

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. 51/200 1/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 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 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 Case-Handling 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

Hanoi, 24 August 2005

**DECREE
ON
ADMINISTRATION OF MULTI-LEVEL SELLING ACTIVITIES**

The Government

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

Pursuant to the *Law on Competition* dated 3 December 2004;

On the proposal of the Minister of Trade;

Decrees:

CHAPTER 1

General Provisions

Article 1 *Governing scope*

This Decree regulates multi-level selling activities and provides for administration of multi-level selling activities within the territory of the Socialist Republic of Vietnam.

Article 2 *Applicable entities*

This Decree shall apply to multi-level selling enterprises and to participants in multi-level sales networks.

Article 3 *Multi-level selling of goods*

1. *Multi-level selling of goods* means a marketing method in order to conduct retail sales of goods which satisfy the conditions stipulated in clause 11 of article 3 of the *Law on Competition*.
2. An enterprise shall only be permitted to organize multi-level selling of goods after it has been issued with a certificate of registration of organization of multi-level selling pursuant to article 16 of this Decree.

Article 4 *People participating in multi-level selling of goods*

1. People participating in multi-level selling of goods (hereinafter referred to as *participants*) means individuals with full capacity for civil acts who have signed a contract for participation in multi-level selling of goods with a multi-level selling enterprise, except for the individuals stipulated in clause 2 of this article.

2. The following individuals shall not be permitted to participate in multi-level selling:
 - (a) Persons who are currently subject to a prison sentence or who have a criminal record regarding manufacture or trading of counterfeit goods, dishonest advertising, illegal business, tax evasion or defrauding customers, or who have committed crimes being misappropriation of property, abuse of trust in order to obtain property, or illegal retention of property;
 - (b) Foreign individuals and Vietnamese residing overseas who do not have a labour permit in Vietnam issued by the competent body.

Article 5 *Goods which may be the subject of business by the multi-level selling method*

1. It shall be permitted to conduct business by the multi-level selling method in all types of goods except the following:
 - (a) Goods on the list of goods prohibited from circulation, goods on the list of goods in which business is restricted, counterfeit goods, and goods which are illegally imported as stipulated by law;
 - (b) Goods being preventive and treatment medicines for humans; all types of vaccines and biological products; medical equipment and apparatus; all types of veterinary drugs (including veterinary drugs used in aquaculture); plant protection agents; chemicals; insecticide and disinfectant products used in both the domestic home sector and in the health sector; raw materials for the manufacture of treatment medicines; and all types of toxic chemicals and products containing toxic chemicals as stipulated by law.
2. It shall be permitted to conduct business by the multi-level selling method only with respect to goods which satisfy the following conditions:
 - (a) The goods satisfy the standards stipulated by law on product quality, safety and hygiene;
 - (b) The source, country of origin, function and use of the goods is clear and legal;
 - (c) The goods are correctly labelled in accordance with law.

CHAPTER 2

Multi-level Selling Activities

Article 6 *Responsibilities of multi-level selling enterprises*

1. Multi-level selling enterprises shall be responsible to formulate and publicly announce Operating Rules of the Enterprise and of Participants in Multi-Level Selling Activities.
2. Multi-level selling enterprises shall be responsible to provide data on the following matters to people who propose to participate in the multi-level sales network of the enterprise:
 - (a) Sales Plan including the method of paying bonuses; standard form contract which the enterprise will sign with participants and all other agreements containing provisions on the rights and obligations of participants; information about quality standards or quality certificates (if any); prices, use and method of use of the goods for sale; and provisions relating to warranty, return and buy back of the goods for sale;

- (b) Training program for participants including the matters on which training will be provided; duration of training courses; order and procedures for issuance of certificates of having passed training courses; and duration and contents of periodic up-dating courses for participants;
 - (c) Operating Rules containing guidelines on methods of conducting transactions and containing provisions relating to multi-level selling of goods;
 - (d) Responsibilities of participants;
 - (dd) Economic benefits to which participants may be entitled as a result of marketing or directly selling goods, and any conditions which apply before participants will be entitled to receive such economic benefits;
 - (e) Conditions in which contracts of participants will be terminated, and rights and obligations arising from contractual termination;
 - (g) Any other issues as stipulated by the competent State body.
3. In addition to the responsibilities stipulated in clause 2 of this article, multi-level selling enterprises shall also have the following responsibilities:
- (a) They must guarantee the truthfulness and accuracy of the information they provide to participants;
 - (b) They must guarantee the quality of goods for sale by the multi-level selling method;
 - (c) They must resolve complaints made by participants or consumers;
 - (d) They must deduct personal income tax of participants in order to pay it into the State budget prior to paying commission, bonuses or other economic benefits to participants;
 - (dd) They must provide professional training and up-dating courses for participants regarding multi-level selling of goods and the law relating to multi-level selling of goods;
 - (e) They must manage participants via a system of cards for members of the multi-level sales network, which cards shall be issued in accordance with the sample form stipulated by the Ministry of Trade;
 - (g) They must notify participants of goods in the category which the enterprise is not obliged to buy back, prior to participants commencing the selling of goods.

Article 7 *Prohibited practices by multi-level selling enterprises*

Multi-level selling enterprises shall be prohibited from conducting the following practices:

1. Requiring persons who wish to participate in the multi-level sales network to pay a deposit in order to have the right to participate.
2. Requiring persons who wish to participate in the multi-level sales network to purchase an initial quantity of goods in order to have the right to participate.
3. Requiring persons who wish to participate in the multi-level sales network to pay a sum of money or any other fee in the form of study course fees, training fees, seminar fees, fees for social activities or

for other similar activities in order to have the right to participate, except for a fee for payment of the data set out in clause 2 of article 6 of this Decree.

4. Failing to undertake to participants to buy back goods from participants and to repay the sums the participants paid to the enterprise in accordance with article 11 of this Decree.
5. Hindering participants from returning goods as a consequence of termination of a contract for participation in the multi-level sales network.
6. Allowing participants to receive commission, bonuses and other economic benefits from the enticement of other persons to participate in the multi-level sales network.
7. Refusing without a legitimate reason to pay to participants commission, bonuses and other economic benefits to which such participants are entitled.
8. Providing untruthful information about the benefits of participation in the multi-level sales network in order to entice people to participate.
9. Providing false information about the nature and use of goods in order to entice people to participate in the multi-level sales network.

Article 8 *Responsibilities of participants and prohibited practices by participants*

1. When participants conduct multi-level selling activities, they shall have the following responsibilities:
 - (a) To present their card of membership in the multi-level sales network prior to introducing or marketing any goods for sale;
 - (b) To provide notification of all the matters set out in clause 2 of article 6 of this Decree when they sponsor another person to participate in the multi-level sales network;
 - (c) To provide truthful and accurate information about the type, quality, price, use and method of use of the goods for sale;
 - (d) To comply with the provisions in the Operating Rules and in the multi-level Sales Plan of the enterprise.
2. It shall be prohibited for participants to conduct the following practices:
 - (a) To require any person whom such participant sponsors for participation in a multi-level sales network to pay any fee in the form of study course fees, training fees, seminar fees, fees for social activities or for other similar activities;
 - (b) To provide fraudulent information about the benefits from participation in a multi-level sales network, or false information about the nature and use of goods or about the activities of the multi-level selling enterprise in order to entice others to participate in multi-level selling of goods.

Article 9 *Contract for participation in multi-level selling of goods*

1. Multi-level selling enterprises must sign a written contract for participation in the multi-level sales network with a participant.

2. The Ministry of Trade shall be responsible to provide guidelines on the main contents of a sample contract for multi-level selling activities.

Article 10 *Termination of a contract for participation in multi-level selling of goods*

1. A participant shall have the right to terminate the contract for participation by providing written notice to the multi-level selling enterprise at least seven (7) working days prior to the date of termination of the contract.
2. A multi-level selling enterprise shall have the right to terminate the contract of a participant who breaches the provisions in article 8 of this Decree, and the enterprise must provide written notice to the participant at least seven (7) working days prior to the date of termination of the contract.
3. Within fifteen (15) working days from the date of termination of a contract, a multi-level selling enterprise shall have the following responsibilities:
 - (a) To buy back from the participant pursuant to article 11 of this Decree the goods which were sold to the participant;
 - (b) To pay to the participant commission, bonuses and other economic benefits to which the participant is entitled as a result of participation in the multi-level sales network.

Article 11 *Buying back goods from a participant when a contract for participation in a multi-level sales network is terminated*

1. A multi-level selling enterprise must buy back the goods sold to the participant when those goods satisfy the following conditions:
 - (a) The goods are resalable in accordance with their initial use purpose;
 - (b) No more than thirty (30) days have expired from the date the participant received the goods.
2. A multi-level selling enterprise which is obliged to buy back goods pursuant to clause 1 of this article shall have the following responsibilities:
 - (a) To refund the total amount of money which the participant paid in order to receive the goods if there are no grounds for making the deduction stipulated in sub-clause (b) of this clause;
 - (b) In a case where the enterprise must bear administrative costs, expenses for re-storage and other administrative costs, then it must repay a total sum not less than ninety (90) per cent of the amount which the participant paid in order to receive the goods.
3. When paying the refund referred to in clause 2 of this article, a multi-level enterprise may deduct commission, bonuses and/or other economic benefits which the participant has already received as a result of receipt of such goods.

4. The provisions in clauses 1 and 2 of this article shall not apply in a case where goods are in the category which need not be compulsorily bought back, comprising goods whose use period has expired as at the date of their return, seasonal goods and goods used in promotions.

Article 12 *Mandatory responsibilities owed by multi-level selling enterprises to participants*

1. Multi-level selling enterprises shall be responsible to pay damages to consumers or participants in the following circumstances:
 - (a) A participant causes loss to a consumer or to another participant when the former participant correctly implements the Operating Rules and Sales Plan of the enterprise;
 - (b) A participant was not provided with complete information about the goods in accordance with clause 2 of article 6 of this Decree.
2. Multi-level selling enterprises shall be responsible to regularly supervise the activities of participants in order to ensure that the latter are correctly implementing the Rules on Operation and the Sales Plan of the enterprise.
3. In a case where failure to comply with the provisions in article 8 of this Decree results in loss to a consumer or another participant, then the [offending] participant in the multi-level sales network shall be responsible to pay damages for the loss caused.

Article 13 *Information and benefits on participation in a multi-level sales network*

If an individual being a participant in a multi-level sales network is used in order to introduce the selling operation, the multi-level selling enterprise or the participant must specify the name, age, address, period of participation and benefits received in each period by such individual, and the latter item must also be certified in minutes by the tax office.

CHAPTER 3

Administration of Multi-Level Selling Activities

Article 14 *Conditions applicable to issuance of a certificate of registration of organization of multi-level selling*

A certificate of registration of organization of multi-level selling shall be issued to an enterprise which satisfies all the following conditions:

1. It has established the deposit fund stipulated in article 17 of this Decree.
2. Trading in the goods in question conforms with the business line specified in the business registration certificate of the enterprise.
3. The enterprise satisfies all the conditions for conducting business, or it has been issued with a certificate of satisfaction of conditions for conducting business in accordance with law in a case where the goods traded are on the list of goods for which the conduct of business is conditional.
4. It has Sales Plan which is transparent and not contrary to law.
5. It has a clear program for training participants.

Article 15 *Application file for issuance of a certificate of registration of organization of multi-level selling*

An application file for issuance of a certificate of registration of organization of multi-level selling shall be lodged with the Department of Trade or with the Department of Trade and Tourism in the province where the enterprise is registered for business. The application file shall comprise:

1. Application for issuance of a certificate of registration of organization of multi-level selling in the form stipulated by the Ministry of Trade.
2. A notarized copy of the business registration certificate.
3. A document of certification from a bank about the amount in the deposit fund paid in accordance with the provision in clause 1 of article 17 of this Decree.
4. A notarized copy of a certificate of satisfaction of business conditions in a case where the goods traded are on the list of goods for which business is conditional.
5. A list and curriculum vitae of the people heading the enterprise together with photos and verification by the police of the commune or ward where those people reside. In the case of foreigners there must certification from the embassy or consulate in Vietnam of the country of nationality of such persons.
6. There must be a Sales Plan containing the particulars specified in clause 2(a) of article 6 of this Decree.
7. There must be a program for training participants containing the particulars stipulated in clause 2(b) of article 6 of this Decree.

Article 16 *Procedures for issuance and supplementation of a certificate of registration of organization of multi-level selling*

1. Within a time-limit of fifteen (15) working days as from the date of receipt of a complete and valid file, the Department of Trade or the Department of Trade and Tourism of the province where the enterprise has registered for business shall be responsible to issue a certificate of registration of organization of multi-level selling to any enterprise whose application file satisfies all the conditions stipulated in article 14 of this Decree.

In a case where a certificate of registration of organization of multi-level selling is not issued, the Department of Trade or the Department of Trade and Tourism shall provide a written response specifying its reasons.

2. An enterprise making an application for the issuance of a certificate of registration of organization of multi-level selling must pay fees for the issuance of the certificate. The level of fees and the regime for management and use of fees shall be regulated by the Ministry of Finance.
3. In a case where there are changes relating to the contents of the Sales Plan, an enterprise shall be responsible to conduct procedures requesting the issuance of an amended certificate of registration of organization of multi-level selling.

The order and time-limit for the issuance of an amended certificate shall be implemented in accordance with the provisions in clauses of 1 and 2 of this article.

4. Within a time-limit of fifteen (15) working days as from the date of issuance of a certificate or amended certificate of registration of organization of multi-level selling, the Department of Trade or the Department of Trade and Tourism shall be responsible to provide a written report to the administrative body for competition under the Ministry of Trade.
5. If a multi-level selling enterprise develops its sales network into a province or city under central authority where such enterprise does not have its own office, then it must notify the Department of Trade or the Department of Trade and Tourism of such province or city under central authority.
6. The Ministry of Trade shall regulate the sample form for the certificate of registration of organization of multi-level selling and the sample form for a notice of having organized a multi-level sales network.

Article 17 *Deposit fund*

1. Multi-level selling enterprises must pay into a deposit fund with a commercial bank operating in Vietnam a sum of five per cent of their charter capital but no less than one billion Vietnamese dong.
2. When there is a notice of suspension of multi-level selling activities, the multi-level selling enterprise shall be permitted to use the deposited monies to pay commission and bonuses or for the cost of buying back goods from participants.
3. On the termination of multi-level selling activities, the multi-level selling enterprise shall only be permitted to withdraw the deposited monies when there are no complaints from participants in the multi-level sales network about payment of commission and bonuses or about the cost of buying back goods.

Article 18 *Withdrawal of certificate or registration of organization of multi-level selling*

1. A Department of Trade or a Department of Trade and Tourism shall revoke a certificate of registration of organization of multi-level selling in the following circumstances:
 - (a) The business registration certificate of the enterprise has been withdrawn;
 - (b) The certificate of satisfaction of business conditions of the enterprise has been withdrawn in a case where the goods traded are on the list of goods for which business is conditional;
 - (c) The application file for issuance of the certificate for registration of organization of multi-level selling contained deliberately fraudulent information;
 - (d) There was conduct constituting a serious breach of law during the course of multi-level selling activity.
2. In a case of withdrawal of a certificate of registration of organization of multi-level selling pursuant to the provisions of clause 1 of this article, the multi-level selling enterprise must immediately suspend multi-level sales and the recruitment of new participants, and must discharge its responsibilities to participants in accordance with the provisions in article 11 of this Decree or pay damages to consumers and participants for claims arising out of transactions entered into prior to the day on which the certificate was withdrawn.
3. The Department of Trade or the Department of Trade and Tourism shall forward any decision on withdrawal of a certificate of registration of organization of multi-level selling to the administrative body for competition under the Ministry of Trade and shall announce such decision on the mass media.

Article 19 *Provisional suspension or termination of multi-level selling activities*

1. Any multi-level selling enterprise which wishes to provisionally suspend or [provisionally] terminate its multi-level selling activities shall have the following obligations:
 - (a) To comply with the regulations on temporary suspension or [temporary] termination of business activities as stipulated in the law on enterprises;
 - (b) To provide a notice to the Department of Trade or the Department of Trade and Tourism in the province where the enterprise has registered for business, and at the same time to provide a public notice at the headquarters of the enterprise and a notice to participants for their information within a time-limit of thirty (30) working days prior to the date of temporary suspension or [temporary] termination of activities.
2. In a case of temporary suspension or [temporary] termination of multi-level selling activities, a multi-level selling enterprise must conduct procedures for liquidation of contracts for participation in multi-level selling with participants in accordance with the provisions in article 10 of this Decree within a time-limit of thirty (30) working days as from the date of temporary suspension or [temporary] termination of multi-level selling activity.

Article 20 *Periodical reporting by multi-level selling enterprises*

Once every six months, multi-level selling enterprises shall be responsible to provide a report to the Department of Trade or the Department of Trade and Tourism of the province where the enterprise is registered for business on the number of participants, on turnover, and on the amount of tax paid by the enterprise including personal income tax of participants which the enterprise has paid on behalf of participants.

Article 21 *Responsibilities of the Ministry of Trade*

1. The Ministry of Trade shall be responsible before the Government to exercise the function of State management of multi-level selling activities nationwide.
2. The administrative body for competition under the Ministry of Trade shall be responsible to assist the Minister of Trade with the following specific administrative matters:
 - (a) Provision of guidelines to Departments of Trade and Departments of Trade and Tourism regarding issuance of certificates of registration of organization of multi-level selling; checks of the administration of multi-level selling activities by Departments of Trade and Departments of Trade and Tourism;
 - (b) Direct checks and inspections of multi-level selling activities when necessary; and dealing in accordance with its authority with breaches of the law on multi-level selling activities;
 - (c) Recommendations to the Government to issue or to amend legal instruments on ensuring order during the organization of conduct of multi-level selling activities, on protection of the interests of participants in multi-level sales networks and of consumers, and on maintaining socio-economic stability.

Article 22 *Responsibilities of people's committees of provinces and cities under central authority*

1. People's committees of provinces and cities under central authority shall be responsible to exercise State administration of methods of multi-level selling in accordance with their authority and pursuant to directions and guidelines from the Ministry of Trade pursuant to this Decree and other relevant provisions of law.
2. Departments of Trade or Departments of Trade and Tourism shall assist people's committees of provinces and cities under central authority to issue certificates of registration of organization of multi-level selling; shall regularly check and supervise multi-level selling activities within their respective localities, and shall provide periodical reports to the administrative body for competition under the Ministry of Trade regarding such checks and supervisions.

Article 23 *Dealing with breaches by multi-level selling enterprises and by participants*

1. Any multi-level selling enterprise or any participant in a multi-level sales network who commits one of the following breaches shall, depending on the nature and seriousness of the breach, be subject to an administrative penalty in accordance with the law on dealing with administrative offences:
 - (a) Conducting multi-level selling prior to having satisfied the stipulated conditions;
 - (b) Committing a breach of the provision on entities entitled to participate in multi-level selling;
 - (c) Committing a breach of the provision on goods in which business is permitted to be conducted by the multi-level selling method;
 - (d) Failing to provide complete information in accordance with the regulations when sponsoring a new participant to a multi-level sales network;
 - (dd) Conducting practices which a multi-level selling enterprise and participants are not permitted to conduct;
 - (e) Failure by a multi-level selling enterprise to sign a written contract with a participant;
 - (g) Committing a breach of the provision on termination of a contract for participation in multi-level selling;
 - (h) Failure to comply with the reporting regime stipulated in article 20 of this Decree;
 - (i) Changing the contents of a Sales Plan without conducting procedures to apply for issuance of a supplemented certificate;
 - (k) A multi-level selling enterprise breaches the provisions of the amount of money it must pay into the deposit fund, or pays disbursements from such deposit fund during the course of its operations;
 - (l) Failure to pay tax as required by law;
 - (m) Failure to comply with requests from a competent State body during the course of a check or inspection;
 - (n) Breach of other provisions of this Decree.

2. If a breach by an enterprise or participant in a multi-level sales network causes loss to the material interests of any organization or individual concerned, then such enterprise [and/or] participant must pay damages in accordance with law.

Article 24 *Jurisdiction and procedures for dealing with administrative breaches*

1. Jurisdiction for dealing with administrative offences being the practices stipulated in article 23 of this Decree shall be implemented in accordance with the *Law on Competition* and the Ordinance on Dealing with Administrative Breaches.
2. The procedures for dealing with administrative breaches being the practices stipulated in article 23 of this Decree shall be implemented in accordance with the law on dealing with administrative breaches.

CHAPTER 4

Implementing Provision

Article 25 *Effectiveness*

1. This Decree shall be of full force and effect fifteen (15) days after the date of its publication in the Official Gazette. Any multi-level selling enterprise which had already conducted business registration prior to the date on which this Decree took effect shall, within a period of three months as from the date this Decree takes effect, be responsible to conduct procedures to apply for the issuance of a certificate of registration of organization of multi-level selling at the Department of Trade or the Department of Trade and Tourism in the province where such enterprise has registered for business.
2. Ministers, heads of ministerial equivalent bodies and Government bodies, and chairmen of people's committees of provinces and cities under central authority shall be responsible for implementation of this Decree.

On behalf of the Government
The Prime Minister
PHAN VAN KHAI

DECREE ON COMPETITION

Providing detailed regulations and guidelines for implementation of a number of articles of the Law on Competition

The Government

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

Pursuant to the *Law on Competition* dated 3 December 2004;

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

Pursuant to the Ordinance on Dealing with Administrative Offences dated 2 July 2002;

On the proposal of the Minister of Trade after reaching agreement with the Chief Judge of the People's Supreme Court,

Decrees:

CHAPTER 1

General Provisions

Article 1 *Governing scope*

This Decree provides detailed regulations and guidelines for implementation of a number of articles of the *Law on Competition* regarding control of practices in restraint of competition and regarding competition legal proceedings.

Article 2 *Applicable entities*

This Decree shall apply to:

1. Organizations and individuals as stipulated in article 2 of the *Law on Competition*.
2. Organizations and individuals conducting business as stipulated in article 2.1 of the *Law on Competition* comprising organizations and individuals who must pay corporate income tax pursuant to law.
3. Industry associations as stipulated in article 2.2 of the *Law on Competition* comprising associations established pursuant to law.

Article 3 *Responsibility to provide information*

State administrative bodies, financial agencies, credit institutions, and organizations and individuals involved in a competition case shall be responsible to promptly provide necessary information which is complete, truthful and accurate pursuant to a request from the administrative body for competition or from the Competition Council.

CHAPTER 2

Control of Practices in Restraint of Competition

SECTION I

Determining What is the Relevant Market

Article 4 *Determining what is the relevant product market*

1. *Relevant product market* means a market comprising goods or services which may be substituted for each other in terms of characteristics, use purpose and price.
2. Reliance shall be placed on one or more of the following matters in order to determine the characteristics of goods or services:
 - (a) Physical features;
 - (b) Chemical features;
 - (c) Technical features;
 - (d) Side effects on the user;
 - (dd) Ability to absorb [assimilate?].
3. A determination of use purpose of goods or services shall be based on the prime principal use purpose of such goods or services.
4. Price of goods or services shall be the retail price listed in accordance with the laws on listing prices.
5. A determination of whether goods or services are capable of being substituted for each other shall be made as follows:
 - (a) Goods or services shall be deemed capable of being substituted for each other in terms of use purpose if such goods or services have the same use purpose;
 - (b) Goods or services shall be deemed capable of being substituted for each other in terms of characteristics if such goods or services have the same physical features, chemical features, technical features, side effects on the user, and ability to absorb [assimilate?];
 - (c) Goods or services shall be deemed capable of being substituted for each other in terms of price if above 50% of a random sample quantity taken from a total number

of one thousand consumers living and working in the relevant geographical area change to purchasing or intend to purchase other goods or services with the same characteristics and use purpose as the goods they are currently using or intend to use where the price of such goods or services increases more than 10% and remains stable for six consecutive months.

6. If the method of determining of whether goods or services are capable of being substituted for each other as stipulated in clause 5 of this article produces results insufficient to make a conclusion on such issue, the administrative body for competition [and/or] the Competition Council shall have the right to consider one or more of the following additional factors in order to determine whether goods or services are capable of being substituted for each other:
 - (a) Percentage change in demand for one product or service when there is a change in the price of another product or service;
 - (b) Duration of supply of goods or services onto the market when there is a sudden increase in demand;
 - (c) Use duration of the goods or services;
 - (d) Ability to replace supply pursuant to article 6 of this Decree.
7. In necessary cases, the administrative body for competition [and/or] the Competition Council may determine an additional group of consumers living and working in the relevant geographical area unable to change to purchasing other goods or services with the same characteristics and use purpose as the goods they are currently using or intend to use where the price of such goods or services increases more than 10% and remains stable for six consecutive months.

Article 5 *Determining what is the relevant product market in special cases*

1. A *relevant product market* may be determined to be a market for one type of special product or for one group of special products based on market structure and the customs [practices] of consumers.
2. When determining what is the relevant product market in the cases stipulated in clause 1 of this article, additional consideration may be given to the market for products auxiliary to the relevant product.

A product shall be deemed to be a product auxiliary to the relevant product if when its price increases or decreases the demand for the relevant product also undergoes an equivalent increase or decrease.

Article 6 *Determining capability of substitution in terms of supply*

Capability of substitution in terms of supply means the capability of an enterprise which is currently manufacturing or distributing any one product or service to change to the manufacture or distribution of another product or service within a short period without any significant increase in expenses in a context where there are price increases for such products or services

Article 7 *Determining what is the relevant geographical market*

1. Relevant geographical market means a specific geographical area in which goods or services may be substituted for each other with similar competitive conditions and which area is significantly different from neighbouring areas.
2. The competitive conditions in a relevant geographical market shall be determined on the following bases:
 - (a) A geographical area contains a business establishment of an enterprise participating in distribution of the relevant products;
 - (b) Business establishments of other enterprises which have been established in neighbouring geographical areas are sufficient, together with the geographical area stipulated in sub-clause (a) above, to enable participation in distribution of the relevant products in such geographical area;
 - (c) Transportation costs in the geographical area prescribed in clause 1 of this article;
 - (d) Duration of transportation of costs and of provision of services in the geographical area prescribed in clause 1 of this article;
 - (dd) Barriers to market access.
3. The competitive conditions in any one specific geographical area shall be deemed similar and significantly different from neighbouring geographical areas if they satisfy one of the following criteria:
 - (a) Transportation costs and the duration of transportation results in an increase in the retail price of goods not exceeding ten (10) per cent;
 - (b) One of the barriers to market access prescribed in article 8 of this Decree is present.

Article 8 *Barriers to market access*

The following shall comprise barriers to market access:

1. Barriers regarding technical or technological matters including inventions, patents, utility solutions, industrial designs, trademarks and appellations of origin of goods.
2. Barriers regarding financial matters including costs of investment in manufacture and distribution, commercial promotion and ability to access financial sources.
3. Administrative decisions by State administrative bodies.
4. Barriers regarding the law including regulations on business, on use of goods and services, and on professional standards.
5. Tariff and non-tariff barriers applicable to imports including import duties; import quotas; measures for self-protection, anti-dumping measures, and measures against subsidies for goods imported into Vietnam.
6. Customs [practices] of consumers.
7. Other barriers to market access.

SECTION 2

Determining Turnover, Turnover of Inwards Purchases, and Market Share

Article 9 *Turnover and turnover of inwards purchases in order to determine market share of an enterprise*

Turnover and turnover of inwards purchases applicable to any one type of goods and services of an enterprise shall be determined in accordance with the tax laws and Vietnamese accounting standards except for the cases stipulated in articles 10, 11 and 12 of this Decree.

Article 10 *Turnover and turnover of inwards purchases in order to determine market share of a corporation*

1. Turnover and turnover of inwards purchases applicable to any one type of goods and services in order to determine market share of a corporation not on the parent company - subsidiary company model shall be calculated as the total turnover and turnover of inwards purchases applicable to such type of goods and services of the following entities:
 - (a) Entities in which the corporation invested the whole of the charter capital comprising independently accounting member companies which operate pursuant to the *Law on State Owned Enterprises*, [and] Decree No. 153-2004-ND-CP dated 9 August 2004 on charters of corporations; dependently accounting member entities and professional units operating pursuant to authority delegated from the corporation in accordance with the provisions of the charter of such the corporation; one member limited liability State companies organized and operating pursuant to the *Law on Enterprises* and finance companies;
 - (b) Member entities in which the corporation holds the controlling shares or made the controlling capital contribution comprising shareholding companies in which the corporation holds the controlling shares operating pursuant to the *Law on Enterprises*; two or more member limited liability companies in which the corporation made the controlling capital contribution and operating pursuant to the *Law on Enterprises*; joint venture companies in which the corporation holds controlling rights and operating pursuant to the *Law on Foreign Investment in Vietnam*; other enterprises in which the corporation holds the controlling shares or made the controlling capital contribution, established overseas and organized and operating pursuant to the law of such foreign country.

Turnover and turnover of inwards purchases applicable to any one type of goods and services of a corporation not on the parent company - subsidiary company model shall not include turnover from the sale of goods and the provision of services between the corporation and its member entities prescribed in this clause.

2. Turnover and turnover of inwards purchases applicable to any one type of goods and services in order to determine market share of a corporation on the parent company - subsidiary company model shall be calculated as the total turnover and turnover of inwards purchases applicable to such type of goods and services of the parent company and of the subsidiary company.

Turnover and turnover of inwards purchases applicable to any one type of goods and services of a corporation on the parent company - subsidiary company model prescribed

in this clause shall not include turnover from the sale of goods and the provisions of services between the parent company and the subsidiary company.

Article 11 *Turnover in order to determine market share of an insurance enterprise*

Turnover in order to determine market share of an insurance enterprise shall be calculated as the total premiums and reinsurance premiums received in that financial year or in the most recent financial year in the case where the period is less than one financial year¹.

Article 12 *Turnover in order to determine market share of a credit institution*

Turnover in order to determine market share of a credit institution shall be calculated as the total of the following revenue items:

1. Interest income.
2. Revenue earned from services operations.
3. Revenue earned from foreign exchange business operations.
4. Profits [or interest income?] from capital contribution or from purchase of shareholding.
5. Revenue earned from other business operations.
6. Other income.

Article 13 *Determining market share of an enterprise in the relevant market*

1. Market share of an enterprise in the relevant market applicable to any one specified type of goods and services shall be determined in accordance with article 3.5 of the *Law on Competition* except for the cases prescribed in clauses 2 and 3 of this article.
2. Market share prior to participation in an economic concentration applicable to a newly established enterprise which has been conducting business operations for less than one financial year means the market share of such enterprise in the relevant market for a month [and/or] quarter as from the date of commencement of operations until the date the enterprise provides notification of its participation in an economic concentration.
3. Market share in a file² for request of exemption in the case of a newly established enterprise which has been conducting business operations for less than one financial year means the market share of such enterprise in the relevant market for a month [and/or] quarter as from the date of commencement of operations until the date the enterprise requests exemption.

SECTION 3

Agreements in Restraint of Competition

Article 14 *Agreements either directly or indirectly fixing the price of goods and services*

¹ This is the literal translation so query.

² Again this is the literal translation here.

An agreement either directly or indirectly fixing the price of goods and services means reaching agreement [and] taking joint action in one of the following forms:

1. Fixing the price applicable to some or all customers.
2. Increasing or reducing the price by a fixed amount.
3. Applying generally a formula for calculating price.
4. Maintaining a fixed percentage regarding the price of related goods.
5. Not discounting prices or applying a uniform discounted price.
6. Setting a limit on general credit available for customers.
7. Excluding from the market goods offered at a lower price aimed at restricting sources of supply and keeping prices high.
8. Not reducing prices unless there is notification to other members of the agreement.
9. Using a uniform price at the commencement of negotiations.

Article 15 *Agreements to share consumer markets or sources of supply of goods and services*

1. An agreement to share consumer markets means reaching agreement on the quantity or location of purchase and sale of goods and services or a group of customers applicable to all parties participating in the agreement.
2. An agreement to share sources of supply of goods and services means reaching agreement that all parties participating in the agreement will only purchase goods and services from one or more specified suppliers.

Article 16 *Agreements to restrain or control the quantity or volume of goods and services manufactured, purchased or sold*

1. An agreement to restrain the quantity or volume of goods manufactured, purchased or sold or of services supplied means reaching agreement to restrain the quantity or volume of goods manufactured, purchased or sold or of services supplied in the relevant market as compared to previously.
2. An agreement to control the quantity or volume of goods manufactured, purchased or sold or of services supplied means reaching agreement to fix the quantity or volume of goods manufactured, purchased or sold or of services supplied at a level sufficient to create a market shortage.

Article 17 *Agreements to restrain technical developments or technology, or to restrain investment*

1. An agreement to restrain technical developments or technology means reaching agreement to purchase an invention, patent, utility solution or industrial design in order to destroy it or keep it from being used.

2. An agreement to restrain investment means reaching agreement not to provide any more capital for expanding manufacture, for improving the quality of goods and services, or for other developmental research.

Article 18 *Agreements to impose on other enterprises conditions for signing contracts for the purchase and sale of goods and services, or to force other enterprises to accept obligations not related in a direct way to the subject of the contract*

1. An agreement to impose on other enterprises conditions for signing contracts for the purchase and sale of goods and services means reaching agreement to impose one or more conditions precedent to signing contracts.
2. An agreement to force other enterprises to accept obligations not related in a direct way to the subject of the contract means reaching agreement to force other enterprises when purchasing goods and services from, or selling goods and services to any of the enterprises participating in the agreement to accept obligations not related in a direct way to the subject of the contract.

Article 19 *Agreements to prevent, impede, or not allow other enterprises to participate in the market or to develop business*

1. An agreement to prevent, impede, or not allow other enterprises to participate in the market means reaching agreement not to trade with any enterprise which does not participate in the agreement and taking joint action in one of the following forms:
 - (a) Enticing one's own customers not to purchase goods from or use the services of any enterprise not participating in the agreement;
 - (b) Requiring [requesting?] [and/or] enticing distributors or retailers which are trading with one to refuse to purchase or sell goods and to refuse to use the services of any enterprise not participating in the agreement;
 - (c) Selling goods or providing services at a price which is sufficient to disenable market participation by any enterprise not participating in the agreement.
2. An agreement to prevent, impede, or not allow other enterprises to develop business means reaching agreement not to trade with an enterprise which does not participate in the agreement and taking joint action in one of the following forms:
 - (a) Requiring [requesting?] [and/or] enticing distributors or retailers which are trading with one to be discriminatory when purchasing or selling goods of any enterprise not participating in the agreement by causing difficulties for the sale of the goods of such enterprise;
 - (b) Selling goods or providing services at a price which is sufficient to disenable any enterprise not participating in the agreement to expand its business scale.

Article 20 *Agreements to exclude from the market other enterprises which are not parties to the agreement*

An agreement to exclude from the market other enterprises which are not parties to the agreement means reaching agreement not to trade with any enterprise which does not participate in the agreement and taking joint action in one of the following forms:

1. Enticing one's own customers not to trade with any enterprise not participating in the agreement.
2. Requiring [requesting?] [and/or] enticing distributors or retailers which are trading with one to terminate the purchase and sale of goods from and to, and to terminate the use of services of any enterprise not participating in the agreement.
3. Selling goods or providing services at a price which is sufficient to force market withdrawal by any enterprise not participating in the agreement.

Article 21 *Collusion in order for one or more parties to win a tender for supply of goods and services*

Collusion in order for one or more parties to win a tender for supply of goods and services means reaching agreement [and] taking joint action in tendering in one of the following forms:

1. One or more of the parties to the agreement withdraws from participation in tendering or withdraws a tender it has already lodged in order for one or more parties to the agreement to win the tender.
2. One or more of the parties to the agreement causes difficulties to parties not participating in the agreement when the latter parties participate in tendering by refusing to supply raw materials, by refusing to sign sub-contracts, or by causing difficulties in other ways.
3. The parties to the agreement set a non-competitive price or a competitive price with conditions which the party calling for tenders could not agree, in order to pre-determine that one or more parties will win the tender.
4. The parties to the agreement decide the number of times each of them will win a tender within a fixed period.

SECTION 4

Abuse of Dominant Market Position and Monopoly Position

Article 22 *Bases for determining capability of an enterprise to substantially restrain competition in the relevant market*

A determination of the capability of an enterprise to substantially restrain competition in the relevant market shall be based on one or more of the following factors:

1. Financial capacity of the enterprise.
2. Financial capacity of the organizations and individuals which established the enterprise.
3. Financial capacity of the organizations and individuals with the right to control or govern the operations of the enterprise in accordance with the provisions of law or the charter of the enterprise.
4. Financial capacity of the parent company.
5. Technological capability.

6. Ownership of or right to use intellectual property objects.
7. Scale of distribution network.
8. Other bases considered appropriate by the administrative body for competition [and/or] by the Competition Council.

Article 23 *Selling goods or providing services below total prime cost of the goods aimed at excluding competitors*

1. Except for the cases stipulated in clause 2 of this article, selling goods or providing services below total prime cost of the goods aimed at excluding competitors means selling goods at a price less than the total of the following costs:
 - (a) Costs making up the prime cost of producing products and services prescribed in article 24 of this Decree or [making up] the purchase price of goods for resale;
 - (b) Costs of circulating goods and services prescribed in article 25 of this Decree.
2. The following practices shall not be deemed to be selling goods or providing services below total prime cost of the goods aimed at excluding competitors:
 - (a) Reducing selling prices of goods being fresh foods;
 - (b) Reducing selling prices of goods in stock due to reduced quality, old-fashioned form or because the goods are now inappropriate to the taste of consumers;
 - (c) Reducing selling prices of goods out of season;
 - (d) Reducing selling prices of goods in accordance with a promotional campaign pursuant to law;
 - (dd) Reducing selling prices of goods in cases of bankruptcy, dissolution, termination of manufacturing or business operation, change of location or change in the policy on manufacturing or business.
3. The cases of reduction of prices stipulated in clause 2 of this article must be publicly and clearly listed in the shop or trading location and shall include an announcement of the former price, of the new price and of the duration of the reduction.

Article 24 *Prime cost of producing products and services*

The prime cost of producing products and services shall comprise the following direct expenses:

1. Direct cost of materials comprising raw materials, supplies, fuel and power directly expended for the manufacture of products and services of the enterprise.
2. Direct manpower costs comprising payments to employees directly engaged in manufacture such as salaries, allowances for quality, meal and shift allowances, social insurance payments, medical insurance payments, and funding for the unions of direct employees.

3. General manufacturing costs comprising general expenses arising at both the factories and business sections of the enterprise such as salaries and allowances including meal and shift allowances paid to factory employees; costs of supplies, tools and gear for manufacturing in the factories; depreciation of fixed assets; rent for factories; costs of external purchase services, and any of the above expenses in foreign currencies.

Article 25 *Costs of circulating goods and [of providing] services*

Costs of circulating goods or of providing services shall comprise the following expenses arising during the process of sale of goods or provision of services:

1. Salaries.
2. Allowances which must be paid to sales staff.
3. Agents commission, brokers commission.
4. Marketing expenses.
5. Packing costs.
6. Packaging.
7. Transportation.
8. Preservation.
9. Depreciation of fixed assets.
10. Tools and gear.
11. Loading and stevedoring charges.
12. External purchase services.
13. Welfare and social payments for sales staff pursuant to law.
14. Interest payments on business loans.
15. Enterprise management expenses allocated to circulation of goods and services.
16. Cash disbursements outside the expenses stipulated in clauses 1 to 15 of this article comprising expenses for goods' warranty, advertising expenses and other cash disbursements made pursuant to law.

Article 26 *Enterprise management expenses*

Enterprise management expenses means the total expenses of enterprise management and of administrative management, and other general expenses related to the overall operation of the enterprise as follows:

1. Salaries and allowances including meal and shift allowances paid to directors and management personnel in all sections, insurance payments and funding for the unions of management personnel.

2. Costs of supplies, tools and gear for the office; depreciation of fixed assets used generally for the enterprise; taxes and costs of external purchase services for the office of the enterprise, and other general expenses for the overall enterprise as follows:
 - (a) Reserves for debts receivable which will be difficult to collect; reserves for reduction in prices of goods in store; auditing, reception and business entertainment expenses; retrenchment payments and loss of work subsidies; expenses for scientific research, research into renovation of technology and new inventions; expenses for training staff and management personnel;
 - (b) Medical expenses paid for employees;
 - (c) Costs of protecting the environment;
 - (d) Expenses paid for female employees;
 - (dd) Expenses paid for security staff;
3. Loan interest payments.

Article 27 *Fixing an unreasonable purchasing or selling price or fixing a minimum reselling price of goods or services, [thereby] causing loss to customers*

1. The practice of fixing a purchasing price of goods or services shall be deemed unreasonable [thereby] causing loss to customers if the purchasing price set in the same relevant market is less than the prime cost of producing products and services in the following conditions [here literally "conditions" not "circumstances"]:
 - (a) The quality of the goods or services for which a purchase order has been placed is not lower than the quality of the goods or services purchased previously;
 - (b) There is no economic crisis, natural disaster or destruction by an enemy.
2. The practice of fixing a selling price of goods or services shall be deemed unreasonable [thereby] causing loss to customers if demand does not suddenly increase to a level exceeding the designed output or the manufacturing capacity of the enterprise and the following two conditions are satisfied:
 - (a) The average retail selling price set in the same relevant market for a minimum period of sixty consecutive days increases once at more than 5%; or increases a number of times at a total level of more than 5% of the selling price prior to such minimum period;
 - (b) There are no extraordinary fluctuations resulting in an increase in the prime cost of producing such products and services of more than 5% for a minimum period of sixty consecutive days prior to the commencement of the price increase.
3. Fixing a minimum reselling price of goods or services [thereby] causing loss to customers means price rigging by not permitting distributors or retailers to resell goods at a lower price than some previously stipulated figure.

Article 28 *Restraining production or distribution of goods or services, limiting the market, or impeding technical development [thereby] causing loss to customers*

1. Restraining production or distribution of goods or services [thereby] causing loss to customers means the practices of:
 - (a) Cutting down on the amount of goods or services supplied on the relevant market compared to the amount of goods or services supplied previously in conditions where there are no large fluctuations in the supply and demand relationship; where there is no economic crisis, natural disaster or destruction by an enemy; and where there is no emergency situation;
 - (b) Fixing the amount of goods or services to be supplied at a level sufficient to create a market shortage;
 - (c) Retaining goods and not selling them in order to create instability on the market.

2. Limiting the market [thereby] causing loss to customers means the practices of:
 - (a) Supplying goods or services in only one or a number of specified geographical areas;
 - (b) Purchasing goods or services from only one or a number of specified sources except in cases where other sources fail to satisfy reasonable conditions which are consistent with the normal commercial practices set by a purchaser.

3. Impeding technical or technological development [thereby] causing loss to customers means the practices of:
 - (a) Purchasing an invention, patent, utility solution or industrial design in order to destroy it or keep it from being used.
 - (b) Threatening or pressurizing a person who is conducting research on technical or technological development to suspend or abandon such research.

Article 29 *Imposing different commercial conditions to the same transactions, aimed at creating inequality in competition*

Imposing different commercial conditions to the same transactions, aimed at creating inequality in competition means the practices of discriminating against enterprises regarding conditions for purchase and sale; conditions on price, on time for payment, and on volumes of transactions of purchase and sale of similar goods and services regarding value or quality of the goods and services, in order to place one or a number of enterprises in a better competitive position than other enterprises.

Article 30 *Imposing conditions on other enterprises signing contracts for the purchase and sale of goods and services, or forcing other enterprises to agree to obligations which are not related in a direct way to the subject of the contract*

1. Imposing conditions on other enterprises signing contracts for the purchase and sale of goods and services means imposing the following conditions precedent to signing contracts:
 - (a) Restrictions on the manufacture and distribution of other goods; purchase [and/or] supply of other services not directly related to the undertaking of the agent pursuant to the laws on agency;

- (b) Geographical restrictions on resale of goods, except in cases where the goods are on the list of goods for which conducting business is subject to conditions or for which conducting business is restricted pursuant to law;
 - (c) Restrictions on the customers who may purchase the goods for resale, except for the goods stipulated in sub-clause (b) above;
 - (d) Restrictions on the form [and/or] volume of goods to be supplied.
2. Forcing other enterprises to agree to obligations which are not related in a direct way to the subject means tying the purchase or sale of goods and services the subject of a contract to other factors in that there is also an obligation to purchase other goods and services from a distributor or from a pre-appointed person or there are other obligations outside the necessary scope and which form part of contractual performance.

Article 31 *Preventing market participation by new competitors*

Preventing market participation by new competitors means the practice of creating the following barriers:

1. Requiring [requesting?] one's customers not to trade with new competitors.
2. Threatening or pressurizing distributors or retail outlets not to agree to distribute the goods of new competitors.
3. Selling goods at a price which is sufficient to disenable new competitors to gain market access but not within the cases stipulated in article 23 of this Decree.

Article 32 *Imposition of disadvantageous conditions on customers by an enterprise in a monopoly position*

Imposition of disadvantageous conditions on customers by an enterprise in a monopoly position means the practice of compelling a customer to agree unconditionally to obligations which cause difficulty to the customer during the process of performance of the contract.

Article 33 *Abuse of monopoly position in order to unilaterally change or terminate a signed contract without legitimate reason*

Abuse of monopoly position in order to unilaterally change or terminate a signed contract without legitimate reason means practices by an enterprise in a monopoly position in one of the following forms:

1. Unilaterally changing or terminating a signed contract without the necessity of prior notice to the customer where there is no liability to bear any sanction [contractual penalty].
2. Unilaterally changing or terminating a signed contract based on one or more reasons not directly related to essential conditions in order to continue to fully implement the contract where there is no liability to bear any sanction [contractual penalty].

SECTION 5

Economic Concentration

Article 34 *Controlling or governing all or one of the trades of another enterprise*

Controlling or governing all or one of the trades of another enterprise as stipulated in article 17.3 of the *Law on Competition* means an enterprise (hereinafter referred to as the *controlling enterprise*) obtains ownership of the assets of another enterprise (hereinafter referred to as the *controlled enterprise*) sufficient to give the controlling enterprise fifty (50) per cent of the voting rights at the general meeting of shareholders, board of management or at a level which according to law or the charter of the controlled enterprise is sufficient to enable the controlling enterprise to govern the financial policies and operations of the controlled enterprise aimed at receiving economic benefit from the business operations of the controlled enterprise.

Article 35 *Acquisition of another enterprise not deemed to be an economic concentration*

1. Where an insurance enterprise or a credit institution acquires another enterprise aimed at reselling it within a maximum period of one year, such acquisition shall not be deemed to be an economic concentration if the acquiring enterprise does not exercise the right to control or govern the acquired enterprise, or only exercises such right in a compulsory context in order to achieve the aim of resale.
2. An insurance enterprise or a credit institution prescribed in clause 1 of this article must submit to the administrative body for competition a file for notification of the acquisition containing the items prescribed in article 21.1 of the *Law on Competition*.
3. The time-limit for reselling the enterprise prescribed in clause 1 of this article may be extended by the head of the administrative body for competition at the request of the acquiring enterprise if the latter proves it was unable to sell the acquired enterprise within the one year period.

Article 36 *An enterprise which is currently at risk of being dissolved or of becoming bankrupt*

1. An enterprise which is currently at risk of being dissolved means an enterprise in the category of enterprises for which the law prescribes it is compulsory that it be dissolved but it has not yet conducted dissolution procedures or it is currently conducting dissolution procedures but there is not yet a dissolution decision from the competent body pursuant to law.
2. An enterprise which is currently at risk of becoming bankrupt means an enterprise unable to pay its due debts on demand by creditors as stipulated in article 3 of the *Law on Bankruptcy*.

Article 37 *Financial reports in a file for notification of an economic concentration in the case of a newly established enterprise which has been conducting business operations for less than one financial year*

Financial reports in a file for notification of an economic concentration by an enterprise participating in an economic concentration being a newly established enterprise which has been conducting business operations for less than one financial year, shall be replaced by the following data:

1. Declaration of amount of charter capital, fixed assets, mobile assets and debts certified by an independent auditing organization established in accordance with law.

2. Declaration of amount of tax paid as from the date of commencement of operations until the date the enterprise provides notification of its participation in the economic concentration.

Article 38 *Reply to notification of an economic concentration*

1. A reply to notification of an economic concentration must be provided in writing.
2. The reply to notification of an economic concentration from the administrative body for competition must be sent to the following entities:
 - (a) Business registration office and other bodies competent pursuant to law to approve a merger, consolidation, acquisition or joint venture;
 - (b) Legal representative of the parties participating in the economic concentration;
 - (c) Parties participating in the economic concentration.

SECTION 6

Procedures for Obtaining Exemption

Article 39 *Financial reports in a file for request of exemption in the case of a newly established enterprise which has been conducting business operations for less than one financial year*

The financial reports in a file for request of exemption in the case of a newly established enterprise which has been conducting business operations for less than one financial year shall be replaced by the data prescribed in article 37 of this Decree.

Article 40 *Explanatory report in a file for request of exemption*

1. A specific explanatory report on satisfaction of the criteria for entitlement to exemption pursuant to articles 10.1 [and/or] 19.2 of the *Law on Competition* must be provided in the form of a pre-feasibility report either formulated or evaluated by a science and technology organization or a research and development organization established pursuant to the Law on Science and Technology dated 9 June 2000.
2. A specific explanatory report on satisfaction of the criteria for entitlement to exemption pursuant to article 19.1 of the *Law on Competition* must prove that one or more of the parties participating in the economic concentration is currently at risk of being dissolved or of becoming bankrupt as stipulated in article 36 of this Decree.

Article 41 *Responsibility to evaluate a file for request of exemption*

1. Where an economic concentration falls within the category for which the Minister of Trade has authority to make a decision on exemption, then the administrative body for competition must evaluate the file for request of exemption and submit it to the Minister of Trade for his decision within the time-limit prescribed in clauses 1 and 2 of article 34 of the *Law on Competition*.
2. Where an economic concentration falls within the category for which the Prime Minister of the Government has authority to make a decision on exemption, then the administrative body for competition must evaluate the file for request of exemption and send letters

seeking opinions on the request of exemption from ministries, ministerial equivalent bodies, Government bodies and other organizations and agencies concerned within a time-limit of fifty (50) days from the date of receipt of a complete file for request of exemption. If there are a number of complex factors then this time-limit shall be one hundred (100) days.

The organizations and agencies whose opinions on the request of exemption is sought must reply in writing to the administrative body for competition within a time-limit of fifteen (15) days from the date of receipt of the letter seeking an opinion.

Within a time-limit of fifteen (15) days from the date of receipt of all opinions from the organizations and agencies requested, the administrative body for competition shall collate such opinions and include them in a draft evaluation report so that the Minister of Trade may submit it to the Prime Minister of the Government for his consideration and decision.

Article 42 *Basic contents of a written evaluation of a file for request of exemption*

A written evaluation of a file for request of exemption shall contain the following basic particulars:

1. Compliance with the time-limit by the explanatory report on satisfaction of the criteria for entitlement to exemption.
2. Issues on which there are differing opinions and a plan for dealing with such issues.
3. Opinion of the administrative body for competition or of the Minister of Trade where the economic concentration falls within the category for which the Prime Minister of the Government has authority to make a decision on exemption.

Article 43 *Making public any decision granting exemption*

The administrative body for competition shall be responsible to make public any decision granting exemption in the following forms:

1. Public listing at the headquarters of the administrative body for competition.
2. Public notification via the mass media.

Article 44 *Errors not deemed fraud in a file for request of exemption*

Errors which shall not be deemed to be fraud during an application for exemption prescribed in clauses 1, 2, 3, 4 and 5 of article 8 of the *Law on Competition* shall comprise spelling mistakes, typing mistakes and printing mistakes not related to data in financial reports and which do not change the basic data in the explanatory report in a file for request of exemption.

CHAPTER 3

Competition Cases

SECTION I

Acceptance of Jurisdiction over Complaints about Competitive Practices

Article 45 *Contents of a complaint application in a complaint file about a competitive practice*

A complaint application in a complaint file about a competitive practice as stipulated in article 58 of the *Law on Competition* shall contain the following basic particulars:

1. Date of the complaint application.
2. Name of the administrative body for competition.
3. Name and address of the complainant.
4. Name and address of the party the subject of the complaint.
5. Name and address of any person with related interests and obligations.
6. Specific matters which the administrative body for competition is requested to resolve.
7. Full names and addresses of any witnesses.
8. Grounds proving the complaint is valid.
9. Other information the complainant considers necessary for resolution of the competition case.
10. Signature of the complainant or his legal representative.

Article 46 *Return of a complaint file about a competitive practice*

1. Within a time-limit of seven (7) working days from the date of receipt of a file about a competitive practice, the administrative body for competition shall check the completeness and validity of the file. If the file lacks the material required by article 58.3 of the *Law on Competition*, then the administrative body for competition shall notify the complainant to supplement the file within thirty (30) days, and in special cases the administrative body for competition may extend this time-limit once by fifteen (15) days at the request of the complainant.
2. The administrative body for competition shall return a complaint file about a competitive practice in the following circumstances:
 - (a) When the time-limit prescribed in article 58.2 of the *Law on Competition* has expired;
 - (b) When the matter is not within the investigative jurisdiction of the administrative body for competition;
 - (c) When the time-limit prescribed in clause 1 of this article has expired and the administrative body for competition has not received a complete and valid file.
3. A complainant shall have the right to complain to the Minister of Trade within a time-limit of five working days from the date of receipt of a complaint file returned by the administrative body for competition. Within a time-limit of seven (7) working days from the date of receipt of such complaint, the Minister of Trade shall issue one of the following decisions:

- (a) To maintain the return of the complaint file about the competitive practice;
- (b) To require the administrative body for competition to accept jurisdiction over the complaint file about the competitive practice.

Article 47 *Acceptance of jurisdiction over a complaint file about a competitive practice*

1. After receipt of a complete and valid file about a competitive practice, the administrative body for competition shall immediately notify the complainant to make advance payment of fees for resolving the competition case unless advance payment is exempt pursuant to article 56 of this Decree.
2. Within a time-limit of fifteen (15) days from the date of receipt of the notice from the administrative body for competition prescribed in clause 1 of this article, the complainant shall make advance payment of fees for resolving the competition case.
3. The administrative body for competition shall only accept jurisdiction over a complaint file about a competitive practice after it receives a receipt for advance payment of the fees for resolving the competition case, unless the complainant is exempt from advance payment of fees pursuant to article 56 of this Decree.

SECTION 2

**Persons with Related Interests and Obligations,
Lawyers for Persons with Related Interests and Obligations**

Article 48 *Persons with related interests and obligations in a competition case*

1. A person with related interests and obligations in a competition case means a person who does not lodge a complaint file about a competitive practice and who is not the party subject to investigation, but resolution of the competition case does involve such person's interests and obligations; and such person himself, or the complainant, or the party subject to investigation proposes that such person participate in the legal proceedings in his capacity as a person with related interests and obligations and the administrative body for competition [and/or] the council dealing with the competition case agree to such participation.
2. If resolution of a competition case does involve the interests and obligations of any one person but no-one proposes that such person participate in the legal proceedings in his capacity as a person with related interests and obligations, then the administrative body for competition [and/or] the council dealing with the competition case shall include that person as a participant in the legal proceedings in his capacity as a person with related interests and obligations.

Article 49 *Independent claims by a person with related interests and obligations*

1. If a person with related interests and obligations does not participate in the legal proceedings jointly with the complainant or with the party subject to investigation as stipulated in article 71 of the *Law on Competition*, such person shall have the right to make an independent claim if he satisfies all the following conditions:
 - (a) Resolution of the competition case does involve his interests and obligations;

- (b) His independent claim is related to the competition case to be resolved;
 - (c) Resolution of the independent claim in the one competition case will assist a more accurate and speedier resolution of the main competition case.
2. The procedures for making an independent claim shall be conducted the same as the procedures for making a complaint about a competitive practice stipulated in Section 1 of this Chapter.

Article 50 *Lawyers for persons with related interests and obligations*

- 1. Any lawyer appointed by a person with related interests and obligations and who satisfies the conditions prescribed by the laws on lawyers for participation in legal proceedings shall have the right to participate in competition legal proceedings in order to protect the legitimate rights and interests of such person with related interests and obligations.
- 2. A lawyer for a person with related interests and obligations participating in competition legal proceedings shall have the rights and obligations prescribed in article 67 of the *Law on Competition*.

SECTION 3

Fees for Dealing with Competition Cases, Fees for Evaluation of Files for Request of Exemption, and Other Fees and Charges

Article 51 *Fees for dealing with competition cases*

Fees for dealing with competition cases as prescribed in article 62 of the *Law on Competition* shall comprise the following:

- 1. Fees for resolving a competition case instituted by a complaint file as prescribed in article 58 of the *Law on Competition* and fees for resolving a competition case after the administrative body for competition discovers there is an indication of a breach of the provisions of the *Law on Competition*.
- 2. Fees for resolving an independent claim by a person with related interests and obligations.

Article 52 *Principles for collection, payment and management of fees for dealing with competition cases and fees for evaluation of files for request of exemption*

- 1. All fees for dealing with competition cases and all fees for evaluation of files for request of exemption, once collected, must be promptly and fully paid into the State Budget.
- 2. Fees paid in advance to the administrative body for competition for dealing with a competition case shall be paid into a provisional account at the State Treasury and then withdrawn in order to execute the decision dealing with the competition case pursuant to a decision of the administrative body for competition [and/or] council dealing with the case.
- 3. If there is an order to repay in part or full the fees to the person who paid such fees in advance for dealing with a competition case as prescribed in clause 1 of this article, then the administrative body for competition shall conduct procedures to refund such fees to the payer.

4. If the payer of fees paid in advance for dealing with a competition case is [eventually] ordered liable to pay such fees, then the amount of fees collected shall be transferred into the State Budget after the effective date for execution of the decision of the administrative body for competition [and/or] council dealing with the case.
5. All fees for dealing with competition cases and all fees for evaluation of files for request of exemption shall be collected via the system of vouchers provided for in regulations of the Ministry of Finance.
6. When the market price of goods and services fluctuates by twenty (20) per cent or more, the Ministry of Trade shall co-ordinate with the Ministry of Finance to amend the level of fees for dealing with competition cases and fees for evaluation of files for request of exemption.

Article 53 *Level of fees for dealing with competition cases and advance payment of such fees*

1. The level of fees for resolving competition cases shall be regulated as follows:
 - (a) The level of fees for resolving a competition case applicable to unfair competitive practices shall be ten million (10,000,000) dong;
 - (b) The level of fees for resolving a competition case applicable to practices in restraint of competition shall be one hundred million (100,000,000) dong;
 - (c) The level of fees for resolving an independent claim by a person with related interests and obligations shall be ten million (10,000,000) dong.
2. The level of fees to be paid in advance for resolving competition cases shall be thirty (30) per cent of the fees stipulated in clause 1 of this article.

Article 54 *Handling fees paid in advance for dealing with a competition case*

1. The payer of fees paid in advance for dealing with a competition case shall be refunded all or part of such fees if such person is not [eventually] ordered by a decision of the administrative body for competition [and/or] council dealing with the case liable to pay such fees, or if he is ordered to liable to pay some fees but less than the full amount paid in advance.
2. The time-limit for a refund of fees paid in advance for dealing with a competition case as prescribed in clause 1 of this article shall be thirty (30) days as from the date of effectiveness of the decision dealing with the competition case.
3. In the case of a decision to stay an investigation as prescribed in article 88.1 of the *Law on Competition* or a decision to stay resolution of a case as prescribed in article 101.1(b) of the *Law on Competition*, any fees paid in advance for dealing with the competition case shall be paid into the State Budget.

Article 55 *Liability for fees for dealing with a competition case*

1. Liability of a complainant and/or parties subject to investigation to pay the fees for dealing with a competition case shall be decided by the administrative body for competition pursuant to article 63 of the *Law on Competition* unless payment of fees for dealing with the competition case is exempt pursuant to article 56 of this Decree.

2. Where the administrative body for competition [and/or] the council dealing with the case disallows an independent claim of a person with related interests and obligations, then such person shall be liable for payment of fees for dealing with the competition case applicable to such claim unless payment of fees for dealing with the competition case is exempt pursuant to article 56 of this Decree.
3. In the case of a decision to stay resolution of a case as prescribed in article 101.1(b) of the *Law on Competition*, the complainant [and/or] parties subject to investigation [and/or] persons with related interests and obligations shall be liable for payment of fifty (50) per cent of the fees for dealing with the competition case prescribed in article 53 of this Decree.

The complainant, the parties subject to investigation and the persons with related interests and obligations may reach agreement on their respective contribution to the fees, but if they fail to agree then the council dealing with the case shall make a decision.

4. If one party is exempt from payment of fees for dealing with the competition case, the other parties must still pay the fees for which they are liable as stipulated in clauses 1 and 2 of this article.

Article 56 *Cases where advance payment is not required of fees for dealing with a competition case and cases of exemption from payment of fees for dealing with a competition case*

If a person is in economic difficulty and such fact is certified by the people's committee of a commune, ward or township (hereinafter referred to as the *ward level people's committee*) or a social agency or organization in the place where such person resides or works, then the council dealing with the case shall make a decision on exemption of all or a part of the advance fees [and/or] the fees for dealing with the competition case.

Article 57 *Level of fees for evaluation of files for request of exemption*

The level of fees for evaluation of a file for request of exemption shall be fifty million (50,000,000) dong.

Article 58 *Other legal proceeding fees*

Other legal proceeding fees shall comprise experts fees, witnesses fees, interpreters fees and lawyers fees.

Article 59 *Advance fees for seeking an expert opinion, fees for an expert opinion*

1. Advance fees for seeking an expert opinion means fees which the administrative body for competition [and/or] the council dealing with the competition case [pays?] when seeking an expert opinion in order to implement such expert evaluation.
2. Fees for an expert opinion means necessary and reasonable fees paid for expert evaluation work implemented by an expert organization or individual and calculated in accordance with law.

Article 60 *Obligation to make advance payment of fees for an expert opinion*

1. The person seeking an expert opinion shall make advance payment of fees for the expert opinion unless the law provides otherwise.
2. If both parties involved jointly seek one expert opinion then each party shall pay fifty (50) per cent of the fees for the expert opinion in advance unless the law provides otherwise.

Article 61 *Dealing with fees paid in advance for an expert opinion*

1. If the person who actually made advance payment of fees for an expert opinion is not [eventually] ordered to be liable to pay such fees, then the person actually liable to pay such fees pursuant to the order of the administrative body for competition [and/or] the council dealing with the competition case must refund such fees to the former person.
2. If the person who actually made advance payment of fees for an expert opinion is [eventually] ordered to be liable to pay such fees, then such person must pay the deficit if the actual fees are more than the fees paid in advance, or such person must be refunded the excess if the actual fees are less than the fees paid in advance.

Article 62 *Obligation to pay fees for an expert opinion*

1. The party seeking an expert opinion shall pay the fees for the expert opinion if the result of the expert evaluation proves that the claim of such party was groundless.
2. The party not agreeing to the request to seek an expert opinion shall pay the fees for the expert opinion if the result of the expert evaluation proves that the party requesting the expert opinion had valid grounds [for doing so].

Article 63 *Witnesses expenses*

1. The party calling a witness shall be liable to pay the reasonable actual expenses of the witness.
2. The party proposing that the administrative body for competition [and/or] the council dealing with the competition case summons a witness shall be liable to pay the expenses of the witness if the declaration [of the witness] is true but incorrect in terms of the claim of the party making the said proposal.

If the declaration [of the witness] is true and also correct in terms of the claim of the party which proposed that the witness be summonsed, then the party with a claim independent from the claim of the party making the said proposal shall be liable to pay the expenses of the witness.

Article 64 *Interpreters and lawyers expenses*

1. Interpreters expenses means fees payable to the interpreter during the process of resolution of the competition case as agreed between the person calling the interpreter and the interpreter, or the amount of fees payable in accordance with law.
2. Lawyers expenses means fees payable to a lawyer as agreed between the person inviting the lawyer and the lawyer in the scope of the rules of the lawyers' office and in accordance with law.

3. The person calling the interpreter and the person inviting the lawyer shall be liable to pay the expenses of the interpreter and the lawyer respectively, unless the parties agree otherwise.
4. The administrative body for competition [and/or] the council dealing with the competition case shall be liable to pay the expenses of the interpreter if such body or council requested the interpreter.

SECTION 4

Issuance and Service of Summonses and Notifications in Competition Legal Proceedings

Article 65 *Obligation to issue and serve summonses or to provide notifications in competition legal proceedings*

The administrative body for competition [and/or] the council dealing with the competition case shall be obliged to issue and serve summonses or to provide notifications of competition legal proceedings prescribed in article 66 of this Decree to complainants, to parties subject to investigation, to other people participating in the legal proceedings and to other organizations and individuals involved pursuant to the provisions of the *Law on Competition* and this Decree.

Article 66 *Contents of legal documents in legal proceedings*

The following documents shall comprise summonses which must be issued and served and notifications which must be provided in competition legal proceedings:

1. A decision on investigation of a competition case issued by the head of the administrative body for competition.
2. A decision dealing with a competition case issued by the administrative body for competition or the council dealing with the competition case.
3. A complaint about a competition case and a complaint about a decision resolving a competition case.
4. Notifications, summonses and invitations in competition legal proceedings.
5. Receipts for advance payment of fees for dealing with a competition case, receipts for payment of fees for dealing with a competition case and receipts for payment of other fees.
6. Other legal documents in legal proceedings as stipulated by law.

Article 67 *Persons responsible to issue and serve summonses or to provide notifications in competition legal proceedings*

1. The following people shall be responsible to issue and serve summonses or to provide notifications in competition legal proceedings:
 - (a) People conducting competition legal proceedings and people assigned the duty to issue and serve summonses or to provide notifications in competition legal proceedings by the agency issuing legal instruments on competition legal proceedings;

- (b) Ward level people's committees where a person participating in competition legal proceedings resides or a social agency or organization in the place where such person works pursuant to a request from the administrative body for competition [and/or] the Competition Council.
2. Any person who is responsible to issue and serve summonses or to provide notifications in competition legal proceedings but who fails to do so shall, depending on the nature and seriousness of the breach, be disciplined, be subject to administrative penalty or be subject to criminal prosecution; and if loss and damage is caused, compensation must be paid in accordance with law.

Article 68 *Methods of issuing summonses and of providing notification in legal proceedings*

Summonses in competition legal proceedings shall be served and notifications in competition legal proceedings shall be provided by the following methods:

1. By direct [i.e. personal delivery], or by [delivery] via the post office, or by [delivery] via an authorized third party.
2. By public listing.
3. By notification via the mass media.

Article 69 *Procedures for issuing summonses and providing notification directly to individuals*

1. The person responsible to issue and serve summonses or to provide notifications in competition legal proceedings shall do so by personal delivery to the addressee who must sign receipt on minutes or in a register of legal documents³.
2. If the addressee is absent then the legal document may be delivered to a relative with full civil capacity and who resides at the same address as the addressee, and the relative shall sign for the legal document and be requested to undertake to deliver it into the hands of the addressee.

If the addressee does not have a relative with full civil capacity residing at the same address as the addressee, or if there is such a relative but the relative refuses to accept service of the legal document then the legal document may be served on the ward level people's committee where the addressee resides with a request that such people's committee redeliver the legal document into the hands of the addressee.

3. When summonses are served and notifications are provided by delivery by an authorized third party, such third party must prepare minutes stating if the addressee was absent and on whom the legal document was served; the reasons for this, the time and date of service, the relationship of the person served and whether the person served undertook to deliver the legal document into the hands of the addressee. The minutes shall be signed by the third party delivering the legal document, by the person on whom the legal document was served, and by a witness.
4. If the addressee of a summons or notification in competition legal proceedings has changed address, then such legal document shall be served on the addressee at the new address.

³ Note the whole of this section is a quick draft and will no doubt be amended in the final version.

5. If the addressee of a summons or notification in competition legal proceedings is absent and it is unclear when he will return or if his address is uncertain then the person serving the document shall prepare minutes stating the reasons why the document could not be served, and the minutes shall be signed by the person providing the above-mentioned information.
6. If the addressee of a summons or notification in competition legal proceedings refuses to accept service of the legal document, then the person serving the document shall prepare minutes stating the reasons for the refusal, and the minutes shall record the refusal which shall be certified by the ward level people's committee.

Article 70 *Procedures for issuing summonses and providing notification directly to bodies and organizations*

1. If the addressee of a summons or notification in competition legal proceedings is a body or organization, the legal document must be directly handed to the legal representative of the body or organization or to the person responsible to accept legal documents on behalf of such body or organization, in which case such latter person must sign their acceptance [on the legal document, on minutes or in a register of legal documents?].
2. If the addressee of a summons or notification in competition legal proceedings is a body or organization which has a legal representative participating in the proceedings or which appoints someone to accept service of the legal document, then such legal representative or appointed person must sign their acceptance on the legal document.

Article 71 *Procedures for public listing*

1. Legal documents in competition legal proceedings shall only be publicly listed when the whereabouts of the addressee of the summons or notification are unclear or when personal⁴ service of the legal document is unable to be effected.
2. The public listing of legal documents in competition legal proceedings shall be implemented directly by the administrative body for competition [and/or] the Competition Council, or shall be implemented by delegation of authority to the ward level people's committee where the addressee of the summons or notification resides, or the legal document shall be publicly listed at the last known address of the said addressee in accordance with the following procedures:
 - (a) The original legal document shall be listed at the headquarters of the administrative body for competition [and/or] the Competition Council, at the ward level people's committee where the addressee of the summons or notification resides, or at the last known address of the said addressee;
 - (b) A copy of the legal document shall be listed at the place where the addressee of the summons or notification resides, or at the last known address of the said addressee;
 - (c) Minutes of implementation of public listing shall be prepared stating the dates of listing.
3. The duration of public listing of legal documents in competition legal proceedings shall be fifteen (15) days from the date of [initial] listing.

⁴ Literal translation is "direct".

Article 72 *Procedures for notification via the mass media*

1. [Legal documents in competition legal proceedings] shall only be notified via the mass media when there are legal regulations providing for same or when there are grounds for deciding that public listing will not result in the addressee of the summons or notification receiving same.
2. There may be notification via the mass media if other persons concerned so request, in which case such persons shall be liable for the costs of the notification via the mass media.
3. Any notification via the mass media shall take the form of publication in a central daily newspaper in three consecutive editions or of announcement on central radio or television on three consecutive days.

Article 73 *Notice of results of serving summonses and of provision of notification of legal documents in legal proceedings*

Where the entity serving a summons or providing notification of legal documents in legal proceedings is not the administrative body for competition or the Competition Council, such entity must notify the results to the administrative body for competition [and/or] the Competition Council immediately after effecting service.

SECTION 6⁵

Providing Proof, Evidence

Article 74 *Rights and obligation to provide proof*

1. A complainant, or a person with related interests and obligations who makes an independent claim, must provide evidence proving that such complaint or claim is legitimate and based on valid grounds.
2. A party opposing a complaint or claim against him by another party shall have the right to provide evidence proving that such opposition is based on valid grounds and such party must lead evidence of same.

Article 75 *Elements and events not required to be proven*

1. The following elements and events shall not be required to be proven:
 - (a) Clear elements and events which everyone knows and which are recognized by the administrative body for competition [and/or] the council dealing with a competition case;
 - (b) Relevant [literally "appropriate"] elements and events which have been determined in legally effective decisions or judgments of a court, in a legally effective decision dealing with a competition case passed by the administrative body for competition or the council dealing with a case, or in a legally effective decision passed by a competent State body;

⁵ Note the draft omits Section 5.

- (c) Elements and events which are recorded in notarized legal documents.
2. If one party introduces an element or event which a second party recognizes or does not dispute, then the former party shall not be required to prove such element or event.
 3. If a party has a legal representative participating in the legal proceedings and such representative recognizes [an element or event], recognition by the legal representative shall be deemed to be recognition by the party.

Article 76 *Determining what is evidence*

1. For material objects to be evidence they must be original exhibits relating to the case.
2. Declarations of witnesses and explanations by organizations and individuals concerned shall be deemed to be evidence if they are recorded in the form of written documents, on recording or video tapes or disks, or on other aural or video forms enclosed with written verification about how the tape or disk was recorded, or [in the form of] statements taken at an investigative hearing.
3. Original data, copies of original data and translations of original data which have been legally notarized or which have been supplied or verified by a competent agency or organization shall be deemed to be evidence if they are data which can be read.
4. The results of an expert evaluation shall be deemed to be evidence if such evaluation was correctly conducted in accordance with the procedures stipulated by law.

Article 77 *Filing evidence*

1. All parties concerned shall have the right to file evidence with the administrative body for competition [and/or] with the council dealing with the competition case during the process of investigation and resolution of a competition case.
2. The filing of evidence as prescribed in clause 1 of this article must be minuted. The minutes shall record the name, form, contents and special characteristics of the evidence; the number of pages and the number of copies of the evidence; the date of filing, and the signatures and seals (if any) of the person filing and of the person receiving the evidence. The minutes shall be prepared in two copies, one copy to be retained in the file of the competition case, and one copy to be retained by the person filing the evidence.

Article 78 *Taking statements from complainants, from parties subject to investigation, from persons with related interests and obligations, and from witnesses*

1. Complainants, parties subject to investigation, persons with related interests and obligations and witnesses must write their own statements and sign them; or if such parties are unable to write their own statements then investigators or members of the council dealing with the competition case shall take the statements. The taking of statements shall only concentrate on those elements which are incomplete or unclear in declarations already made by such complainants, parties subject to investigation, persons with related interests and obligations, and witnesses.
2. The taking of statements as prescribed in clause 1 of this article shall be implemented at the headquarters of the administrative body for competition [and/or] of the Competition Council, but in necessary cases may be implemented outside such headquarters.

3. Minutes of a declaration must be re-read by or re-read to the declarant who must then sign or make a finger imprint on the minutes. The declarant shall have the right to require that the minutes record any errors in or amendments of or additions to the declaration which the declarant shall then verify by signing or making a finger imprint. Minutes must bear the signature of the declarant and of the person writing the minutes, and be sealed by the administrative body for competition [and/or] of the Competition Council. In the case of minutes with more than one page, the pages must be affixed with overlapping seals.

In the case of minutes of a declaration prepared outside the headquarters of the administrative body for competition [and/or] of the Competition Council, there must be a witness or verification from a ward level people's committee or from an agency or organization in the place where such minutes were prepared.

4. If any statement is taken from a complainant, from a party subject to investigation, from a person with related interests and obligations or from a witness by a minor or by a person with restricted civil capacity then the legal representative of such minor or person with restricted civil capacity must be present during the taking of the statement.

Article 79 *Seeking expert opinion*

1. The head of the administrative body for competition [and/or] the council dealing with the competition case may issue a decision seeking an expert opinion on his/its own initiative or on the recommendation of an investigator or on the proposal of a related party. Any decision seeking an expert opinion must specify the name and address of the expert, the object of and issues on which the expert opinion is sought, and specific matters on which the expert must provide a conclusion.
2. If it is considered that the expert conclusion is incomplete, unclear or illegal, the head of the administrative body for competition [and/or] the council dealing with the competition case may issue a decision seeking an additional opinion or a re-evaluation. A re-evaluation may be conducted by the originally appointed expert or by another expert organization in accordance with law.

Article 80 *Seeking expert opinion on evidence which is denounced as false*

1. If evidence is denounced as false, the person leading the evidence shall have the right to withdraw it; and if the person leading the evidence does not withdraw it, then the person denouncing the evidence shall have the right to request the administrative body for competition [and/or] the council dealing with the competition case to seek an expert opinion pursuant to article 79 of this Decree.
2. If the falsification of evidence bears signs of a criminal offence, the administrative body for competition [and/or] the council dealing with the competition case shall transfer the matter to the competent criminal investigation agency.
3. Any person leading false evidence must pay compensation for loss and damage if the falsification of the evidence caused loss and damage to others.

Article 81 *Preservation of evidence [which has been filed]*

1. The administrative body for competition [and/or] the council dealing with the competition case shall be responsible to preserve any evidence which has been filed with it.

2. If evidence cannot be filed with the administrative body for competition [and/or] the council dealing with the competition case, then the person holding such evidence shall be responsible to preserve it.
3. If it is necessary to assign evidence to a third party for preservation, then the administrative body for competition [and/or] the council dealing with the competition case shall issue a decision on, and prepare minutes of the assignment of evidence for preservation. The assignee shall sign the minutes, shall be entitled to remuneration, and shall be liable for preservation of the evidence.

Article 82 *Assessment of evidence*

1. Assessment of evidence must be objective, across the board, complete and accurate.
2. The administrative body for competition [and/or] the council dealing with the competition case shall assess each item of evidence and the relationship between items of evidence, and shall confirm the legal value of each item of evidence.

Article 83 *Announcement of and use of evidence*

1. Each item of evidence must be publicly announced and used equally, except for the cases prescribed in clause 2 of this article.
2. The administrative body for competition [and/or] the council dealing with the competition case shall not publicly announce the following items of evidence:
 - (a) Evidence which pursuant to law is a State secret;
 - (b) Evidence which relates to good morals and customs, professional secrets, business secrets, or private life secrets pursuant to a legitimate request from a related party.

SECTION 7

**Administrative Preventive Measures During Investigations
and While Dealing with Competition Cases**

Article 84 *Administrative preventive measures during investigations and while dealing with competition cases*

Administrative preventive measures during investigations and while dealing with competition cases shall comprise:

1. Personal detention [arrest] pursuant to administrative procedures.
2. Seizure of exhibits and facilities in breach of the laws on competition.
3. Body searches.
4. Searches of vehicles and other objects.
5. Searches of places used to hide evidence and the facilities in breach of the laws on competition.

Article 85 *Principles for applying, amending or rescinding administrative preventive measures during investigations and while dealing with competition cases*

The application, amendment or rescission of administrative preventive measures during investigations and while dealing with competition cases must comply with articles 61.2, 61.3 and 61.4, article 76.6, article 79.4 and article 81.2 of the *Law on Competition*, with this Section of this Decree, and with the Ordinance on Dealing with Administrative Offences.

Article 86 *Personal arrest pursuant to administrative procedures*

1. A personal arrest pursuant to administrative procedures shall only be conducted when it is essential to collate and verify important elements as the basis for a decision dealing with the competition case.
2. A personal arrest pursuant to administrative procedures prescribed in clause 1 of this article must comply with the Ordinance on Dealing with Administrative Offences and with Decree No. 62-2004-ND-CP dated 7 September 2004 on personal arrests pursuant to administrative procedures.

Article 87 *Jurisdiction to make a personal arrest during investigations and while dealing with a competition case*

1. The following persons shall have jurisdiction to make a personal arrest pursuant to administrative procedures during investigations and while dealing with a competition case:
 - (a) The head of the administrative body for competition;
 - (b) The chairman of the Competition Council.
2. If the people prescribed in clause 1 of this article are absent then their deputies shall have authority to issue a decision on personal arrest pursuant to administrative procedures, and such deputy shall be responsible for his decision.

Article 88 *Seizure of exhibits and facilities in breach of the laws on competition*

1. The seizure of exhibits and facilities in breach of the laws on competition shall only be conducted when it is essential to verify important elements as the basis for a decision dealing with the competition case or in order to immediately halt a practice in breach.
2. The people prescribed in article 87 of this Decree shall have jurisdiction to conduct the seizure of exhibits and facilities in breach of the laws on competition.
3. If there are grounds for believing that unless there is an immediate seizure of exhibits and facilities in breach of the laws on competition then such exhibits and facilities may be dispersed or destroyed, such a seizure may be carried out at the request of the head of the administrative body for competition or the chairman of the Competition Council by a member of the people's police or border guard, forest ranger, customs officer, market controller or member of a specialist inspectorate.
4. Any seizure of exhibits and facilities in breach of the laws on competition shall be minuted. The minutes shall record the name, quantity and type of exhibit or facility which was seized, and the signatures of the person conducting the seizure and of the person in breach. The person issuing the decision on seizure and the person conducting the seizure shall be responsible to preserve such exhibits and facilities; and if such seized exhibits

and facilities are lost, sold, replaced or damaged due to the fault of such person [such people?], then such person must pay compensation for loss and damage and shall be dealt with in accordance with law.

If exhibits and facilities need to be sealed, this shall be done in front of the person in breach and if the latter is absent then sealing shall take place in the presence of a family representative, [and/or] representative of the organization, [and/or] a representative of the local authorities and a witness.

5. The following exhibits and facilities must be preserved in accordance with the applicable law: Vietnamese dong, foreign currency, gold and silver, precious stones and gems, drugs and other objects subject to special control regimes. Where the exhibits and facilities are damaged goods and products, the person issuing the decision on seizure must deal with them in accordance with article 61.3 of the Ordinance on Dealing with Administrative Offences.
6. The person issuing the decision on seizure must deal with the exhibits and facilities within a time-limit of ten (10) days from the date of seizure by measures stated in a decision on dealing with the exhibits and facilities or else return them to an organization or individual if the administrative penalty of confiscation is not applied. If there are complex factors and there needs to be verification, then this time-limit may be extended to a maximum of sixty (60) days by a decision of the head of the administrative body for competition or by the chairman of the Competition Council.

Article 89 *Body searches pursuant to administrative procedures*

1. A body search pursuant to administrative procedures shall only be conducted when there are grounds for believing someone is hiding on his person things, data and facilities in breach of the laws on competition.
2. The people prescribed in article 87 of this Decree shall have jurisdiction to conduct a body search pursuant to administrative procedures.
3. If there are grounds for believing that unless there is an immediate body search for things, data and facilities in breach of the laws on competition then such objects may be dispersed or destroyed, then such a search may be carried out at the request of the head of the administrative body for competition or the chairman of the Competition Council by the people prescribed in article 87 of this Decree, a member of the people's police, a policeman on guard, a border guard, forest ranger, or a market controller conducting the civil service work of a body search pursuant to administrative procedures.
4. Prior to conducting a body search, the person conducting the search must notify the decision on the body search to the person to be searched. A male person must conducting the search of a male, a female person must conducting the search of a female, and there must be a witness of the same sex as the person searched.
5. Every case of a body search must be minuted, and the decision on the body search and the minutes of the body shall be handed to the person searched.

Article 90 *Searches of places used to hide evidence and facilities in breach of the laws on competition*

Searches of places used to hide evidence and facilities in breach of the laws on competition shall be conducted in accordance with the following provisions:

1. The people prescribed in article 87 of this Decree shall have jurisdiction to issue a decision on the conduct of a search of a place used to hide evidence and facilities in breach of the laws on competition.
2. A place used to hide evidence and facilities in breach of the laws on competition means a place where a person in breach hides an exhibit, money, goods or facilities in breach of the laws on competition. If someone hides evidence and facilities on his person, the administrative preventive measure of a body search prescribed in article 89 of this Decree shall be applied.
3. If the place used to hide evidence and facilities in breach of the laws on competition is a residence, then an authorized person shall only conduct a search with written agreement from the chairman of the district people's committee of the location where the object is hidden.

Residence as prescribed in this Decree means a location used for regular residence by an individual or family household with permanent or temporary residential registration; [or] with registration of facilities if such facilities are the regular residence of the individual or family household.

4. Every case of a search of a place used to hide evidence and facilities must be minuted.

Article 91 *Procedures for applying administrative preventive measures*

1. Any person recommending to the head of the administrative body for competition or the chairman of the Competition Council the application of administrative preventive measures prescribed in article 61.2 of the *Law on Competition* shall prepare an application and forward it to the head of the administrative body for competition or the chairman of the Competition Council.

An application recommending administrative preventive measures shall contain the following basic particulars:

- (a) Date of the application;
- (b) Name and address of the applicant;
- (c) Name and address of the party against whom administrative preventive measures are recommended;
- (d) Summary of the acts infringing the legitimate rights and interests of the applicant;
- (dd) Reason for applying administrative preventive measures;
- (e) Specifically recommended administrative preventive measure/s and any other recommendations.

Depending on the specifically recommended administrative preventive measure/s, the applicant must provide proof of the necessity to apply same.

2. Within a time-limit of three days from the date of receipt of the application, if the applicant does not [literal translation but query] provide security or immediately after the applicant does provide security pursuant to article 93 of this Decree, the head of the administrative

body for competition or the chairman of the Competition Council shall issue a decision on application of administrative preventive measures and in a case of refusal to do so, must provide written reasons therefore.

3. If the council dealing with a competition case receives an application recommending administrative preventive measures at an investigative hearing, the chairman of the investigative hearing shall make a recommendation to the chairman of the Competition Council to consider issuing a decision on immediately applying administrative preventive measures or on applying such measures after the applicant has provided security pursuant to article 93 of this Decree.

Article 92 *Issuance by the head of the administrative body for competition or by the chairman of the Competition Council of a decision applying administrative preventive measures*

The head of the administrative body for competition or the chairman of the Competition Council may [on his/its own initiative] issue a decision applying administrative preventive measures if there is no recommendation made pursuant to article 91 of this Decree.

Article 93 *Compulsory payment of a security sum*

The complainant in a competition case who submits an application recommending that the head of the administrative body for competition or the chairman of the Competition Council apply administrative preventive measures must lodge a sum of money, precious stones or gems or valuable papers in a frozen account at the State Treasury for a fixed period as specified by the head of the administrative body for competition or the chairman of the Competition Council.

Article 94 *Amending or applying supplementary administrative preventive measures*

The procedures prescribed in article 91 of this Decree shall apply to the amending or applying of supplementary administrative preventive measures when it is considered the current measures are no longer appropriate and must be changed or that supplementary measures need to be applied.

Article 95 *Rescinding application of administrative preventive measures*

1. The head of the administrative body for competition or the chairman of the Competition Council must issue a decision rescinding administrative preventive measures previously applied in one the following circumstances:
 - (a) The applicant for the original application of the administrative preventive measures requests their rescission;
 - (b) The duration [in a decision on] seizure of exhibits and facilities in breach of the laws on competition has expired.
2. When there is a rescission of administrative preventive measures previously applied, the applicant for the original application shall receive the money, precious stones or gems or valuable papers prescribed in article 93 of this Decree, except for the cases stipulated in article 61.3 of the *Law on Competition*.

Article 96 *Effectiveness of any decision applying, amending or rescinding administrative preventive measures*

1. Any decision applying, amending or rescinding administrative preventive measures shall take immediate effect.
2. The head of the administrative body for competition or the chairman of the Competition Council must send any decision applying, amending or rescinding administrative preventive measures to the applicant, to the person subject to the administrative preventive measures, and to [other] organizations and individuals concerned.

SECTION 8

Investigative Hearings, and a Decision Dealing with a Competition Case Passed by the Council Dealing with Such Case

Article 97 *General requirements applicable to investigative hearings*

1. Investigative hearings must be held at the appointed time and location stated in the decision to open the investigative hearing or in the notification of re-opening of the adjourned investigative hearing.
2. A council dealing with a competition case must directly determine the elements of a competition case by questioning and by hearing explanations from complainants, from parties subject to investigation, from persons with related interests and obligations and from other participants; by considering and checking collated data and evidence; and by hearing the investigator who previously investigated the competition case summarise his conclusions of the investigation. A decision dealing with a competition case shall only be based on the results of questioning during the investigative hearing, on open debate and on evidence which has been considered and checked during the investigative hearing.
3. Questioning and open debate at an investigative hearing must be conducted uninterruptedly except for rest periods. All members of the council dealing with the competition case must attend the investigative hearing from its commencement until its termination except in the circumstances stipulated in article 98.1 of this Decree.

In special circumstances as stipulated in this Decree, an investigative hearing may be temporarily suspended for not more than five days and must be continued at the expiry of such period.

4. At least one member of the Competition Council who is not a member of the council dealing with the competition case must attend each investigative hearing.

Article 98 *Replacement of members of a council dealing with a competition case in special cases*

1. If a member of a council dealing with a competition case is unable to continue participation in the investigative hearing, then the member of the Competition Council attending the investigative shall replace such former member.
2. If the chairman of the investigative hearing is unable to continue participation in the investigative hearing, then the investigative hearing shall be temporarily suspended for not more than one working day in order for the chairman of the Competition Council to appoint another member of the council dealing with the competition case to replace such former chairman.

Article 99 *Presence at investigative hearings by complainants, by parties subject to investigation and by persons with related interests and obligations*

1. Complainants, parties subject to investigation and persons with related interests and obligations must be present at investigative hearings in accordance with any summons issued by the council dealing with the competition case, and if on the first occasion such parties are absent for a legitimate reason then the investigative hearing must be adjourned.
2. If a complainant, party subject to investigation or a person with related interests and obligations is validly summonsed to attend an investigative hearing on a second occasion but fails to attend, the council dealing with the competition case shall continue to conduct the investigative hearing in order to resolve the competition case in the absence of such person.
3. If a person with related interests and obligations who made an independent claim is validly summonsed to attend an investigative hearing on a second occasion but fails to attend, such person shall be deemed to have voluntarily withdrawn his independent claim and if the complainant and the party subject to investigation so agree, the council dealing with the competition case shall issue a decision staying resolution of the independent claim from such person.

Article 100 *Conducting an investigative hearing to resolve a competition case in circumstances where the complainant, party subject to investigation or persons with related interests and obligations are absent*

The council dealing with the competition case shall still continue to conduct the investigative hearing in order to resolve the competition case in the following circumstances:

1. Where a complainant, a party subject to investigation or a person with related interests and obligations is not present at the investigative hearing but makes an application requesting that the council dealing with the competition case resolve the competition case in such party's absence.
2. Where a complainant, a party subject to investigation or a person with related interests and obligations is not present at the investigative hearing but their legal representative attends the investigative hearing.
3. In the circumstances stipulated in article 99.2 of this Decree.

Article 101 *Presence of lawyers*

1. The lawyer for a complainant, for a party subject to investigation or for a person with related interests and obligations must participate in an investigative hearing in accordance with a summons issued by the council dealing with the competition case; and if on the first occasion the lawyer is absent for a legitimate reason then the investigative hearing must be adjourned.
2. If the lawyer for a complainant, for a party subject to investigation or for a person with related interests and obligations is validly summonsed to attend an investigative hearing on a second occasion but fails to attend, the council dealing with the competition case shall continue to resolve the competition case and the complainant, party subject to investigation or the person with related interests and obligations shall themselves protect their legitimate interests.

Article 102 *Presence of witnesses*

1. A witness must participate in an investigative hearing in accordance with a summons issued by the council dealing with the competition case in order to clarify the elements of the competition case. If a witness is absent but previously made a declaration directly to the council dealing with the competition case or sent a declaration to the council dealing with the competition case, then the chairman of the investigative hearing shall publicly announce such declaration.
2. If a witness fails to attend, the council dealing with the competition case shall issue a decision on adjournment of the investigative hearing or shall continue to conduct the investigative hearing; if a witness fails to attend an investigative hearing without a legitimate reason and such absence hinders resolution of the competition case then such person may be brought to the investigative hearing by the police at the request of the council dealing with the competition case.

Article 103 *Presence of experts*

1. An expert must participate in an investigative hearing in accordance with a summons issued by the council dealing with the competition case in order to clarify the matters the subject of the expert opinion and the conclusions of the expert.
2. If an expert fails to attend, the council dealing with the competition case may either adjourn the investigative hearing or continue to conduct the investigative hearing.

Article 104 *Presence of interpreters*

1. An interpreter must participate in an investigative hearing in accordance with a summons issued by the council dealing with the competition case.
2. If an interpreter fails to attend and there is no replacement person, the council dealing with the competition case shall issue a decision on adjournment of the investigative hearing unless the parties concerned request that the investigative hearing continue.

Article 105 *Presence of investigators*

1. The chairman of the Competition Council shall assign two investigators, at least one of whom has already investigated the competition case, to participate in an investigative hearing.
2. If a competition case is conducted pursuant to article 65.2 of the *Law on Competition* and both investigators are unable to continue participation in the investigative hearing, the council dealing with the competition case shall issue a decision on adjournment of the investigative hearing and shall notify the chairman of the Competition Council.

Article 106 *Time-limits applicable to duration of adjournment of an investigative hearing, and decisions on adjournment of an investigative hearing*

1. Where a council dealing with a competition case issues a decision on adjournment of the investigative hearing pursuant to articles 73.2 or 85.2 of the *Law on Competition* or pursuant to articles 99, 101, 102, 103, 104, 105, 113 or 119.4 of this Decree, then the duration of the adjournment shall not exceed thirty (30) days as from the date of issuance of the decision on adjournment.

2. A decision on adjournment of an investigative hearing shall contain the following basic particulars:
 - (a) Date of issuance of the decision;
 - (b) Names of the members of the council dealing with the competition case, and names of other people conducting the legal proceedings;
 - (c) The competition case which has been raised for resolution;
 - (d) The reason for the adjournment;
 - (dd) The time when and the location where the investigative hearing was opened.
3. Any decision on adjournment of an investigative hearing shall be signed by the chairman of the investigative hearing on behalf of the council dealing with the competition case, and shall be publicly announced for the information of the participants in the legal proceedings; and the council dealing with the competition case must immediately send the decision to the people [involved who] are not present.
4. If after an adjournment of an investigative hearing the council dealing with the competition case is unable to reopen the hearing at the correct time and location as appointed in the decision on adjournment, the council dealing with the competition case must immediately notify the participants in the legal proceedings of the actual time and location for reopening the investigative hearing.

Article 107 *Internal rules applicable to investigative hearings*

The chairman of the Competition Council shall promulgate internal rules applicable to investigative hearings, which rules shall contain the following basic particulars:

1. Persons under the age of 16 years may not enter the room where an investigative hearing is being held unless such persons participate pursuant to a summons issued by the council dealing with the competition case.
2. All persons in the room where an investigative hearing is being held must rise when the council dealing with the competition case enters the room. All persons must respect such council, must retain order, and must comply with the conditions propounded by the chairman of the investigative hearing.
3. People may only be questioned, provide answers to questions or make oral statements with permission from the council dealing with the competition case, and such people must do so standing unless they are permitted to be seated for reasons of health by the chairman of the investigative hearing.

Article 108 *Procedures for issuance of a decision by the council dealing with a competition case at an investigative hearing*

1. Any decision dealing with a competition case must be debated and passed in camera by the council dealing with the competition case.
2. Any decision on replacement of the person conducting the legal proceedings or of an expert or interpreter, any decision staying resolution of the competition case, and any

decision on adjournment of an investigative hearing must be debated and passed in camera by the council dealing with the competition case and then committed to writing.

3. Any decision on any other issue made by the council dealing with the competition case shall be debated and passed in the room where the investigative hearing is being held and need not be committed to writing but must be recorded in the minutes of the investigative hearing.

Article 109 *Minutes of an investigative hearing*

1. Minutes of an investigative hearing shall specify all the following particulars:
 - (a) All the particulars contained in the decision to conduct the investigative hearing as stipulated in article 102.2 of the *Law on Competition*;
 - (b) All developments which take place at the investigative hearing from its commencement until its termination;
 - (c) All questions, answers and oral statements at the investigative hearing.
2. In addition to recording minutes of an investigative hearing, the tape recording or filming of developments taking place at an investigative hearing may only be conducted with the consent of the council dealing with the competition case.
3. After termination of an investigative hearing, the chairman of the investigative hearing shall check the minutes of the investigative hearing and shall, together with the secretary to the investigative hearing, sign such minutes.
4. People participating in legal proceedings shall have the right to consider the minutes of the investigative hearing immediately after termination of such hearing, and to request amendments and addition to the minutes which amendments and additions they shall sign for verification.

Article 110 *Preparation for opening an investigative hearing*

Prior to opening an investigative hearing, the secretary to the investigative hearing shall carry out the following tasks:

1. Disseminate the internal rules applicable to investigative hearings.
2. Check the presence or absence of those people participating in the investigative hearing pursuant to a summons or notification issued by the council dealing with the competition case, and clarify the reasons for any absence.
3. Ensure order in the room where the investigative hearing is to be held.
4. Request all persons in the room where the investigative hearing is to be held to rise when the council dealing with the competition case enters the room.

Article 111 *Opening an investigative hearing*

1. The chairman of the investigative hearing shall open the hearing and read the decision to conduct the investigative hearing.

2. The secretary to the investigative hearing shall report to the council dealing with the competition case on the presence or absence of those people participating in the investigative hearing pursuant to a summons or notification issued by the council dealing with the competition case, and on the reasons for any absence.
3. In necessary cases, the chairman of the investigative hearing shall check the presence or absence of those people participating in the investigative hearing pursuant to a summons issued by the complainant, by the party subject to investigation or by a person with related interests and obligations.
4. The chairman of the investigative hearing shall announce the rights and obligations of the complainant, of the party subject to investigation, of persons with related interests and obligations, and of other people participating in the legal proceedings.
5. The chairman of the investigative hearing shall introduce the names of the people conducting the legal proceedings, and of experts and interpreters.
6. The chairman of the investigative hearing shall ask those people with the right to request a replacement of people conducting the legal proceedings, of experts and of interpreters, whether they wish to make any such request.

Article 112 *Resolution of a request to replace the people conducting the legal proceeding, the expert or an interpreter*

If anyone makes a request for the replacement of the people conducting the legal proceedings, of experts or of interpreters, then the council dealing with the competition case shall consider such request and make a decision accepting or rejecting it in accordance with the procedures stipulated in Chapter 5 of the *Law on Competition*, and in the case of rejection shall specify the reasons therefor.

Article 113 *Consideration of and decision on adjournment of an investigative hearing when someone is absent*

When a participant in the legal proceedings is absent from the investigative hearing and not within the circumstances when the council dealing with the competition case must adjourn the investigative hearing, the chairman of the investigative hearing shall ask if there is anyone who wishes the investigative hearing to be adjourned; and if there is such a request then the council dealing with the competition case shall consider such request and make a decision accepting or rejecting it in accordance with the procedures stipulated in Chapter 5 of the *Law on Competition* and in this Section, and in the case of rejection shall specify the reasons therefor.

Article 114 *Ensuring objectivity of witnesses*

1. Prior to putting any questions to a witness and in necessary cases, the chairman of the investigative hearing may make a decision on appropriate measures to ensure that a witness does not hear the declarations of other witnesses and does not make contact with persons involved.
2. If the declaration of a complainant, of the party subject to investigation, of a person with related interests and obligations and of a witness may affect the declarations of other participants, then the chairman of the investigative hearing may make a decision on isolating other participants prior to putting any questions to a witness.

Article 115 *Hearing explanations from complainants, from parties subject to investigation and from persons with related interests and obligations*

1. The council dealing with a competition case shall commence resolution of the case by hearing explanations from the complainants, from the party subject to investigation and from persons with related interests and obligations in the following order:
 - (a) The lawyer for the complainant shall explain the complaint and the evidence providing the grounds of and justification for the complaint. The complainant shall have the right to add his own opinion;
 - (b) The lawyer for the party subject to investigation shall explain the opinion of such party regarding the complaint, the claims of the party subject to investigation and the evidence providing the grounds of and justification for such claims. The party subject to investigation shall have the right to add his own opinion;
 - (c) The lawyer for any person with related interests and obligations shall explain the opinion of such person regarding the complaint, regarding the opinion and claims of the party subject to investigation; regarding any independent claim and demands of such person with related interests and obligations and the evidence providing the grounds of and justification for such claim and demands. The person with related interests and obligations shall have the right to add his own opinion.
2. If the complainant, the party subject to investigation or a person with related interests and obligations does not have a lawyer, then such party shall provide its own explanation of the complaint, of its claim and demands and the evidence providing the grounds of and justification for such complaint, claim and demands.
4. In the case of a competition case which does not have a complainant in that the case is brought by the administrative body for competition pursuant to article 65.2 of the *Law on Competition*, a report from the investigator shall replace the explanation from the people prescribed in clause 1(a) of this article.

Article 116 *Order for putting questions at an investigative hearing*

At the conclusion of the explanation from the complainant or from the investigator where the case is brought pursuant to article 65.2 of the *Law on Competition*, and at the conclusion of the explanation from the party subject to investigation and from any person with related interests and obligations, the following order shall apply to putting questions to each person on each issue:

1. The chairman of the investigative hearing.
2. Members of the council dealing with the competition case.
3. Lawyers for the parties, for the complainant, for the party subject to investigation, and for any person with related interests and obligations.
4. Other participants in the legal proceedings.

Article 117 *Putting questions to each complainant, each party subject to investigation, and to each person with related interests and obligations*

1. If there are a number of complainants, parties subject to investigation or persons with related interests and obligations, then questions shall be put to each complainant, to each party subject to investigation, or to each person with related interests and obligations.
2. Questions may only be put to the parties prescribed in clause 1 of this article on issues which the lawyers for the parties or people who have already provided an explanation have not yet clarified; or which contradict other issues, previous declarations or declarations yet to be given by lawyers for other parties.
3. A complainant, a party subject to investigation or a person with related interests and obligations may personally answer questions or may answer questions via such party's lawyer and thereafter the person to whom the questions are put may make an additional answer.

Article 118 *Taking evidence from witnesses*

1. Where there are a number of witnesses, each witness must be questioned separately in turn.
2. Prior to putting questions to a witness, the chairman of the investigative hearing shall enquire of the witness about his/her relationship if any with the complainant, with the party subject to investigation, and with any person with related interests and obligations in the competition case.
3. If a witness is a minor, the chairman of the investigative hearing may request a parent, guardian or teacher of such witness to assist with the questioning.
4. The chairman of the investigative hearing shall request a witness to explain clearly the elements of the competition case which such witness knows. When a witness has finished giving his/her evidence, the witness may only be additionally questioned about points which were not clearly or fully propounded; about points which contradict each other, which contradict previous declarations or explanations of other participants in the legal proceedings, or which contradict statements from the lawyers for such other parties.
5. In necessary cases, the safety of witnesses and their relatives must be ensured, and the council dealing with the competition case may make a decision on non-disclosure of the relatives of witnesses and on persons present at the investigative hearing not seeing the witnesses.

Article 119 *Taking evidence from experts*

1. The chairman of the investigative hearing shall request an expert to explain his conclusions on the issues on which he was asked for an expert opinion. An expert shall have the right to provide additional explanations on his conclusions and the grounds therefor.
2. Participants in the legal proceedings who are present at the investigative hearing shall have the right to make their observations about the conclusions of the expert, and to put questions on points which remain unclear, which contradict other points in the conclusion of the expert, or which contradict other elements in the competition case.
3. If an expert is not present at the investigative hearing, the chairman of the investigative hearing shall publicly announce the conclusions of the expert.

4. If a participant in the legal proceedings disagrees with the conclusions of an expert as publicly announced at the investigative hearing and requests additional expert evidence or the re-taking of expert evidence, then the council dealing with the competition case shall consider such request and make a decision accepting or rejecting it, and in the case of acceptance the council shall issue a decision on adjournment of the investigative hearing.

Article 120 *Procedure prior to concluding the taking of oral evidence from each person [literally just questioning] at an investigative hearing*

Prior to concluding questioning at an investigative hearing, the chairman of the investigative hearing shall ask the complainant, the party subject to investigation, any person with related interests and obligations, the lawyers for all the aforesaid parties and persons, and other participants in the legal proceedings if they wish to put any more questions and if anyone does so wish, the chairman of the investigative hearing shall consider the request and make a decision on it.

Article 121 *Order for addresses during open debate*

1. The order for addresses during open debate shall be as follows:
 - (a) The lawyer for the complainant. The complainant shall then have the right to add his own supplementary opinion;
 - (b) The lawyer for the party subject to investigation. The party subject to investigation shall then have the right to add his own supplementary opinion;
 - (c) The lawyer for any person with related interests and obligations. The person with related interests and obligations shall then have the right to add his own supplementary opinion.
2. Any complainant, party subject to investigation or person with related interests and obligations without a lawyer shall deliver his own address.
3. In the case of a competition case which does not have a complainant in that the case is brought by the administrative body for competition pursuant to article 65.2 of the *Law on Competition*, an address from the investigator shall replace the address of the lawyer for the complainant prescribed in clause 1(a) of this article.

Article 122 *Addresses during open debate*

1. Any person delivering an address on assessment of evidence and on the viewpoint for resolution of the competition case shall base the address on:
 - (a) Data and evidence already considered and checked during the investigative hearing;
 - (b) Results of questioning during the investigative hearing.
2. The time reserved for open debate shall be unrestricted.

Article 123 *Re-examination of witnesses*

If during open debate it is considered there are elements of the competition case not yet considered or considered incompletely, or that further evidence needs to be considered, the council dealing with the competition case may decide to re-open questioning and after further questioning is complete then the open debate shall continue.

Article 124 *Conclusion of open debate*

1. Prior to announcement of the conclusion of open debate, the party subject to investigation shall have the right to deliver an address on the competition case for an unrestricted time.
2. If the party subject to investigation raises during his address a new and important element in the competition case, the council dealing with the competition case must decide to re-open questioning.

Article 125 *Discussion prior to issuance of a decision [by the council] dealing with a competition case*

1. The council dealing with the competition case shall hold a discussion on issuance of a decision dealing with a competition case in camera and shall decide each issue by majority vote. A person with a minority view shall have the right to express it in writing and put it into the file on the competition case.
2. The discussion prescribed in clause 1 of this article must be based on the data and evidence already considered and checked during the investigative hearing, and on the results of questioning during the investigative hearing, and full consideration must be given to the opinion of the people participating in the proceedings.
3. During the discussion in order to issue a decision dealing with a competition case, there must be minutes recording the opinions expressed during the discussion and the decision of the council dealing with the case, which minutes must be signed by each member of the council prior to announcement of the decision of the council dealing with the case.
4. In a complex case requiring a long discussion prior to issuance of a decision dealing with case, the council dealing with the case may extend such time but not to exceed five working days from the date of conclusion of open debate at the investigative hearing. The council dealing with the case must notify the date and time for announcement of the decision of the council dealing with the case to those who were present at the investigative hearing and also to those participants in the proceedings who were absent from the investigative hearing; and if any person so notified is not present on the appointed date and time, the council dealing with the case shall continue to make its announcement of the decision dealing with the case in accordance with article 128 of this Decree.

Article 126 *Re-opening questioning and open debate*

If during the discussion in order to issue a decision dealing with a competition case, it is considered there are elements of the competition case not yet considered, or that questioning was incomplete, or that further evidence should be considered, the council dealing with the competition case may decide to re-open questioning and open debate.

Article 127 *Contents of a decision by the council dealing with the competition case*

1. The contents of a decision by the council dealing with the competition case shall comprise the opening section, a section summarizing the contents of the case and observations, and a section being the conclusion.
2. The opening section of a decision dealing with a competition case shall contain the following particulars:
 - (a) Date of acceptance of jurisdiction;
 - (b) Date of announcement of the decision dealing with the case;
 - (c) Names of all members of the council dealing with the case, and of the secretary to the investigative hearing;
 - (d) Names of any experts or interpreters;
 - (dd) Names and addresses of the complainant (if any), of the party the subject of the complaint, of any person with related interests and obligations, and of the legal representatives and lawyers for the aforesaid parties;
 - (e) Clause and article of the *Law on Competition* which was breached;
 - (g) Number and date of the decision to conduct the investigative hearing;
 - (h) Duration of investigative hearing, where it was held, and form of holding the investigative hearing.
3. The section summarizing the contents of the case and observations shall contain the following particulars:
 - (a) Complaint application, or complaint of the administrative body for competition where such body discovers a breach and holds an investigation;
 - (b) Proposal (if any) of the party subject to investigation;
 - (c) Independent claim and proposal (if any) by a person with related interests and obligations;
 - (d) Analysis of evidence and observations of the council dealing with the competition case;
 - (dd) Analysis of grounds for accepting or rejecting the complaints and proposals of all parties and their lawyers;
 - (e) Clause and article of the *Law on Competition* which was breached;
 - (g) Any attenuating or extenuating circumstances.
4. The conclusion section of a decision dealing with a competition case shall contain the following particulars:
 - (a) Decision on each issue in the competition case;
 - (b) Decision on liability to pay the fees of the competition case;

- (c) Right to lodge a complaint about the decision dealing with the competition case.

Article 128 *Announcement of decision dealing with the competition case*

1. When the decision dealing with the competition case is announced, all the people in the room where the investigative hearing is being held must rise, unless granted permission to be seated by the chairman of the investigative hearing. The chairman of the investigative hearing or another member of the council dealing with the competition case shall read the decision dealing with the competition case and shall explain its enforcement and the right to lodge a complaint about the decision.
2. If any related party does not know Vietnamese, an interpreter may translate the whole of the decision dealing with the competition case into the appropriate foreign language after the decision has been announced.

Article 129 *Amendment of or addition to a decision dealing with a competition case*

1. A decision dealing with a competition case shall not be permitted to be amended or added to after the decision has been announced except on the discovery of mistakes which are clearly only spelling mistakes, a mix up [literally confusion] or incorrect mathematical calculation. Any amendment of or addition to a decision dealing with a competition case shall be immediately notified to the complainant and to any person with interests and obligations which are related to such amendment or addition.
2. Only the chairman of the investigative hearing may make an amendment of or addition to a decision dealing with a competition case, but if the chairman of the investigative hearing has not accepted a position as a member of the Competition Council then the chairman of the Competition Council shall be the person authorized to make any amendment of or addition to a decision dealing with a competition case.

Article 130 *Issuance of the decision dealing with the competition case*

The decision dealing with a competition case shall be issued in accordance with the provisions of Section 4 of this Chapter on procedures for issuance and service of summonses and notifications in competition legal proceedings.

Article 131 *Explanation of a decision dealing with a competition case*

1. The judgment creditor, judgment debtor, any person with interests and obligations which are related to execution, the civil judgment execution office and other agencies responsible to organize execution of a decision dealing with a competition case shall have the right to make a written request to the council dealing with the competition case to explain any unclear points in the decision dealing with the case.

Within a time-limit of fifteen (15) days from the date of receipt of a request, the council dealing with the competition case shall be responsible to provide a written explanation to the applicant and to any person with interests and obligations which are related to execution of the decision dealing with the competition case.

2. The chairman of the investigative hearing shall be responsible to explain the decision dealing with the competition case made by the council dealing with the case, but if the chairman of the investigative hearing is no longer a member of the Competition Council

then the chairman of the Competition Council shall be the person with the responsibility to explain such decision.

3. An explanation of a decision dealing with a competition case made by the council dealing with such case shall be based on the minutes of the investigative hearing and the minutes of the open debate which was held in order to issue such decision as stipulated in article 125 of this Decree.

SECTION 9

Attenuating or Extenuating Circumstances in Dealing with a Competition Case

Article 132 *Attenuating and extenuating circumstances*

1. The following shall be attenuating circumstances when dealing with a breach being a practice in restraint of competition:
 - (a) Voluntary declaration of the conduct in breach prior to its discovery by the competent body;
 - (b) The offender has taken measures to prevent or mitigate the adverse impact of the breach, or has voluntarily redressed the consequences or has already paid compensation for it;
 - (c) The offender has voluntarily provided evidence or information about the breach to the competent body which was previously unknown to such body;
 - (d) The conduct in breach has a positive impact on the development of the economy;
 - (dd) Positive co-operation during the investigative process.
2. The following shall be extenuating circumstances when dealing with a breach being a practice in restraint of competition:
 - (a) A number of acts in breach in the same sector or a second offence in the same sector;
 - (b) Deliberate breach after the competent body notified its refusal to an application file requesting exemption;
 - (c) Continued conduct in breach after an authorized person has requested termination of such conduct;
 - (d) After committing the conduct in breach, the offender took action to evade or conceal the breach.
3. With respect to unfair competitive practices, in addition to considering the attenuating and extenuating circumstances stipulated in clauses 1 and 2 of this article, the administrative body for competition body may also apply the attenuating and extenuating circumstances stipulated in articles 8 and 9 of the Ordinance on Dealing with Administrative Offences.

Article 133 *Committing a number of offences within the same sector*

Committing a number of offences within the same sector means committing a breach of the laws on competition within a sector in which a breach has previously been committed but the offender has not yet been dealt with for the latter and the time prescription for dealing with the latter has not yet expired.

Article 134 *A repeat offence within the same sector*

Committing a repeat offence within the same sector means the offender has already been dealt with but two years has not yet expired from the date of the decision dealing with the breach or from the expiry of the date for enforcement of such decision and the offender commits a repeat offence within the same sector in which he was dealt with.

Sector in this article means the following goods and services business sectors:

1. Agricultural.
2. Forestry.
3. Sea foods.
4. Industrial.
5. Supply of natural gas, electricity, petroleum, oil, petrol and diesel gas.
6. Advertising, [and] radio, television, film and video production services.
7. Tourism, entertainment services, hotels.
8. Posts, telecommunications, information technology.
9. Banking, credit, insurance, securities and other financial services.
10. Printing, publication of books and newspapers.
11. Construction.
12. Education.
13. Health care.
14. Recycling waste.
15. Cultural activities.
16. Other sectors as announced by the Ministry of Trade.

SECTION 10

Decision Dealing with a Competition Case by the Administrative Body for Competition

Article 135 *Principles for issuance of a decision dealing with a competition case by the administrative body for competition*

Issuance of a decision dealing with a competition case by the administrative body for competition must comply with the following principles:

1. The administrative body for competition shall exercise the jurisdiction to deal with competition cases prescribed in article 49.2(d) of the *Law on Competition*.
2. The administrative body for competition shall only issue a decision dealing with an unfair competitive practice after an investigative hearing has been held and the decision must be based on the contents of the official investigation prescribed in article 89.2 of the *Law on Competition* [translator's note - query], on the investigation report prescribed in article 93.2 of the *Law on Competition*, on any attenuating and extenuating circumstances as prescribed in article 132 of this Decree, and on other relevant provisions of this Decree and of other laws on dealing with administrative offences.

Article 136 *Contents of a decision dealing with a competition case by the administrative body for competition*

A decision dealing with an unfair competitive practice made by the administrative body for competition shall contain the following basic particulars:

1. Date of the decision.
2. Name and address of the complainant, of the party the subject of the complaint, of any person with related interests and obligations, and of the legal representatives and lawyers (if any) for the aforesaid parties.
3. Clause and article of the *Law on Competition* which was breached.
4. Summary of contents of the case.
5. Analysis of the case.
6. Conclusion regarding the breach, analysis of the evidence concluding there is a breach [or] analysis of the evidence concluding there is not a breach; any attenuating and extenuating circumstances.
7. If the party the subject of the complaint is not in breach, then the decision of the administrative body for competition on dealing with the matter, on fees, on restoring the honour of and dealing with the legitimate rights and interests of the said party.

SECTION 11

Complaints against Decisions dealing with a Competition Case, Instituting Proceedings in relation to a Decision on Resolution of a Complaint

Article 137 *Complaints against decisions dealing with a competition case*

Complaints against decisions dealing with a competition case and resolution of such complaints shall be implemented in accordance with Section 7 of the *Law on Competition*.

Article 138 *Transfer of file on a competition case when a court accepts jurisdiction over proceedings in relation to a decision on resolution of a complaint*

1. When a court accepts jurisdiction over proceedings in relation to a decision on resolution of a complaint as prescribed in article 115.1 of the *Law on Competition*, the Minister of Trade and the chairman of the Competition Council shall be responsible to organize transfer of the file on the competition case to the court within a time-limit of ten (10) working days from the date of receipt of a request from the court.
2. The file on a competition case as prescribed in clause 1 of this article shall comprise:
 - (a) The complaint file about the competitive practice prescribed in article 58 of the *Law on Competition*;
 - (b) The investigation report prescribed in article 93 of the *Law on Competition*;
 - (c) The decision dealing with the competition case;
 - (d) Any decision dealing with resolution of a complaint about the decision dealing with the competition case.

CHAPTER 5⁶

Organization of Implementation

Article 139 *Effectiveness*

This Decree shall be of full force and effect fifteen days after the date of publication in the Official Gazette.

Article 140 *Organization of implementation*

1. The Ministry of Trade shall be responsible to organize implementation of this Decree.
2. Ministers, heads of ministerial equivalent bodies and Government bodies, and chairmen of provinces and cities under central authority shall be responsible for the implementation of this Decree.

On behalf of the Government
Prime Minister
PHAN VAN KHAI

⁶ Note the draft omits Chapter 4.

Hanoi, 30 September 2005

DECREE ON DEALING WITH BREACHES IN THE COMPETITION SECTOR

The Government

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

Pursuant to the *Law on Competition* dated 3 December 2004;

Pursuant to the *Ordinance on Dealing with Administrative Offences* dated 2 July 2002;

On the proposal of the Minister of Trade;

Decrees:

CHAPTER I

General Provisions

Article 1 *Governing scope*

1. This Decree provides for dealing with organizations and individuals committing intentional or unintentional breaches of the provisions of the laws on competition.
2. Conduct in breach of the laws on competition as stipulated in this Decree comprises:
 - (a) Conduct in breach of the provisions on control of practices in restraint of competition, including conduct in breach of the provisions on agreements in restraint of competition, on abuse of dominant market position and monopoly position, and on economic concentration;
 - (b) Conduct in breach of the provisions on unfair competitive practices;
 - (c) Conduct in breach of other provisions of the laws on competition.

Article 2 *Applicable entities*

This Decree shall apply to the following organizations and individuals:

1. Organizations and individuals conducting business (hereinafter referred to as *enterprises*) and industry associations operating in Vietnam (hereinafter referred to as *associations*) as stipulated in article 2 of the *Law on Competition*.
2. Other organizations and individuals conducting the practices stipulated in Section 5 of Chapter II of this Decree.

Article 3 *Principles for dealing with breaches of laws on competition*

1. Dealing with conduct in breach of the provisions on control of practices in restraint of competition must comply with the following principles:
 - (a) Any offence must be identified promptly and dealt with expeditiously, justly and thoroughly; and the consequences arising from the offence must be rectified correctly as stipulated by law;
 - (b) Dealing with breaches must comply with the order and procedures for competition legal proceedings stipulated in Chapter III of Decree 116-2005-ND-CP of the Government dated 15 September 2005 providing detailed regulations for implementation of a number of articles of the *Law on Competition*, and with the provisions in this Decree;
 - (c) Only persons authorized to deal with offences may do so and they must deal with offences correctly in accordance with the authority conferred on them by law;
 - (d) Any one breach of the laws on competition shall only be penalized once; an enterprise which commits a number of breaches shall be penalized in respect of each breach;
 - (dd) If a breach contains indications of a criminal offence, it shall not be dealt with pursuant to the provisions in this Decree.
2. Dealing with acts which constitute unfair competitive practices must comply with the principles stipulated in clause 1 of this article and in article 3 of the *Ordinance on Dealing with Administrative Offences*.
3. Dealing with conduct in breach of other provisions of the laws on competition must comply with the principles stipulated in article 3 of the *Ordinance on Dealing with Administrative Offences*.

Article 4 *Forms of penalty which may be imposed for breaches of laws on competition*

1. The forms of penalty which may be imposed for breaches of the laws on competition shall comprise fines and other measures for remedying consequences.
2. For each breach of the laws on competition, one of the following principal penalties must be imposed on an organization or individual in breach:
 - (a) Warning;
 - (b) Fine.
3. Depending on the nature and seriousness of a breach, one of the following additional forms of penalty may be imposed on an organization or individual in breach of the laws on competition:
 - (a) Withdrawal of business registration certificate, revocation of right to use a licence or practising certificate;
 - (b) Confiscation of material evidence and facilities used to commit the breach of the laws on competition.

4. In addition to the forms of penalty stipulated in clauses 2 and 3 of this article, one or more of the following measures for remedying consequences may also be applied to an organization or individual in breach of the laws on competition:
- (a) Restructure of an enterprise which abused its dominant market position;
 - (b) Division or split of an enterprise which merged or consolidated; compulsory re-sale of that part of an enterprise which was acquired;
 - (c) Public retraction;
 - (d) Removal of illegal terms and conditions from a contract or business transaction;
 - (dd) Compulsory use or re-sale of inventions, utility solutions or industrial designs which were purchased but not used;
 - (e) Compulsory removal of measures which prevent or impede other enterprises from participating in the market or from developing business;
 - (g) Compulsory restoration of conditions for technical or technological development which an enterprise impeded;
 - (h) Compulsory removal of disadvantageous conditions imposed on customers;
 - (i) Compulsory restoration of contractual conditions which were changed without any legitimate reason;
 - (k) Compulsory restoration of a contract which was cancelled without any legitimate reason.

Article 5 *Levels of fines applicable to breaches of laws on competition*

1. With respect to a breach of the provisions on control of practices in restraint of competition, the body with authority to deal with the breach shall impose a fine at the specific levels stipulated in Sections 1, 2 and 3 of Chapter II of this Decree but the maximum fine shall be ten (10) per cent of the total turnover of the enterprise in breach in the financial year preceding the year in which the breach was committed.

If the enterprise in breach is newly established and has not yet operated for a full financial year, "total turnover for the financial year prior to the year in which the breach was committed" as stipulated in this clause means the total turnover of the enterprise as from the date of establishment until the date of issuance of the decision to hold an official investigation into the practice in breach.

2. With respect to unfair competitive practices and conduct in breach of other provisions of the laws on competition outside the cases stipulated in clause 1 of this article, the body with authority to deal with the breach shall impose a fine at the specific levels stipulated in Sections 4 and 5 of Chapter II of this Decree.

Article 6 *Compensation for loss caused by breach of laws on competition*

1. Any organization or individual breaching the laws on competition, thereby causing loss to the interests of the State or to the lawful rights and interests of other organizations and individuals, must pay compensation for such loss.
2. Payment of compensation for loss as stipulated in clause 1 of this article shall be implemented in accordance with the civil law.

Article 7 *Grounds for fixing levels of penalties applicable to breaches of laws on competition*

When fixing the level of a penalty applicable to each breach of the laws on competition, the competent body shall have the right to rely on one or more of the following factors:

1. Level of restraint of competition caused by the practice in breach.
2. Amount of loss caused by the practice in breach caused.
3. Capability of the entity in breach to restrain competition.
4. Period of time during which the practice in breach occurred.
5. Profits gained as a result of the practice in breach.
6. Attenuating or aggravating circumstances as stipulated in article 8 of this Decree.

Article 8 *Extenuating and aggravating circumstances*

1. With respect to any practice in breach of the provisions on control of practices in restraint of competition and on unfair competitive practices, the body with authority to deal with the breach may apply the extenuating and aggravating circumstances stipulated in Section 6 of Chapter III of Decree 116-2005-ND-CP of the Government dated 15 September 2005 providing detailed regulations for implementation of a number of articles of the *Law on Competition*.
2. With respect to any practice in breach of other provisions of the laws on competition, the body with authority to deal with the breach may apply the extenuating and aggravating circumstances stipulated in articles 8 and 9 of the *Ordinance on Dealing with Administrative Offences*.

Article 9 *Limitation period for lodging complaint about competition case and limitation period for issuance of decision to investigate when administrative body for competition discovers indications of breach of laws on competition*

1. The limitation period for lodging a complaint about a competition case and the limitation period for issuance of a decision to investigate when the administrative body for competition discovers indications of a breach of the laws on competition stipulated in article 65.2 of the *Law on Competition* is two years from the date on which the breach is committed.
2. If during the period stipulated in clause 1 of this article an organization or individual commits a new breach of the laws on competition, or deliberately evades or prevents the breach being dealt with by the competent body, the limitation period stipulated in clause 1 of this article shall be re-calculated from the date on which the new breach is committed or from the date of termination of the conduct to evade dealing with the breach or to prevent the breach being dealt with.

CHAPTER II

Conduct in Breach of the Laws on Competition, Forms and Levels of Penalty

SECTION I

Breaches Involving Agreements in Restraint of Competition

Article 10 *Agreements either directly or indirectly fixing the price of goods and services*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for one of the following breaches:
 - (a) Agreement fixing the price applicable to some or all customers;
 - (b) Agreement to increase or reduce the price by a fixed amount;
 - (c) Agreement for general application of a formula for calculating price;
 - (d) Agreement to maintain a fixed ratio for the price of related goods;
 - (dd) Agreement not to discount prices or to apply a uniform discounted price;
 - (e) Agreement to restrict credit available for customers;
 - (g) Agreement not to reduce prices without notification to other members of the agreement;
 - (i) Agreement to use a uniform price at the commencement of negotiations.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for a breach stipulated in clause 1 of this article in one of the following cases:
 - (a) The goods and services for which the price was fixed are foodstuffs, food products, medical apparatus, preventive and treatment medicine for humans, veterinary drugs, fertilizer, animal feed, plant protection agents, seeds or domestic animals, medical services or healthcare services;
 - (b) The enterprise in breach organized or induced other entities to participate in the agreement.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the following additional forms of penalty and measures for remedying consequences may also be applied to an enterprise in breach:
 - (a) Confiscation of material evidence and facilities used to commit the breach, including confiscation of all profits earned from the practice in breach;
 - (b) Compulsory removal of illegal terms and conditions from the contract or business transaction.

Article 11 *Agreements to share consumer markets or sources of supply of goods and services*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for one of the following breaches:
 - (a) Agreement on the quantity or location of purchase and sale of goods and services or on the group of customers for each of the parties participating in the agreement;
 - (b) Agreement that all parties participating in the agreement will only purchase goods and services from one or more specified sources of supply.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 10.2 of this Decree.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 10.3 of this Decree may also be applied to an enterprise in breach.

Article 12 *Agreements to restrain or control quantity or volume of goods and services produced, purchased or sold*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for one of the following breaches:
 - (a) Agreement to stop or reduce the quantity or volume of goods produced, purchased or sold or of services supplied on the relevant market as compared to previously;
 - (b) Agreement to fix the quantity or volume of goods produced, purchased or sold or of services supplied at a level sufficient to create a shortage in the market;
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 10.2 of this Decree.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 10.3 of this Decree may also be applied to an enterprise in breach.

Article 13 *Agreements to restrain technical developments or technology or to restrain investment*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for one of the following breaches:
 - (a) Agreement to purchase an invention, utility solution or industrial design in order to destroy it or keep it from being used;
 - (b) Agreement not to provide any more capital for expanding production, for improving the quality of goods and services, or for other development and expansion.

2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 10.2 of this Decree.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 10.3 of this Decree may also be applied to an enterprise in breach.

Article 14 *Agreements to impose on other enterprises conditions for signing contracts for purchase and sale of goods and services, or to force other enterprises to accept obligations not related in direct way to subject matter of contract*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for one of the following breaches:
 - (a) Agreement to impose on other enterprises the following conditions precedent prior to signing contracts for the purchase and sale of goods and services:
 - Restriction on the production and distribution of other goods; the purchase or supply of other services, not directly related to undertakings of a party accepting to act as an agent in accordance with the law on agency;
 - Restriction on the locations for re-sale of goods, except for goods on the list of goods in which business is conditional and on the list of goods in which business is restricted in accordance with law;
 - Restriction on the customers which may purchase goods for re-sale, except for goods on the list of goods in which business is conditional and on the list of goods in which business is restricted in accordance with law;
 - Restriction on the form and quantity of goods which may be supplied.
 - (b) Agreement to force other enterprises, when they are conducting purchases and sales of goods and services with any of the enterprises which are parties to the agreement, to purchase other goods and services from a pre-nominated supplier or other entity or to discharge one or more obligations outside the essential scope of performance of the contract.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 10.2 of this Decree.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 10.3 of this Decree may also be applied to an enterprise in breach.

Article 15 *Agreements which prevent, impede, or do not allow other enterprises to participate in the market or to develop business*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being a party to the agreement for one of the following breaches:
 - (a) Agreement not to trade with enterprises not being parties to such agreement;
 - (b) Agreement to act together in requiring, persuading or coercing one's customers not to conduct purchase and sale of goods with or to use services of enterprises not being parties to the agreement;
 - (c) Agreement to act together to conduct purchase and sale of goods and services at prices sufficient to ensure that enterprises not being parties to the agreement will not be able to participate in the relevant market;
 - (d) Agreement to act together in requiring, persuading or coercing one's distributors and retail sellers trading with such enterprise to discriminate when purchasing goods from and selling goods to enterprises not being parties to the agreement by causing difficulty for such latter enterprises to sell their goods;
 - (dd) Agreement to act together to conduct purchase or sale of goods and services at prices sufficient to ensure that enterprises not being parties to the agreement will not be able to expand their business scale.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 10.2 of this Decree.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 10.3 of this Decree may also be applied to an enterprise in breach.

Article 16 *Agreements which exclude from market other enterprises which are not parties to the agreement*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being a party to the agreement for one of the following breaches:
 - (a) Agreement not to trade with enterprises which are not parties to the agreement and to act together in requiring, persuading or coercing one's customers not to conduct purchases and sales of goods with or to use services of enterprises which are not parties to the agreement;
 - (b) Agreement not to trade with enterprises which are not parties to the agreement and to act together in purchasing and selling goods at a price which is sufficient to force enterprises which are not parties to the agreement to withdraw from the relevant market.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 10.2 of this Decree.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 10.3 of this Decree may also be applied to an enterprise in breach.

Article 17 *Conduct constituting collusion in order for one or more parties to agreement to win tender for supply of goods and services*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being a party to the agreement for one of the following breaches:
 - (a) Agreement for one or more of the parties to such agreement to withdraw a tender or an application to participate in tendering which was previously lodged, in order for one or more of the other parties to such agreement to win the tender;
 - (b) Agreement for one or more of the parties to such agreement to cause difficulties to others not being parties to the agreement when the latter participate in tendering by refusing to supply the latter with raw materials, by refusing to sign ancillary contracts or by causing difficulties in other ways;
 - (c) Agreement for all parties to such agreement to provide a uniform non-competitive price or a competitive price with conditions attached which the party calling for tenders will not be able to accept, in order for one or more of the parties to the agreement to win the tender;
 - (d) Agreement to set in advance the number of times each party to the agreement will win a tender within a fixed period.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being a party participating in the agreement for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 10.2 of this Decree.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 10.3 of this Decree may also be applied to an enterprise in breach.

SECTION 2

Breaches of Provisions on Abuse of Dominant Market Position and Monopoly Position

Article 18 *Selling goods or providing services below total prime cost of goods aimed at excluding competitors*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position or by each enterprise in a group of enterprises in a dominant market position shall apply to an enterprise which sells goods or provides services below total prime cost of the goods aimed at excluding competitors.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the following cases:
 - (a) The relevant goods and services are items stipulated in article 10.2 of this Decree;
 - (b) The enterprise has a market share of fifty (50) per cent or more.

3. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by an enterprise in a group of enterprises in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the following cases:
 - (a) The enterprise has the largest relevant market share in the group of enterprises in a dominant market position;
 - (b) The enterprise took the role of organizing or inducing other enterprises in the group of enterprises in a dominant market position to act together in the practice in breach.
4. In addition to the fines stipulated in clauses 1, 2 and 3 of this article, one or more of the following additional forms of penalty and measures for remedying consequences may also be applied to an enterprise in breach of the provisions on abuse of dominant market position:
 - (a) Confiscation of material evidence and facilities used to commit the breach, including confiscation of all profits earned from the practice in breach;
 - (b) Compulsory removal of illegal terms and conditions from the contract or business transaction;
 - (c) Compulsory restructure of the enterprise in a dominant market position.

Article 19 *Fixing unreasonable selling or purchase price or fixing minimum reselling price of goods or services, thereby causing loss to customers*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position or by each enterprise in a group of enterprises in a dominant market position shall apply for one of the following breaches:
 - (a) Fixing an unreasonable selling or purchase price of goods or services, thereby causing loss to customers;
 - (b) Fixing a minimum reselling price of goods or services, thereby causing loss to customers.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.2 of this Decree.
3. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by an enterprise in a group of enterprises in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.3 of this Decree.
4. In addition to the fines stipulated in clauses 1, 2 and 3 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 18.4 of this Decree may also be applied to an enterprise in breach of the provisions on abuse of dominant market position.

Article 20 *Restraining production or distribution of goods or services, limiting the market, or impeding technical or technological development, thereby causing loss to customers*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position or by each enterprise in a group of enterprises in a dominant market position shall apply for one of the following breaches:
 - (a) Ceasing the supply or reducing the quantity supplied of goods and services on the relevant market as compared to previously in conditions where there are not large fluctuations in the supply and demand relationship, there is no economic crisis, natural disaster or destruction by an enemy, and there is no major technical breakdown or emergency situation;
 - (b) Fixing the quantity of goods and services supplied at a level sufficient to create a shortage in the market;
 - (c) Hoarding and not selling goods in order to create instability in the market;
 - (d) Supplying goods and services in only one or a number of specific geographical areas;
 - (dd) Purchasing goods and services only from one or a number of specified sources of supply, except where other sources of supply fail to satisfy the conditions set by the purchaser and such conditions are both reasonable and consistent with normal commercial practice;
 - (e) Purchasing an invention, utility solution or industrial design in order to destroy it or keep it from being used;
 - (g) Threatening or coercing a person engaged in research into technical or technological development to suspend or abandon such research.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.2 of this Decree.
3. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by an enterprise in a group of enterprises in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.3 of this Decree.
4. In addition to the fines stipulated in clauses 1, 2 and 3 of this article, one or more of the following additional forms of penalty and measures for remedying consequences may also be applied to an enterprise in breach of the provisions on abuse of dominant market position:
 - (a) Additional forms of penalty and measures for remedying consequences stipulated in article 18.4 of this Decree;
 - (b) Compulsory use or re-sale of an invention, utility solution or industrial design which was purchased but not used;
 - (c) Compulsory removal of measures which prevent or impede other enterprises from participating in the market or from developing business;
 - (d) Compulsory restoration of conditions for technical or technological development which the enterprise impeded.

Article 21 *Applying different commercial conditions to the same transactions aimed at creating inequality in competition*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position or by each enterprise in a group of enterprises in a dominant market position shall apply for conduct being discrimination between enterprises regarding conditions for purchase and sale, price, time for payment, or volumes of transactions of purchase and sale of goods and services similar in value and characteristics in order to place one or more enterprises in a better competitive position than other enterprises.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.2 of this Decree.
3. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by an enterprise in a group of enterprises in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.3 of this Decree.
4. In addition to the fines stipulated in clauses 1, 2 and 3 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 18.4 of this Decree may also be applied to an enterprise in breach of the provisions on abuse of dominant market position.

Article 22 *Imposing conditions on other enterprises signing contracts for purchase and sale of goods and services or forcing other enterprises to agree to obligations which are not related in direct way to subject matter of contract*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position or by each enterprise in a group of enterprises in a dominant market position shall apply for one of the following breaches:
 - (a) Imposing on other enterprises the following conditions precedent prior to signing contracts for the purchase and sale of goods and services:
 - Restriction on the production and distribution of other goods; the purchase or supply of other services, not directly related to undertakings of a party accepting to act as an agent in accordance with the law on agency;
 - Restriction on the locations for re-sale of goods, except for goods on the list of goods in which business is conditional and on the list of goods in which business is restricted in accordance with law;
 - Restriction on the customers which may purchase goods for re-sale, except for goods on the list of goods in which business is conditional and on the list of goods in which business is restricted in accordance with law;
 - Restriction on the form and quantity of goods which may be supplied.
 - (b) Forcing other enterprises, when they are conducting purchases and sales of goods and services with any of the enterprises which are a party to the agreement¹, to purchase other goods and services from a pre-nominated supplier or other entity or to discharge one or more obligations outside the essential scope of performance of the contract.

1 Phillips Fox Note: The Competition Administration Department under the Ministry of Trade has informally advised that the phrase "when they are conducting purchases and sales of goods and services with any of the enterprises which are a party to the agreement" should not have been included here (in contrast to in article 14.1(b) above).

2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.2 of this Decree.
3. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by an enterprise in a group of enterprises in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.3 of this Decree.
4. In addition to the fines stipulated in clauses 1, 2 and 3 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 18.4 of this Decree may also be applied to an enterprise in breach of the provisions on abuse of dominant market position.

Article 23 *Preventing market participation by new competitors*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position or by each enterprise in a group of enterprises in a dominant market position shall apply for one of the following breaches:
 - (a) Requiring one's customers not to trade with a new competitor;
 - (b) Threatening or compelling distributors or retail sales outlets not to agree to distribute the goods of the new competitor;
 - (c) Selling goods at prices at a level which is sufficient to ensure that a new competitor is not able to access the market, other than in the cases stipulated in article 19.1 of this Decree.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.2 of this Decree.
3. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by an enterprise in a group of enterprises in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.3 of this Decree.
4. In addition to the fines stipulated in clauses 1, 2 and 3 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 18.4 of this Decree may also be applied to an enterprise in breach of the provisions on abuse of dominant market position.

Article 24 *Conduct constituting abuse of monopoly position*

1. A fine of up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a monopoly position shall apply for one of the following breaches:
 - (a) Breaches stipulated in articles 18.1, 19.1, 20.1, 21.1, 22.1 and 23.1 of this Decree;
 - (b) Imposing disadvantageous conditions on customers;
 - (c) Changing or cancelling unilaterally a signed contract without prior notice to the customer and without having to bear any sanction;

- (d) Changing or cancelling unilaterally a signed contract based on one or more grounds not directly related to conditions essential for continued and complete performance of the contract and without having to bear any sanction.
2. In addition to the fine stipulated in clause 1 of this article, one or more of the following additional forms of penalty and measures for remedying consequences may also be applied to an enterprise in breach of the provisions on abuse of monopoly position:
- (a) Confiscation of material evidence and facilities used to commit the breach, including confiscation of all profits earned from the practice in breach;
 - (b) Compulsory removal of illegal terms and conditions from the relevant contract or business transaction;
 - (c) Compulsory restoration of the conditions on technical or technological development which the enterprise impeded;
 - (d) Compulsory removal of the disadvantageous conditions which were imposed on customers;
 - (dd) Compulsory restoration of the contractual conditions which were changed without legitimate reason;
 - (e) Compulsory restoration of the contract which was cancelled without legitimate reason.

SECTION 3

Conduct in Breach of Provisions on Economic Concentration

Article 25 *Prohibited merger of enterprises*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the merging enterprises and the merged enterprise shall apply for a prohibited merger of enterprises as stipulated in article 18 of the *Law on Competition*.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the merging enterprises and by the merged enterprise shall apply for a breach stipulated in clause 1 of this article if the merged enterprise coerced directly or indirectly the merging enterprises to carry out the merger.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, the merging enterprises may be subject to compulsory demerger from the merged enterprise and the merged enterprise may be subject to compulsory split in order to restore the former status quo.

Article 26 *Prohibited consolidation of enterprises*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the consolidating enterprises shall apply for a prohibited consolidation of enterprises as stipulated in article 18 of the *Law on Competition*.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the consolidating enterprises shall apply for a breach stipulated in clause 1 of this article if the consolidation results in a significant increase in the price of goods and services on the relevant market.

3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the following additional forms of penalty and measures for remedying consequences may also be applied to the consolidating enterprises:
 - (a) Withdrawal of the business registration certificate issued to the consolidated enterprise;
 - (b) Compulsory division or demerger of the consolidated enterprise.

Article 27 *Prohibited acquisition of enterprise*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the acquiring enterprise shall apply to a prohibited acquisition of a part or all of the assets of another enterprise as stipulated in article 18 of the *Law on Competition*.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the acquiring enterprise shall apply for a breach stipulated in clause 1 of this article if the acquiring enterprise coerced directly or indirectly the other enterprise to sell a part or all of the assets of such enterprise.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, the acquiring enterprise may be compulsorily required to re-sell the assets it acquired.

Article 28 *Prohibited joint venture between enterprises*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each party to a joint venture which is prohibited by article 18 of the *Law on Competition*.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each party to a joint venture in breach as stipulated in clause 1 of this article if the joint venture results in a significant increase in the price of goods and services on the relevant market.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, the business registration certificate of each party to the joint venture and of the joint venture enterprise may be withdrawn.

Article 29 *Failure to notify an economic concentration*

A fine of from one to three per cent of the total revenue in the financial year prior to the year in which a breach was committed by an enterprise stipulated in articles 25.1, 26.1, 27.1 and 28.1 of this Decree shall apply to an economic concentration which was not notified as required by article 20 of the *Law on Competition*.

SECTION 4

Conduct in Breach of Provisions on Unfair Competitive Practices

Article 30 *Conduct constituting breach of provisions on misleading instructions*

1. A fine of from five million (5,000,000) Vietnamese dong up to ten million (10,000,000) Vietnamese dong shall apply for the following breaches:
 - (a) Using instructions which contain misleading information about commercial names, business slogans, business logos, packaging and geographical indications of the enterprise in breach and of other enterprises in order to mislead customers in their understanding of goods and services for competitive purposes;
 - (b) Conducting business in goods and services which use misleading instructions as stipulated in sub-clause (a) above.

2. A fine of from ten million (10,000,000) Vietnamese dong up to twenty million (20,000,000) Vietnamese dong, shall apply for a breach of the provisions on misleading instructions stipulated in clause 1 of this article in one of the following cases:
 - (a) The relevant goods and services are items stipulated in article 10.2(a) of this Decree;
 - (b) The relevant goods and services were circulated or supplied in two or more provinces or cities under central authority.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the following additional forms of penalty and measures for remedying consequences may also be applied:
 - (a) Confiscation of material evidence and facilities used to commit the breach, including confiscation of all profits earned from the practice in breach;
 - (b) Public retraction.

Article 31 *Conduct constituting infringement of business secrets*

1. A fine of from five million (5,000,000) Vietnamese dong up to ten million (10,000,000) Vietnamese dong shall apply for the following breaches:
 - (a) Accessing or collecting information in the category of business secrets by countering the security measures taken by the lawful owner of such business secret;
 - (b) Disclosing or using information in the category of business secrets without permission from the lawful owner of such business secret;
 - (c) Breaching a confidentiality contract, cheating or abusing the confidence of a person with an obligation to maintain confidentiality, aimed at accessing, collecting and disclosing information in the category of business secrets of the owner of such business secret;
 - (d) Accessing or collecting information in the category of business secrets of another person when such person is conducting business procedures stipulated by law or procedures to circulate products by countering security measures taken by State bodies or by using such information for business objectives or for the objective of applying for the issuance of a business-related permit or a permit to circulate products.
2. A fine of from ten million (10,000,000) Vietnamese dong up to twenty million (20,000,000) Vietnamese dong shall apply for any one breach of the provisions on infringement of business secrets stipulated in clause 1 of this article in one of the following cases:
 - (a) Using a business secret in order to produce and circulate goods or to provide services in two or more provinces or cities under central authority;
 - (b) Disclosing or providing a business secret to a competitor of the lawful owner of such business secret.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, the following measure may also apply to an enterprise in breach, namely confiscation of material evidence and facilities used to commit the breach, including confiscation of all profits earned from the practice in breach.

Article 32 *Conduct constituting coercion in business*

1. A fine of from five million (5,000,000) Vietnamese dong up to ten million (10,000,000) Vietnamese dong shall apply for a breach being coercing customers or business partners of another enterprise by threatening or coercive conduct in order to compel such entities not to transact or to cease a transaction with such other enterprise.
2. A fine of from ten million (10,000,000) Vietnamese dong up to twenty million (20,000,000) Vietnamese dong shall apply for a breach constituting coercion in business stipulated in clause 1 of this article in the case of coercion of the largest customer or business partner of a competitor.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, the following measure may also apply to an enterprise in breach, namely confiscation of material evidence and facilities used to commit the breach, including confiscation of all profits earned from the practice in breach.

Article 33 *Defamation of another enterprise*

1. A fine of from five million (5,000,000) Vietnamese dong up to ten million (10,000,000) Vietnamese dong shall apply for a breach being defamation of another enterprise by any indirect act of providing untruthful information which adversely impacts on the reputation, financial position and business activities of such other enterprise.
2. A fine of from ten million (10,000,000) Vietnamese dong up to twenty million (20,000,000) Vietnamese dong shall apply for a breach being defamation of another enterprise by any direct act of providing untruthful information which adversely impacts on the reputation, financial position and business activities of such other enterprise.
4. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 30.3 of this Decree may also be applied to an enterprise in breach.

Article 34 *Causing disruption to business activities of another enterprise*

1. A fine of from five million (5,000,000) Vietnamese dong up to ten million (10,000,000) Vietnamese dong shall apply for a breach being causing disruption to the lawful business activities of another enterprise by any direct or indirect act which hinders or interrupts the business activities of such other enterprise.
2. A fine of from ten million (10,000,000) Vietnamese dong up to twenty million (20,000,000) Vietnamese dong shall apply for a breach being causing disruption to business activities of another enterprise resulting in the disrupted enterprise being unable to continue to conduct normal business activities.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 30.3 of this Decree may also be applied to an enterprise in breach.

Article 35 *Advertisements aimed at unfair competition*

1. A fine of from fifteen million (15,000,000) Vietnamese dong up to twenty five million (25,000,000) Vietnamese dong shall apply for the following advertisements:
 - (a) Advertisement comparing directly the goods and services of the enterprise with those of the same type of another enterprise;
 - (b) Advertisement imitating another advertising product in order to mislead customers;

- (c) Advertisement providing false or misleading information to customers about one of the following matters:
- Price, quantity, quality, usage, design, type, packaging, date of manufacture, use expiry, origin of goods, manufacturer, place of manufacture, processor or place of processing;
 - Manner of use, method of service, warranty period;
 - Other false or misleading information.
2. A fine of from 30,000,000 (thirty million) Vietnamese dong up to 50,000,000 (fifty million) Vietnamese dong shall apply for a breach stipulated in clause 1 of this article in one of the following cases:
- (a) The relevant goods and services are items stipulated in article 10.2 of this Decree;
 - (b) The scale of the advertisement encompasses two or more provinces or cities under central authority.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 30.3 of this Decree may also be applied to an enterprise in breach.

Article 36 *Promotions aimed at unfair competition*

1. A fine of from fifteen million (15,000,000) Vietnamese dong up to twenty five million (25,000,000) Vietnamese dong shall apply for the following breaches:
- (a) Holding a promotion providing false information about prizes;
 - (b) Holding a promotion which is untruthful or misleading about goods and services in order to deceive customers;
 - (c) Discriminating between similar customers in different promotional areas within the same promotional campaign;
 - (d) Offering free goods to customers for trial use but requiring exchange of goods of the same type produced by another enterprise which such customer is currently using in order that the customer will use the goods of the promoting enterprise.
2. A fine of from thirty million (30,000,000) Vietnamese dong up to fifty million (50,000,000) Vietnamese dong shall apply for any one breach stipulated in clause 1 of this article in one of the following cases:
- (a) The promoted goods and services are items stipulated in article 10.2 of this Decree;
 - (b) The scale of the promotion encompasses two or more provinces or cities under central authority.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 30.3 of this Decree may also be applied to an enterprise which holds a promotion aimed at unfair competition.

Article 37 *Conduct constituting discrimination by association*

1. A fine of from fifteen million (15,000,000) Vietnamese dong up to twenty five million (25,000,000) Vietnamese dong shall apply for the following breaches:
 - (a) Refusing admission to or refusing withdrawal from the association by any organization or individual satisfying the conditions for admission or withdrawal, if such refusal constitutes discriminatory treatment and places such organization or individual at a competitive disadvantage;
 - (b) Unreasonably restricting the business activities or other activities involving a business objective of member enterprises.
2. A fine of from thirty million (30,000,000) Vietnamese dong up to fifty million (50,000,000) Vietnamese dong shall apply for a breach stipulated in clause 1 of this article in one of the following cases:
 - (a) Committing a number of offences in relation to one enterprise;
 - (b) Committing an offence in relation to a number of enterprises at the same time;
 - (c) Unreasonably restricting activities in order that a member enterprise is forced to withdraw from the association.

Article 38 *Breach being illegal multi-level selling of goods*

1. A fine of from fifty million (50,000,000) Vietnamese dong up to seventy million (70,000,000) Vietnamese dong shall apply for an enterprise engaged in multi-level selling of goods for the following breaches:
 - (a) Requiring persons who wish to participate to pay a deposit in order to have the right to participate in the multi-level sales network;
 - (b) Requiring persons who wish to participate to purchase an initial quantity of goods in order to have the right to participate in the multi-level sales network;
 - (c) Requiring persons who wish to participate to pay an amount of money or any other sum in the form of fees for studying, training, seminars, social or similar activities in order to have the right to participate in the multi-level sales network, except for fees for purchasing data stipulated in article 6.2 of Decree 110-2005-ND-CP of the Government dated 24 August 2005 on supervision of multi-level selling of goods;
 - (d) Failing to undertake to participants to re-acquire goods and pay a refund of any money that participants paid to the enterprise pursuant to article 11 of Decree 110-2005-ND-CP of the Government dated 24 August 2005 on supervision of multi-level selling of goods;
 - (dd) Preventing participants from returning goods by terminating the contract for participation in multi-level selling of goods;
 - (e) Allowing participants to receive commissions, bonuses or other economic benefits essentially only from enticing other persons to participate in the multi-level sales network;
 - (g) Providing untruthful information about the benefits of participation in the multi-level sales network in order to entice persons to participate;
 - (h) Providing untruthful information about the quality and use purpose of goods in order to entice persons to participate.
2. A fine of from seventy million (70,000,000) Vietnamese dong up to one hundred million (100,000,000) Vietnamese dong shall apply for any one of the breaches stipulated in

clause 1 of this article if the scale of the multi-level selling of goods encompasses two or more provinces or cities under central authority.

3. In addition to the fine stipulated in clause 1² of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 30.3 of this Decree may also be applied to an enterprise engaged in illegal multi-level selling of goods.

SECTION 5

Conduct in Breach of Other Provisions of Laws on Competition

Article 39 *Breach of provisions on supplying information and data*

1. A warning or a fine of from five hundred thousand (500,000) Vietnamese dong up to one million (1,000,000) Vietnamese dong shall apply for the following breaches:
 - (a) Failure to supply or supplying incomplete information and data known to the enterprise when requested by a competent body;
 - (b) Failure to supply information and data on time as requested by a competent body;
 - (c) Deliberate supply of false or misleading information and data or falsifying information and data;
 - (d) Coercing others to supply false information and data;
 - (dd) Concealing or destroying information and data relevant to a competition case.
2. A fine of from one million (1,000,000) Vietnamese dong up to three million (3,000,000) Vietnamese dong shall apply for any one of the breaches stipulated in clause 1 of this article if the information and data requested was of particular importance for a proper resolution of a competition case.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, an organization or individual in breach may be compelled to supply complete information and data.

Article 40 *Breach of other provisions on investigations and on dealing with competition cases*

1. A warning or a fine of from five hundred thousand (500,000) Vietnamese dong up to one million (1,000,000) Vietnamese dong shall apply for the following breaches:
 - (a) Deliberately or negligently disclosing information and data the subject of a secret investigation;
 - (b) Disrupting an investigative hearing.
2. A fine of from one million (1,000,000) Vietnamese dong up to three million (3,000,000) Vietnamese dong shall apply for any one of the breaches stipulated in clause 1 of this article if the information and data which was disclosed was of particular importance for a proper resolution of the competition case.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, an organization or individual in breach may be subject to confiscation of the material evidence and facilities used to commit the breach.

2 Phillips Fox Note: This is presumed to be a typographical error and to be intended to refer to "the fines stipulated in clause 1 and 2 of this article".

Article 41 *Breaches involving agreement in restraint of competition or economic concentration prior to issuance of decision by competent body granting exemption*

1. A fine of from thirty million (30,000,000) Vietnamese dong up to fifty million (50,000,000) Vietnamese dong shall apply to each party to an agreement in restraint of competition within the exempt category as stipulated in article 10 of the *Law on Competition* when such enterprises have a combined market share of thirty (30) per cent or more in the relevant market and the agreement was made prior to issuance of a decision by the Minister of Trade granting exemption, but the maximum fine shall not exceed three per cent of the total turnover of the enterprise in breach in the financial year preceding the year in which the breach was committed.
2. A fine of from thirty million (30,000,000) Vietnamese dong up to fifty million (50,000,000) Vietnamese dong shall apply to the merging enterprises and to the merged enterprise within the exempt category as stipulated in article 19 of the *Law on Competition* when a merger took place prior to issuance of a decision by the Prime Minister of the Government or by the Minister of Trade granting exemption, but the maximum fine shall not exceed three per cent of the total turnover of the enterprise in breach in the financial year preceding the year in which the breach was committed.
3. A fine of from thirty million (30,000,000) Vietnamese dong up to fifty million (50,000,000) Vietnamese dong shall apply to consolidating enterprises within the exempt category as stipulated in article 19 of the *Law on Competition* when a consolidation took place prior to issuance of a decision by the Prime Minister of the Government or by the Minister of Trade granting exemption, but the maximum fine shall not exceed three per cent of the total turnover of the enterprise in breach in the financial year preceding the year in which the breach was committed.
4. A fine of from thirty million (30,000,000) Vietnamese dong up to fifty million (50,000,000) Vietnamese dong shall apply to an acquiring enterprise within the exempt category as stipulated in article 19 of the *Law on Competition* when an acquisition took place prior to issuance of a decision by the Prime Minister of the Government or by the Minister of Trade granting exemption, but the maximum fine shall not exceed three per cent of the total turnover of the enterprise in breach in the financial year preceding the year in which the breach was committed.
5. A fine of from thirty million (30,000,000) Vietnamese dong up to fifty million (50,000,000) Vietnamese dong shall apply to parties to a joint venture within the exempt category as stipulated in article 19 of the *Law on Competition* when a joint venture was entered into prior to issuance of a decision by the Prime Minister of the Government or by the Minister of Trade granting exemption, but the maximum fine shall not exceed three per cent of the total turnover of the enterprise in breach in the financial year preceding the year in which the breach was committed.

CHAPTER III

Authority and Procedures for Dealing with Breaches of Laws on Competition

SECTION I

Authority for Dealing with Breaches of Laws on Competition

Article 42 *Authority of administrative body for competition and of head of administrative body for competition*

1. The administrative body for competition shall have the following powers with respect to breaches being unfair competitive practices and other breaches of the laws on competition stipulated in Section 5 of Chapter II of this Decree:
 - (a) To impose a warning;
 - (b) To impose a fine;
 - (c) To confiscate the material evidence and facilities used to commit the breach;
 - (d) To compel the entity in breach to make a public retraction.
2. The head of the administrative body for competition shall have the right to make decisions on application, amendment and revocation of administrative preventive measures prior to the time when a file on a competition case is transferred to the Competition Council to deal with.

Article 43 *Authority of Competition Council and of councils dealing with competition cases*

The Competition Council and councils dealing with competition cases shall have the following powers to deal with breaches of the provisions on control of practices in restraint of competition:

1. To impose a warning.
2. To impose a fine.
3. To confiscate the material evidence and facilities used to commit the breach.
4. To apply the measures stipulated in sub-clauses (c), (d), (dd), (e), (g), (h), (i) and (k) of article 4.4 of this Decree.
5. To request the competent body to withdraw a business registration certificate or to revoke the right to use a licence or practising certificate.
6. To request the competent body to apply the measures prescribed in sub-clauses (a) and (b) of article 4.4 of this Decree.

Article 44 *Authority of chairman of Competition Council*

The chairman of the Competition Council shall have the right to make decisions on application, amendment and revocation of administrative preventive measures after receipt of a file on a competition case.

Article 45 *Authority of other bodies*

Authority by other bodies to impose penalties for breaches of provisions on unfair competitive practices relating to intellectual property rights shall be determined in accordance with the law on dealing with administrative offences.

SECTION 2

Procedures for Dealing with Breaches of Laws on Competition

Article 46 *Procedures for dealing with breaches of laws on competition*

The procedures for dealing with breaches of the laws on competition shall comprise the following procedures:

1. Procedures for dealing with breaches of the provisions on control of practices in restraint of competition and on unfair competitive practices.
2. Procedures for application, amendment and revocation of administrative preventive measures.
3. Procedures for dealing with breaches of other provisions of the laws on competition.

Article 47 *Procedures for dealing with breaches of provisions on control of practices in restraint of competition and on unfair competitive practices*

Dealing with breaches of the provisions on control of practices in restraint of competition and on unfair competitive practices shall follow the order and procedures for competition legal proceedings stipulated in Chapter V of the *Law on Competition* and in Chapter III of Decree 116-2005-ND-CP of the Government dated 15 September 2005 providing detailed regulations for implementation of a number of articles of the *Law on Competition*.

Article 48 *Procedures for application, amendment and revocation of administrative preventive measures*

The procedures for application, amendment and revocation of administrative preventive measures shall be implemented in accordance with article 61 of the *Law on Competition* and the provisions in Section 7 of Chapter III of Decree 116-2005-ND-CP of the Government dated 15 September 2005 providing detailed regulations for implementation of a number of articles of the *Law on Competition*.

Article 49 *Minutes of breach of other provisions of laws on competition*

1. Upon discovery of a breach of other provisions of the laws on competition stipulated in Section 5 of Chapter II of this Decree, the authorized person shall issue an order suspending immediately the conduct in breach and shall prepare minutes of the breach.
2. The minutes shall contain the following particulars:
 - (a) Date and location of preparation of the minutes;
 - (b) Full name and title of the person who prepared the minutes;
 - (c) Full name, address and occupation of the individual in breach or, in the case of an organization in breach, the name and address of the organization;
 - (d) Date and location of occurrence of the breach;
 - (dd) Description of the conduct in breach;
 - (e) Administrative preventive measures (if any);
 - (g) Status of seized material evidence and facilities (if any);
 - (h) Declaration of the individual in breach or of the representative of the organization in breach;

- (i) Full name, address and declaration of any witness or of any individual suffering loss or of the representative of any organization suffering loss.
3. At least two copies of the minutes shall be prepared. The minutes shall be signed by the person who prepared them and by the individual in breach or by the representative of the organization in breach; and if there was any witness and any entity suffering loss, the minutes shall also be signed by the witness(es) and by the individual suffering loss or by the representative of the organization suffering loss. Where the minutes contain more than one page, all of the entities referred to in this clause must sign each page. If any individual in breach, representative of an organization in breach, witness, person suffering loss or representative of an organization suffering loss refuses to sign the minutes, the person preparing the minutes shall note it in the minutes.
4. After the minutes have been completed, one copy shall be handed to the individual or organization in breach; if the breach exceeds the jurisdiction to deal with the breach of the person preparing the minutes, the minutes must be forwarded to the body competent to deal with the breach.

Article 50 *Time-limit for issuing decision dealing with breach of other provisions of laws on competition*

1. The time-limit for issuing a decision dealing with a breach of other provisions of the laws on competition shall be ten (10) days from the date of preparation of the minutes of the breach; in complex circumstances, this time-limit shall be thirty (30) days.
2. If an authorized person considers that more time is required to verify or collate evidence, he or she shall provide a written request to extend the time-limit to the person directly in charge of him or her; and any grant of an extension shall be in writing and shall not exceed thirty (30) days. An authorized person shall not issue a decision dealing with a breach after the expiry of the time-limit stipulated above, and if a person is at fault in allowing the time-limit to expire without issuing a decision dealing with a breach, such person shall be dealt with in accordance with law.

Article 51 *Decision dealing with breach of other provisions of laws on competition*

1. A decision dealing with a breach of other provisions of the laws on competition shall contain the following particulars:
 - (a) Date of issuance of the decision;
 - (b) Full name and title of the person issuing the decision;
 - (c) Full name, address and occupation of the individual in breach or, in the case of an organization in breach, the name and address of the organization;
 - (d) Details of the act, conduct or practice in breach; any circumstances relevant to resolution; clause and articles of applicable legal instruments;
 - (dd) Principal penalty, additional form of penalty (if any) and measures for remedying consequences (if any);
 - (e) Time-limit for enforcement of the decision, place for enforcement of the decision, and signature of the person issuing the decision;
 - (g) Right pursuant to law to lodge a complaint about the decision dealing with a breach of other provisions of the laws on competition.
2. A decision dealing with a breach of other provisions of the laws on competition shall record that, if the individual or organization in breach fails to implement voluntarily the decision, the decision will be enforced compulsorily.

3. A decision dealing with a breach of other provisions of the laws on competition shall become effective as from the date of its signing, unless the decision itself provides for a different effective date.
4. A decision dealing with a breach of other provisions of the laws on competition shall be forwarded to the individual or organization in breach and to the fine-collecting body within three working days from the date of issuance of the decision.

Article 52 *Transfer of files on competition cases with indications of criminal offences*

If indications of a criminal offence are identified, the competent body shall transfer the file, the material evidence and the facilities used to commit the breach to the body with authority to institute a criminal prosecution in accordance with article 94 of the *Law on Competition*. If a decision dealing with a breach has already been issued, the body which issued such decision must revoke it and transfer the file to the body with authority to institute a criminal prosecution within three working days from the date of revocation of the decision.

SECTION 3

Procedures for Enforcement of Decisions Dealing with Competition Cases and of Decisions Dealing with Breaches of Other Provisions of Laws on Competition

Article 53 *Compliance with decision dealing with competition case or decision dealing with breach of other provisions of laws on competition*

1. An enterprise which is subject to a decision dealing with a competition case issued by a council dealing with a competition case or by the administrative body for competition must comply with the decision within a time-limit of thirty (30) days from the date of effectiveness of such decision dealing with the breach.
2. Any organization or individual being in breach of other provisions of the laws on competition and being dealt with pursuant to Section 5 of Chapter II of this Decree must comply with the decision dealing with the breach within ten (10) days from the date on which such decision is delivered.
3. If upon expiry of the time-limit stipulated in either clause 1 or clause 2 of this article the organization or individual fails to comply voluntarily with the decision, such decision shall be enforced pursuant to article 55 or article 56 of this Decree.

Article 54 *Payment of fines*

Any organization or individual which is fined by a decision dealing with a competition case or a decision dealing with a breach of other provisions of the laws on competition must pay the fine to the State Treasury stipulated in such decision.

Article 55 *Procedures for enforcement of decisions dealing with competition cases*

1. If upon expiry of the time-limit stipulated in article 53.1 of this Decree the organization or individual having a penalty imposed fails to comply voluntarily with the decision and does not institute court proceedings pursuant to Section 7 of Chapter V of the *Law on Competition*, the judgment creditor shall have the right to request the competent bodies stipulated in clauses 2 and 3 of this article to enforce the decision dealing with the competition case within the scope of the functions, duties and powers of such body.
2. The competent body shall be responsible to withdraw a business registration certificate or to revoke the right to use a licence or practising certificate which such body issued to the enterprise which committed an administrative breach, if so required by the council dealing with the competition case in its decision.
3. Other competent bodies shall be responsible to organize coercive measures, namely, the restructure of an enterprise which abused its dominant market position, the division or split of an enterprise which merged or consolidated, or the compulsory re-sale of that part

of an enterprise which was acquired, if so required by the council dealing with the competition case in its decision.

4. A civil judgment enforcement office of the province or city under central authority where the judgment debtor has its head office or resides or where there are assets of the judgment debtor shall be responsible to organize implementation of that part of the decision dealing with the competition case relating to assets at the request of the judgment creditor as named in the decision dealing with the competition case.

Article 56 *Procedures for enforcement of decision dealing with breach of other provisions of laws on competition*

If upon expiry of the time-limit stipulated in article 53.2 of this Decree the organization or individual having a penalty imposed fails to comply voluntarily with the decision dealing with a breach of other provisions of the laws on competition, such entity shall be compelled to implement the decision pursuant to articles 66 and 67 of the *Ordinance on Dealing with Administrative Offences* and the provisions of Decree 37-2005-ND-CP of the Government dated 18 March 2005 on procedures applicable to enforcement of decisions imposing penalties for administrative offences.

CHAPTER IV

Complaints and Denunciations

Article 57 *Complaints and denunciations*

1. Any organization or individual being dealt with for a breach of the laws on competition or the legal representative of such organization or individual shall have the right to lodge a complaint with the competent body about a decision dealing with a competition case or a decision dealing with a breach of other provisions of the laws on competition issued by a council dealing with a competition case or by the administrative body for competition where there are grounds for believing such decision is contrary to law or infringes the complainant's lawful rights and interests.
2. Any organization or individual being subject to an administrative preventive measure or the legal representative of such organization or individual shall have the right to lodge a complaint with the competent body about such measure applied by the chairman of the Competition Council or by the head of the administrative body for competition where there are grounds for believing such decision is contrary to law or infringes the complainant's lawful rights and interests.
3. All citizens shall have the right to make a denunciation with the competent body about a breach of the law during the process of dealing with breaches of the laws on competition where the breach causes loss or threatens to cause loss to the interests of the State or to the lawful rights and interests of a body, organization or individual.
4. Any organization or individual making a false complaint or denunciation which harms the reputation of the entity complained about or of the person denounced shall be dealt with in accordance with law.

Article 58 *Resolution of complaints about decision dealing with competition case of council dealing with case or of administrative body for competition*

Resolution of complaints about decisions dealing with competition cases of councils dealing with competition cases or of the administrative body for competition shall be implemented in accordance with Section 7 of Chapter V of the *Law on Competition* and with the provisions in Section 10 of Chapter III of Decree 116-2005-ND-CP of the Government dated 15 September 2005 providing detailed regulations for implementation of a number of articles of the *Law on Competition*.

Article 59 *Resolution of complaints about decisions dealing with breaches of other provisions of laws on competition and about decisions imposing administrative preventive measures*

Resolution of complaints about decisions dealing with breaches of other provisions of the laws on competition and about decisions imposing administrative preventive measures shall be implemented in accordance with the law on complaints and denunciations.

Article 60 *Resolution of denunciations*

Resolution of denunciations by citizens about breaches of law during the process of dealing with breaches of the laws on competition shall be implemented in accordance with the law on complaints and denunciations.

Article 61 *Institution of administrative court proceedings*

1. If the parties concerned disagree with a decision resolving a complaint by the competent body pursuant to article 58 of this Decree, they shall have the right to institute administrative court proceedings in respect of all or a part of such decision in accordance with article 115 of the *Law on Competition*.
2. If the parties concerned disagree with a decision resolving a complaint by the competent body pursuant to article 59 of this Decree, they shall have the right to institute administrative court proceedings in respect of all or a part of such decision in accordance with the law on complaints and denunciations and the procedures for resolution of administrative court proceedings.

CHAPTER V

Implementing Provisions

Article 62 *Effectiveness*

This Decree shall be of full force and effect after fifteen (15) days from the date of publication in the Official Gazette.

Article 63 *Responsibility for implementation*

1. The Ministry of Trade shall be responsible to organize implementation of this Decree.
2. Ministers, heads of ministerial equivalent bodies and Government bodies, and chairmen of provinces and cities under central authority shall be responsible for implementation of this Decree.

On behalf of the Government
Prime Minister

PHAN VAN KHAI

THE MINISTRY OF TRADE <hr style="width: 10%; margin: 0 auto;"/> No.19/2005/TT-BTM	SOCIALIST REPUBLIC OF VIETNAM Independence- Freedom- Happiness <hr style="width: 30%; margin: 0 auto;"/> <i>Hanoi, November 8, 2005</i>
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CIRCULAR

Guiding a number of contents in the Government's Decree No. 110/2005/ND-CP dated August 24, 2005, on management of multi-level sale of goods

Pursuant to Decree No. 29/2004/ND-CP of January 16, 2004 of the Government, defining the functions, tasks, powers and organizational structure of the Ministry of Trade;

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

The Ministry of Trade hereby guides a number of contents in Decree No. 110/2005/ND-CP as follows:

1. Subjects applying for multi-level sale registration papers

Subjects applying for multi-level sale registration papers are enterprises established in Vietnam under the provisions of law on enterprises and wishing to organize multi-level sale after the effective date of Decree No. 110/2005/ND-CP dated August 24, 2005, on management of multi-level sale of goods.

2. Agencies granting multi-level sale registration papers

Agencies granting multi-level sale registration papers are provincial/municipal Trade Services or Trade-Tourism Services with which enterprises applying for multi-level sale registration papers have made their business registrations.

3. Responsibilities of the agencies granting multi-level sale registration papers

a) To post up instructions on the conditions, order, time and administrative

procedures for granting multi-level sale registration papers at their head offices;

b) To grant multi-level sale registration papers to enterprises, which have dossiers satisfying the conditions specified in Article 14 of Decree No. 110/2005/ND-CP;

c) To consider the grant of multi-level sale registration papers within the time limit provided for in Article 16 of Decree No. 110/2005/ND-CP and under the guidance in this Circular;

d) To collect, manage and use the fee for grant of multi-level sale registration papers under the guidance of the Ministry of Finance;

e) To report in writing to the competition-managing office of the Ministry of Trade on the grant, additional grant or re-grant of multi-level sale registration papers according to the provisions of Clause 4, Article 16 of Decree No. 110/2005/ND-CP;

f) After granting multi-level sale registration papers, to assume the prime responsibility for, and coordinate with other competent state agencies in, inspecting and supervising the organization of multi-level sale according to the granted multi-level sale registration papers; to detect violations of provisions of law on management of multi-level sale activities and apply measures to handle such violations according to their competence or report them to competent authorities for handling;

g) To fully comply with regulations on archive of dossiers of application for multi-level sale registration papers, dossiers of application for supplementation of multi-level sale registration papers and dossiers of application for re-grant of multi-level sale registration papers according to the provisions of law on archives;

h) Other responsibilities provided for by law.

4. Dossiers of application for multi-level sale registration papers

a) A dossier of application for a multi-level sale registration paper shall comprise the documents specified in Article 15 of Decree No. 110/2005/ND-CP.

b) Applications for multi-level sale registration papers shall be made according to form MD-1 in Appendix II to this Circular (not printed herein).

c) Heads of enterprises defined in Clause 5, Article 15 of Decree No. 110/2005/ND-CP include owners of private enterprises, partners of partnerships, members of members' councils, chairpersons of companies, members of managing boards,

directors (general directors) and other important managerial posts defined in the charters of limited liability companies or joint stock companies.

5. Principal contents of the model contract on participation in multi-level sale

- a) The name, address of the head office and at-law representative of the multi-level sale enterprise;
- b) The full names, registered places of permanent residence (or registered places of sojourn, for foreigners), registered places of temporary residence, numbers of identity cards (or numbers of passports, for foreigners) of participants; numbers of working permits of participants being foreigners;
- c) The origin, category, quality, price, utility and usage of goods on sale, reselling price of goods warranty, conditions and scope for goods (if any);
- d) The method of calculating commissions, bonuses and economic benefits to be enjoyed by participants for their goods marketing and sale activities and by subordinate participants in the networks organized by participants themselves and accepted by the multi-level sale enterprise;
- e) Rights and obligations of the multi-level sale enterprise and participants, including the responsibility of the multi-level sale enterprise to pay damages to consumers or participants;
- f) Cases of contract termination and liquidation.

6. Procedures for grant of multi-level sale registration papers

- a) Receipt of dossiers of application for multi-level sale registration papers
 - The agencies granting multi-level sale registration papers shall have to receive dossiers of application for multi-level sale registration papers.
 - The dossier-receiving agencies must write dossier receipts. A dossier receipt shall be made in two copies according to form MTB-1 in Appendix II to this Circular (not printed herein). One copy shall be handed to the enterprise applying for a multi-level sale registration paper while the other shall be kept at the agency granting multi-level sale registration papers.
 - For incomplete and invalid dossiers of application for multi-level sale registration papers, the dossier-receiving agencies shall, within three working days after receipt

of such dossiers, ask in writing the enterprises to amend and complete their dossiers according to form MTB-2 in Appendix II to this Circular (not printed herein).

- Enterprises may request the dossier-receiving agencies to clearly explain the required amendment to and completion of dossiers while the dossier-receiving agencies shall have to satisfy such request of enterprises.

- Where no amendment to dossiers is required, the time limit for examination of dossiers shall be counted from the date of receipt of dossiers.

b) Examination of dossiers before making decision to grant multi-level sale registration papers

- Within 15 working days after the date of receipt of complete and valid dossiers, the agencies competent to grant multi-level sale registration papers shall, on the basis of relevant current provisions of law, examine such dossiers before deciding to grant or not to grant multi-level sale registration papers.

- In case of refusal to grant multi-level sale registration papers, agencies competent to grant multi-level sale registration papers shall have to reply in writing, clearly stating reasons therefor.

c) Multi-level sale registration papers

- Multi-level sale registration papers shall be made according to form MG-1 in Appendix II to this Circular (not printed herein).

- A multi-level sale registration paper shall be made in two original copies. One copy shall be granted to the applying enterprise while the other shall be kept at the agency granting the multi-level sale registration paper.

- Agencies granting multi-level sale registration papers shall write the serial numbers of registration papers according to the following regulations:

- + Provincial codes: two-digit numbers (specified in Appendix I to this Circular, not printed herein).

- + Enterprise type codes: 01 denotes private enterprises, 02 denotes limited liability companies with two members or more, 03 denotes joint-stock companies, 04 denotes one-member limited liability companies, 05 denotes partnerships, 06 denotes cooperatives, 07 denotes joint-venture enterprises, 08 denotes enterprises

with 100% foreign investment capital, and 09 denotes state enterprises.

+ Ordinal numbers of enterprises: 6-digit numbers, from 000001 to 999999.

+ Codes and numbers are joined with hyphens.

An example of the numbering of a multi-level sale registration paper: A private enterprise which makes its business registration in Hanoi shall have its multi-level sale registration paper numbered as follows:

01-01-000002 (multi-level sale registration paper granted to the second private enterprise in Hanoi).

d) Collection of the fee for grant of multi-level sale registration papers

Before handing multi-level sale registration papers to the applying enterprises, the agencies granting multi-level sale registration papers shall collect a fee for grant of multi-level sale registration papers under the guidance of the Ministry of Finance.

7. Supplementation of multi-level sale registration papers

a) A dossier of application for supplementation of a multi-level sale registration paper shall comprise:

- An application for supplementation of a multi-level sale registration paper, made according to form MD-2 in Appendix II to this Circular (not printed herein);
- The original multi-level sale registration paper granted by a competent agency;
- Documents related to changes in the sale program.

b) The procedures for supplementation of multi-level sale registration papers shall comply with the guidance in Clause 6 of this Circular.

Agencies which approve the supplementation of multi-level sale registration papers shall only write the additionally registered contents and certifications on the multi-level sale registration papers already granted to enterprises.

8. Re-grant of multi-level sale registration papers

a) Re-grant of multi-level sale registration papers in cases where they are lost

- When losing their multi-level sale registration papers, enterprises shall have to

promptly declare the loss to the commune-level police offices of the places where their multi-level sale registration papers are lost and notify such to the agencies which have granted the multi-level sale registration papers.

- Within seven working days after making declarations to the police offices, the enterprises shall have to request the agencies which have granted the multi-level sale registration papers to re-grant multi-level sale registration papers to them.

- A dossier of application for re-grant of a multi-level sale registration paper comprises:

- + An application for re-grant of a multi-level sale registration paper, made according to form MD-3 in Appendix II to this Circular (not printed herein);

- + The commune-level police office's certification that the enterprise has declared the loss of its multi-level sale registration paper.

b) Re-grant of multi-level sale registration papers in cases where they are torn or ragged

- Where their multi-level sale registration papers are tom or ragged, enterprises may apply for re-grant thereof.

- A dossier of application for re-grant of a multi-level sale registration paper comprises:

- + An application for re-grant of a multi-level sale registration paper, made according to form MD-3 in Appendix II to this Circular (not printed herein);

- + The torn or ragged original multi-level sale registration paper.

c) Procedures for re-grant of multi-level sale registration papers in cases where they are lost, torn or ragged

- Upon receiving the dossiers of enterprises in the cases specified at Points a and b of this Clause, the agencies granting multi-level sale registration papers shall have to write dossier receipts. A dossier receipt shall be made in two copies according to form MTB-1 in Appendix II to this Circular. One copy shall be handed to the applying enterprise while the other shall be kept at the agency granting multi-level sale registration papers.

- Within five working days after the date of receipt of complete and valid dossiers,

the agencies granting multi-level sale registration papers shall re-grant multi-level sale registration papers, made according to form MG-1 in Appendix II to this Circular, to enterprises. The serial numbers of re-granted multi-level sale registration papers shall be those of the lost, torn or ragged ones. Re-granted multi-level sale registration papers must specify the re-granting time.

- Before handing multi-level sale registration papers to enterprises which apply for re-grant thereof, the agencies granting multi-level sale registration papers shall collect a fee therefor under the guidance of the Ministry of Finance.

d) Re-grant of multi-level sale registration papers in cases where they are withdrawn or their use right is deprived of.

For enterprises which have their multi-level sale registration papers withdrawn or their right to use such papers deprived of, their dossiers of application for re-grant of multi-level sale registration papers shall not be considered by the agencies granting multi-level sale registration papers within one year after the date of issue of the withdrawal or right deprivation decisions.

- The re-grant of multi-level sale registration papers to enterprises, which have had their multi-level sale registration papers withdrawn or their right to use such papers deprived of by competent state agencies shall be conducted as for the grant of new multi-level sale registration papers.

9. Multi-level sale network member cards

a) Within seven working days after entering into a contract on participation in multi-level sale, a multi-level sale enterprise shall have to grant multi-level sale network member cards to the participants.

b) A multi-level sale network member card shall contain the following basic information:

- The name of the multi-level sale enterprise;
- The address of the head office and telephone number of the multi-level enterprise;
- The full name and the number of the identity card (or passport) of the participant;
- The serial number of the multi-level sale network member card;

- A 4 cm x 6 cm photo of the participant taken within six months before the contract on participation in multi-level sale is entered into;

- The date of grant of the card, the signature and seal of the multi-level sale enterprise's at-law representative;

- Rules for the card holder.

c) Multi-level sale network member cards shall be laid out according to form MT-1 in Appendix III to this Circular.

d) Multi-level sale enterprises shall renew old cards or grant new cards to participants in the following cases:

- Cards are torn, ragged or lost;

- One or several contents specified at Point b of this Clause is/are changed.

e) Multi-level sale enterprises shall have to withdraw multi-level sale network member cards upon termination of contracts on participation in multi-level sale according to the provisions of Article 10 of Decree No. 110/2005/ND-CP.

10. Notification of multi-level sale when multi-level sale enterprises develop their sale networks

a) When a multi-level sale enterprise develops its sale network to provinces or centrally-run cities other than the province or centrally-run city where it is headquartered, it shall have to notify the Trade Services or Trade and Tourism Services of such provinces or centrally-run cities of such development. Such notice shall be made according to the form of multi-level sale organization notice (MTB-3) set in Appendix III to this Circular (not printed herein).

b) After receiving multi-level sale notices of enterprises, the provincial/municipal Trade Services or Trade and Tourism Services shall have to inspect and supervise multi-level sale activities in their respective localities and handle violations of law provisions on management of multi-level sale activities according to their competence or report them to competent authorities for handling.

11. Organization of implementation

a) Provincial/municipal Trade Services or Trade and Tourism Services shall base themselves on the provisions of law and the guidance in this Circular to assist

provincial/municipal People's Committees in organizing the grant of multi-level sale registration papers; and regularly inspect, supervise and handle violations in multi-level sale activities in their localities.

b) Before January 15 every year, provincial/municipal Trade Services or Trade and Tourism Services shall have to report to the competition-managing office of the Trade Ministry on the inspection, supervision and handling of violations in multi-level sale activities in their localities.

c) In case of necessity, provincial/municipal Trade Services or Trade and Tourism Services shall have to report on matters related to multi-level sale activities in their localities at the request of the competition-managing office of the Ministry of Trade.

This Circular takes effect 15 days after its publication in CONG BAO. Any problems arising in the course of implementation should be promptly reported by the concerned branches and localities to the Ministry of Trade for study, amendment or supplement.

	<p style="text-align: center;">FOR THE MINISTER OF TRADE</p> <p style="text-align: center;">VICE MINISTER</p> <p style="text-align: center;"><i>(Signed and sealed)</i></p> <p style="text-align: center;">Le Danh Vinh</p> <p style="text-align: center;"><i>(This translation is for reference only)</i></p>
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GOVERNMENT

No : 05/2006/NŞ-
CP

SOCIALIST REPUBLIC OF VIET NAM
Independence - Freedom - Happiness

Hà Nội, January 9, 2006

DECREE

**On establishment, functions, duties, powers and
organizational structure of Vietnam Competition Council**

GOVERNMENT

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

Pursuant to the Law on Competition dated December 3, 2001;

Pursuant to the Decree No 86/2002/NĐ-CP dated November 05, 2002 by the Government on functions, duties, powers and organizational structure of ministries, ministerial-level agencies;

Pursuant to the Decree No 29/2004/NĐ-CP dated January 16, 2004 by the Government on functions, duties, powers and organizational structure of the Ministry of Trade;

Upon the request of the Minister of Trade,

DECREE :

Article 1. Establishment of Vietnam Competition Council

Vietnam Competition Council shall be established. Its transaction name in English shall be Vietnam Competition Council, which shall be abbreviated as VCC.

The Vietnam Competition Council shall have the legal status, a stamp imprinted with the national coat of arms, be allowed to open its bank account in the State Treasury as stipulated by law.

The fund for the operation of the Vietnam Competition Council shall be allocated from the state budget and prepared in the annual estimated budget of the Ministry of Trade.

Article 2. Position and function

The Vietnam Competition Council is an independent executive agency, has the function of handling limited competition acts.

Article 3. Duties and powers

The Vietnam Competition Council shall have the following duties and powers:

1. to organize the handling of affairs related to limited competition acts as stipulated by law.
2. to establish a Council for handling competition cases which will handle a concrete case
3. to request the concerned organizations, individual people to provide information, documents needed to implement the assigned duties.
4. to decide on application, change, abolishment of administrative prevention measures after receiving a file of competition case as stipulated by law.
5. to handle complaints, denouncements against competition cases related to limited competition acts as stipulated by law.
6. to do other duties, powers as stipulated by law.

Article 4. Organizational structure

1. The Vietnam Competition Council shall have from 11 to 15 members who are appointed, deappointed by the Prime Minister upon the request of the Minister of Trade. The members of the Vietnam Competition Council shall have to fully meet the requirements provided for in Article 55 of the Law on Competition.

The members of the Vietnam Competition Council shall work on basis of a 5-year term and may be re-appointed.

2. The Vietnam Competition Council shall be assisted by a Secretariat. Functions, duties, organizational structure of the Secretariat of the Vietnam Competition Council shall be specified by the Minister of Trade.

3. The Vietnam Competition Council shall be responsible for elaborating a regulation on its organization and operation and submit it to the Minister of Trade for approval.

Article 5. Leadership of the Vietnam Competition Council

The Vietnam Competition Council shall be headed by a Chairman. The Chairman of the Vietnam Competition Council shall be appointed, de-appointed

among the members of the Vietnam Competition Council by the Prime Minister upon the request by the Minister of Trade.

The Chairman of the Vietnam Competition Council shall be responsible for organizing its operation.

Article 6. Implementation effect

This Decree shall take effect 15 days after the date of its publication on the Gazette.

Article 7. Implementation responsibility

The Minister of Trade, the ministers, the heads of the ministerial-level agencies, the heads of the Government-affiliated agencies, the chairmen of the People's Committee or the provinces, the centrally-run cities shall be responsible for implementing this Decree./.

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER**

Recipients:

Phan Văn Khải – Signed

- Central Party Secretariat;
- Prime Minister, Deputy Prime Ministers;
- Ministries, ministerial-level agencies, Government-affiliated agencies;
- People's Councils, People's Committees of provinces, centrally-run cities;
- Central Party Office and Party Committees;
- President Office;
- Ethics Council and Committees of National Assembly;
- National Assembly Office;
- Supreme People's Court;
- Supreme People's Procuracy;
- Central offices of associations;
- National Public Administration Academy
- Government Office: BTCN, TBNC, c.c PCN, BNC,
- Management Board of Programme 112;
- Spokeman of Prime Minister, attached departments, units, Gazette;
- Archives: Filing clerk, Organization and Personnel Department (5 copies), Hoà (315b).

GOVERNMENT

No : 06/2006/NŞ-
CP

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom - Happiness

Hà Nội, January 9, 2006

DECREE

**On functions, duties, powers and organizational structure of Vietnam
Competition Administration Department**

GOVERNMENT

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

Pursuant to the Law on Competition dated December 3, 2001;

Pursuant to the Ordinance on Protection of Rights of Customers dated April 27, 1999;

Pursuant to the Ordinance on Self Defense in Importing foreign goods into Viet Nam dated May 25, 2002;

Pursuant to the Ordinance on Combat against Dumping of Goods Imported into Viet Nam dated April 29, 2004;

Pursuant to the Ordinance on Combat against Subsidy for Goods Imported into Viet Nam dated August 20, 2004;

Pursuant to the Decree No 29/2004/NĐ-CP dated January 16, 2004 by the Government on functions, duties, powers and organizational structure of the Ministry of Trade;

Upon the request of the Minister of Trade,

DECREE :

Article 1. Position and functions

1. The Vietnam Competition Administration Department shall be an organization affiliated to the Ministry of Trade, have a function of assisting the Minister of Trade to exercise the state management over the competition, combat against dumping, combat against subsidy, application of self defense measures

towards goods imported into Viet Nam; protecting rights of customers; coordinating with enterprises, goods industry associations to deal with lawsuits in international trading, which are related to the breaking of prices, the subsidy and the application of self defense measures.

The Vietnam Competition Administration Department has the transaction name in English as Vietnam Competition Administration Department, which is abbreviated as VCAD.

2. The Competition Administration Department shall have a legal status, a stamp imprinted the national coat of arms, be allowed to open its bank account, to use its respective stamp for its transaction as stipulated by law. Fund for the operation of the Vietnam Competition Administration Department shall be allocated from the state budget.

The Vietnam Competition Administration Department shall have its headquarter located in Ha Noi City and representative offices in provinces, other cities.

The establishment of its representative offices shall be decided by the Minister of Trade.

Article 2. Duties, powers

The Vietnam Competition Administration Department shall exercise duties, powers according to the legislation on competition, combat against dumping, combat against subsidy, protection of customers' rights and the following duties, powers:

1. To elaborate and submit to the Minister of Trade legal documents on competition, combat against dumping, combat against subsidy, application of self defense measures towards goods imported into Viet Nam, protection of customers' rights; to organize the implementation of the legal documents after they are issued.

2. To instruct to examine, evaluate and synthesize the implementation of legal documents, approved planning, plans, programmes, projects of the work areas falling under the function of the competition administration agency.

3. To investigate and request the concerned agency(ies) to handle, within their competence, the legal documents of which the contents do not conform with the legislation on competition, combat against dumping, combat against subsidy, application of self defense measures towards goods imported into Viet Nam, protection of customers' rights

4. With regard to competition:

a. To handle, to organize the investigation of competition cases related to limited competition acts for the Competition Council to handle as stipulated by law.

b. To organize investigation of competition cases related to unhealthy competition acts and the acts that violate the legislation on competition as stipulated by law.

c. To evaluate files of requests for being entitled to an exception according to the legislation and submit them to the Minister of Trade or to the Prime Minister for decision.

d. To supervise the process of economic centralization.

đ. To build up, to manage a system of information about dominant enterprises in the market, mono-power enterprises, competition principles applied to associations, exception cases.

5. With regard to handling cases (vu viec) of combat against dumping, combat against subsidy and application of self defense towards goods imported into Viet Nam.

a. To take the main responsibility for and coordinate with the concerned agencies to organize the implementation of the legal provisions on combat against dumping, combat against subsidy and application of self defense towards goods imported into Viet Nam.

b. To receive, to organize the investigation of the importing of foreign goods into Viet nam and propose measures of combat against dumping, combat against subsidy and self defense as stipulated by law.

c. To make request to the Minister of Trade to give decision on application of tax on combat against dumping, combat against temporary subsidy and application of self defense measures as stipulate by law.

d. To report the results of the investigation to the Council for Handling Cases, to make a report to the Minister of Trade for decision on application or non application of measures for combat against dumping, combat against temporary subsidy and self defense towards goods imported into Viet Nam.

đ) To take the main responsibility for and coordinate with the concerned agencies to guide and review the implementation of the decisions on application of measures for combat against dumping, combat against subsidy and self defense.

6. To coordinate with enterprises, goods industry associations in handling complaints related to combat against dumping, combat against temporary subsidy and self defense towards goods imported into Viet Nam.

7. To handle complaints, denouncements falling under competence and violations of the legislation on protection of customers' rights.

8. To carry out international co-operation activities in elaborating and implementing the legislation on competition, combat against dumping, combat against temporary subsidy, application of measures of self defense and protection of customers' rights.

9. To request organizations, individual people to provide necessary information, documents for the implementation of the assigned duties; to be entitled to using local and foreign consultants in a necessary circumstance as stipulated by law.

10. To apply administrative prevention measures, administrative violation punishment forms and consequence resolving measures as stipulated by law.

11. To propagandize, to educate, to disseminate the legislation and the policies related to competition, combat against dumping, combat against subsidy, application of self protection towards goods imported into Viet Nam and protection of customers' right.

12. To organize training, upgrading for improved professional qualification to the officials implementing management over competition, combat against dumping, combat against subsidy, application of self protection and protection of customers' right.

13. To manage the organization, the contingent of public servants, public officials, property, finance assigned as stipulated and delegated by the State.

14. To organize, to develop a database, to manage and to provide information for state agencies, organizations, individual people having a demand for as stipulated by the legislation on competition.

15. To do other duties assigned by the Minister of Trade.

Article 3. Organizational structure

1. The assistant apparatus to the Head of the Vietnam Competition Administration Department:

- Committee of Limited Competition Investigation
- Committee of Competition Supervision and Management

- Committee of Unhealthy Competition Investigation
 - Committee of Customer Protection
 - Committee of Handling of Combat Against Dumping, Combat Against Subsidy and Protection
 - Committee of International Cooperation
 - Office
2. Service delivery organizations affiliated to the Vietnam Competition Administration Department
- Information Center.
 - Center for Training of Investigators
3. Other units affiliated to the Vietnam Competition Administration Department, including:
- Representative Office in Da Nang.
 - Representative Office in Ho Chi Minh City.

Functions, duties, powers and organizational structure of the units affiliated to the Vietnam Competition Administration Department shall be specified according to the decision by the Minister of Trade.

The representative offices of the Vietnam Competition Administration Department shall have their own seals and be entitled to opening an account in the State Treasury as stipulated by law.

Article 4. Leadership

The Vietnam Competition Administration Department shall have a director and a number of deputy directors. The Director of the Vietnam Competition Administration Department shall be appointed, deappointed at the proposal of the Minister of Trade and be accountable to the Minister of Trade for all the operation of the Vietnam Competition Administration Department.

The Deputy Directors, the Heads of the representative offices of the Department shall be appointed, deappointed by the Minister of Trade at the proposals of the Director of the Department and be accountable to the Director of the Department for their assigned work.

Article 5. Staff

The staff of the Vietnam Competition Administration Department shall be decided on among all the staff of the Ministry of Trade by the Minister of Trade

Article 6. Implementation effect

This Decree shall take effect 15 days after the date of its publishment on the Gazette. The previous provisions contrary to this Decree shall be annulled.

Article 7. Implementation responsibility

The Minister of Trade, the minister, the heads of ministerial-level agencies, the heads of the Government-affiliated agencies, the chairmen of the People's Committees of provinces, centrally-run cities and the Director of the Vietnam Competition Administration Department are responsible for implementing this Decree./.

ON BEHALF OF THE GOVERNMENT PRIME MINISTER

Recipients:

- Central Party Secretariat;
- Prime Minister, Deputy Prime Ministers;
- Ministries, ministerial-level agencies, Government-affiliated agencies;
- People's Councils, People's Committees of provinces, centrally-run cities;
- Central Party Office and Party Committees;
- President Office;
- Ethics Council and Committees of National Assembly;
- National Assembly Office;
- Supreme People's Court;
- Supreme People's Procuracy;
- Central offices of associations;

- National Public Administration Academy
(Signed)
- Government Office: BTCN, TBNC, c.c PCN, BNC,
- Management Board of Programme 112;

Phan Văn Khải

- Spokeman of Prime Minister, attached departments, units, Gazette;
- Archives: Filing clerk, TCCB (5 copies)

OVERVIEW ON VIETNAM COMPETITION ADMINISTRATION DEPARTMENT

Prepared by:

Vietnam Competition Administration Dept. - MINISTRY OF INDUSTRY AND
TRADE

HANOI, MAY 2007

1

Points of Discussion

- Overview of VCAD
- Relevant legal documents
- Overview of functions of divisions under VCAD
- Plan of development of VCAD
- Human Resource development
- Budget of VCAD
- Projects/Donors
- Vietnam Competition Council

2

Overview of VCAD

- History
- Main functions
 - Competition Law
 - Consumer Protection Ordinance
 - Trade Remedies Regulations

3

Relevant Legal Documents

- Vietnam Competition Law
 - Promulgated since December 2004
- Ordinance on Consumer Protection
 - Dated 1999 adopted by National Assembly Steering Committee
 - Vietnam now is drafting the new law on consumer protection
- Ordinance on Antidumping
- Ordinance on Safeguard
- Ordinance on Subsidy and Countervailing measures

4

Functions of divisions under VCAD

- | |
|--|
| - International Cooperation Division |
| - Division on handling antidumping, countervailing and safeguard measures. |
| - Division on consumer protection |
| - Division on competition supervision and management |
| - Division on investigating unfair competition practices |
| - Division on investigating competition restriction practices. |
| - VCAD office |

5

Expansion of VCAD

- Competition Information Center
 - Established since 17/4/2008;
 - Main function: Building, managing, exploring and support in exploring information system, database for the purpose of assisting tasks and duties of VCAD

6

Human Resource of VCAD

- 12/2006: 20 employees
- 12/2007: 45 employees
- June 2008: 60 employees

7

Budget of VCAD

- 2006: 4 billion Vietnam dong (equivalent to 240.000USD)
- 2007: 5 billion Vietnam dong (equivalent to 300.000USD)
- 2008: 7.5 billion Vietnam dong (equivalent to 450.000USD)
- Budget allocation: 1/3 for salary payment; 2/3 for annual operation

8

Projects from other donors

- **Cuts International**
 - Project name: Advocacy and Capacity building on Competition Policy and Law in the Mekong Region;
 - Target country: Bangladesh, Cambodia, India, Laos, Nepal and Vietnam
 - Objective: Strengthen competition environment in those countries and strengthening enforcement capacity. The project also launched several advocacy program to raise business awareness on competition issue.
 - Period: 2004-2006
- **Swiss Project**
 - Project: Strengthening vietnamese competition authorities
 - Budget: 900.000 Swiss France (equivalent to 730.000USD)
 - Period: 3 years (2008-2010)

9

Projects from other donors

- **Adetef Project**
 - Not a separate project with VCAD
 - Cooperation activities under the umbrella of the FSP Project of the French Government to Vietnam, namely : "Support Vietnam in international economic integration". This project is hosted by Vietnam Committee on international integration.
 - The Project has been finished in August 2007.
- **Cooperation with KFTC**
 - Training courses organised by OECD -RCC
 - Expert exchanges

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Vietnam Competition Council

- **Functions, Tasks**
 - Organising hearing to handling competition restriction practices, including cartel and abuse of dominant position cases.
 - Independent council
- **Decree No. 05 of the Government**
- **List of VCC members**

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List of VCC member

No	Gender	Full name	Title	Agency
1	Male	Phan The Rue	Vice Minister	Ministry of Trade
2	Male	Dinh Trung Tung	Vice Minister	Ministry of Justice
3	Male	Truong Chi Trung	Vice Minister	Ministry of Finance
4	Male	Pham The Dung	Director General	Import-Export Department
5	Male	Hoang Tho Xuan	Director General	Domestic market Policy Department
6	Male	Nguyen Hung Dung	Director General	Market Management Department
7	Female	Trinh Minh Hien	Director General	Legal Department - Ministry of Transportation
8	Male	Ly Quoc Hung	Deputy Director General	Legal Department - Ministry of Industry
9	Male	Pham Van Hung	Deputy Director General	Financial Department - Ministry of Agriculture and Rural Development
10	Female	Nguyen Thi Man	Deputy Director General	Trade and Service Department - Ministry of Planning and Investment
11	Male	Do Thai Luu	Deputy Director General	Financial and Economic Department - Ministry of Construction ¹²



13

Division for Investigation of Competition Restriction Cases

Prepared by
Nguyen Duc Minh

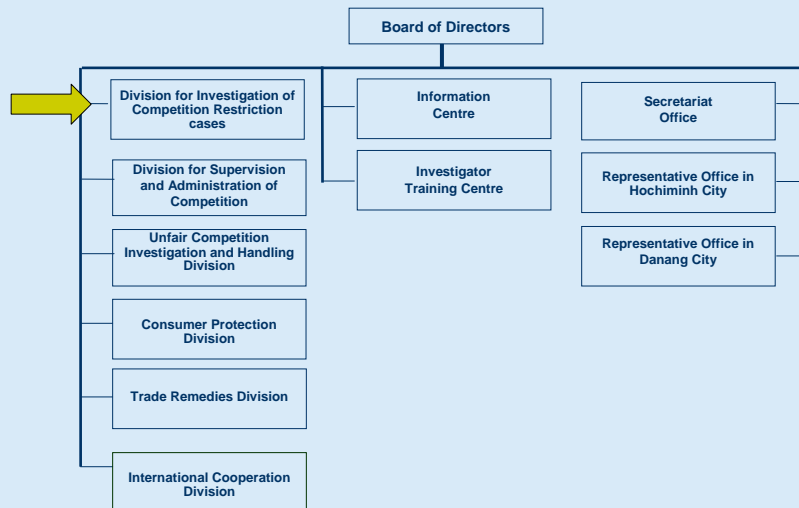


Contents



- Who we are?
- What we do?
- How we do?
- What we have done?
- What we need to do it better?

Who we are?



Who we are?

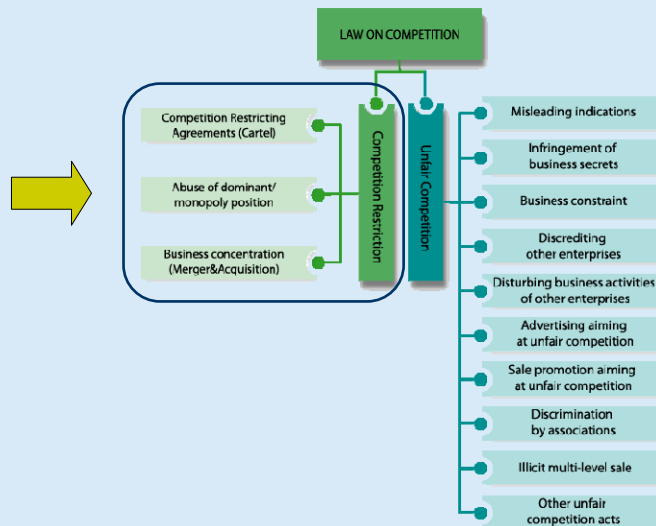


● Structure

- 01 Deputy Director + 05 staff
- 2 lawyers + 4 economists
- 4 investigators



What we do?



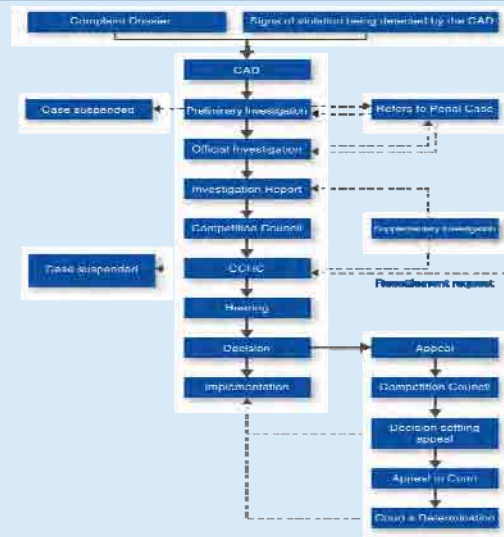
What we do?

● Legal basis

- Competition Law
- Decree No. 05/2006/ND-CP dated 09/01/2006
- Decree No. 06/2006/ND-CP dated 09/01/2006
- Decree No. 116/2005/ND-CP dated 15/09/2005
- Decree No. 120/2005/ND-CP dated 30/9/2005



How we do?



How we do?

● Sanctions

- *Monetary fine*
 - Up to 10% of the total revenue of the violating enterprises in the fiscal year preceding the year of violation
- *Additional sanctions*
 - Revocation of the business registration certificates, deprivation of licenses and practicing certificates; confiscation of exhibits and means used for committing violations
- *Consequence remedying measures*
 - Removal of illegal acts, compulsory restructure of enterprise ...



What we have done?

Year	Sector	Behavior	Status
2007	Beverage and Soft Drinks	Abuse of dominance	Official Investigation
2007	Consumer Goods	Abuse of dominance	Preliminary Revision
2007	Energy	Abuse of dominance	Closed Recommendations
2008	Petrol	Abuse of monopoly	Official Investigation
2008	Banking	Cartel	Closed Recommendations
2008	Banking	Abuse of dominance	Preliminary Revision



What we need to do it better?

- Human resource building
- Training program for Investigators
 - Textbook Compilation
 - Training session

Thank you



Division for Investigating and Settling Unfair Competition Cases

Prepared by
Nguyen Mai Hanh

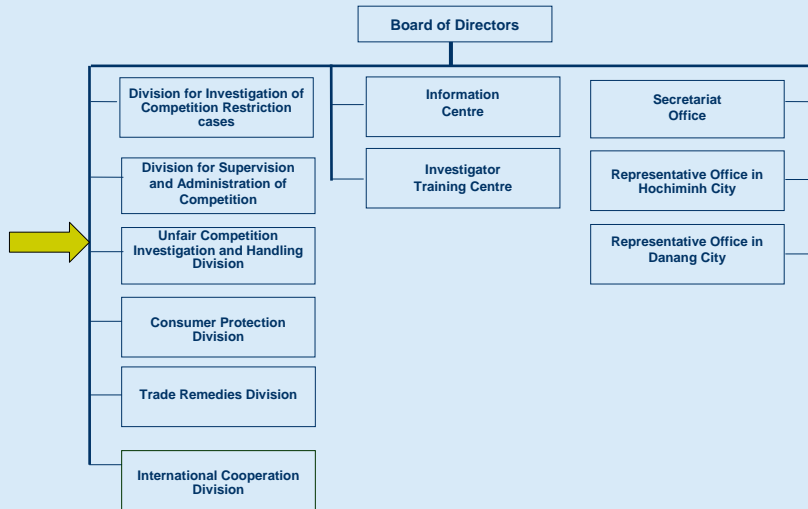


Contents



- Introduction of Division
- Regulations, Procedures and Sanction
- Indicator of Our activities
- Difficulties and challenges
- Needs of supportation

INTRODUCTION



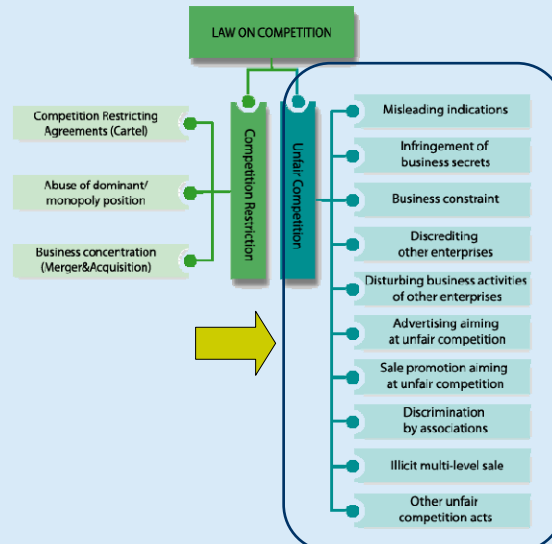
INTRODUCTION



● Structure

- 01 Deputy Director + 07 staffs
- 4 lawyers + 4 economists
- 6 investigators

INTRODUCTION



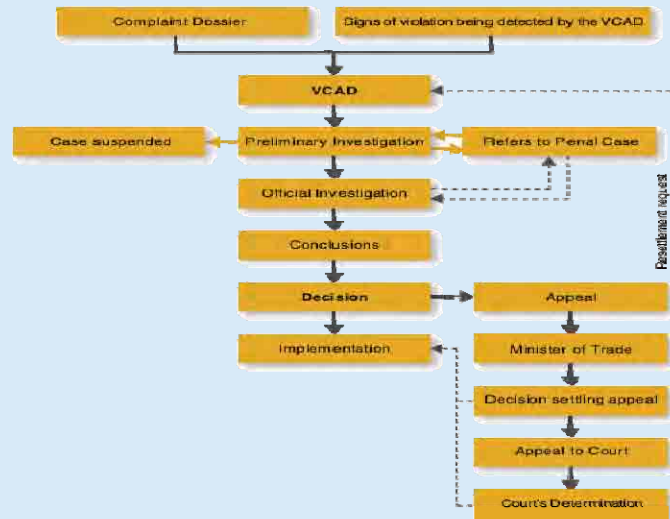
Regulation



● Legal basis

- Competition Law
- Decree No. 05/2006/ND-CP dated 09/01/2006
- Decree No. 06/2006/ND-CP dated 09/01/2006
- Decree No. 116/2005/ND-CP dated 15/09/2005
- Decree No. 120/2005/ND-CP dated 30/9/2005
- Decree No. 110/2005/ND-CP dated 20/8/2005
- Circular No. 19/2005/TT-BTM dated 8/11/2005

PROCEDURES



SANCTION



• Sanctions

- *Monetary fine*
 - *From 5 million to 20 million VND* for misleading indications; infringement upon business secrets; constraint in business; discrediting other enterprises; disturbing business activities of other enterprises.
 - *From 15 million to 50 million VND* for advertising, sale promotion for the purpose of unfair competition and discrimination by associations.
 - *From 50 million to 100 million VND* for illegal multi-lever sales
- *Additional sanctions*
 - Confiscation of exhibits and means used for committing violations
- *Consequence remedying measures*
 - Forced to make public correction



Indicators of our activities

Unfair competition cases	2005	2006	2007	2008	Total
Number of complaint dossiers received? (unfair competition)	0	8	12	4	24
Number of signs of violation being detected by VCAD	0	0	0	0	0
Number of preliminary investigation conducted by VCAD	0	0	4	2	6
Number of decisions of cases made by VCAD	0		4		4
Number of cases under investigation	0			2	2
Number of administrative preventing measures imposed by VCAD	0		2		2
Number of warnings, total amount of fines, number of additional sanctions and of remedying measures imposed for unfair competitive practice.	0		1 VND85.000.000	1 VND 60.000.000	2
Number of complaints appealed to the People's Court	0	0	0	0	



DIFFICULTIES AND CHALLENGES

- Lack of experiences
- Tight financial resource
- Insufficient human resources

Needs of support activities



- Human resource development:
 - + Training
 - + Internship
 - + Study Tour
- Research and publication
- Advocacy activities

Thank you



Vietnam Competition Administration Department

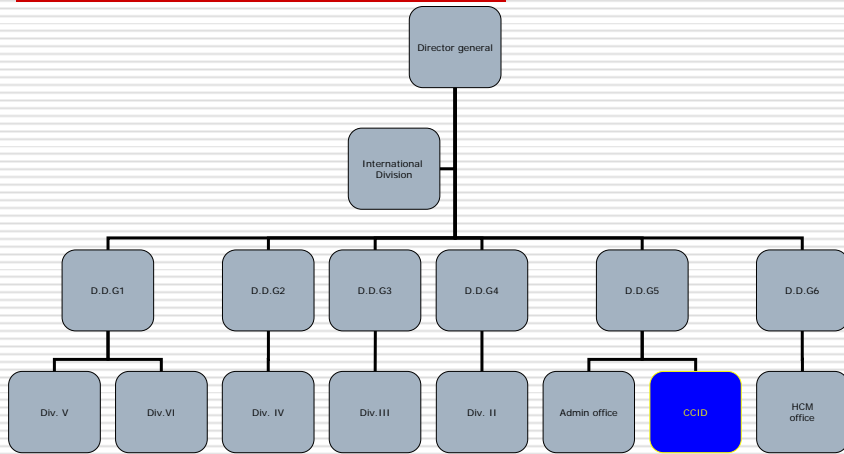
Technical Assistance Needs of Center for Competition Information and Data (CCID) **for the period 2008-2010**

25 Ngo Quyen street, Hanoi, Vietnam
Tel.: 84-4-2205009; Email: phuvb@moit.gov.vn

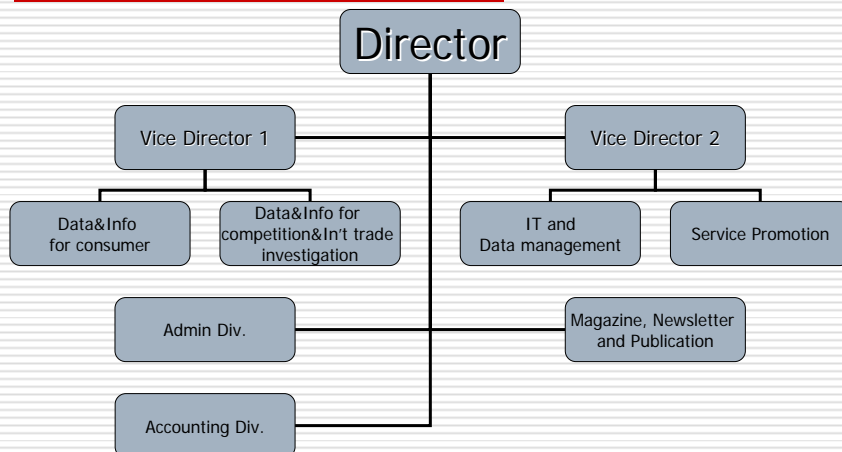
Establishment and Structure

- Decree No. 06/2006/ND-CP of the Government regulated functions, duties, authorities and structure of the VCAD
 - Decision No. 2332/QD-BCT of the MTI's Minister regulated functions, duties, authorities and structure of the CCID
 - Structure (see next page)
-

CCID in VCAD



CCID's Organization Chart



CCID: Mission and Function

- To setup and manage a system of national and international data and information on competition, consumer's right and anti-dumping, subsidy defense and self-defense in international trade;
- Filling and Storage documents and dossiers related to the closed cases of VCAD;
- Provide local and international information on the periodical basis and to serve state management, monitoring, building and paving policy on competition, consumer's right and anti-dumping, subsidy defense and self-defense in international trade of VCAD and line agencies;
- Promote info and data service on the requirement of the local and international individual and entities in conformity with regulation and leaders;
- Advise Leaders the use of consultant service and adhoc service in the necessary case base on the needs and in conformity with regulation;
- Work and coordinate with inter VCAD agencies on publishing relevant publications for the purpose of PR, introduction and propaganda of competition, consumer right protection, trade defense measure policy as well as other activities of the VCAD;
- Build, maintain, and manage VCAD's intranet and internet;
- Takes part and coordinates with relevant divisions and entities of VCAD in researches, studies and info. analysis;

T/A Need 1: 2008-2010

Description	Objectives	Inputs	Outputs
Training collection, treatment and analysis skill of economic and industry data for the competition investigation	Equip basic skill of data collection, treatment and analysis for the CCID's staff such as economic statistics, social survey, quantitative application in survey, analysis, consolidation	<ul style="list-style-type: none"> - Provision of experts; - Chances for the local and international workshop, training; - Guidelines and related materials; - Software, quantitative models; - Financial resources for above activities; 	<ul style="list-style-type: none"> - Number of training courses held locally and internationally; - Number of staff will be sent for local and international training and workshops; - Manual or hand book for the staff.

T/A Need 2: 2008-2010

Des	Objectives	Inputs	Outputs
Builds and operates an economic data and information system serving competition investigation	<p>Establishment of an economic data and information serving competition investigation such as:</p> <ul style="list-style-type: none"> (1) Industrial structure of high economic concentration industries (electricity – except for transmission, internet, telecommunication, retail distribution...) (2) Market share of above industries; (3) Measure market power of enterprises in the above industries; (4) Market barrier accession (if any); (5) Substitute ability of the related goods on the market; (6) Number of M&A, cartel formation in the period (7) Structural data and information system for the unfair competition activities (multi-level retail, distortion advertisement...); 	<ul style="list-style-type: none"> - Experts; - Workshops and Seminars; - Hiring IT firms to develop professional soft-wares for the data & information treatment; - Finance for the publication of reports of those issues; 	<p>A Structural data and information system of the:</p> <ul style="list-style-type: none"> - Industries; - Market of basic good and services; <p>To serve:</p> <ul style="list-style-type: none"> - The state management of competition policy; - Monitoring and supervision of competition compliance - Competition investigation; - Annual reports of the industrial structure, market share basic goods and services, M&A, cartel formation... <p>FI: *VCAD telecommunications reports 2008-09*</p> <ul style="list-style-type: none"> - Builds and operates the websites of these issues

T/A Need 3: 2008-2010

Des.	Objective	Inputs	Outputs
Build, maintain and operate V&E VCAD's website and CCID's website	<ul style="list-style-type: none"> (1) Improvement VCAD's website structure and content; (2) Maintain English version of VCAD's website; (3) Build and operate CCID's website; (4) Maintain English version of CCID website 	<ul style="list-style-type: none"> - Translation E-V and V-E; - Editing; - Local and international experts (contribution for the content); - Finance 	<ul style="list-style-type: none"> - Improved website of VCAD; - Maintenance of English version for VCAD's website; - CCID website - Maintenance of English version for CCID's website

T/A Need 4: 2008-2010

Des.	Objectives	Inputs	Outputs
Bi-monthly "Competition and Consumer" Newsletter	To publish a bimonthly newsletter of VCAD under the name "Competition and Consumer" as a supplement tool of competition advocacy and a forum for exchange view, policy analysis.	- Expert (local and internationally) for text, editing; - Finance (for print and publishing)	- To publish 5000 unit/40-50 pages/term

Budget and resource for scheme realization

- Will be discussed in detail for each activity

Thanks for your attention!

ECONOMIC CONCENTRATION CONTROL IN VIETNAM

Presented by:

**Competition Supervision and Administration
Division
Vietnam Competition Administration Dept.**

**This presentation is of personal opinion only, not necessary reflex the official views of Vietnam
Competition Administration Department**

Hanoi, July 2008

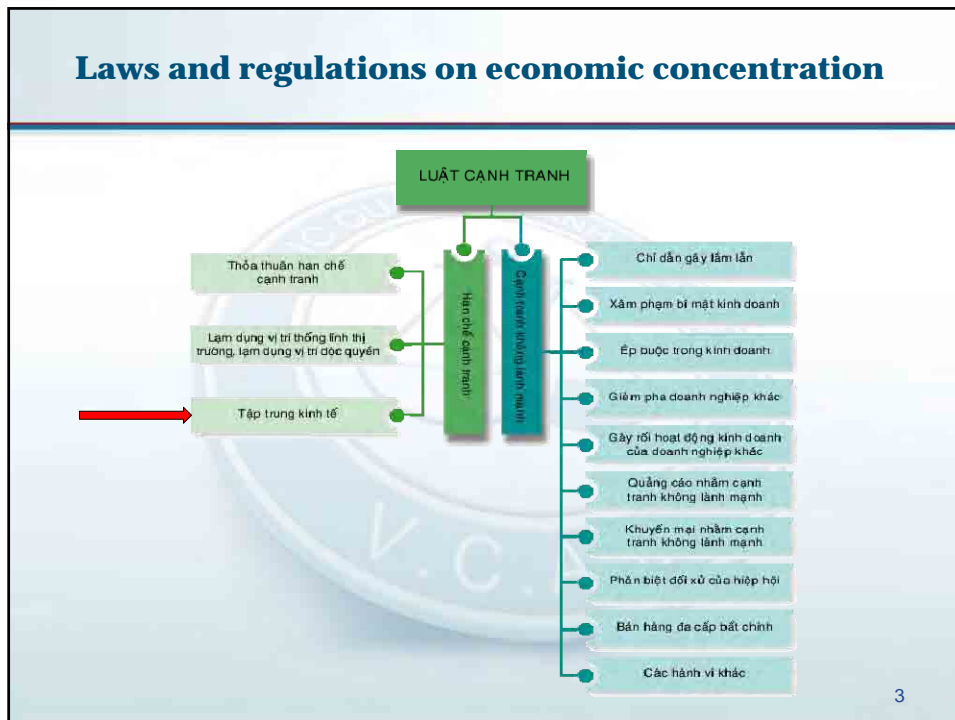
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CONTENT

- **Laws and regulations on economic concentration**
- **Practices of M&A in Vietnam**
- **Issues to discuss with JICA**
- **Q&A**

2

Laws and regulations on economic concentration



Forms of Economic concentration

Economic concentration means acts of enterprises, including:

- (i) Merger of enterprises;
- (ii) Consolidation of enterprises;
- (iii) Acquisition of enterprises;
- (iv) Joint venture between enterprises;
- (v) Other acts of economic concentration prescribed by law.

Merger

- ***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

Target company

Merger company

- Example: **Enterprise A** merge into **Enterprise B**

5

Consolidation

- ***Consolidation of enterprises*** means an act whereby two or more enterprises transfer all of their property, rights, obligations and legitimate the existence of the consolidated enterprises.

Consolidated enterprises

New enterprise

- Example: Enterprise A and Enterprise B consolidate to establish **Enterprise C**

6

Acquisition

- **Acquisition of enterprises** means 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

Acquirer enterprise

Acquired Enterprise

- Example: Enterprise A acquire 51% of shares of Enterprise B

7

Joint venture

- **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

Joint venture enterprises

New enterprise

- Example: Enterprise A and Enterprise B jointly contribute capital to establish a new Enterprise C

8

Notification of economic concentration

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.

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.

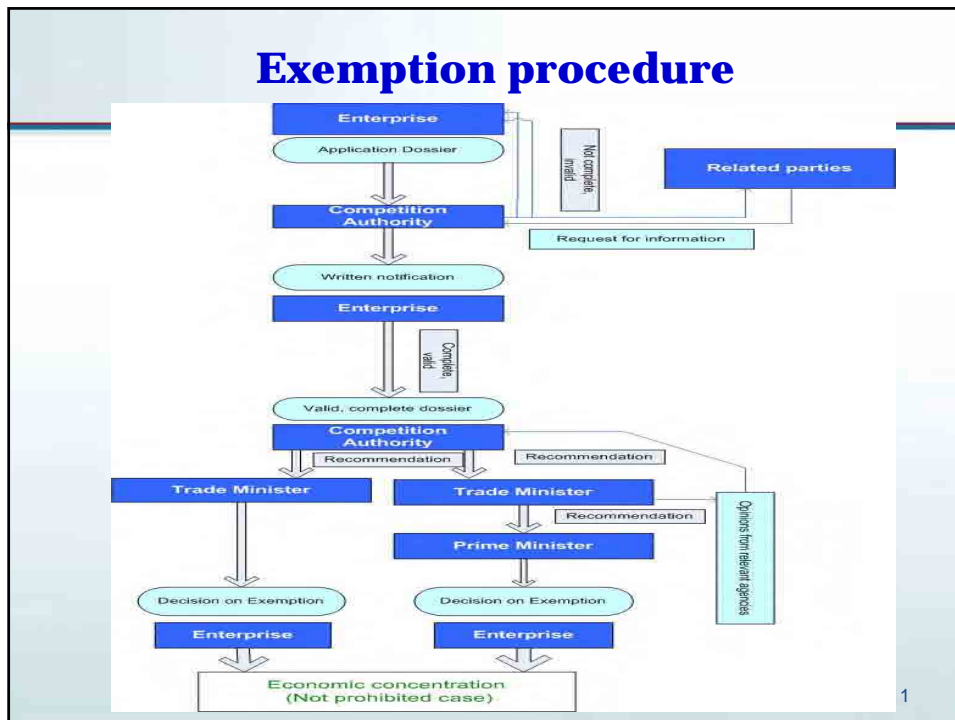
9

Exemption from prohibited economic concentration

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

10

Exemption procedure



OTHER LAWS REGULATING ECONOMIC CONCENTRATION ACTIVITIES IN VIETNAM

2/ Enterprise Law 2005

- **Article 153:** One or some enterprises operating in the same sector (merged enterprise) could be merged into other enterprise (merger enterprise) by transferring all assets, obligations, rights and legally interests to the merger enterprise, and bring to the end of the existence of the merged enterprise.
- **Article 152:** Two or some enterprises operating in the same sector (consolidated enterprise) could be consolidated into a new enterprise by transferring all assets, obligations, rights and legally interests to the consolidation enterprise, and bring to the end of the existence of the consolidated enterprises.
- **Article 154:** The owner of the private enterprise have the right to sell out his/her enterprise to other people.

OTHER LAWS REGULATING ECONOMIC CONCENTRATION ACTIVITIES IN VIETNAM

2/ Investment Law 2005

Article 21: Direct investment could be conducted by the following forms:

- Contribute capital to establish a new enterprise or to participate in management of the investment activities
- *Acquire all or a part of the existing enterprise*
- *Acquire shares to merge an enterprise*

Article 25: On the capital contribution, share acquiring and M&A

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OTHER LAWS REGULATING ECONOMIC CONCENTRATION ACTIVITIES IN VIETNAM

3/ Securities Law 2006

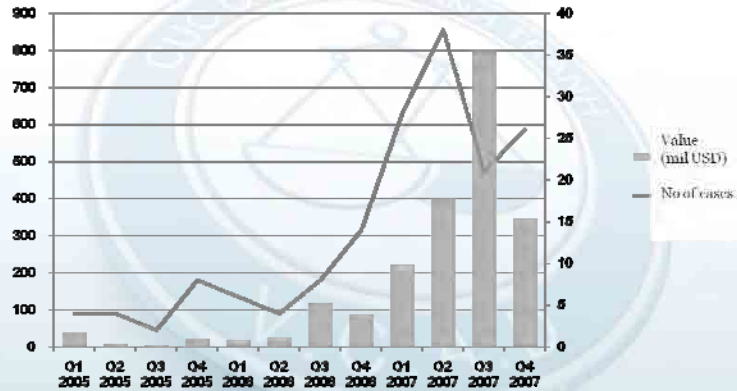
- **Article 29 and Article 69**

4/ Law on credit institutions

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CURRENT STATUS OF M&A ACTIVITIES IN VIETNAM

Announced M&A in Vietnam



Source: PriceWaterhouse Coppers

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ISSUES TO DISCUSS WITH JICA

Question 3-13

Number of specific sectors exempted from an application of the Competition Law, based exemption provisions.

Answer: There's no exempted sector at all

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ISSUES TO DISCUSS WITH JICA

Question 3-14

Number of notifications and confirmation of economic concentration

Year	Number of cases	Industry	Conduct	Current status
2007	1	Plastic - Chemical	Economic concentration objected to notification	Filing
2008	4	Software industry	Economic concentration	Consultation
		Telecom device	Economic concentration	Consultation
		Entertainment service	Economic concentration	Consultation
		Paint - Chemical	Economic concentration	Consultation
Total	5			

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ISSUES TO DISCUSS WITH JICA

Question 4B

1/ For what purpose does VCAD use market research

Answer:

- Market research would provide the pictures of market shares
- For supervising competition conducts in the market, particularly the competition restrictive conducts, abuse of dominant/monopoly position
- For controlling economic concentration activities

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ISSUES TO DISCUSS WITH JICA

Question 4B

2/ Does VCAD have any plan to implement market research?
If do, please specify the goal and status quo

Answer:

- Annually, VCAD plans to implement market research in the selected specific sectors such as telecom, pharmaceutical,... The sectors are selected based on emerging issues raised in the market as well as the existing resources of VCAD

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ISSUES TO DISCUSS WITH JICA

Question 4B

3/ Please explain the results of the implementation of the market research in the past

Answer:

- In the past, VCAD has provided 4 market researches done by VCCI via a project funded by JICA (VCAD is the beneficiary). Beside that, we have not implemented any other due to limited resources in terms of both staff and budget

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ISSUES TO DISCUSS WITH JICA

Question 4B

4/ Please explain the difficulties and weak points of the market research

Answer:

- Expertise to determine “relevant market”
- Criteria to define market structure, in which market share is a major indicator
- The reliable database of turnover/revenue of firms

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ISSUES TO DISCUSS WITH JICA

Question 4B

5/ Please explain the database for automatic alert and how to collect data

Answer:

- We don't have database for automatic alert

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ISSUES TO DISCUSS WITH JICA

Question 4C

Competition advocacy activities

Answer:

- 4C-1: VCAD coordinates with specific sectoral regulators by:
 - (i) written notes (MOU) between VCAD with individual specific regulators such as ERAV, FIA
 - (ii) administration means such as official letters issued by VCAD requesting for cooperation in specific cases
- 4C-2: VCAD joints into the drafting board of the law as a member
- 4C-3; 4C-4: None

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ISSUES TO DISCUSS WITH JICA

Question 6-1

Please explain related policies for competition law

Answer:

- Decision of the Prime Minister in specific situations
- Industrial policy in which some domestic industries are encouraged to strengthen in the purpose of international competition

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Q&A



Vietnam Competition Administration Department

21 Ngô Quyền, Hoàn Kiếm, Hà Nội
Tel: +84 4 8262538
Fax: +84 4 9360385
Email: qlct@mot.gov.vn
Website: www.vcad.gov.vn; www.qlct.gov.vn

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THANK YOU FOR YOUR LISTENING!

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Function and Responsibilities of Competition Administration Division

1. Assess Exemption Application and submit proposal to Head of VCAD
 2. Control Economic concentration
 3. Acts that State management agencies are prohibited from performing
 4. State management responsibilities for competition
 5. Law Review
 6. State management over competition
- (Supervise Enforcement of competition law – Article No. 4, 5,6,7,15 of Competition Law.)*

Article 4. Right to business competition

- Enterprises enjoy freedom to competition within the legal framework. The State protects the lawful right to business competition
- Competition must be implemented on the principles of honesty, non infringement upon the interest 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;

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

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.

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.

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

- 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.

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

- 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.