much | Fairly useful | Acceptable | Not useful | | |
| | 18 | 13 | 0 | 0 | | 31 |
| | 58.1% | 41.9% | 0.0% | 0.0% | | 100.0% |
| Q-4 ev2 | Very much | Fairly so | Acceptable | Not clear | | |
| | 5 | 23 | 4 | 0 | | 32 |
| | 15.6% | 71.9% | 12.5% | 0.0% | | 100.0% |
| Q-5 ev3 | Session 1 | Session 2 | Session 3 | Session 4 | Session 5 Session 6 | |
| | 20 | 18 | 15 | 11 | 18 15 | 97 |
| | 20.6% | 18.6% | 15.5% | 11.3% | 18.6% 15.5% | 100.0% |

(2) Other Evaluating Points throughout the Seminar Activities

One of the initial objectives of organizing seminar in the C/B Project is to provide technical assistance to the VCAD in coordinating and arranging advocacy seminar effectively. (As mentioned in the previous Progress Report, to relatively fair extension, the VCAD had already developed their own capability in doing so.) To make this task more concrete, the prepared checklist, “Seminar Operation Step-by-Step Check List” (see Appendix C-4), was utilized as it was in the previous operation, and the initiative has been taken by the VCAD.

Besides operational logistics, it has been recognized that the further consideration needs to be taken on the VCAD’s capacity in planning and formulating strategy in this area. In the process of the organizing the second Seminar, the effort has been taken on this area. The discussion was focused on “for what actual objectives”, “what should be delivered and realized”, “what contents should be brought to deal with these previous items”, and so on. The strategy shown as the synergic effect of the Seminar presentation by using same contents from the Advocacy Leaflet can be recognized as one of the outcomes of this consideration task.

From TA Team side, in order to facilitate in preparing seminar materials, the explanatory notes were provided which elaborate keystone idea/information actually to be delivered contents by contents. Also, the comparative chart was prepared to make clear notion of comparability in provisions between Vietnam Competition Law and AMA (see Appendix B-8).

These tasks above, as well as preparation of management instruments, were conducted on the process of preparation of the Seminar; thus, considered to contribute for know-how transfer and provision of methodology so that the VCAD can utilize them even after the TA Project.

Besides all above, throughout the activities, following points of evaluating comments have been raised from participants and speakers/operational side.

Some of the points mentioned from the participants

- It was very useful opportunity to have a seminar like this time. It is expected to have more of like kind of opportunities on the Competition Law and Policy. Also, it will be

appreciated if the development of implementation is periodically delivered through seminars.

- It is welcomed if there will be certain opportunities to share information on specific act of restriction in specific area related to the participants' sectors (training programs provided in certain enterprises or for the specific trade associations, a series of seminars through VCCI, plenary session with separate meetings at one seminar, etc.)
- Instead of just introducing the experiences of Japan, it may be more beneficial if practical suggestions can be presented and discussed based on those experiences.

Some of the points mentioned from the organizers/lecturers side

- The range of the participants can be more specific so that subject can be more specific to the targeted participants. For example, if the target is the SME, participation can be concentrated on those groups that share similar business transactions.
- In the future, it will be worth considering designing more and more programs utilizing the Advocacy Leaflet the Study developed.

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 (detailed

programs appended in the end of this report):

Table 2-4-1 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 cases 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

(1) Objective of the first TA Seminar

The First TA seminar was positioned as the introduction of the Program, conducted with aims of sharing the overview of the Japanese Antimonopoly Act, regulation of the Law and Guideline on monopoly/oligopoly, and market survey method.

As for the preparation and administration of the seminar, a conference room in the Press Club that has the simultaneous translation facility was used as the venue. The VCAD has taken responsibility to prepare the machines (PCs, projectors, etc.) starting from the first seminar through out the program. On the days of the seminars, the VCAD officials have taken care of the machine setting and operation. Mr. Phan Duc Que, an official of the VCAD took full responsibility to organize and facilitate the seminars under cooperation of the other VCAD officials.

As for the distributed materials, also, the translation from English to Vietnamese and binding duplications were taken in charge by the VCAD; the materials were with substantial volume with many technical terms, but adequate translation was always made in time.

Given the time constraint, the simultaneous interpreters took important roles. The same interpreters were provided during the series of seminars that enable them to be familiar with the legal issues and technical terms. Their interpretation was generally highly evaluated.

(2) Contents

The seminar was held during March 1 – 3, 2006. The first day was open to the broader participants; some 70 participants attended from various agencies including related ministries, national university, law firms, state-owned corporations, etc. On second and third days, 36 participants were mainly from the VCAD and a few from MPI, Supreme Court, Prime Minister's Office and Ministries closely related to Competition Law.

The first day started by opening remarks by Mr. Son, DDG of the VCAD, Mr. Tojyo, Deputy Representative of JICA Vietnam, and Mr. Shimozu, Deputy Director of JFTC. The presentation on the Competition Law of Vietnam followed. Professor Seryo from

Doshisha University made presentation on history and importance of the Antimonopoly Law in Japan, and the role of the JFTC.

On second and third days, Mr. Shimozu made presentation on the Monopoly and Oligopoly Regulation under the Antimonopoly Act and Guideline. Mr. Maruyama's presentation introduced 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.

Table 2-4-2 Details of the First TA Seminar

| First TA Seminar | | |
|---------------------|--|--------------|
| Date | March 1-3, 2006 | |
| Participants | Officials from 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. | |
| 1 st Day | <u>Theme : Competition Law of Vietnam and Japanese Antimonopoly Act</u> | Presentation |
| AM | Opening and Introduction | |
| | Updating the development of Competition Law & Policy in Vietnam (including review of Competition Law & function of CAD) Direction of Competition Policy and Enforcement of the Law (the significance of Law implementation at the introductory stage and government intention on how the effective and efficient implementation of the Law would be structured including the expected role of respective Ministry in this area) | Vietnam |

| | | |
|---------------------|---|--------------|
| | Background and History of Japanese Antimonopoly Act (AMA) Outline of Japanese AMA and JFTC | Prof. Seryo |
| PM | Updating Decrees and/or Guidelines introduced and/or to be introduced to Competition Law in Vietnam | Vietnam |
| | Basic Concept and Function of Guidelines for implementation of AMA | JFTC |
| | Q&A Session | |
| 2 nd Day | <u>Theme : Market Survey Method and Practice concerning Monopolistic Situation</u> | Presentation |
| AM | Opening | |
| | <u>Monopoly and Oligopoly Regulation under the Antimonopoly Act</u> - Negative effect caused by monopoly and oligopoly in the course of domestic market growth - • Definition of monopolistic situation (Section 2(7)(8)) • Guidelines concerning “monopolistic situations” | JFTC |
| | - Measures against a monopolistic situation - - Guidelines concerning “monopolistic situations” (cont.) & related decrees - Measures against a monopolistic situation (Section 8-4) | JFTC |
| PM | <u>Monopoly and oligopoly regulation under the Antimonopoly Act</u> - Application of the provisions concerning a monopolistic situation - - Measures against a monopolistic situation (Section 8-4) (cont.) - Procedural regulations and its characteristics up to application of the provisions - Historical background at the time of the introduction of provisions concerning monopolistic situation (Why this provision was needed and how it evolved to be such a complex provision) - Guidelines concerning the interpretation of “Specific business field” as defined in the provisions of “monopolistic situations” in the Antimonopoly Act - Figure of Procedures against a monopolistic situation | JFTC |
| | <u>Recent Discussions on the Monopoly and Oligopoly Regulation under the Antimonopoly Act</u> - Recent discussions on Section 8-4 | JFTC |
| | Q&A Session | |
| | <u>Theme : Market Survey Method and Practice concerning Monopolistic Situation</u> | Presentation |
| AM | Opening | |

| | | |
|----|--|------|
| | <u>Market Survey Method on Monopolistic Situation - Outline of the concentration ratio survey -</u> - Background of the survey - Significance and objectives of the survey - <u>Survey method on concentration ratio -</u> - Operating procedures - Method of selecting targeted items - Framing of questionnaire design | JFTC |
| | - Subject matter of the survey - Method of collecting and compiling data - Utilization of the results for JFTC activities | JFTC |
| PM | Q&A Session | |

(3) Evaluation of the First TA Seminar

Active discussion was held as a whole. The questionnaire survey was implemented to the participants on final day. 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

(1) Objectives of the Second TA Seminar

a) Needs of the VCAD

Following the success of the first TA seminar and other activities in the first fiscal year, the communication channel between the VCAD and the TA Team has grown even tighter, and closer consultation was enabled. Based upon this relation, for the sake of effective designing of the second seminar, brain-storming session between a team of the VCAD officials and the TA Team was held to clarify the detailed needs of the VCAD towards future seminars. Also the communication on e-mails and telephone calls facilitated the preparation as well.

As for the planning of the future seminars, the VCAD has put forward the needs as

follows, with accurate understanding that there would be a certain limitation. The TA Team conveyed the needs and expectation from the VCAD to the JFTC officials and academic expert to discuss the planning.

The VCAD officials shared their expectation for the future seminars as follows:

- Previous seminar provided general ideas and introductory explanation. Based upon the information provided during the first seminar, the seminars to follow should provide practical details that would be useful for the VCAD's mandated operations in the future.
- Practical issues such as details of the investigation methods, how to define market focusing on market dimension, internal procedure of handling complaints/cases, how to deal with documents, difficulty of getting evidence, etc. should be covered.
- Particular cases should be used for the explanation; the case handling from the beginning to the end should be introduced.
- Good combination of the theory and case, with particular stress on the case study, is expected.
- Practice of case selection and explanation of thereof, prioritization among cases/tasks, classification of documents/cases etc. would be of interest.
- Actual way of hearing in detail is of interest.
- Education process of investigators at JFTC.

The VCAD officials stated their idea on the formation of the future seminars as follows:

- Each seminar should pick up one of the areas from 1) market allocation (in distribution sector / retailers), 2) abuse of dominant position, 3) monopoly, 4) price fixing by implicit agreement. <number does not show priority>
- Each seminar would be started by a brief explanation of the law/theory, followed by a case study. One case shall be picked up for each seminar for full and in depth explanation/analysis, covering investigation method, internal process, market definition and other points interested by the VCAD officials.
- Actual documents (related materials, if any) available should be distributed for the TA seminars.
- Case in each seminar can be selected and proposed by the discussion between the JFTC and the TA Team.
- Depending on the issues, small participation can be considered for each seminar. (i.e. around 20 participants from VCAD only)
- Role playing may be introduced for 3rd and 4th seminar. When necessary, the

VCAD may be able to prepare a hypothetical case for the role playing, based upon their experiences.

Based upon these expectations, the VCAD and the TA Team generally agreed that i) the major participants would be the VCAD officials, ii) theoretical issues would be the introductory part of the lectures and the actual cases in Japan would be used to introduce from the clue to the practice of the investigation and decision, and iii) the second, third and fourth seminars would cover the interested regulation area of the law, respectively, and iv) one or two cases should be taken up to allow longer question and answer sessions.

b) Consultations with JFTC Officials and an Academic Expert, and TA Team

Based upon the needs and expectations of the VCAD, the JFTC and the TA Team proposed to take up unfair trade practice in the Antimonopoly Act in Japan. It was also planned that on the first day of the seminar, the flow of the practice of case handling would be introduced, followed by the presentation actually using the cases with deep analysis for the each step of the handling practice. The two cases were carefully selected with a good contrast of the nature of the goods or the sectors, etc.

Table 2-4-3 Two Cases Presented during the Second TA Seminar

| |
|---|
| 2 nd day: Nissan Chemical Case Adopted Provisions: Article 19 of the Antimonopoly law, resale price restriction (Article 12 of the Designation of Unfair Trade Practices) On-the-spot investigation in October 2005. Cease and Desist Order in May 2006. |
| 3 rd day: Mitsui Sumitomo Bank Case Adopted Provisions: Article 19 of the Antimonopoly law, abuse of dominant position (Article 14 of the Designation of Unfair Trade Practices) Decision in December 2005. No on-the-spot investigation implemented. |

The TA Team also consulted with Professor Seryo who took part in the first seminar as one of the lecturers and agreed that he was going to make a presentation on the role of the Antimonopoly Law in the society of Japan and importance of the unfair trade practice, with emphasis on the resale price and dominant position. Thus, an implication to the Vietnam who is currently at the stage of introducing the competition

law would be provided, and also could facilitate participants understanding on the cases.

During the course of the preparation, it was found helpful that the concepts of the Vietnam Law and Japanese Law should be understood in the comparison. Therefore, the TA Team drafted the comparison chart of the two laws at annexed to this report. Also it was included in the duplication of materials for distribution for both TA seminars and Advocacy seminars.

c) Consultation with the VCAD regarding the detailed Program

The VCAD and the TA Team have consulted and decided that in addition to the introduction of the Japanese Antimonopoly Act, it is helpful for the participants as well as the lecturers to explain the Vietnamese Competition Law with comparison with the Japanese law, because sharing the concepts of the both laws would help questions and answers afterwards. Thus, a presentation by an official of the VCAD was also included as one of the lectures on the first day. During the preparation period, the exchange of the materials was frequent. One of the materials offered from the VCAD was “Abuse of dominant position in Vietnam Law”.

The seminar was subtitled as Case Handling Skills, since the content has the emphasis on the aspect.

(2) Contents of the Second TA Seminar

a) Program

As shared during the preparation process, the theme was abuse of dominant position and the retail price – unfair trade practice in Japanese AMA. The agenda was set as follows. To open the seminar, Dr. Loan, DG, was made an opening remark. DDG Dzung and Team Leader Tanaka co-moderated.

Table 2-4-4 Details of the Second TA Seminar

| Second TA Seminar- Case Handling Skills | | |
|---|--|--------------------------------------|
| Date | July 19-22, 2006 | |
| objectives | Technical transfer to the VCAD officials regarding the implementation of competition law | |
| moderators | Mr. Bui Son Dzung, DDG, VCAD and Mr. Hidekazu Tanaka, Team Leader | |
| 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 | |
| First Day | | lecturers |
| AM | Opening - Dr. Loan, DG, VCAD - Mr. Hidekazu TANAKA, TA Team | |
| | Flow of Procedure for Handling Illegal Cases in JFTC (Overview) | Mr. KODA Senior Investigator |
| | Abuse of Dominant Position in Vietnam | Mr. Le Thank Vinh Official - VCAD |
| PM | Comparison between the Antimonopoly Act of Japan and the Competition Law of Vietnam (tentative) Questions and Answers | Prof. Seryo |
| 2 nd Day | | lecturer |
| AM/PM | Nissan Chemical Industries, Ltd. Case Case Overview, Investigation Process, Investigation Methods and Decisions of Measures Questions and Answers | Mr. KODA Senior Investigator |
| 3 rd Day | | lecturer |
| AM/PM | Mitsui Sumitomo Banking Corporation Case Overview, Investigation Process, Investigation Methods and Decisions of Measures Questions and Answers | Mr. IHORI Investigator |
| 4 th Day | | lecturer |
| AM | Recent Cases of Unfair Trade Practices Questions and Answers (incl. Q & A for whole seminar) | Mr. KODA Mr. IHORI |
| PM | Summing up comments Closing - Bui Son Dzung DDG, VCAD - Mr. TANAKA, Leader, TA Team Certificate delivery | Mr. KODA Mr. IHORI Prof. SERYO |

b) Participants

The VCAD is responsible for inviting and making list of the participants. During the preparation consultation, the VCAD and the TA Team agreed that the major participants would be the officials of the VCAD, and some limited number of officials from closely related agencies in operation (e.g., Ministry of Justice or Supreme Court) might be invited. However, the coverage of the invitees was broader on the first day, so that some rearrangement was made for second and third day. As a result, the seminar gathered 40 participants on first day and 26 participants on second and third days.

c) Preparation and Operation of the Seminar

The VCAD took the active voluntary role in preparation and operation of the seminar with a high level of ownership, including translation and binding material. A few officials from the VCAD mentioned during the seminar that they have used the occasion of translation of Japanese information into Vietnamese, which showed the eagerness of the VCAD side to learn.

d) Major Discussion

1st Day: Violation case handling by JFTC and Competition Laws of Japan and Vietnam

Dr. Loan, DG of the VCAD opened the seminar by expressing her appreciation to the occasion and sharing the expectation to the technical transfer. She particularly stated that the officials should enhance their knowledge and skills in order to deal with the current challenges the VCAD were facing, including the close relation between the violators and the power. She shared that she believed Japan's experience and history of the development of competition policy would be helpful for the Vietnamese authority.

Mr. Tanaka, Leader of the TA Team has made opening remarks on behalf of Japanese side and gave the comprehensive contents and meanings of the whole program in bilateral framework started in October 2005. He also shared that this seminar would put an emphasis on practical aspect.

Mr. Koda, Senior Investigator of the JFTC has started his presentation by introducing the competition laws in the world, and shared his understanding that facilitation of the competitive environment has become a global standard. He introduced the overview and organizational structure relating to the competition law in Japan, history and figures of the violation cases, and procedures and surcharge.

A variety of questions were made from the floor, including getting cooperation from parties concerned, screening of reported information from the public, selection of the venues of on-the-spot investigation, gathering evidences, calculation of surcharge, etc.

Mr. Vinh, an official of the VCAD has made presentation on significance of the Competition Law in Vietnam and abuse of dominant position, as well as the procedures stipulated in the Vietnam Law. Some questions followed including the relation between the VCAD and the Courts.

Professor Seryo explained Japan's AMA and unfair trade practice with emphasis on resale price and abuse of dominant position, which would be the basis for the case presentation on next day.

Many questions were made from the participants relating to confirmation of the dominant position. DDG Dzung appreciated active participation and reminded that the meaning of dominant position is different in the contexts of laws in Vietnam and Japan.

2nd Day: Nissan Chemical Case

Mr. Koda presented the outline, measures and investigation skills of Nissan Chemical Case, a violation case of resale price restriction.

The participants questioned purpose of the resale price setting, handling of per-se illegal, concrete skills of the investigation, measures to the retailer, how to implement on-the-spot investigation, media relations, etc.

Mr. Koda, and partly Mr. Ihori and Professor Seryo, answered each question; resale pricing was a tool to maximize merit of the suppliers, resale price was a per-se illegal act so that no study was need to identify alternative goods, mass media generally quoted the case in favor of the JFTC, etc.

3rd Day: Mitsui Sumitomo Bank Case

Mr. Ihori explained the outline, measures and investigation skills of Mitsui Sumitomo Bank Case, a violation case of abuse of dominant position.

The participants made questions relating methodology to analyze dominant position, handing of the false statement, relation with other agencies, how to recruit experts, budget of investigation, validity of contract after the desist and cease order.

Mr. Ihori, and partly Mr. Koda and Professor Seryo, answered each question; dominant position in this case was analyzed based on qualitative data, but quantitative data has been used in other cases, false statement under the formal hearing was subject to

punishment, officials are subjected to the confidentiality obligation, contract is not automatically abrogated, etc.

4th Day: Recent cases of Unfair Trade Practice and Questions and Answers

Mr. Koda overviewed the cases and outlines of the unfair trade practice. During questions and answers session, questions including condition of application of the AMA Section 8, decision of the section applied, surcharge system, etc.

At the closing session, Mr. Koda showed his expectation that the VCAD would accumulate the experience and know-how suitable for the environment of the Vietnam, referring to the examples of other countries. Mr. Ihori mentioned that the VCAD would overcome the challenges that it would face during actual case handling, and showed his expectation that the VCAD would work for the business environment with fair competition.

Professor Seryo suggested that; i) distinguishing hard core violation and others would help heightening of the transparency, ii) decision of the applicable provisions should be clarified through the training, iii) selection of the cases requires study of impact to the market, available resources, function of other agencies, etc. so that it future discussion would be needed to clarify under what sort of environment the Competition Law is available. Professor Seryo concluded that the public faith and contribution in the society would be the key factors for future application of the Competition Law.

Mr. Dzung, DDG has expressed his appreciation, followed by the delivery of the certificate to each participant.

(3) Evaluation of the Second TA Seminar

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.

The questionnaire survey found followings comments from more than two participants:

- As for the next seminar, further details in case handling would be expected
- Would like to know the details in evaluation and analysis of the evidences, planning of the investigation policy, organization of the evidence, evidence other than physical evidence
- Interested in application of the Vietnamese Law to the cases introduced
- Main materials should be distributed to the participants in advance
- Longer discussion and questions and answers session would be appreciated

The lecturers suggested after the seminar as follows:

- Actual needs of the Vietnam side could be understood by facing and talking
- Less questions relating to the case handling practice than expected
- Found difference of interests between the VCAD and other agencies
- Preparation and follow-up activities could make the seminar more effective
- M&A would be the appropriate sector since the participants have interest in market definition.

The VCAD and the TA Team agreed to make full use of the comments from the participants and lecturers to design and undertake the third and forth seminar, and continue the consultation.

4.4 Third TA Seminar

(1) Objective of the Third TA Seminar and Preparation

a) Reconfirmation of the Objective and Participants

The Second TA seminar was primarily designed to have the attendance of officials mainly from the VCAD and study details of the case handling process. However, the participants turned out to be from broader agencies; it helped to promote general understanding of significant of the Competition law to the relevant agencies, but the detailed discussion relating to the case handling practice was pulled back in a certain extent. Thus the discussion in the seminar sometimes lost the focus and it was pointed out by the officials of the VCAD that more focused seminar would be expected.

The agreed purpose of the TA Seminars, “technical transfer to the VCAD that is in the start-up period, under the cooperation by the JFTC officials,” was reconfirmed, and it was decided between the VCAD and the TA Team that the participants would be limited to the VCAD officials and closely related agencies such as Legal Department of the Ministry of Commerce, Ministry of Justice, Prosecutors and Courts.

b) The Program Designing based on the Capacity Improvement of the VCAD

During the course of the elaboration of the Seminar Program, the TA Team pay serious attention to the continuous capacity development of the VCAD officials that brought in-depth interest and expectation to the Seminar. For example, before the Second Seminar, the VCAD officials expressed that they would like to hear the practical skills from the clue through the investigation to the decision based on the cases; during the discussion in the Second Seminar and the questionnaire afterwards showed the deepening of the interest in the VCAD officials, for example, evidence analysis and application of particular provision of the law became on of the most frequent comments. Thus, the progress of the knowledge and experience of the VCAD officials brought us to design the next-level contents of the Third Seminar.

c) Thesis and Practice Type Program

It was decided that the Third Seminar would take up the actual cases to explain from the clue to the end and share the practical details including viewpoints of the investigation, evidence analysis, etc. One of the cases was selected from the merger as the VCAD has constantly showed their interest in the market definition. There are remaining regulation areas such as private monopoly, cartel and association guidelines; among these, M&A and private monopolization were selected for the Third Seminar.

In addition, the VCAD has been expecting to have a practice type exercise; therefore, the application to the Vietnamese law that was clearly requested after the Second Seminar was decided to be included in the Third Seminar.

(1) Third TA Seminar

a) Program

Based upon the evaluation of the previous Seminar and a series of consultations, the Third TA Seminar was designed to pick up economic concentration and private monopolization 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: 1st and 2nd days focused on M&A related theory, procedure, case study and practical exercise to apply the Vietnamese Law, and 3rd and 4th 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.

The participants counted 30 officials, consists of some 20 VCAD officials and a few from MOC and the Courts.

Table 2-4-5 Details of the Third TA Seminar

| Third TA Seminar- Monopoly Position, Economic Concentration and Simulated Case Handling | | |
|---|--|----------------------------|
| Date | September 5-8, 2006 | |
| Objectives | Technical transfer to the VCAD officials regarding the implementation of competition law | |
| Moderators | Mr. Bui Son Dzong, DDG, VCAD and Mr. Hidekazu Tanaka, Team Leader | |
| 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 | |
| 1 st Day | | |
| AM | Opening -Representative from VCAD -Mr. Hidekazu TANAKA, TA Team | |
| | Market Concentration (M&A) Regulations in Japanese AMA and the Guideline (in comparison with Vietnamese Competition Law) | Prof. SERYO |
| | Market Concentration Review Procedure Questions and Answers | Ms. Tomoyuki |
| PM | Market Concentration Review Procedure, investigation, measures (including market definition) Questions and Answers | |
| | Preparation for Simulated Case Handling Exercise | TA Team (Ms. Kunimatsu) |
| 2 nd Day | | |

| | | |
|---------------------|---|---|
| AM/PM | Simulated Case Handling Exercise on M&A - Presentation of the rule and methodology of the exercise - Group Discussion - Group Presentation - Comments/advice from lecturers | TA Team/ VCAD (Ms. Kunimatsu) Lecturers as advisors |
| 3 rd Day | | |
| AM | Private Monopolization Regulations in Japanese AMA and Recent Cases (in comparison with Vietnamese Competition Law) | Prof. SERYO |
| | Private Monopolization Regulations and the NTT Case - Overview | Mr. Hosoda |
| PM | Private Monopolization Regulations and the NTT Case – Investigation, Methodology, Measure and Notion behind Questions and Answers | |
| | Preparation for Simulated Case Handling on DAY4 | TA Team (Ms. Kunimatsu) |
| 4 th Day | | |
| AM | Simulated Case Handling Exercise Group Discussion Group Presentation/ advice from lecturers | TA Team/ VCAD (Ms. Kunimatsu) Lecturers |
| | Q&A for whole seminar Comments/ advice from lecturers | Lecturers |
| PM | Interim Presentation on Trial Market Research Questions and Answers | TA Team (Mr. Kagohashi) |
| | Closing - Representative from VCAD - Mr. TANAKA, Leader, TA Team - Summing up comments - Presentation of certificates | |

b) Major discussions

Mr. Bui Son Dzong, DDG of the VCAD made opening remarks, and co-moderated with Mr. Hidekazu Tanaka, Leader of the TA Team to handle questions and answers, facilitate discussions.

1st Day: Lecture on Economic Concentration

Professor Seryo made a presentation on Market Concentration (M&A) Regulations in Japanese AMA and the Guideline in comparison with Vietnamese Competition Law. He explained provisions and cases of M&A, trend of the cases and current situation, purpose of the provision, and case law approach and statutory approach. He also

raised questions related to the Vietnamese law, e.g. who would calculate the share, one should notify the share between 30-50%, whether the handling period could be kept in case number of notifications was received, whether measures to ease the concentration could be taken, etc.

Ms. Tomoyuki made a presentation on M&A procedure and cases. She introduced the prior consultation procedure in Japan; how to deal with prior consultation, analysis of materials, definition of goods, definition of geographical area, hearing to the parties concerned, with many suggestion in practice.

Questions were made such as scheduling of the prior consultation, hearing and publication of the case, provisions for the market definition, etc., and answered and commented by the lecturers.

Ms. Tomoyuki continued her presentation on actual cases, namely, acquisition of Asahi Fiber Glass Co., Ltd. by Owens Corning Japan Corporate, the investment by Marubeni Corporation to the Daiei, Inc., and Business Integration of Bus Manufacturing Operations of Hino Motors, Ltd. and Isuzu Motors, Ltd., and explained practice and key issues in investigation, including information that should be acquired, as well as market definitions.

The question and answers took up the issues including definition of geographical area and population concentration, market definition by products, etc.

2nd Day: Case Handling Exercise on Economic Concentration

Ms. Kunimatsu, TA Team Member, started how the case handling exercise would be proceeded: each group is a team of investigator who receives the notification of the economic concentration, and asked to discuss how the Vietnamese Law should be applied by full use of the facts and background data.

Professor Seryo noted a few points such as; how the threshold of 50% is seen, who calculate, how the “practical restriction of trade” can be interpreted.

Four groups formed by the VCAD worked on the simulated case by group discussion. Mr. Dzong worked around to promote and stimulate discussion of each group.

The lecturers visited each group with interpreters to confirm and comment on the discussion, which varied from one to another. One group reached to the conclusion by

looking at the share while the other tried to have a deeper discussion including the possibility of alternative products or impact to the society. The lecturers asked, for example, how the market definition was made, how should further information should be gathered, etc.

During the presentation by each group, a variety of points were reported including followings:

- Procedure and schedule were confirmed at the beginning based on the mission letter.
- As for the application of law, market of the products was defined based on Article 4.5 and 4.6 of the Law. Geographical area was considered to cover whole territory of the nation. Necessity of notification was decided based on information of the share
- In case the merger turned out to be a share of more than 30%, the companies by themselves have to calculate and notify to the VCAD. Further clarification would be needed in the Law.
- There should be still some more information to be gathered; e.g. in order to discuss the geographical market, the distribution system, customer, production, use and alternative products, etc. should be clarified. Also the information of the competing companies and market situation should be known.

The lecturers made following comments:

- The conclusion of no violation was correct based on the Vietnamese Law since the market share was under 50% after the merger.
- The good viewpoint of possibility of the expansion of production, competing companies and R&D for new products taking the notion from Japanese Law.
- In analyzing shares, it was good to pay attention to the gap between merged company and competitors.
- Good comment that additional information would be useful to study the distribution channel. It is necessary to identify the demanders.
- Future possibility of the development of new drug is an uncertain piece of information so that it cannot be taken into consideration. Actual growth of the figure or actual plan should be acquired.
- In M&A investigation in Japan, the market is defined first and analyze whether there is a dominant position. This notion is seen in both the U.S. and EU Laws.
- The comments on market definition and elements to take consideration showed

that the participants have got good understanding of the lecture yesterday.

- Article 18 of the Competition Law in Vietnam prohibits merger that cause 50% or more share. This should be understood not only by the text itself, but also see the notion behind; it is assumed that a market share of more than 50% is likely to constitute a market power.
- As the officials of responsible authorities, practical feasibility has to be kept in mind. In case of Vietnamese Law, market definition is the most important issue.
- Clarification would be needed on the matter of information gathering beyond the dossier in Article 21.

The TA Team presented the additional mission to consider four different cases in that the share after the merger turned out to be more than 50%, and instructed that each group should discuss regarding the application of the Article 19 (exemption) and difference of market power.

Mr. Hosoda stated that the market power is not simple as “exists or not”. The market share is important to analyze the market power though it is not only an element. Therefore, the investigator has to look at the share and the order to consider whether the possibility of forming market power is high or low, or needs more information; this is the point that Mr. Hosoda invited to discuss. Following 30 minute group discussion, group presentations were made.

3rd Day: Private monopolization/ lectures

Professor Seryo made a presentation on Private Monopolization Regulations in Japanese AMA and Recent Cases in comparison with Vietnamese Competition Law. He explained meaning and concept of the AMA with the emphasis on the similarity of private monopolization in the AMA and abuse of dominant position in the Competition Law in Vietnam. He also overviewed historical trend of the cases, difference between private monopolization and unfair trade practice. In addition, he asked question regarding the Article 11 of the Vietnam Law.

Mr. Hosoda made a presentation on Private Monopolization and NTT East Case, explaining similarities of private manipulation and business combination, such as market power, and difference (timing of analysis), etc. He also shared particular features of the case in the area of the telecommunication and intention of restricting

competition.

Many questions followed. One was to ask about the cheaper service and consumer benefit. Mr. Hosoda discussed about the notion of true consumer benefit.

Professor Seryo briefed Hokkaido Newspaper Case as a reference of next day's practice.

4th Day: Case Handling Exercise on Private Monopolization/ exercise

The final day was started by the explanation by Ms. Kunimatsu, TA Team Member, followed by the group discussion, presentation and comments.

During the presentation, each group explained analysis on the case and application of the Competition Law in Vietnam. Mr. Hosoda asked in case of several doubtful actions whether investigator should consider each individual action or a group of actions as a whole. Another discussion was about the relevant articles in the Decrees. Statute of limitation was another discussion point.

Ms. Tomoyuki pointed out by referring to the presentations from the participants that some parts in the Law would need further discussion to clarify interpretation.

Mr. Tanaka invited the groups to think about the NTT East Case in the context of the Vietnamese Law. After the group discussion, Mr. Dzung stated that there was a similar case in Vietnam but the VCAD was not in charge because there is Vietnam Telecommunication Ministry to supervise telecommunication interconnection issues.

Mr. Kagohashi, TA Team Member in charge of pilot market survey, made an interim reporting on pilot market survey activities. He presented purpose, outline and current situation of the survey. Mr. Dzung commented that he would look forward to the final outcome.

Mr. Dzung and Mr. Tanaka made closing remarks, followed by the delivery of the certificates.

(3) Evaluation of the Third Seminar

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. Some commented that four days might be rather long for the officials who have other tasks during the week.

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

(1) Objectives of the Second TA Seminar

Since the First Seminar was held, the VCAD has continued its effort, through the own activities and those with international supporters, and continuously developed its capacity. In addition, the capacities of organization and officials have been getting prepared for the actual case handling. Based on this improvement, the pieces of questions and interest in the practice have become willingness to participate in the practical exercise before the third seminar. After the Third Seminar, the VCAD showed its expectation to deal with an analysis and investigation exercise through a role-play type workshop.

The Fourth Seminar, against such background, would consist of lectures of theory and case introduction, as well as a simulated investigation, using cartel and bid-rigging as materials, aiming to experience investigation skill in actual case handling.

The TA Team proposed to design the Fourth Seminar focusing competition restriction agreements; section 8- in the Competition Law would be taken up and dealt with by the investigation role-playing, which was welcomed by the VCAD. The VCAD and the TA Team agreed that price fixing (Article 8.1) and bid-rigging (Article 8.8) are taken up.

For the exercise part, not only the group discussion on application of the law, simulated investigation would be planned with the TA Team taking roles of the suspects, and being investigated by the participants. The VCAD also noted that the question should not be too simple as the previous Seminar. The simulated situation should be complicated with vagueness so that there would be rooms for discussion like real cases.

(2) Contents

a) Program

Based on the prior consultations, cartel and bid rigging were taken up. The lectures on theory and cases were made on the first day. 2nd and 3rd days would be the role-play exercise.

Table 2-4-6 Details of the Fourth TA Seminar

| Fourth TA Seminar- Competition Restriction Agreement and Simulated Investigation | | |
|--|--|-------------|
| Date | November 27-29, 2006 | |
| objectives | Technical transfer to the VCAD officials regarding the implementation of competition law | |
| moderators | Mr. Tran Ann Son, DDG, VCAD and Mr. Hidekazu Tanaka, Team Leader | |
| 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 | |
| 1 st Day | | |
| AM | Opening - Representative from the VCAD - Mr. Hidekazu TANAKA, TA Team | |
| | Competition Restriction Agreement in Japanese Antimonopoly Act and Recent Cases (in comparison with Vietnamese Competition Law) Questions and Answers | Prof. SERYO |
| | Experience of Investigation in Cartel Case (Cartel by Producers of Modifier for polyvinyl chloride) | JFTC |
| PM | Experience of Bid-Rigging Case (Bid-Rigging on Jet Fan for Highway Tunnel) | |

| | | | | |
|---|---|--|--|--|
| | Discussion and Questions and Answers relating to Case Handling with the emphasis of investigation | | | |
| | Presentation regarding the Simulated Investigation Exercise | | TA Team (Ms. Kunimatsu) | |
| 2 nd Day | | | | |
| Simulated Investigation Exercise (Facilitator: TA Team) | | | | |
| | AM | Explanation of the mission by TA Team | TA Team/VCAD <ul style="list-style-type: none">• A simulated case on cartel or bid-rigging with evidences is prepared by the TA Team.• TA Team members play roles of suspect-companies; VCAD groups will play the roles of investigators.• The clue -> information/evidence gathering (e.g. hearings) -> application of law -> reporting and decision shall be conducted by each group.• VCAD is in charge of groupings• Lecturers are asked to make comments/ advice | |
| | | Exercise | | |
| | PM | Interim Presentation by Groups | | |
| | | Exercise | | |
| 3 rd Day | | | | |
| | AM | Simulated Investigation Exercise Presentation by Groups Comments from Lecturers | | |
| | | Questions and Answers Session Closing <ul style="list-style-type: none">- VCAD Representative- JICA Representative- Presentation of certificate | | |

b) Major discussion

1st Day: Lectures

Mr. Tran Anh SON, DDG of the VCAD made opening remarks, and co-moderated with Mr. Hidekazu Tanaka.

Professor Seryo made a presentation on theory of the competition restriction regulation, or prohibition of cartels, and the trend of the implementation in Japan in comparing with the Vietnamese Law. Stimulated by the Professor's presentation, questions and answers followed on various issues such as figure of the cases, criminal law suits or international cases.

Mr. Uchida from the JFTC presented on the modifiers price cartel case with the emphasis on the probative values of the evidences. Mr. Maeda from the JFTC has made a presentation on the bid-rigging case on tunnel ventilation construction and explained the practice of the on-the-spot investigation and the leniency. Questions and answers session followed.

2nd and 3rd Day: Simulated Investigation Practice

A simulated investigation practice was undertaken based on the lectures on the first day. The TA Team prepared a set of materials of the simulation investigation practice on "Hai Phong City Road Construction Case" advised by the officials of the JFTC and the academician. The participants were divided into the teams of the "investigator". Starting by the clue of receiving a dossier, a whole process of the investigations including confirmation to the complainant, discussion and drafting investigation strategy, preliminary investigation, the on-the-spot investigation, interviews of parties concerned and reporting was covered. The TA Team members took roles of suspected companies and parties concerned. In each step, the lecturers gave comments and advice based on their practice. Some legal and practical issues of the regulations were shared by the exercise.

At the end of the third day, Mr. Son and Mr. Tanaka made closing remarks, the lecturers gave final comments and the certificates were delivered to the participants.

(3) Evaluation of the Fourth Seminar

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 lecturers 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.

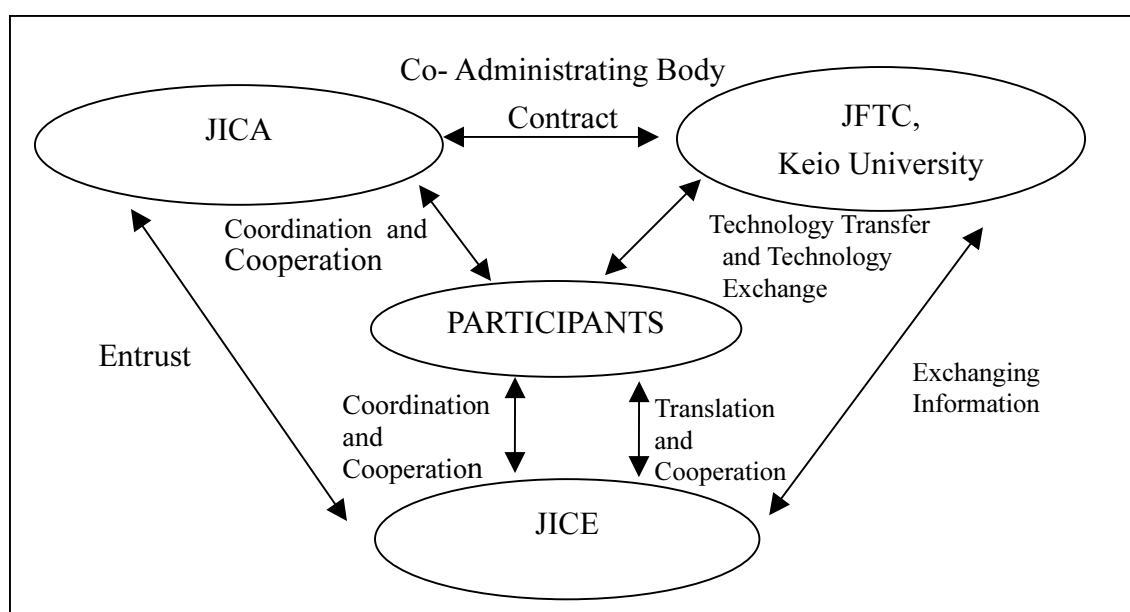
5. Counterpart Training

5.1 Counterpart Training Course Objective

The Training Course was held in October 2006 in Japan with cooperation of organization concerned (refer Figure 2-5-1) 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 2-5-1 Structure for Counterpart Training



Source: JICA

5.2 Schedule of Counterpart Training Course

The schedule of Counterpart Training Course is as follows.

Table 2-5-2 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, the 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 in Mid to Long Term

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, GDT and 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 web site. 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 web site 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 / Biz 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 Website)

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.

(iv) 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 web-site, 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 web-site 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 web-site 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 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.

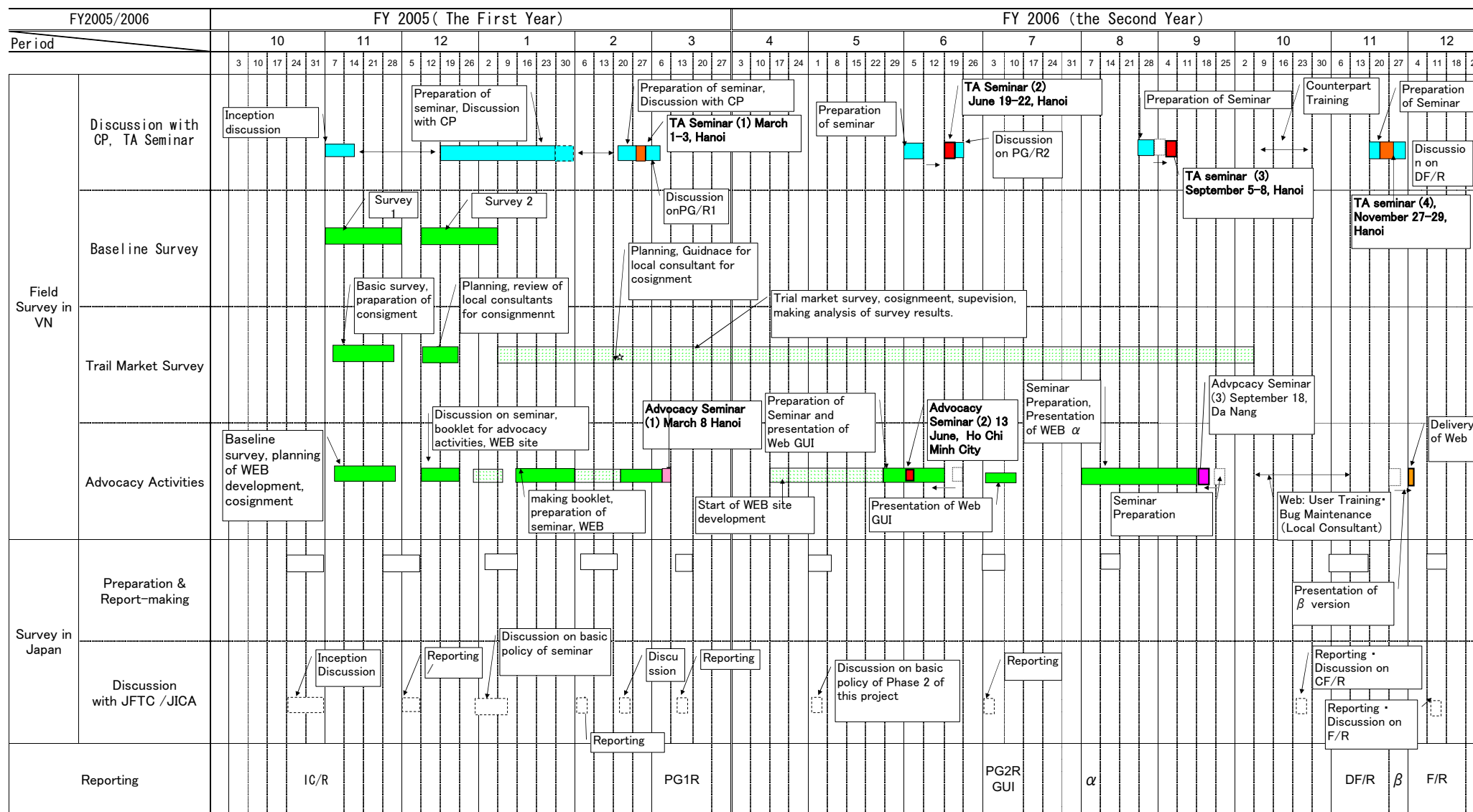
One important mission would be to discuss and develop some internal rules (guiding principles, manuals, checklists and/or formats) that would cover necessary practices not prescribed in the existing law or orders. An institutional setting to discuss the rules (e.g., regular meetings mentioned in 1. above) 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 base on the duty of confidentiality.)

Appendix

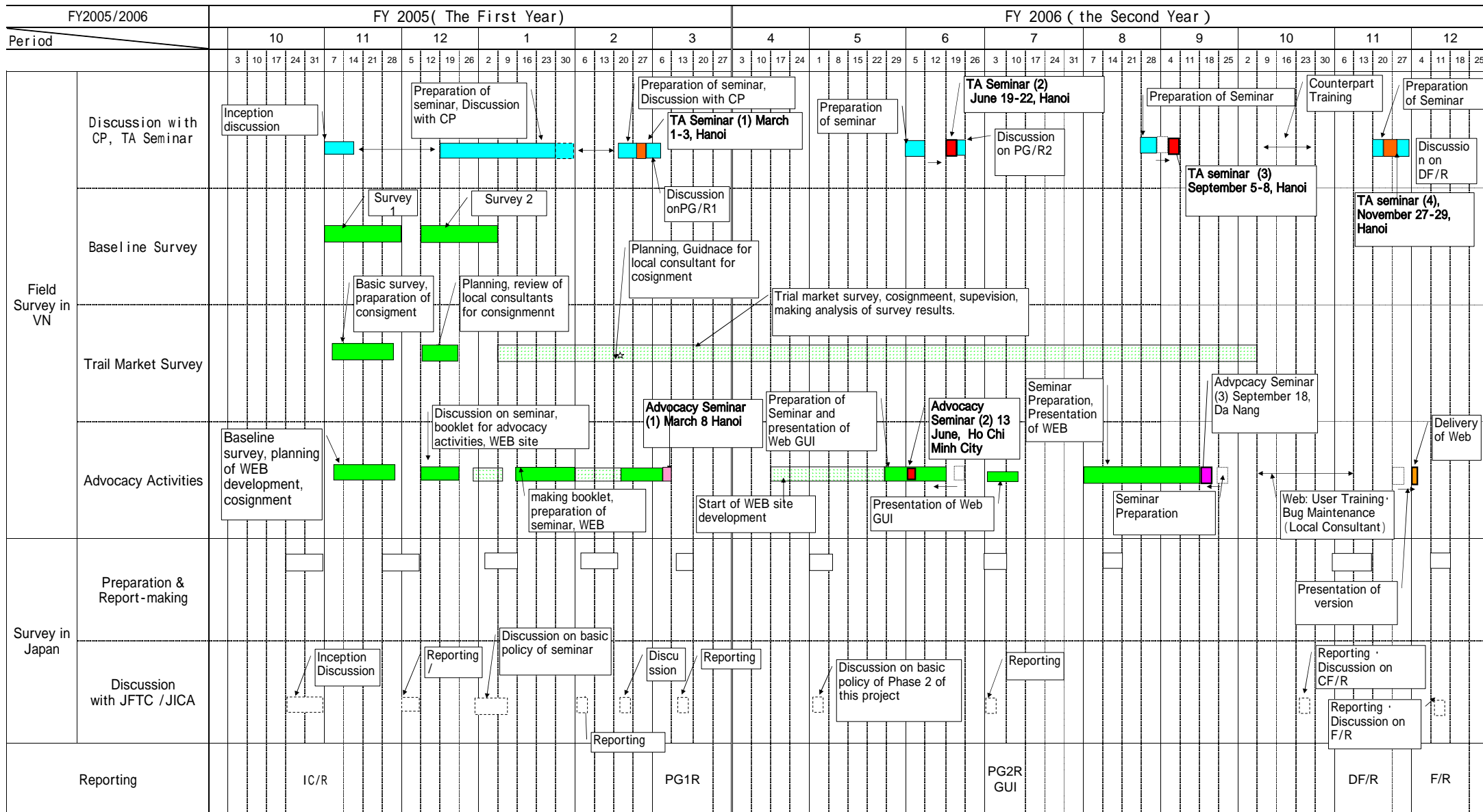
Project Schedule

Appendix A



Project Schedule

Appendix A



THE STATE PRESIDENT

**ORDER No. 23/2004/L-CTN OF DECEMBER 14, 2004 ON THE
PROMULGATION OF LAW**

THE PRESIDENT OF THE SOCIALIST REPUBLIC OF VIETNAM

Pursuant to Articles 103 and 106 of the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001 of the Xth National Assembly, the 10th session;

Pursuant to Article 91 of the Law on Organization of the National Assembly;

Pursuant to Article 50 of the Law on Promulgation of Legal Documents,

PROMULGATES:

The Competition Law,

which was passed on December 3, 2004 by the XIth National Assembly of the Socialist Republic of Vietnam at its 6th session.

President of the Socialist Republic of Vietnam

TRAN DUC LUONG

COMPETITION LAW

(No. 27/2004/QH11)

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001 of the Xth National Assembly, the 10th session;

This Law provides for competition.

Chapter I

GENERAL PROVISIONS

Article 1.- Scope of regulation

This Law provides for competition-restricting acts, unfair competition acts, order and procedures for settling competition cases, measures to handle violations of competition legislation.

Article 2.- Subjects of application

This Law shall apply to:

1. Business organizations and individuals (hereinafter referred collectively to as enterprises), including also enterprises producing, supplying products, providing public-utility services, enterprises operating in the State-monopolized sectors and domains, and foreign enterprises operating in Vietnam.
2. Professional associations operating in Vietnam.

Article 3.- Interpretation of terms

In this Law the following terms are construed as follows:

1. Relevant market means relevant market of products and relevant geographical market.

Relevant market of products means a market of goods, services which are interchangeable in terms of characteristics, use purposes and prices.

Relevant geographical market means a specific geographical area in which exist goods, services which are interchangeable under similar conditions of competition, and which is

considerably differentiated from neighboring areas.

2. Professional associations include commodity line associations and trade associations.

3. Competition restriction acts mean acts performed by enterprises to reduce, distort and prevent competition on the market, including acts of competition restriction agreement, abusing the dominant position on the market, abusing the monopoly position and economic concentration.

4. Unfair competition acts mean competition acts performed by enterprises in the process of doing business, which run counter to common standards of business ethics and cause damage or can cause damage to the State's interests, legitimate rights and interests of other enterprises or consumers.

5. An enterprise's market share of a certain kind of goods or service means the percentage between sale turnover of this enterprise and aggregate turnover of all enterprises dealing in such kind of goods or service on the relevant market or the percentage between purchase turnover of this enterprise and aggregate purchase turnover of all enterprises dealing in such kind of goods or service on the relevant market on a monthly, quarterly or yearly basis.

6. Combined market share means aggregate market share on the relevant market of enterprises participating in the competition restriction agreement or economic concentration.

7. Total cost of production of goods or services consists of:

a/ Cost of production of products or services; purchasing price of goods;

b/ Cost of circulation to bring goods, services to consumers.

8. Competition case means a case showing signs of violation of the provisions of this Law, which is investigated and handled by a competent state agency according to law provisions.

9. Competition procedures mean activities carried out by agencies, organizations and individuals according to the order and procedures for settling and handling competition cases prescribed by this Law.

10. Business secret means information that fully meets the following conditions:

a/ Being other than common knowledge;

b/ Being applicable to business and, once used, placing the holder ..)f such information at an advantage over the non-holder or non-user of such information;

c/ Being kept confidential by the owner by applying necessary measures to keep such

information from disclosure and easy access.

11. Multi-level sale means an approach of marketing to retail goods, which meets the following conditions:

a/ The marketing to retail goods is conducted through a multi-level and multi-branch network of participants in the multi-level sale;

b/ Goods are marketed by participants in the multi-level sale directly to consumers at the customers' homes, working places or other places other than regular retail places of the enterprises or participants;

c/ Participants in the multi-level sale enjoy commissions, bonuses or other economic benefits from the sale results of their own and of lower-level multi-level sale participants within the network which is organized by themselves and approved by the multi-level sale enterprises.

Article 4.- Right to business competition

1. Enterprises enjoy freedom to competition within the legal framework. The State protects the lawful right to business competition.

2. Competition must be implemented on the principles of honesty, non-infringement upon the interests of the State, public interests, legitimate rights and interests of enterprises, consumers and compliance with the provisions of this Law.

Article 5.- Application of this Law, other relevant laws and international agreements

1. Where there is any disparity between the provisions of this Law and those of other laws on competition restriction acts or unfair competition acts, the provisions of this Law shall apply.

2. Where international agreements which the Socialist Republic of Vietnam has signed or acceded to contain provisions different from those of this Law, the provisions of such international agreements shall apply.

Article 6.- Acts that State management agencies are prohibited from performing

State management agencies are prohibited from performing the following acts to prevent competition on the market:

1. To force enterprises, organizations or individuals to buy, sell goods, provide services to enterprises which are designated by these agencies, except for goods and services in the State-monopolized domains or in emergency cases prescribed by law;

2. To discriminate between enterprises;

3. To force professional associations or enterprises to align with one another with a view to precluding, restricting or preventing other enterprises from competing on the market;
4. Other acts that prevent lawful business activities of enterprises.

Article 7.- State management responsibilities for competition

1. The Government performs uniform State management over competition.
2. The Trade Ministry shall be responsible to the Government for performing the State management over competition.
3. Ministries, ministerial-level agencies, provincial/municipal People's Committees shall, within the scope of their respective tasks and powers, have to coordinate with the Trade Ministry in performing the State management over competition.

Chapter II

CONTROL OF COMPETITION RESTRICTION ACTS

Section 1. COMPETITION RESTRICTION AGREEMENTS

Article 8.- Competition restriction agreements

Competition restriction agreements include:

1. Agreements on directly or indirectly fixing goods or service prices;
2. Agreements on distributing outlets, sources of supply of goods, provision of services;
3. Agreements on restricting or controlling produced, purchased or sold quantities or volumes of goods or services;
4. Agreements on restricting technical and technological development, restricting investments;
5. Agreement on imposing on other enterprises conditions on signing of goods or services purchase or sale contracts or forcing other enterprises to accept obligations which have no direct connection with the subject of such contracts;
6. Agreements on preventing, restraining, disallowing other enterprises to enter the market or develop business;
7. Agreements on abolishing from the market enterprises other than the parties of the

agreements;

8. Conniving to enable one or all of the parties of the agreement to win bids for supply of goods or provision of services.

Article 9.- Prohibited competition restriction agreements

1. Competition restriction agreements prescribed in Clauses 6, 7 and 8 of this Law are prohibited.

2. Competition restriction agreements prescribed in Clauses 1, 2, 3, 4 and 5, Article 8 of this Law the parties of which have combined market share of 30% or more on the relevant market are prohibited.

Article 10.- Cases of exemption with regard to prohibited competition restriction agreements

1. Competition restriction agreements defined in Clause 2, Article 9 of this Law shall enjoy exemption for a definite term if they meet one of the following conditions in order to reduce costs to benefit consumers:

a/ Rationalizing the organizational structure, business model, raising business efficiency;

b/ Promoting technical and technological advances, raising goods and service quality;

c/ Promoting the uniform application of quality standards and technical norms of products of different kinds;

d/ Harmonizing business, goods delivery and payment conditions, which have no connection with prices and price factors;

e/ Enhancing the competitiveness of small- and medium-sized enterprises;

f/ Enhancing the competitiveness of Vietnamese enterprises on the international market.

2. The order, procedures for granting exemptions and exemption terms shall comply with the provisions of Section 4 of this Chapter.

Section 2. ABUSE OF DOMINANT POSITION ON THE MARKET,

ABUSE OF MONOPOLY POSITION

Article 11.- Enterprises, groups of enterprises holding the dominant position on the market

1. Enterprises shall be considered to hold the dominant position on the market if they have market shares of 30% or more on the relevant market or are capable of restricting competition considerably.

2. Groups of enterprises shall be considered to hold the dominant position on the market if they take concerted action to restrict competition and fall into one of the following cases:

- a/ Two enterprises having total market share of 50% or more on the relevant market;
- b/ Three enterprises having total market share of 65% or more on the relevant market;
- c/ Four enterprises having total market share of 75% or more on the relevant market;

Article 12.- Enterprises holding the monopoly position

An enterprise shall be considered to hold the monopoly position if there is no enterprise competing on the goods or services dealt in by such enterprise on the relevant market.

Article 13.- Prohibited acts of abusing the dominant position on the market

Enterprises, groups of enterprises holding the dominant position on the market are prohibited from performing the following acts:

1. Selling goods, providing services at prices lower than the aggregate costs in order to eliminate competitors.
2. Imposing irrational buying or selling prices of goods or services or fixing minimum re-selling prices causing damage to customers;
3. Restricting production, distribution of goods, services, limiting markets, preventing technical and technological development, causing damage to customers;
4. Imposing dissimilar commercial conditions in similar transactions in order to create inequality in competition;
5. Imposing conditions on other enterprises to conclude goods or services purchase or sale contracts or forcing other enterprises to accept obligations which have no direct connection with the subject of such contracts;
6. Preventing new competitors from entering the market.

Article 14.- Prohibited acts of abusing the monopoly position

Enterprises holding the monopoly position are prohibited from performing the following acts:

1. Acts defined in Article 13 of this Law;
2. Imposing unfavorable conditions on customers;
3. Abusing the monopoly position to unilaterally modify or cancel the contracts already signed without plausible reasons.

Article 15.- Control of enterprises operating in the State monopolized domains, enterprises producing, supplying public-utility products, services

1. The State controls enterprises operating in the State-monopolized domains with the following measures:

a/ Deciding on the buying prices, selling prices of goods, services in the State-monopolized domains;

b/ Deciding on the quantities, volumes and scope of market of goods, services in the State monopolized domains.

2. The State controls enterprises producing and supplying public-utility products, services with measures of ordering goods, assigning plans or bidding according to prices or charges set by the State.

3. When undertaking other business activities outside the State-monopolized domains and producing, providing public-utility products, services, enterprises shall not be subject to the application of the provisions of Clause 1 and Clause 2 of this Article but still be subject to the application of other provisions of this Law.

Section 3. ECONOMIC CONCENTRATION

Article 16.- Economic concentration

Economic concentration means acts of enterprises, including:

1. Merger of enterprises;
2. Consolidation of enterprises;
3. Acquisition of enterprises;

4. Joint venture between enterprises;
5. Other acts of economic concentration prescribed by law.

Article 17.- Merger, consolidation, acquisition of enterprises and joint venture between enterprises

1. Merger of enterprises means an act whereby one or several enterprises transfer all of its/their property, rights, obligations and legitimate interests to another enterprise, and at the same time terminate the existence of the merged enterprise (s).

2. Consolidation of enterprises means an act whereby two or more enterprises transfer all of their property, rights, obligations and legitimate interests to form a new enterprise and, at the same time, terminate the existence of the consolidated enterprises.

3. Acquisition of enterprises mean an act whereby an enterprise acquires the whole or part of property of another enterprise sufficient to control or dominate all or one of the trades of the acquired enterprise.

4. Joint venture between enterprises means an act whereby two or more enterprises jointly contribute part of their property, rights, obligations and legitimate interests to the establishment of a new enterprise.

Article 18.- Prohibited cases of economic concentration

Economic concentration shall be prohibited if the combined market shares of enterprises participating in economic concentration account for over 50% on the relevant market, except for cases specified in Article 19 of this Law or the case where enterprises, after implementing economic concentration, are still of small or medium size as prescribed by law.

Article 19.- Cases of exemption from prohibited economic concentration

Prohibited economic concentration prescribed in Article 18 of this Law may be considered for exemption in the following cases:

1. One or more of the participants in economic concentration is/are in danger of dissolution or bankruptcy;
2. The economic concentration has an effect of expanding export or contributing to socio-economic development, technical and technological advance.

Article 20.- Notification of economic concentration

1. If enterprises participating in economic concentration have combined market shares of between 30 and 50% on the relevant market, their lawful representatives must notify the competition managing agency before implementing economic concentration.

Where combined market shares of enterprises participating in economic concentration are lower than 30% on the relevant market or where enterprises, after implementing economic concentration, are still of small or medium size as prescribed by law, such notification is not required.

2. Enterprises participating in economic concentration eligible for exemption prescribed in Article 19 of this Law shall submit exemption application dossiers under the provisions of Section 4 of this Chapter instead of notification of economic concentration.

Article 21.- Economic-concentration notification dossiers

1. An economic-concentration notification dossier shall comprise:

a/ The written notification of economic concentration, made according to a form set by the competition-managing agency;

b/ Valid copies of the business registration certificates of all enterprises participating in economic concentration;

c/ Financial statements of the latest two consecutive years of each enterprise participating in economic concentration, with the certification of audit organizations according to law provisions;

d/ The list of dependent units of each enterprise participating in economic concentration;

e/ The list of kinds of goods, services dealt in by each enterprise participating in economic concentration and by its dependent units;

f/ Reports of the latest two consecutive years of each enterprise participating in economic concentration on their market shares on the relevant market.

2. Enterprises submitting the economic concentration notification dossiers shall be accountable for the truthfulness of their dossiers.

Article 22.- Acceptance of economic concentration notification dossiers

Within seven working days after receiving the economic-concentration notification dossiers, the competition-managing agency shall have to notify in writing the dossier-submitting enterprises of the validity and completeness of their dossiers; where a dossier is incomplete, the competition-managing agency shall have to clearly point out the contents that have to be supplemented.

Article 23.- Time limit for reply to economic concentration notification

1. Within forty five days after receiving complete economic-concentration notification

dossiers, the competition-managing agency shall have to reply in writing to the dossier-submitting enterprises. Written replies of the competition-managing agency must determine whether economic concentration falls into one of the following cases:

a/ Economic concentration does not fall into the prohibited cases;

b/ Economic concentration is prohibited under the provisions of Article 18 of this Law; the prohibition reason must be clearly stated in the written reply.

2. Where economic concentration involves many complicated circumstances, the head of the competition-managing agency may extend the time limit for reply specified in Clause 1 of this Article no more than twice, each time for no more than thirty days and notify such in writing to the dossier submitting enterprises no later than three working days before the expiration of the time limit for reply, clearly stating the extension reason.

Article 24.- Implementation of economic concentration

Lawful representatives of the enterprises participating in economic concentration subject to notification as prescribed in Clause 1 , Article 20 of this Law may only carry out economic concentration procedures at the competent State agencies prescribed by legislation on enterprises after the competition-managing agency replies in writing that such economic concentration does not fall into any prohibited cases.

Section 4. PROCEDURES FOR EXECUTION OF EXEMPTION CASES

Article 25.- Competence to decide on exemption

1. The Trade Minister shall consider and decide in writing on the exemption prescribed in Article 10 and Clause 1, Article 19 of this Law.

2. The Prime Minister shall consider and decide in writing on the exemption prescribed in Clause 2, Article 19 of this Law.

Article 26.- Subjects submitting exemption application dossiers

The subjects submitting exemption application dossiers are the parties intending to participate in competition restriction agreements or economic concentration.

Article 27.- Lawful representatives of parties of competition restriction agreements or economic concentration

1. The parties of the competition restriction agreements or economic concentration may appoint a representative to carry out the procedures to apply for exemption. The appointment of representatives must be made in writing and certified by the involved parties.

2. Rights and obligations of the representative party shall be determined by the involved parties;

3. The parties shall be responsible for acts of the representative party within the scope of authorization.

Article 28.- Dossiers of application for exemption for competition restriction agreements

1 . A dossier of application for exemption for a competition restriction agreement shall comprise:

a/ The application, made according to the form set by the competition-managing agency;

b/ The valid copies of the business registration certificates of each enterprise participating in the competition restriction agreement and the charter of the association for cases where the competition restriction agreement is participated by such association;

c/ Financial statements of the latest two consecutive years of each enterprise participating in the competition restriction agreement, with the certification of audit organizations according to law provisions;

d/ Reports of the latest two consecutive years of each enterprise participating in the competition restriction agreement on their market shares on the relevant market;

e/ A report elaborating the satisfaction of the cases eligible for exemption prescribed in Article 10 of this Law;

f/ The written authorization of the representative party by the parties of the competition restriction agreement.

2. The dossier submitters and the parties of the competition restriction agreements shall be accountable for the truthfulness of their dossiers.

Article 29.- Dossiers of application for exemption for economic concentration

1. A dossier of application for exemption for economic concentration shall comprise:

a/ The application, made according to the form set by the competition-managing agency;

b/ The valid copies of the business registration certificates of each enterprise participating in economic concentration;

c/ Financial statements of the latest two consecutive years of each enterprise joining in economic concentration, with the certification of audit organizations according to law

provisions;

d/ Reports of the latest two consecutive years of each enterprise participating in economic concentration on their market shares on the relevant market;

e/ A report elaborating the satisfaction of the cases eligible for exemption prescribed in Article 19 of this Law;

f/ The written authorization of the representative party by the parties of economic concentration.

2. The dossier submitters and the parties of economic concentration shall be accountable for the truthfulness of their dossiers.

Article 30.- Acceptance of exemption application dossiers

1. The competition-managing agency shall be responsible for accepting exemption application dossiers, putting forward its opinions to the Trade Minister for decision or submission to the Prime Minister for decision.

2. Within seven working days after receiving exemption application dossiers, the competition managing agency shall have to notify in writing the dossier submitters of the completeness of their dossiers. Where a dossier is incomplete, the competition-managing agency must point out the contents that have to be supplemented.

3. The dossier submitters must pay a fee for evaluation of exemption application dossiers according to law provisions.

Article 31.- Requests for supplementation of exemption application dossiers

The competition-managing agency may request the submitters of exemption application dossiers to supplement necessary documents and information related to their intention to implement the competition restriction agreements or economic concentration and give additional explanation on unclear matters.

Article 32.- Supply of information by related parties

1. The competition-managing agency may request related organizations and individuals to supply information on competition restriction agreements or economic concentration which it is handling.

2. Within fifteen days after receiving the requests of the competition-managing agency, related organizations and individuals shall have to reply in writing to the requests.

Article 33.- Withdrawal of exemption applications

1. If wishing to withdraw their exemption applications, the dossier submitters must

notify in writing the competition-managing agency thereof.

2. The competition-managing agency shall not refund the fee for evaluation of exemption application dossiers in the case prescribed in Clause 1 of this Article.

Article 34.- Time limit for issuance of decisions

1. Within sixty days after receiving complete exemption application dossiers, the Trade Minister shall issue one of the following decisions:

- a/ Approving the exemption for the parties;
- b/ Disapproving the exemption for the parties.

2. For cases involving many complicated circumstances, the Trade Minister may extend the time limit for issuance of decisions prescribed in Clause 1 of this Article no more than twice, each for thirty days at most.

3. In case of economic concentration falling under the Prime Minister's competence to grant exemption, the time limit for issuance of decisions approving or disapproving exemption shall be ninety days as from the date of receipt of complete exemption application dossiers; for cases involving many complicated circumstances, the time limit for issuance of such decisions shall be one hundred and eighty days.

4. In case of extension of the time limit for issuance of decisions, the competition-managing agency shall notify in writing the dossier submitters not later than three working days before the expiration of such time limit, clearly stating the reason therefor.

Article 35.- Decisions on grant of exemption

1. A decision on grant of exemption must contain the following principal details:

- a/ Names and addresses of the parties approved to perform the act;
- b/ The details of the act to be performed;
- c/ The time limit for enjoyment of exemption, conditions and obligations of the parties.

2. The competition-managing agency shall have to publicize the decisions on grant of exemption according to the Government's regulations.

Article 36.- Implementation of competition restriction agreements, economic concentration for cases of enjoyment of exemption

1. The parties of the competition restriction agreements that enjoy exemption may implement their competition restriction agreements only after the decisions on grant of exemption are issued by the Trade Minister.

2. Lawful representatives of enterprises participating in economic concentration eligible for exemption may carry out procedures for economic concentration only at the competent Stage agencies prescribed by enterprise legislation after the decisions on grant of exemption are issued by the Prime Minister or the Trade Minister.

Article 37.- Cancellation of decisions on grant of exemption

1. The agency competent to issue decisions on grant of exemption shall be entitled to cancel decisions on grant of exemption.

2. Decisions on grant of exemption shall be cancelled in the following cases:

a/ Frauds in the exemption application are detected;

b/ Enterprises enjoying exemption fail to abide by the conditions and obligations within the time limit stated in the decisions on grant of exemption;

c/ The conditions for grant of exemption no longer exist.

Article 38.- Complaints about decisions related to grant of exemption

Enterprises which disagree with the decisions on grant or non-grant of exemption or decisions canceling the decisions on grant or exemption may lodge complaints according to law provisions on complaints and denunciations.

Chapter III

UNFAIR COMPETITION ACTS

Article 39.- Unfair competition acts

Unfair competition acts in this Law include:

1. Misleading indications;
2. Infringement upon business secrets;
3. Constraint in business;
4. Discrediting other enterprises;
5. Disturbing business activities of other enterprises;
6. Advertising for the purpose of unfair competition;
7. Sale promotion for the purpose of unfair competition;
8. Discrimination by associations;

9. Illicit multi-level sale;

10. Other unfair competition acts according to the criteria determined in Clause 4, Article 3 of this Law and prescribed by the Government.

Article 40.- Misleading indications

1. Enterprises are forbidden to use instructions containing information causing confusions about trade names, business mottoes, business logos, packings, geographical indications and other elements as prescribed by the Government to mislead customers about goods or services for the purpose of competition.

2. It is forbidden to do business in goods or services using misleading information prescribed in Clause 1 of this Article.

Article 41.-Infringement upon business secrets

Enterprises are forbidden to perform the following acts:

1. Accessing and collecting information belonging to business secrets by counteracting the security measures applied by lawful owners of such business secrets;

2. Disclosing, using information belonging to business secrets without the permission of owners of such business secrets;

3. Breaching security contracts or deceiving or taking advantage of the trust of persons having the security duty in order to access, collect or disclose information belonging to business secrets of owners of such business secrets;

4. Accessing, collecting information belonging to business secrets of other persons when such persons carry out procedures according to law provisions concerning business, carry out procedures for product circulation, or by counteracting the measures applied by State agencies, or using such information for business purposes, application for licenses related to business or product circulation.

Article 42.- Constraint in business

Enterprises are forbidden to constrain customers, business partners of other enterprises by performing acts of threatening or forcing them not to enter in transactions or to stop transactions with such enterprises.

Article 43.- Discrediting other enterprises

Enterprises are forbidden to discredit other enterprises by performing acts of directly or indirectly issuing untruthful information badly affecting the latter's reputation, financial status and business activities.

Article 44.- Disturbing business activities of other enterprises

Enterprises are forbidden to disturb lawful business activities of other enterprises by performing acts of directly or indirectly preventing, disrupting the latter's business activities.

Article 45.- Advertising for the purpose of unfair competition

Enterprises are forbidden to carry out the following advertising activities:

1. Comparing their goods, services directly with those of the same kind of other enterprises;
2. Imitating other advertising products to mislead customers;
3. Issuing false or misleading information to customers on one of the following contents:
 - a/ Prices, quantities, quality, utilities, designs, categories, packings, date of manufacture, use duration, goods origin, manufacturers, places of manufacture, processors, places of processing;
 - b/ Usage, mode of servicing, warranty duration;
 - c/ Other false or misleading information.
4. Other advertising activities prohibited by law.

Article 46.- Sale promotion for the purpose of unfair competition

Enterprises are forbidden to carry out the following sale promotion activities:

1. Organizing sale promotion with prize frauds;
2. Organizing sale promotion which is dishonest or causes confusion about goods, services in order to cheat customers;
3. Discriminating between similar customers at different sale promotion places under the same sale promotion program;
4. Presenting goods free to customers for trial use but requesting customers to use their goods in exchange for similar goods manufactured by other enterprises and currently used by such customers;
5. Other sale promotion activities prohibited by law.

Article 47.- Discrimination by associations

Professional associations are forbidden to perform the following acts:

1. Refusing to admit enterprises eligible for admission or refusing to allow enterprises to withdraw from the associations in a discriminatory way, placing such enterprises at a competitive disadvantage;

2. Irrationally restricting business activities or other business-related activities of member enterprises.

Article 48.- Illicit multi-level sale

Enterprises are forbidden to perform the following acts to gain illicit profits from the recruitment of participants into the multi-level sale networks:

1. Requesting those who wish to participate to pay a deposit, buy an initial volume of goods or pay a sum of money for the right to participate in the multi-level sale network;

2. Not to commit to buy back goods at 90% at least of the price at which the goods were sold to participants for re-sale;

3. To give participants commissions, bonuses or other economic benefits which are gained mostly from the enticement of other people to participate in the multi-level sale network;

4. Supplying false information on the benefits of the participation in the multi-level sale network, false information on the nature and utilities of goods in order to entice the participation of other people.

Chapter IV

COMPETITION-MANAGING AGENCY, COMPETITION COUNCIL

Section 1. COMPETITION-MANAGING AGENCY

Article 49.- Competition-managing agency

1. The Government shall decide to establish, and prescribe the organization and apparatus of, the competition-managing agency.

2. The competition-managing agency shall have the following tasks and powers:

a/ To control the process of economic concentration according to the provisions of this Law;

b/ Accepting exemption application dossiers; put forward opinions to the Trade

Minister for decision or submission to the Prime Minister for decision;

c/ Investigating competition cases related to competition-restricting acts and unfair competition acts;

d/ Handling and sanctioning unfair competition acts;

e/ Other tasks prescribed by law.

Article 50.- Head of the competition-managing agency

1. The head of the competition-managing agency shall be appointed or dismissed by the Prime Minister at the proposal of the Trade Minister.

2. The head of the competition-managing agency shall have to organize and direct the competition-managing agency to perform the tasks and powers defined in Clause 2, Article 49 of this Law.

Article 51.- Investigators of competition cases

1. Investigators of competition cases (hereinafter called investigators) shall be appointed by the Trade Minister at the proposal of the head of the competition-managing agency.

2. Investigators shall investigate specific competition cases under decisions of the head of the competition-managing agency.

Article 52.- Criteria of investigators

Persons who fully meet the following criteria may be appointed investigators:

1. Possessing good ethical qualities, being honest, impartial;

2. Having the degree of bachelor of law, economics or finance;

3. Having worked at least five years in one of the domains defined in Clause 2 of this Article;

4. Having been trained in professional investigation skills.

Section 2. COMPETITION COUNCIL

Article 53.- Competition Council

1. The Competition Council is an agency established by the Government.

The Competition Council shall be composed of between eleven and fifteen members appointed or dismissed by the Prime Minister at the proposal of the Trade Minister.

2. The Competition Council shall have to organize the handling and settlement of complaints about competition cases involving competition restricting acts under the provisions of this Law.

Article 54.- Chairman of the Competition Council

1. The Competition Council chairman shall be appointed or dismissed by the Prime Minister among the Competition Council members at the proposal of the Trade Minister.

2. The Competition Council chairman shall have to organize the operation of the Competition Council.

3. The Competition Council chairman shall decide to set up the Competition Case-Handling Council composed of at least five members of the Competition Council, one of whom shall chair hearings to deal with a specific competition case.

Article 55.- Criteria of Competition Council members

1. Persons who fully meet the following criteria may be appointed as Competition Council members:

a/ Possessing good ethical qualities, being honest, impartial, and having the sense of protecting socialist legality;

b/ Having the degree of bachelor of law, economics or finance;

c/ Having worked at least nine years in one of the domains defined at Point b, Clause 1 of this Article;

d/ Being capable of fulfilling the assigned tasks.

2. Competition Council members shall have a five-year term of office and may be re-appointed.

Chapter V

INVESTIGATION, HANDLING OF COMPETITION CASES

Section 1. GENERAL PROVISIONS

Article 56.- Principles for competition procedures

1 . The settlement of competition cases involving competition-restricting acts shall comply with the provisions of this Law.

2. The settlement of competition cases involving unfair competition acts shall comply with the provisions of this Law and legislation on handling of administrative violations.

3. In the process of carrying out competition procedures, investigators, the head of the competition-managing agency and Competition Council members must, within the scope of their respective tasks and powers, keep confidential business secrets of enterprises, respect legitimate rights and interests of the related organizations and individuals.

Article 57.- Language and script used in competition procedures

The language and script used in competition procedures is Vietnamese. Participants in competition procedures shall be entitled to use their native language and script; in this case interpretation is required.

Article 58.- Complaints about competition cases

1. If organizations and individuals deem that their legitimate rights and interests are infringed upon by acts in violation of the provisions of this Law (hereinafter referred collectively to as complainants), they may lodge complaints with the competition-managing agency.

2. The statute of limitations for lodging complaints is two years, as from the date the acts involving signs of violation of competition legislation are committed.

3. Complaint dossiers must comprise the following principal documents:

a/ The written complaint, made according to a form set by the competition-managing agency;

b/ Evidences on the violation act.

4. Complainants shall be accountable for the truthfulness of evidences they supply to the competition-managing agency.

Article 59.- Acceptance of complaint dossiers

1 . The competition-managing agency shall have to accept complaint dossiers.

2. Within seven working days after receiving complaint dossiers, the competition-managing agency shall have to notify in writing the complainants of the acceptance of their

dossiers.

3. Complainants must pay an advance for the cost of handling the competition case according to law provisions.

Article 60.- Evidences

1. Evidences are facts used by investigators and the Competition Case-Handling Council as grounds for determining whether or not exist acts of violating the provisions of this Law.

2. Evidences are determined from the following sources:

a/ Exhibits, which are things used as tools or means for commission of violations, money and other things having the effect of proving acts of violating the provisions of this Law;

b/ Testimonies of witnesses, explanations of related organizations and individuals;

c/ Original documents, copies and translations of original documents which are lawfully notarized or authenticated or supplied and certified by competent agencies or organizations.

d/ Expertise conclusions.

Article 61.- Application of administrative preventive measures

1. The head of the competition-managing agency, the Competition Council chairman may apply some administrative preventive measures prescribed by legislation on handling of administrative violations in the cases specified in Clause 6, Article 76 and Clause 4, Article 79 of this Law.

The Government shall specify administrative preventive measures that the head of the competition-managing agency and the Competition Council chairman may apply.

2. The following persons may propose the application of administrative preventive measures:

a/ Complainants may make such a proposal to the head of the competition-managing agency and the Competition Council chairman;

b/ Investigators may make such a proposal to the head of the competition-managing agency;

c/ Presidents of hearings may make such a proposal to the Competition Council chairman.

3. In case of application of administrative preventive measures at the proposals of complainants, the complainants shall have to pay a guaranty money according to the Government's regulations.

In cases of wrong application of administrative preventive measures, causing damage to the investigated parties, the complainants must pay compensation therefor. The compensation level shall be agreed upon by the complainants and the investigated parties; if the two parties cannot reach agreement thereon, they may initiate lawsuits at court to claim for damages according to the provisions of civil legislation.

4. Where the administrative preventive measures are applied at variance of the requests of investigators or the hearing presidents, thereby causing damage to the investigated parties, the competition-managing agency or the Competition Council must pay compensation therefor. The level of compensation shall be agreed upon by the investigated parties and the competition-managing agency or the Competition Council; if they cannot reach agreement thereon, the investigated parties may initiate lawsuits at courts to claim for damages according to the provisions of civil legislation. If compensation must be paid, the competition managing agency or the Competition Council must identify the responsibility, also including material responsibility, of the proposers and related persons so as to impose proper disciplinary forms on such persons and force them to indemnify for the money amounts the competition-managing agency or the Competition Council has compensated to the investigated parties.

5. The parties subject to the application of administrative preventive measures may lodge complaints about the decisions thereon according to the law provisions on complaints and denunciations.

Article 62.- Competition case-handling charges

Competition case-handling charges shall be used for the handling of competition case. The Government shall prescribe the levels, collection, payment, management and use of such charge in accordance with legislation on charges and fees.

Article 63.- Liability to competition case-handling charges

1. The party that is concluded to have violated the provisions of this Law must pay competition case-handling charges.

2. Where the invested party does not violate the provisions of this Law, the complainant shall have to pay competition case-handling charges.

3. Where a competition case is conducted under the provisions of Clause 2, Article 65 of this Law, if the investigated party does not violate the provisions of this Law, the competition-managing agency shall have to pay competition case-handling charges.

Section 2. COMPETITION PROCEDURE PARTICIPANTS

Article 64.- Competition procedure participants

Competition procedure participants include:

1. The complainant;
2. The investigated party;
3. Lawyers;
4. Witnesses;
5. Experts;
6. Interpreter;
7. Persons with related interests and obligations.

Article 65.- Investigated parties in competition cases

The investigated parties in competition cases (hereinafter called investigated parties) are organizations or individuals that are investigated under decisions of the competition-managing agency in the following cases:

1. Being complained against under the provisions of Article 58 of this Law;
2. Being detected by the competition-managing agency to be committing or have committed acts involving signs of violation of competition legislation within two years as from the date such acts were committed.

Article 66.- Rights and obligations of involved parties

- 1 . The investigated party shall have the following rights:
 - a/ To produce documents, things; to know documents and things produced by the complainants or the competition-managing agency;
 - b/ To participate in hearings;
 - c/ To request the change of investigators, Competition Case-Handling Council members if detecting that they fall into one of the cases prescribed in Article 83 of this Law;
 - d/ To authorize lawyers to participate in competition procedures;
 - e/ To request witnesses;

f/ To propose the competition-managing agency to request expertise;

g/ To propose the change of competition procedure-conducting persons and competition procedure participants under the provisions of this Law.

2. The complainant shall have the following rights:

a/ The rights prescribed in Clause 1 of this Law;

b/ To propose the head of the competition managing agency or the Competition Council chairman to apply administrative preventive measures related to the competition cases.

3. The investigated party and the complainant shall have the following obligations:

a/ To supply full, truthful, accurate evidences in a timely manner related to their proposals or requests;

b/ To appear in response to the summonses of the competition-managing agency or the Competition Case-Handling Council. Where they are summoned but fail to appear without plausible reasons, the Competition Case-Handling Council shall proceed with handling the cases based on available information;

c/ To abide by decisions of the competition managing agency and the Competition Case-Handling Council.

Article 67.- Lawyers of the complainants, the investigated parties

1. Lawyers who fully meet the procedure-participating conditions prescribed by legislation on lawyers and are authorized by the complainants or investigated parties may participate in competition procedures to protect the legitimate rights and interests of the parties which they represent.

2. When participating in competition procedures, lawyers shall have the following rights and obligations:

a/ To participate in all stages of the process of competition procedures;

b/ To verify and collect evidences and supply them in order to protect the legitimate rights and interests of the parties which they represent;

c/ To study documents in the competition case dossiers and to take notes and copy necessary documents in such dossiers in order to protect the legitimate rights and interests of the parties which they represent;

d/ To propose on behalf of the parties they represent the change of competition procedure-conducting persons and/or competition procedure participants under the provisions

of this Law;

e/ To render legal assistance to the parties they represent in order to protect their legitimate rights and interests;

f/ To respect truth and law; not to bribe, force or incite other persons to give false testimonies or supply untruthful documents;

g/ To appear in response to the summonses of the Competition Case-Handling Council;

h/ Not to disclose investigation secrets they know in the process of participating in competition procedures; not to use their notes and copies of documents in the competition case dossiers for the purpose of infringing upon the State's interests or legitimate rights and interests of organizations and individuals.

Article 68.- Witnesses

1. Persons who know about circumstances related to the competition cases may be summoned by the Competition Case-Handling Council to participate in competition procedures in the capacity as witnesses or invited by the competition-managing agency in the capacity as witnesses at the requests of the involved parties. Persons who have lost their civil act capacity must not act as witnesses.

2. Witnesses shall have the following rights and obligations:

a/ To supply all documents, papers and things they have, which are related to the settlement of competition cases; give testimony verbally or in writing to the competition-managing agency or the Competition Case-Handling Council on all circumstances they know, which are related to the settlement of competition cases;

b/ To participate in hearings and give testimony to the Competition Case-Handling Council;

c/ To be allowed to take leave when they are summoned by, or give testimony to, the competition-managing agency or the Competition Case-Handling Council if they are working for State agencies, organizations or enterprises;

d/ To be paid for travel expenses and enjoy other regimes as prescribed by law;

e/ To refuse to give testimony if such testimony is related to State secrets, professional secrets or personal privacy or badly, disadvantageously affects the complainants or investigated parties that are their close relatives;

f/ To honestly report on circumstances they know, which are related to the settlement of competition cases;

g/ To pay damages and take responsibility before law for their false testimony causing damage to the complainants, investigated parties or other persons;

h/ To appear at the hearings in response to the summonses of the Competition Case-Handling Council if they must give testimony publicly at the hearings;

i/ To pledge before the competition-managing agency or the Competition Case-Handling Council to exercise their rights and fulfill their obligations, except for minor witnesses.

3. Witnesses who refuse to give testimony, give false testimony, supply false materials or are absent without plausible reasons when being summoned by the Competition Case-Handling Council shall have to bear responsibility according to law provisions, except for the case prescribed at Point e, Clause 2 of this Article.

4. Witnesses shall be protected according to law provisions.

Article 69.- Experts

1. Experts are those who have necessary knowledge about the matters to be expertised at the request of the head of the competition-managing agency or the Competition Case-Handling Council or at the request of the involved parties after it is accepted by the head of the competition-managing agency or the Competition Case-Handling Council according to law provisions.

2. Experts shall have the following rights .and obligations:

a/ To read documents in the competition case dossiers which are related to the expertised subject; to request the expertise-requesting agency to supply materials necessary for expertise;

b/ To raise questions to the competition procedure participants on matters related to the expertised subject;

c/ To appear in response to the summonses of the expertise-requesting agency, give answers on matters related to the expertise as well as expertise conclusions in an honest, grounded and objective manner;

d/ To notify in writing the expertise-requesting agency of the impossibility to expertise because the matters requested to be expertised fall beyond their professional capability or the supplied documents are not enough or are of no use for expertise;

e/ To preserve the received documents and return them to the expertise-requesting agency together with the expertise conclusions or the notice on the impossibility to expertise;

f/ Not to collect by themselves documents for expertise, not to privately contact other

competition procedure participants if such contact affects the impartiality of the expertise results; not to disclose information they know in the expertising process, not to notify the expertise results to other persons, except for the signees of the expertise-requesting decisions;

g/ To write their opinions on the written general conclusions if disagreeing with the general conclusions in the case of collective expertise;

h/ To be paid for travel expenses and enjoy other regimes according to law provisions.

3. Experts who refuse to give expertise conclusions without plausible reasons or give false expertise conclusions or are absent without plausible reasons when summoned by the expertise-requesting agency shall have to bear responsibility according to law provisions.

4. Experts must refuse to participate in competition procedures or be changed in the following cases:

a/ They fall into one of the cases prescribed in Article 83 of this Law;

b/ They have participated in competition procedures in the capacity as lawyers, witnesses or interpreters in the same competition case;

c/ They have conducted procedures in such competition case in the capacity as Competition Case-Handling Council members.

Article 70.- Interpreters

1. Interpreters are those who are capable of translating a language other than Vietnamese into Vietnamese and vice versa in case where competition procedure participants cannot use Vietnamese. Interpreters shall be selected according to the agreement of the involved parties and accepted by the Competition Case-Handling Council or shall be appointed by the Competition Case-Handling Council.

2. Interpreters shall have the following rights and obligations:

a/ To appear in response to the summonses of the Competition Case-Handling Council;

b/ To interpret in an truthful, objective and accurate manner;

c/ To ask competition procedure-conducting persons and competition procedure participants to explain the contents more clearly for interpretation;

d/ Not to contact other competition procedure participants if such contact may affect the truthfulness, objectivity and accuracy of the interpretation;

e/ To be paid for travel expenses and enjoy other regimes according to law provisions;

f/ To pledge before the Competition Case-Handling Council to exercise their rights and fulfill their obligations.

3. Interpreters who deliberately give false interpretation or are absent without plausible reasons when summoned by the Competition Case-Handling Council shall have to bear responsibility according to law provisions.

4. Interpreters must refuse to participate in competition procedures or be changed in the following cases:

a/ They fall into one of the cases prescribed in Article 83 of this Law;

b/ They have participated in competition procedures in the capacity as lawyers, witnesses or experts in the same competition case;

c/ They have conducted procedures in such competition case in the capacity as Competition Case-Handling Council members.

5. The provisions of this Article also apply to those who understand the signs given by dumb or deaf competition procedure participants.

Where only the representatives or relatives of dumb or deaf competition procedure participants can understand the latter's signs, they may be accepted by the Competition Case-Handling Council to act as interpreters for such dumb or deaf persons.

Article 71.- Persons with interests, obligations related to competition case

1. Persons with related interests, obligations may file independent claims or participate in competition procedures on the side of the complainants or investigated parties.

2. Persons with related interests, obligations who file independent claims or participate in competition procedures on the side of the complainants or persons with interests only shall have the complainant's rights and obligations prescribed in Article 66 of this Law.

3. Persons with related interests, obligations who participate in competition procedures on the side of the investigated parties or persons with obligations only shall have the investigated party's rights and obligations prescribed in Article 66 of this Law.

Article 72.- Procedures for refusing expertise, interpretation or requesting change of experts or interpreters

1. The refusal of expertise or interpretation or request for change of experts or interpreters before the opening of hearings must be made in writing, clearly stating the reasons therefor.

2. The refusal of expertise or interpretation or request for change of experts or

interpreters during a hearing must be written in the hearing's minutes.

Article 73.- Deciding on change of experts or interpreters

1. Before opening a hearing, the change of experts or interpreters shall be decided by the Competition Council chairman.

2. During a hearing, the change of experts or interpreters shall be decided by the Competition Case-Handling Council after hearing the opinions of the persons requested to be changed and other competition procedure participants.

If it is necessary to change experts or interpreters, the Competition Case-Handling Council shall issue a decision to postpone the hearing. The request for expertise by other experts or the appointment of other interpreters shall comply with the provisions of Articles 69 and Article 70 of this Law.

***Section 2. COMPETITION PROCEDURE-CONDUCTING AGENCIES,
COMPETITION PROCEDURE-CONDUCTING PERSONS***

Article 74.- Competition procedure-conducting agencies

Competition procedure-conducting agencies include the competition-managing agency and the Competition Council.

Article 75.- Competition procedure-conducting persons

Competition procedure-conducting persons include Competition Council members, the head of the competition-managing agency, investigators and the hearing's clerks.

Article 76.- Tasks and powers of the head of the competition-managing agency when conducting competition procedures

When conducting competition procedures, the head of the competition-managing agency shall have the following tasks and powers:

1. To decide to assign investigators to investigate specific competition cases;
2. To inspect investigative activities of competition case investigators;
3. To decide to modify or cancel groundless and illegal decisions issued by competition case investigators;
4. To decide to change competition case investigators;
5. To decide to request expertise;

6. To decide to apply, change or cancel administrative preventive measures pending the transfer of competition case dossiers to the Competition Council for handling;

7. To decide to conduct preliminary investigation, stop investigation, conduct official investigation of competition cases falling under the competence of the competition-managing agency;

8. To invite witnesses at the requests of the involved parties at the investigation stage;

9. To sign written conclusions on the investigation of competition cases, submitted by the assigned investigators;

10. To transfer competition case dossiers to the Competition Council in cases where the competition cases involve competition-restricting acts;

11. To settle complaints and denunciations falling under the competence of the competition-managing agency.

Article 77.- Powers of investigators when conducting competition procedures

When conducting competition procedures, investigators shall have the following powers:

1. To request related organizations and individuals to supply necessary information and documents concerning competition cases;

2. To request the investigated parties to supply documents and give explanations concerning competition cases;

3. To propose the head of the competition-managing agency to request expertise;

4. To propose the head of the competition managing agency to apply administrative preventive measures to competition cases.

Article 78.- Obligations of investigators when conducting competition procedures:

When conducting competition procedures, investigators shall have the following obligations:

1. To hand the investigation decisions of the head of the competition-managing agency to the investigated parties;

2. To keep confidential business secrets of enterprises;

3. To preserve the supplied documents;

4. To investigate competition cases assigned by the head of the competition-managing

agency;

5. To make investigation reports upon termination of preliminary investigation or official investigation of competition cases;

6. To take responsibility to the head of the competition-managing agency and before law for the performance of their tasks and powers.

Article 79.- Tasks and powers of the Competition Council chairman when conducting competition procedures

1. To set up the Competition Case-Handling Council under the provisions of Clause 3, Article 54 of this Law.

2. To decide to change Competition Case-Handling Council members, the hearing's clerks, experts or interpreters before opening a hearing according to the provisions of Clause 1 of Article 73, Article 83 and Clause 1 of Article 85 of this Law.

3. To decide to appoint Competition Case-Handling Council members, the hearing's clerks to replace those who are changed during the hearing according to the provisions of Clause 2, Article 85 of this Law.

4. To decide to apply, change or cancel administrative preventive measures when receiving competition case dossiers.

Article 80.- The Competition Case- Handling Council

1. When settling competition cases, the Competition Case- Handling Council shall work independently and only abide by law.

2. Decisions on handling competition cases shall be adopted by the Competition Case- Handling Council by majority vote; where the numbers of votes for and against are equal, decisions shall be made according to the side sharing the opinion of the hearing's president.

Article 81.- Tasks and powers of the president of a hearing

The president of a hearing shall have the following tasks and powers:

1. To organize the study of competition case dossiers;

2. On the basis of the decision of the Competition Case- Handling Council, to sign the proposal to the Competition Council chairman to apply, change or cancel administrative preventive measures; decide to return the competition case dossier to the competition-managing agency and request additional investigation; decide to stop the settlement of the competition case;

3. On the basis of the decision of the Competition Case- Handling Council, to sign the

decision to open the hearing;

4. To decide to summon participants to the hearing;

5. To sign and announce the decision on the handling of the competition case and other decisions of the Competition Case- Handling Council;

6. To carry out other activities under his/her competence prescribed by this Law when handling the competition case.

Article 82.- Clerks of hearings

1. The clerk of a hearing shall have the following tasks and powers:

a/ To prepare necessary professional jobs before the opening of a hearing;

b/ To announce the rules of the hearing;

c/ To report to the Competition Case- Handling Council on the presence or absence of those summoned to the hearing;

d/ To write the minutes of the hearing;

e/ To perform other jobs assigned by the president of the hearing.

2. The clerk of a hearing must refuse to conduct competition procedures or be changed in the cases prescribed in Article 83 of this Law.

Article 83.- Cases of refusal or change of Competition Case- Handling Council members, investigators, the hearing's clerks, experts, interpreters

Competition Case-Handling Council members, investigators, the hearing's clerks, experts, interpreters must refuse to perform their tasks or shall be changed in one of the following cases:

1. They are relatives of the complainants or investigated parties;

2. They are persons with interests, obligations related to the competition cases;

3. There are other explicit grounds to deem that they shall not be impartial when performing their tasks.

Article 84.- Procedures for refusal to conduct competition procedures or request for change of Competition Case-Handling Council members, the hearing's clerks

1. The refusal to conduct competition procedures or request for change of Competition Case-Handling Council members, the hearing's clerks before the opening of the hearings must

be made in writing, clearly stating the reasons and grounds therefor.

2. The refusal to conduct competition procedures or request for change of Competition Case-Handling Council members, the hearing's clerks during the hearings must be recorded in the hearings' minutes.

Article 85.- Deciding on change of Competition Case-Handling Council members or the hearing's clerks

1. Before a hearing is opened, the change of Competition Case-Handling Council members, the hearing's clerk shall be decided by the Competition Council chairman.

2. During a hearing, the acceptance of the change of Competition Case-Handling Council members or the hearing's clerk shall be decided by the Competition Case-Handling Council after hearing the opinions of the refusing persons or the persons requested to be changed. The Competition Case-Handling Council shall discuss behind closed doors and make decision by majority vote.

If it is necessary to change Competition Case-Handling Council members or the hearing's clerk, the Competition Case-Handling Council shall issue a decision to postpone the hearing. The appointment of Competition Case-Handling Council members or a hearing's clerk to replace those who must be changed shall be decided by the Competition Council chairman.

Section 4. INVESTIGATION OF COMPETITION CASES

Article 86.- Preliminary investigation

The preliminary investigation of competition cases shall be conducted under decisions of the head of the competition-managing agency in the following cases:

1. Competition case dossiers have been accepted by the competition-managing agency;

2. The competition-managing agency detects signs of violation of the provisions of this Law.

Article 87.- Time limit for preliminary investigation

1. The time limit for preliminary investigation is thirty days as from the date of issuance of preliminary investigation decisions.

2. Within the time limit specified in Clause 1 of this Article, investigators assigned to investigate competition cases must complete the preliminary investigation and propose the

head of the competition-managing agency to issue a decision to stop investigation or conduct official investigation.

Article 88.- Decisions to stop investigation, decisions to conduct official investigation

On the basis of the preliminary investigation results and the proposals of investigators, the head of the competition-managing agency shall issue one of the following decisions:

1. To stop investigation if the preliminary investigation results show that there are no acts of violation of the provisions of this Law;
2. To conduct official investigation if the preliminary investigation results show that there are acts of violation of the provisions of this Law.

Article 89.- Contents of official investigation

1. For cases of competition restriction agreement, abuse of the dominant position on the market or abuse of the monopoly position, or economic concentration, investigation shall covers:

- a/ Identifying the relevant market;
- b/ Verifying the investigated party's market share on the relevant market;
- c/ Collecting and analyzing evidences on violation acts.

2. For cases of unfair competition, investigators must identify the grounds to deem that the investigated parties have performed or are performing unfair competition acts.

Article 90.- Time limit for official investigation

The time limit for official investigation is prescribed as follows:

1. For cases of unfair competition, the time limit for official investigation shall be ninety days as from the date of issuance of decisions; in case of necessity, this time limit may be extended by the head of the competition-managing agency for another sixty days at most;

2. For cases of competition restriction agreement, abuse of the dominant position on the market or abuse of the monopoly position, or economic concentration, the time limit for official investigation shall be one hundred and eighty days, as from the date of issuance of decisions; in case of necessity, this time limit may be extended by the head of the competition-managing agency no more than twice, each time for sixty days at most;

3. The extension of the investigation time limit must be notified by investigators to all related parties not later than seven working days before the expiration of the investigation time limit.

Article 91.- Investigation minutes

1. When conducting investigation, investigators must make investigation minutes, clearly indicating the investigation time and place, investigators, investigated party, investigated contents and complaint and/or claim of the investigated party.
2. Investigation minutes must be read out by investigators to the investigated party before they both sign the minutes.
3. If the investigated party refuses to sign the minutes, investigators must record such in the minutes together with the reason therefor.

Article 92.- Request to invite witnesses in the investigation process

1. In the process of investigation, the involved parties may request the competition-managing agency to invite witnesses. The requestors shall be obliged to state the reasons for inviting witnesses to the competition-managing agency for decision.
2. The competition-managing agency's invitation to a witness must clearly indicate the full name and address of the invitee, time and place for giving testimony, the parties and subject involved in the case.
3. Testimonies of witnesses must be recorded in minutes by investigators, which shall be read out to the witnesses before they both sign the minutes.

Article 93.- Investigation reports

1. After the termination of investigation, the head of the competition-managing agency must transfer the investigation reports together with the whole competition case dossiers related to competition-restricting acts to the Competition Council.
2. An investigation report shall contain the following principal contents:
 - a/ A brief account of the case;
 - b/ Verified circumstances and evidences;
 - c/ Proposed handling measures.

Article 94.- Transfer of dossiers of competition cases involving criminal signs

If, through investigation, it is detected that a competition case shows criminal signs, investigators must promptly propose the head of the competition-managing agency to consider and transfer the relevant dossier to competent State agencies for institution of criminal cases.

Article 95.- Return of dossiers in case of availability of grounds for non-institution of

criminal cases

Where state agencies with competence to institute criminal cases find that there are grounds for non-institution of criminal cases under the provisions of the Criminal Procedure Code, they must return the dossiers to the competition-managing agency for further investigation according to the procedures prescribed in this Law. The investigation time limit prescribed in Article 90 of this Law shall be counted as from the date the dossiers are--received back.

Article 96.- Additional investigation, time limit for additional investigation

1. Competition case investigators must conduct additional investigation if it is so requested in writing by the Competition Case-Handling Council.

2. The time limit for additional investigation is sixty days, as from the date of issuance of the Competition Case-Handling Council's written requests for additional investigation.

Article 97.- Responsibilities for coordination and support in the investigation process

Local administrations, police agencies, other agencies and organizations shall have to coordinate and support the investigation process at the request of the head of the competition-managing agency.

Section 5. HEARINGS

Article 98.- Competition cases must be considered and handled through hearings

Competition cases falling under the settling competence of the Competition Council must be considered and handled through hearings.

Article 99.- Preparation for opening a hearing

1. After receiving the investigation report and the complete competition case dossier, the Competition Council chairman shall decide to set up a Competition Case-Handling Council.

2. Within thirty days after receiving the competition case dossier, the Competition CaseHandling Council must issue one of the following decisions:

a/ To open a hearing;

b/ To return the dossier for additional investigation;

c/ To stop settling the competition case.

3. Within fifteen days after the date of issuance of the decision to open a hearing, the Competition Case-Handling Council must open a hearing.

4. In case of returning the dossier for additional investigation, within fifteen days after the date of receiving back the dossier, the Competition Case-Handling Council must issue one of the decisions defined in Clause 2 of this Article.

Article 100.- Return of dossiers for additional investigation

If finding that the collected evidences are not enough for determining acts of violation of the provisions of this Law, the Competition Case-Handling Council shall decide to return the dossiers for additional investigation.

Article 101.- Stoppage of settlement of competition cases falling under the settling competence of the Competition Council

1. The Competition Case-Handling Council shall decide to stop settling competition cases falling under the settling competence of the Competition Council in the following cases:

a/ The head of the competition-managing agency proposes to stop settling the competition case if there are not enough evidences of acts of violation of the provisions of this Law and the Competition Case-Handling Council deems such proposal justified;

b/ The investigated party has voluntarily terminated its violation acts, remedied consequences and the complainant has voluntarily withdrawn its written complaint;

c/ The investigated party has voluntarily terminated its violation acts, remedied consequences and the head of the competition-managing agency proposes to stop settling the competition case, for cases where investigation has been conducted under the provisions of Clause 2, Article 65 of this Law.

2. Decisions to stop settling competition cases must be sent to the investigated parties and the complainants (if any) as well as the competition-managing agency.

Article 102.- Decisions to open hearings

1. A decision to open a hearing must be handed to the parties named therein not later than ten days before the date of opening of the hearing.

2. A decision to open a hearing must contain the following contents:

a/ The investigated party;

b/ The complainant or the competition-managing agency, for cases where investigation has been conducted under the provisions of Clause 2, Article 65 of this Law;

c/ Violated articles and/or clauses of this Law;

- d/ Time and place of opening of the hearing;
- e/ The hearing is to be held in public or behind closed doors;
- f/ Full names of Competition Case-Handling Council members;
- g/ Full names of investigators who have investigated the competition case, the hearing's clerk;
- h/ Full names of lawyers;
- i/ Full name of the interpreter;
- j/ Full names of witnesses;
- k/ Full names of experts;
- l/ Persons with related interests and obligations.

Article 103.- Summoning of persons who must appear at the hearings

On the basis of the decisions to open the hearings, the Competition Case-Handling Council shall send summonses to persons who must appear at the hearings not later than ten days before the date of opening of the hearings.

Article 104.- Hearings

1. Hearings shall be held in public. Where the contents of a hearing are related to national secrets or business secrets, the hearing shall be held behind closed doors.

2. Participants to a hearing include:

- a/ Competition Case-Handling Council members, the hearing's clerk;
- b/ The investigated party;
- c/ The complainant;
- d/ Lawyers;
- e/ Investigators who have investigated the competition case;
- f/ Other persons named in the decision to open the hearing.

3. After hearing the opinions and arguments presented by the participants to the hearings, the Competition Case-Handling Council shall discuss, cast secret votes and make decision by majority vote.

Section 6. EFFECT OF COMPETITION CASE-HANDLING DECISIONS

Article 105.- Competition case-handling decisions

1. A competition case-handling decision shall contain the following principal contents:
 - a/ A brief account of the case;
 - b/ Analysis of the case;
 - c/ Conclusion on the handling of the case.
2. The hearing presidents must sign competition case-handling decisions.
3. Competition case-handling decisions must be sent to the related parties within seven working date after the date of its signing.

Article 106.- Effect of competition case-handling decisions

Competition case-handling decisions shall come into force thirty days after the date of its signing provided that during this period they are not complained about under the provisions of Article 107 of this Law.

Section 7. SETTLEMENT OF COMPLAINTS ABOUT COMPETITION CASE-HANDLING DECISIONS WHICH HAVE NOT YET COME INTO FORCE

Article 107.- Complaining about competition case-handling decisions

1. If the involved parties disagree with part or the whole of the competition case-handling decisions issued by the Competition Case-Handling Council, they may lodge complaints with the Competition Council.
2. If the involved parties disagree with part or the whole of the competition case-handling decisions issued by the head of the competition-managing agency, they may lodge complaints with the Trade Minister.

Article 108.- Written complaints about competition case-handling decisions

A written complaint about the competition case-handling decision must contain the following principal contents:

- a/ Date of making;
- b/ Name and address of the maker;
- c/ Serial number and date of the complained competition case-handling decision;

- d/ The reason for complaining and the complainant's claim;
- e/ The signature and seal (if any) of the complainant.

2. Written complainants must be addressed to the agencies issuing the competition case-handling decisions in question together with supplementary evidences (if any) proving that the complaints are grounded and lawful.

Article 109.- Acceptance of written complaints about competition case-handling decisions

Within five working days after receiving the written complainants about the competition case-handling decisions, the agencies which have issued such decisions must check the validity of the written complaints according to the provisions of Article 108 of this Law.

Article 110.- Consequences of complaints about competition case-handling decisions

1. The complained parts of competition case-handling decisions shall not be executed.
2. Within fifteen days after receiving the written complaints about competition case-handling decisions, the agency accepting such written complaints shall have to consider and transfer them together with the whole competition case dossiers as well as their proposals on the written complaints to the Competition Council or the Trade Minister according to the provisions of Article 107 of this Law.

Article 111.- Time limit for settling complaints about competition case-handling decisions

Within thirty days after receiving the complaint dossiers, the Competition Council or the Trade Minister shall have to settle the complaints according to competence; in specially complicated cases, the time limit for settling complaints may be extended for another thirteen days at most.

Article 112.- Powers of the Competition Council when settling complaints about competition case-handling decisions of the Competition Case-Handling Council

When considering and settling complaints about competition case-handling decisions of the Competition Case- Handling Council, the Competition Council shall have the following powers:

1. To hold up the competition case-handling decisions if deeming that the complaints are not sufficiently grounded;
2. To amend part or whole of the competition case-handling decisions if such decisions are illegal;

3. To cancel the competition case-handling decisions and transfer the competition case dossiers to the Competition Case- Handling Council for resettlement in the following cases:

a/ Evidences have not yet been fully collected and verified;

b/ The composition of the Competition Case-Handling Council contravenes the provisions of this Law or other serious violations of competition procedures were committed.

Article 113.- Powers of the Trade Minister when settling complaints about competition case-handling decisions of the competition-managing agency

When considering and settling complaints about competition case-handling decisions of the competition-managing agency, the Trade Minister shall have the powers defined in Clause 1 and Clause 2, Article 112 of this Law, the power to cancel the competition case-handling decisions and request the competition-managing agency to resettle the cases according to the procedures prescribed in this Law in cases where evidences have not yet been fully collected and verified.

Article 114.- Effect of complaint-settling decisions

Decisions to settle complaints about competition case-handling decisions shall come into force as from the date of signing.

Article 115.- Initiation of lawsuits against complaint-settling decisions

1. If the involved parties disagree with the decisions to settle complaints about competition case-handling decisions, they may initiate administrative lawsuits against part or the whole of the contents of such decisions at the competent provincial/municipal People's Courts.

2. Where the courts accept the written lawsuits against the decisions to settle complaints about competition case-handling decisions according to the provisions of Clause 1 of this Article, the Trade Minister and the Competition Council chairman shall have to direct the transfer of the competition case dossiers to the courts within ten working days after receiving the court's requests.

Article 116.- Consequences of lawsuits

Those parts of competition case-handling decisions which are not sued against at court shall continue to be executed.

Section 8. HANDLING OF VIOLATIONS OF COMPETITION LEGISLATION

Article 117.- Forms of sanctioning violations of competition legislation and measures to remedy consequences

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

a/ Warning;

b/ Fine.

2. Depending on the nature and seriousness of their violations, the organizations or individuals violating competition legislation may be subject to one of the following additional sanctioning forms:

a/ Revocation of the business registration certificates, deprivation of licenses and practicing certificates;

b/ Confiscation of exhibits and means used for commission of violations of competition legislation.

3. In addition to the sanctioning forms prescribed in Clause 1 and Clause 2 of this Article, organizations or individuals violating competition legislation may be subject to the application of one or more than one of the following consequence remedying measures:

a/ To restructure the enterprises having abused their dominant position on the market;

b/ To divide or split the merged or consolidated enterprises; to force the resale of the acquired enterprise parts;

c/ To make public corrections;

d/ To remove illegal provisions from the business contracts or transactions;

e/ Other necessary measures to overcome the competition restriction impacts of the violation acts.

If organizations or individuals violating competition legislation cause damage to the interests of the State, legitimate rights and interests of other organizations or individuals, they must pay compensation therefor according to law provisions.

Article 118.- Levels of fine imposed for acts of violating competition legislation

1. For acts of violating the provisions on competition restriction agreements, abuse of dominant position on the market, abuse of monopoly position or economic concentration, the agencies with sanctioning competence may impose fines of up to 10% of total turnover earned by the violating organizations or individuals in the fiscal year preceding the year when they commit violation acts.

2. For acts of violating the provisions on unfair competition and other acts of violating the provisions of this Law other than those prescribed in Clause 1 of this Article, the agencies

with sanctioning competence shall impose fines according to law provisions on handling of administrative violations or relevant law provisions.

3. The Government shall specify the levels of fine imposed for acts of violating the provisions of this Law.

Article 119.- Competence to sanction, handle violations of competition legislation

1. The Competition Case-Handling Council and the Competition Council shall have the following powers:

- a/ To issue caution;
- b/ To impose fines according to the provisions of Clause 1, Article 118 of this Law;
- c/ To confiscate exhibits and means used for commission of violations of competition legislation;
- d/ To apply the measures prescribed at Points c, d and e, Clause 3, Article 117 of this Law;
- e/ To request competent state agencies to revoke business registration certificates, deprive of licenses and/or practicing certificates;
- f/ To request competent state agencies to apply the measures prescribed at Points a and b, Clause 3, Article 117 of this Law.

2. The competition-managing agency may apply the measures prescribed at Point a of Clause 1, Point b of Clause 2, Point c of Clause 3, Article 117 and Clause 2, Article 118 of this Law.

3. Other agencies with sanctioning competence shall sanction intellectual property-related unfair competition acts according to law provisions on handling of administrative violations.

Article 120.- Handling of violations committed by state officials and employees

State officials and employees who commit acts of violation of competition legislation shall, depending on the nature and seriousness of their violations, be disciplined or examined for penal liability; if causing any damage, they must pay compensation therefor according to law provisions.

Article 121.- Execution of competition case-handling decisions

1. After thirty days as from the date the competition case-handling decisions come into force, if the parties obliged to comply with such decisions fail to voluntarily comply with and do not initiate lawsuits at court according to the provisions of Section 7 of this Chapter, the

parties in favor of which the competition case-handling decisions are executed may request in writing the competent state agencies to organize the execution of the competition case-handling decisions falling within the scope of their functions, tasks and powers.

2. Where the competition case-handling decisions are related to the property of the parties bound to comply with the decisions, the parties in favor of which the competition case-handling decisions are executed may request the civil judgment-executing agencies in the provinces or centrally run cities where the parties obliged to comply with the decisions are headquartered, reside or their property is located to organize the execution of the competition case-handling decisions.

Chapter VI

IMPLEMENTATION PROVISIONS

Article 122.- Implementation effect

This Law shall take effect as from July 1, 2005.

Article 123.- Implementation guidance

The Government and the Supreme People's Court shall detail and guide the implementation of this Law.

This Law was passed on December 3, 2004 by the XIth National Assembly of the Socialist Republic of Vietnam at its the 6th session.

Chairman of the National Assembly

NGUYEN VAN AN

THE STATE PRESIDENT

DECREES:

Chapter I

GENERAL PROVISIONS

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

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

Article 1.- Governing scope

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

-Article 2.- Subjects of application

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

Article 3.- Multi-level sale of goods

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

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

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

THE GOVERNMENT

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

2. The following individuals must not participate

THE GOVERNMENT

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

THE GOVERNMENT

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

Pursuant to the December 3, 2004 Competition Law;

At the proposal of the Trade Minister.

in multi-level sale of goods:

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

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

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

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

c/ Having labels according to provisions of law.

Chapter II

MULTI-LEVEL SALE ACTIVITIES

Article 6.- Responsibilities of multi-level sale enterprises

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

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

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

such economic benefits;

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

g/ Other matters stipulated by competent state agencies.

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

- a/ To ensure truthfulness and accuracy of information supplied to participants;
- b/ To ensure quality of goods sold by mode of multi-level sale;
- c/ To settle complaints of participants and consumers;
- d/ To withhold and remit personal income tax amounts of participants into the state budget before paying commissions, bonuses or other economic benefits to participants;
- e/ To provide professional training in multi-level sale and law on multi-level sale to participants;
- f/ To manage participants through the system of multi-level sale network member cards made according to a form set by the Trade Ministry;
- g/ To notify participants of goods not to be bought back by enterprises before they buy such goods.

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

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

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

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

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

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

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

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

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

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

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

Article 8.- Responsibilities and prohibited acts of participants

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

3. In cases where they fail to comply with the provisions of Article 8 of this Decree, thus causing damage to consumers or other participants, multi-level sale participants shall have to pay compensations for such damage.

Article 13.- Information on benefits from participation in multi-level sale

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

Chapter III

MANAGEMENT OF MULTI-LEVEL SALE ACTIVITIES

Article 14.- Conditions for granting multi-level sale registration papers

Enterprises shall be granted multi-level sale registration papers when fully satisfying the following conditions:

1. Having paid deposits according to the provisions of Article 17 of this Decree.
2. Trading in goods in accordance with business lines and trades stated in their business registration certificates.
3. Satisfying all business conditions or being granted certificates of satisfaction of business conditions as provided for by law in cases where they trade in goods on the list of goods subject to conditional business.

by participants to receive such goods, if there is no ground for deduction under the provisions of Point b of this Clause;

b/ In cases where enterprises must bear management and re-warehousing expenses as well as other administrative expenses, they shall have to refund a total sum which is not smaller than 90% of the amount already paid by participants to receive such goods.

3. When refunding money according to the provisions of Clause 2 of this Article, multi-level sale enterprises may deduct commissions, bonuses and/or other economic benefits which have been enjoyed by participants from the receipt of such goods.

4. The provisions of Clauses 1 and 2 of this Article shall not apply to goods which are not subject to buy-back, including goods which are expired upon return, seasonal goods or goods for sale promotion.

Article 12.- Responsibilities binding between multi-level sale enterprises and participants

1. Multi-level sale enterprises shall have to pay damages to consumers or participants in the following cases:

- a/ Participants cause damage to consumers or other participants while strictly observing operation rules and sale programs of enterprises;
- b/ Participants have not been supplied with adequate information on goods according to the provisions of Clause 2, Article 8 of this Decree.
2. Multi-level sale enterprises shall have to regularly supervise activities of participants in order to ensure that the latter strictly observe their operation rules and sale programs.

1. Participants have the right to terminate participation contracts by sending written notices to multi-level sale enterprises at least 7 working days before terminating the contracts.

2. Multi-level sale enterprises have the right to terminate contracts with participants when the latter violate the provisions of Article 8 of this Decree and shall have to notify such in writing to the participants at least 7 working days before terminating the contracts.

3. Within 15 working days after the termination of contracts, multi-level sale enterprises shall have the following responsibilities:

a/ To buy back goods already sold to the participants according to the provisions of Article 11 of this Decree;

b/ To pay the participants commissions, bonuses and economic benefits enjoyable by participants in the course of participating in the multi-level sale networks.

Article 11.- Buying back goods from participants upon termination of multi-level sale participation contracts

1. Multi-level sale enterprises must buy back goods already sold to participants when such goods satisfy the following conditions:

- a/ They can be re-sold for their initial use purposes;
- b/ They are returned within 30 days after the participants receive them.

2. In cases where they must buy back goods under the provisions of Clause 1 of this Article, multi-level sale enterprises shall have to:

a/ Refund the total money amount already paid

a/ To produce their multi-level sale network member cards before introducing goods or marketing for sale of goods;

b/ To notify all contents specified in Clause 2, Article 6 of this Decree to other persons under their sponsorship for participation in multi-level sale networks;

c/ To supply truthful and accurate information on type, quality, prices, utilities and usage of goods for sale;

d/ To comply with regulations in operation rules and sale programs of enterprises.

2. Participants are forbidden to take the following acts:

a/ Requesting persons under their sponsorship for participation in multi-level sale networks to pay any charges for study courses, training courses, seminars, social activities or other similar activities;

b/ Supplying deceitful information on benefits from the participation in multi-level sale, untruthful information on characteristics and utilities of goods, activities of multi-level sale enterprises in order to entice other persons to participate in multi-level sale.

Article 9.- Contracts on participation in multi-level sale

1. Multi-level sale enterprises must enter into written participation contracts with participants in their respective multi-level sale networks.

2. The Trade Ministry shall have to guide the basic contents of model contract for multi-level sale activities.

Article 10.- Termination of contracts on participation in multi-level sale

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

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

Article 17.- Deposits

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

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

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

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

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

- a/ Enterprises have their business registration certificates withdrawn;
- b/ Enterprises have their certificates of satisfaction of business conditions withdrawn in

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

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

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

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

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

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

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

- a/ To abide by regulations on suspension or termination of business activities according to the provisions of law on enterprises;
- b/ To notify such to provincial-level Trade Services or Trade-Tourism Services where they have made their business registrations; and at the

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

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

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

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

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

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

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

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

5. When multi-level sale enterprises develop

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

5. Having clear programs on training of participants.

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

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

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

2. Notarized copies of the business registration certificate.

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

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

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

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

7. The program on training of participants, with

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

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

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

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

Article 21.- Responsibilities of the Trade Ministry

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

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

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

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

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

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

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

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

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

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

a/ Organizing multi-level sale while the specified

conditions therefor are not fully satisfied;

b/ Violating the regulations on subjects eligible for participating in multi-level sale;

c/ Violating the regulations on goods permitted to be traded by mode of multi-level sale;

d/ Failing to fully notify the required information to new sale network participants under their sponsorship;

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

f/ Failing to enter into written contracts with participants;

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

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

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

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

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

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

m/ Violating other provisions of this Decree.

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

Article 24.- Competence and procedures for handling administrative violations

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

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

Chapter IV

IMPLEMENTATION PROVISIONS

Article 25.- Implementation effect

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

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

On behalf of the Government
Prime Minister
PHAN VAN KHAI