

THE NATIONAL ASSEMBLY

SOCIALIST REPUBLIC OF VIET NAM

Independence Freedom Happiness

No. 27/2004/QH11

Hanoi, December 03rd, 2004

LAW

ON COMPETITION

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended and added to by Resolution 51-2001-QH10 passed by Legislature X of the National Assembly at its 10th Session on 25 December 2001;

This Law governs competition.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of governance

This Law governs practices in restraint of competition, unfair competitive practices, the order and procedures for resolution of competition cases, and measures for dealing with breaches of the laws on competition.

Article 2. Applicable entities

This Law shall apply to:

1. Organizations and individuals conducting business (hereinafter together referred to as enterprises), including enterprises engaged in production or supply of public utility products or services, enterprises conducting business in State monopoly industries and sectors and overseas enterprises operating in Vietnam.
2. Industry associations operating in Vietnam.

Article 3. Interpretation of terms

In this Law, the following terms shall be construed as follows:

1. Relevant market consists of relevant product market and relevant geographical market.

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.

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. Industry associations consist of trade associations and professional associations.

3. Practices in restraint of competition means practices of enterprises which reduce, distort or hinder competition in the market, including practices being agreements in restraint of competition, abuse of dominant market position, abuse of monopoly position and economic concentration.

4. Unfair competitive practices means competitive practices by an enterprise during the business process which are contrary to general standards of business ethics and which cause or may cause damage to the

interests of the State and/or to the legitimate rights and interests of other enterprises or of consumers.

5. Market share of an enterprise with respect to a certain type of goods or services means the percentage of turnover from sales of such enterprise over the total turnover of all enterprises conducting business in such type of goods or services in the relevant market or the percentage of turnover of inwards purchases of such enterprise over the total turnover of inwards purchases of all enterprises conducting business in such type of goods or services in the relevant market for a month, quarter or year.

6. Combined market share means the total market share in the relevant market of the enterprises participating in an agreement in restraint of competition or in an economic concentration.

7. Total prime cost of goods and services comprises:

(a) Prime cost of producing products and services; prime cost of purchasing goods;

(b) Expenses of circulating goods and services to consumers.

8. Competition cases means cases with an indication of a breach of this Law which are investigated by the competent State body and dealt with in accordance with the provisions of law.

9. Competition legal proceedings means activities of bodies, organizations and individuals in accordance with the order and procedures for resolving and/or dealing with competition cases in accordance with the provisions of this Law.

10. Business secret means information which satisfies all of the following conditions:

(a) It is not common knowledge;

(b) It is able to be applied in business and when used will create an advantage for the information holder over an entity which does not have or use such knowledge;

(c) It is protected by its owner by necessary means in order that such information will not be disclosed and will be difficult to access.

11. Multi-level selling of goods means a marketing method in order to conduct a retail sale of goods which satisfies the following conditions:

(a) Marketing in order to conduct a retail sale of goods is implemented via a network of participants comprising a number of different levels and branches;

(b) A participant markets goods directly to a consumer at the residence or working location of the consumer or at some other place which is not the regular retail sales location of the enterprise or participant;

(c) A participant in the network for multi-level selling of goods will receive commissions, bonuses or other economic benefits from the results of marketing sales of goods by himself or herself and by other persons below the participant in the network organized by such participant and approved by the enterprise engaged in multi-level selling of goods.

Article 4. Right to compete in business

1. All enterprises shall be entitled to compete freely within the framework of the law. The State shall protect the right to compete lawfully in business.

2. Competition must be undertaken on the principles of honesty; non-infringement of the interests of the State, the public interest, and the lawful rights and interests of enterprises and consumers; and compliance with the provisions of this Law.

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

1. Where there is any difference between the provisions of this Law and the provisions of another law with respect to a practice in restraint of

competition or unfair competitive practice, the provisions of this Law shall apply.

2. Where an international treaty which the Socialist Republic of Vietnam has signed or acceded to contains provisions which are different from those in this Law, the provisions of such international treaty shall prevail.

Article 6. Practices of State administrative bodies which are prohibited

State administrative bodies shall not be permitted to perform the following acts in order to hinder competition in the market:

1. Force an enterprise, organization or individual to purchase or sell goods or services with an enterprise appointed by such body, except for goods and services belonging to State monopoly sectors or in cases of emergency as stipulated by law;

2. Discriminate between enterprises;

3. Force industry associations or enterprises to associate with each other aimed at excluding, restraining or hindering other enterprises from competing in the market;

4. Other practices which hinder the lawful business activities of enterprises.

Article 7. Responsibility for State administration of competition

1. The Government shall exercise uniform State administration of competition.
2. The Ministry of Trade shall be responsible before the Government for the exercise of State administration of competition.
3. Ministries, ministerial equivalent bodies and people's committees of provinces and cities under central authority shall, within the scope of their respective duties and powers, be responsible to co-ordinate with the Ministry of Trade in the exercise of State administration of competition.

Chapter II

CONTROL OF PRACTICES IN RESTRAINT OF COMPETITION

Section 1. AGREEMENTS IN RESTRAINT OF COMPETITION ARTICLE 8 AGREEMENTS IN RESTRAINT OF COMPETITION AGREEMENTS IN RESTRAINT OF COMPETITION SHALL COMPRISE:

1. Agreements either directly or indirectly fixing the price of goods and services;

2. Agreements to share consumer markets or sources of supply of goods and services;
3. Agreements to restrain or control the quantity or volume of goods and services produced, purchased or sold;
4. Agreements to restrain technical or technological developments or to restrain investment;
5. 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 which are not related in a direct way to the subject matter of the contract;
6. Agreements which prevent, impede or do not allow other enterprises to participate in the market or to develop business;
7. Agreements which exclude from the market other enterprises which are not parties to the agreement;
8. Collusion in order for one or more parties to win a tender for supply of goods and services.

Article 9. Prohibited agreements in restraint of competition

1. The agreements stipulated in clauses 6, 7 and 8 of article 8 of this Law shall be prohibited.

2. The agreements in restraint of competition stipulated in clauses 1, 2, 3, 4 and 5 of article 8 of this Law shall be prohibited when the parties to the agreement have a combined market share of thirty (30) per cent or more of the relevant market.

Article 10. Exemptions for prohibited agreements in restraint of competition

1. An agreement in restraint of competition stipulated in clause 2 of article 9 of this Law shall be entitled to exemption for a definite period if it satisfies one of the following criteria aimed at reducing prime costs and benefiting consumers:

(a) It rationalizes an organizational structure or a business scale or increases business efficiency;

(b) It promotes technical or technological progress or improves the quality of goods and services;

(c) It promotes uniform applicability of quality standards and technical ratings of product types;

(d) It unifies conditions on trading, delivery of goods and payment, but does not relate to price or any pricing factors;

(dd) It increases the competitiveness of medium and small sized enterprises;

(e) It increases the competitiveness of Vietnamese enterprises in the international market.

2. The order, procedures and duration of exemptions shall be implemented in accordance with the provisions in Section 4 of this Chapter.

Section 2. ABUSE OF DOMINANT MARKET POSITION AND MONOPOLY POSITION

Article 11. Enterprises and groups of enterprises in dominant market position

1. An enterprise shall be deemed to be in a dominant market position if such enterprise has a market share of thirty (30) per cent or more in the relevant market or is capable of substantially restraining competition.

2. A group of enterprises shall be deemed to be in a dominant market position if they act together in order to restrain competition and fall into one of the following categories:

(a) Two enterprises have a market share of fifty (50) per cent or more in the relevant market;

(b) Three enterprises have a market share of sixty five (65) per cent or more in the relevant market;

(c) Four enterprises have a market share of seventy five (75) per cent or more in the relevant market.

Article 12. Enterprises in monopoly position

An enterprise shall be deemed to be in a monopoly position if there are no enterprises competing in the goods and services in which such enterprise conducts business in the relevant market.

Article 13. Practices constituting abuse of dominant market position which are prohibited

Any enterprise or group of enterprises in a dominant market position shall be prohibited from carrying out the following practices:

1. Selling goods or providing services below total prime cost of the goods aimed at excluding competitors;

2. Fixing an unreasonable selling or purchasing price or fixing a minimum re-selling price goods or services, thereby causing loss to customers;

3. Restraining production or distribution of goods or services, limiting the market, or impeding technical or technological development, thereby causing loss to customers;
4. Applying different commercial conditions to the same transactions aimed at creating inequality in competition;
5. 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 matter of the contract;
6. Preventing market participation by new competitors.

Article 14. Practices constituting abuse of monopoly position which are prohibited

Any enterprise in a monopoly position shall be prohibited from carrying out the following practices:

1. Practices stipulated in article 13 of this Law;
2. Imposing disadvantageous conditions on customers;
3. Abuse of monopoly position in order to change or cancel unilaterally a signed contract without legitimate reason.

Article 15. Control of enterprises operating in State monopoly sectors and of enterprises engaged in production or supply of public utility products or services

1. The State shall control enterprises which operate in State monopoly sectors by taking the following measures:

(a) Deciding the selling price or purchasing price of goods and services in State monopoly sectors;

(b) Deciding the quantity, volume, price and market scope of goods and services in State monopoly sectors.

2. The State shall control enterprises which produce or supply public utility products or services by the method of placing orders, assigning plans or conducting tendering in accordance with prices or fees stipulated by the State.

3. When conducting business activities outside State monopoly sectors and other than production or supply of public utility products or services, enterprises shall not be subject to the controls stipulated in clauses 1 and 2 of this article but shall be governed by the other provisions of this Law.

Section 3. ECONOMIC CONCENTRATION

Article 16. Economic concentration

Economic concentration means conduct of enterprises comprising:

1. Merger of enterprises;
2. Consolidation of enterprises;
3. Acquisition of an enterprise;
4. Joint venture between enterprises;
5. Other forms of economic concentration as stipulated by law.

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

1. Merger of enterprises means the transfer by one or more enterprise(s) of all of its lawful assets, rights, obligations and interests to another enterprise and at the same time the termination of the existence of the merging enterprise(s)

2. Consolidation of enterprises means the transfer by two or more enterprises of all of their lawful assets, rights, obligations and interests to form one new enterprise and at the same time the termination of the existence of the consolidating enterprises.

3. Acquisition of an enterprise means the purchase by one enterprise of all or part of the assets of another enterprise sufficient to control or govern the activities of one or all of the trades of the acquired enterprise.

4. Joint venture between enterprises means two or more enterprises together contribute a portion of their lawful assets, rights, obligations and interests to form a new enterprise.

Article 18. Prohibited cases of economic concentration

Any economic concentration shall be prohibited if the enterprises participating in the economic concentration have a combined market share in the relevant market of more than fifty (50) per cent, except in the cases stipulated in article 19 of this Law or where the enterprise after the economic concentration still falls within the category of medium and small sized enterprises as stipulated by law.

Article 19. Cases of exemption for prohibited economic concentration

A prohibited economic concentration as stipulated in article 18 of this Law may be considered for exemption in the following cases:

1. One or more of the parties participating in the economic concentration is or are at risk of being dissolved or of becoming bankrupt;

2. The economic concentration has the effect of extension of export or contribution to socio-economic development and/or to technical and technological progress.

Article 20. Notification of economic concentration

1. In the case where enterprises participating in an economic concentration have a combined market share in the relevant market of from thirty (30) per cent to fifty (50) per cent, the legal representative of such enterprises must notify the administrative body for competition prior to carrying out the economic concentration.

If the enterprises participating in the economic concentration have a combined share in the relevant market of less than thirty (30) per cent or if, after the economic concentration, the enterprise still falls within the category of medium and small sized enterprise as stipulated by law, they shall not be required to provide notification.

2. Enterprises participating in an economic concentration and entitled to exemption pursuant to article 19 of this Law shall submit a file for request of exemption in accordance with the provisions in Section 4 of this Chapter, instead of providing notification of the economic concentration.

Article 21. File for notification of economic concentration

1. A file for notification of an economic concentration shall comprise:

(a) Written notification of the economic concentration in the form issued by the administrative body for competition;

(b) Valid copy of the certificate of business registration of all of the enterprises participating in the economic concentration;

(c) Financial statements for the last two consecutive years of all of the enterprises participating in the economic concentration, certified by an auditing organization as stipulated by law;

(d) List of the enterprises which are subsidiary entities of the enterprises participating in the economic concentration;

(dd) List of all types of goods and services in which the enterprises participating in the economic concentration and their subsidiaries are currently conducting business;

(e) Report on market share in the relevant market of the enterprises participating in the economic concentration for the last two consecutive years.

2. The enterprise submitting a file for notification of an economic concentration shall be responsible for the truthfulness of the file.

Article 22. Acceptance of jurisdiction over file for notification of economic concentration

The administrative body for competition shall be responsible, within a time-limit of seven working days from the date of receipt of a file, to provide written notice to the enterprise submitting the file on the completeness and validity of the file.

If a file is incomplete, the administrative body for competition shall be responsible to specify what items are required to be supplemented.

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

1. The administrative body for competition shall be responsible, within a time-limit of forty five (45) days from the date of receipt of a complete file for notification of an economic concentration, to provide a written reply to the enterprise which submitted the file. The written reply of the administrative body for competition must confirm that the economic concentration belongs to one of the following categories:

- (a) The economic concentration does not fall within the prohibited category;
- (b) The economic concentration is prohibited pursuant to article 18 of this Law. The reasons for the prohibition must be specified in the written reply.

2. In complex cases of economic concentration, the head of the administrative body for competition may issue a decision extending the time-limit for a reply as stipulated in clause 1 of this article, but on not more than two occasions and each extension may not exceed thirty (30) days, and there must be written notice to the enterprise which submitted the file,

specifying the reason for the extension, at least three working days prior to expiry of the time-limit for a reply to a notification.

Article 24. Carrying out economic concentrations

The legal representative of enterprises participating in an economic concentration in the category required to provide notification as stipulated in clause 1 of article 20 of this Law may conduct procedures for the economic concentration at the authorized State body in accordance with the laws on enterprises only after having received a written reply from the administrative body for competition that the economic concentration is not within the prohibited category.

Section 4. PROCEDURES FOR OBTAINING EXEMPTION

Article 25. Authority to make decision on exemption

1. The Minister of Trade shall consider and make a written decision on exemptions stipulated in article 10 and clause 1 of article 19 of this Law.

2. The Prime Minister of the Government shall consider and make a written decision on exemptions stipulated in clause 2 of article 19 of this Law.

Article 26. Subjects submitting file for request of exemption

Subjects submitting a file for request of exemption shall be the parties intending to enter an agreement in restraint of competition or to participate in an economic concentration.

Article 27. Legal representative of parties to agreement in restraint of competition or to economic concentration

1. Parties intending to enter an agreement in restraint of competition or to participate in an economic concentration may appoint a representative to conduct the procedures for request of exemption. This appointment must be in writing and certified by all of the parties.

2. The rights and obligations of the representative shall be agreed and regulated by the parties.

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

Article 28. File for request of exemption for agreement in restraint of competition

1. A file for request of exemption for an agreement in restraint of competition shall comprise:

(a) Application in the form issued by the administrative body for competition;

(b) Valid copy of certificate of business registration of each of the enterprises participating in the agreement in restraint of competition; if an association intends to participate, the charter of the association;

(c) Financial statements for the last two consecutive years of each of the enterprises participating in the agreement in restraint of competition, certified by an auditing organization in accordance with law;

(d) Report on market share in the relevant market for the last two consecutive years of the enterprises participating in the agreement in restraint of competition;

(dd) Detailed explanatory report on how the conditions for exemption as stipulated in article 10 of this Law are satisfied;

(e) Power of attorney to the representative from all parties participating in the agreement in restraint of competition.

2. The party submitting the application file and all of the parties participating in the agreement shall be responsible for the truthfulness of the file.

Article 29. File for request of exemption for economic concentration

1. A file for request of exemption for an economic concentration shall comprise:

(a) Application in the form issued by the administrative body for competition;

(b) Valid copy of certificate of business registration of each of the enterprises participating in the economic concentration;

(c) Financial statements for the last two consecutive years of each of the enterprises participating in the economic concentration, certified by an auditing organization in accordance with law;

(d) Report on market share in the relevant market for the last two consecutive years of each of the enterprises participating in the economic concentration;

(dd) Detailed explanatory report on how the conditions for entitlement to exemption as stipulated in article 19 of this Law are satisfied;

(e) Power of attorney to the representative from all of the parties participating in the economic concentration.

2. The party submitting the application file and all of the parties participating in the economic concentration shall be responsible for the truthfulness of the file.

Article 30. Acceptance of jurisdiction over file for request of exemption

1. The administrative body for competition shall be responsible to accept jurisdiction over files for request of exemption and to forward its opinion to the Minister of Trade for decision or to submit same to the Prime Minister for his decision.

2. Within a time-limit of seven working days from the date of receipt of a file for request of exemption, the administrative body for competition shall be responsible to provide written notice to the party which submitted the file on the completeness of the file. If a file is incomplete, the administrative body for competition shall be responsible to specify what items are required to be supplemented.

3. The party submitting a file must pay a fee for evaluation of the file for request of exemption in accordance with law.

Article 31. Request to supplement file for request of exemption

The administrative body for competition shall have the right to require the party which submitted the file for request of exemption to add necessary documents and information relating to the proposed agreement in restraint of competition or economic concentration and to provide additional explanation of any unclear matters.

Article 32. Provision of information by related parties

1. The administrative body for competition shall have the right to require organizations and individuals concerned to provide information about

agreements in restraint of competition and economic concentrations over which the administrative body for competition has accepted jurisdiction.

2. Within a time-limit of fifteen (15) days from the date of receipt of a request from the administrative body for competition, an organization or individual concerned shall be responsible to provide a written reply on the matters requested.

Article 33. Withdrawal of request of exemption

1. A party wishing to withdraw its request of exemption after submission must provide written notice to the administrative body for competition.

2. The administrative body for competition shall not refund fees for evaluation of a file for request of exemption in the case stipulated in clause 1 of this article.

Article 34. Time-limits for issuance of decision

1. The Minister of Trade shall, within a time-limit of sixty (60) days from the date of receipt of a complete file for request of exemption, issue one of the following decisions:

(a) Agree that the parties are entitled to an exemption;

(b) Not agree that the parties are entitled to an exemption.

2. In complex cases, the Minister of Trade may extend the time-limit for issuance of the decision stipulated in clause 1 of this article, but on not more than two occasions and each extension may not exceed thirty (30) days.

3. Where an economic concentration case falls within the authority of the Prime Minister of the Government to grant an exemption, the time-limit for issuance of a decision agreeing or not agreeing to grant of exemption shall be ninety (90) days from the date of receipt of a complete file, and one hundred and eighty (180) days in complex cases.

4. If the time-limit for issuance of a decision is extended, the administrative body for competition shall provide a written notice to the party which submitted the file, specifying the reasons, at least three working days prior to expiry of the time-limit for issuance of a decision.

Article 35. Decisions granting exemption

1. A decision granting exemption must contain the following main particulars:

(a) Names and addresses of the parties permitted to carry out the practice;

(b) Contents of the permitted practice;

(c) Duration of effectiveness of the exemption, conditions on and obligations of the parties.

2. The administrative body for competition shall be responsible to make public any decision granting exemption in accordance with regulations of the Government.

Article 36. Carrying out agreement in restraint of competition or economic concentration in cases granted exemption

1. Parties participating in an agreement in restraint of competition which are granted exemption may perform such agreement only after they have a decision granting exemption from the Minister of Trade.

2. The legal representative of enterprises participating in an economic concentration which are granted exemption may conduct procedures for the economic concentration at the authorized State body in accordance with the laws on enterprises only after they have a decision granting exemption from the Prime Minister of the Government or the Minister of Trade.

Article 37. Revocation of decision granting exemption

1. Any entity authorized to issue a decision granting exemption shall also have the right to revoke such decision.

2. A decision granting exemption shall be revoked in the following circumstances:

- (a) Upon discovery of fraud during application for exemption;
- (b) When an enterprise granted exemption fails to fulfil the conditions and discharge the obligations within the time-limit stipulated in the decision granting exemption;
- (c) When the conditions for exemption no longer exist.

Article 38. Complaint about granting of entitlement to exemption

Any enterprise which disagrees with a decision granting exemption or not granting exemption or a decision revoking a decision granting exemption shall have the right to complain in accordance with the laws on complaints and denunciations.

CHAPTER III

UNFAIR COMPETITIVE PRACTICES

Article 39. Unfair competitive practices

Unfair competitive practices in this Law comprise:

1. Misleading instructions;
2. Infringement of business secrets;
3. Coercion in business;
4. Defamation of another enterprise;
5. Causing disruption to the business activities of another enterprise;
6. Advertisement aimed at unfair competition;
7. Promotion aimed at unfair competition;
8. Discrimination by an association;
9. Illegal multi-level selling of goods;
10. Other unfair competitive practices stipulated by the Government determined in accordance with the criteria stipulated in clause 4 of article 3 of this Law.

Article 40. Misleading instructions

1. Enterprises shall be prohibited from using instructions which contain misleading information about commercial names, business slogans, business logos, packaging, geographical indications and other elements in accordance with regulations of the Government in order to mislead customers in their understanding of goods and services for competitive purposes.
2. Conducting business in goods and services which use misleading instructions as prescribed in clause 1 of this article shall be prohibited.

Article 41. Infringement of business secrets

Enterprises shall be prohibited from conducting the following practices:

1. Accessing or collecting information in the category of business secret by countering the security measures taken by the lawful owner of such business secret;
2. Disclosing or using information in the category of business secret without permission from the lawful owner of such business secret;
3. Breaching a confidentiality contract or 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 secret of the owner of such business secret;

4. Accessing or collecting information in the category of business secret of an entity which conducts procedures stipulated by law in relation to business or conducts procedures to circulate products by countering security measures taken by State bodies, or 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.

Article 42. Coercion in business

Enterprises shall be prohibited from coercing customers or business partners of another enterprise by threatening or coercive conduct in order to compel them not to transact or to cease a transaction with such other enterprise.

Article 43. Defamation of another enterprise

Enterprises shall be prohibited from defaming another enterprise by any direct or indirect act of providing untruthful information which adversely impacts on the reputation, financial position or business activities of such other enterprise.

Article 44. Causing disruption to business activities of another enterprise

Enterprises shall be prohibited from causing disruption to the lawful business activities of another enterprise by any direct or indirect act which hinders or interrupts the business activities of another enterprise.

Article 45. Advertisement aimed at unfair competition

Enterprises shall be prohibited from conducting the following advertising activities:

1. Comparing directly their own goods and services with those of the same type of another enterprise;

2. Imitating another advertising product in order to mislead customers;

3. Providing false or misleading information to customers about one of the following matters:

- (a) Price, quantity, quality, usage, design, type, packaging, date of manufacture, use expiry, origin of goods, manufacturer, place of manufacture, processor or place of processing;

- (b) Manner of use, method of service, warranty period;

- (c) Other false or misleading information;

4. Other advertising activities prohibited by law.

Article 46. Promotions aimed at unfair competition

Enterprises shall be prohibited from conducting the following promotional activities:

1. Holding a promotion providing false information about prizes;
2. A promotion which is untruthful or misleading about goods and services in order to deceive customers;
3. Discriminating between similar customers in different promotional areas within the same promotional campaign;
4. Offering free goods to customers for trial use but requiring exchange of goods of the same type produced by another enterprise which the customer is currently using in order that the customer will use the goods of the promoting enterprise;
5. Conducting other promotional activities which are prohibited by law.

Article 47. Discrimination by associations

Industry associations shall be prohibited from acting as follows:

1. 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;
2. Unreasonably restricting the business activities or other activities involving a business objective of member enterprises.

Article 48. Illegal multi-level selling of goods

Enterprises shall be prohibited from conducting the following acts aimed at obtaining illegal profit from recruitment of new participants to a multi-level sales network:

1. Requiring persons who wish to participate to pay a deposit, to purchase an initial fixed quantity of goods, or to pay an amount of money in order to have the right to participate in multi-level selling of goods;
2. Failing to undertake to re-acquire the goods sold to the participant for re-sale at at least ninety (90) per cent of their original price;
3. Allowing participants to receive commissions, bonuses and/or other economic benefits essentially only from enticing other persons to participate in the multi-level sales network;

4. Providing untruthful information about the benefits of participation in the multi-level sales network or untruthful information about the quality and use purpose of goods in order to entice other persons to participate.

Chapter IV

ADMINISTRATIVE BODY FOR COMPETITION AND COMPETITION COUNCIL

Section 1. ADMINISTRATIVE BODY FOR COMPETITION

Article 49. Administrative body for competition

1. The Government shall issue a decision on establishment and shall regulate the organizational structure and staffing of the administrative body for competition.

2. The administrative body for competition shall have the following duties and powers:

(a) To control the process of economic concentration in accordance with this Law;

(b) To accept jurisdiction over files for request of exemption; to forward its opinion to the Minister of Trade for decision or to submit same to the Prime Minister for his decision;

(c) To investigate competition cases concerning practices in restraint of competition and unfair competitive practices;

(d) To deal with and impose fines in respect of unfair competitive practices;

(dd) To fulfil other duties in accordance with law.

Article 50. Head of administrative body for competition

1. The Prime Minister of the Government shall appoint and dismiss the head of the administrative body for competition on the proposal of the Minister of Trade.

2. The head of the administrative body for competition shall be responsible to organize and direct the administrative body for competition to fulfil the duties and powers stipulated in clause 2 of article 49 of this Law.

Article 51. Investigators of competition cases

1. An investigator of a competition case (hereinafter referred to as an investigator) shall be appointed by the Minister of Trade on the proposal of the head of the administrative body for competition.

2. Investigators shall undertake the task of investigating specific competition cases in accordance with the decision of the head of the administrative body for competition.

Article 52. Standards for investigators

Persons who satisfy the following standards may be appointed to act as investigators:

1. Having good ethics and being honest and objective;
 2. Having a bachelor degree in law or in economics or in finance;
 3. Having five or more years work experience in one of the sectors stipulated in clause 2 of this article;
 4. Having undertaken training in professional investigations.
- SECTION 2
Competition Council

Article 53. Competition Council

1. The Competition Council shall be a body established by the Government. The Competition Council shall consist of from eleven (11) to fifteen (15) members appointed and dismissed by the Prime Minister of the Government on the proposal of the Minister of Trade.

2. The Competition Council shall have the duty to organize dealing with competition cases concerning practices in restraint of competition and resolution of complaints in accordance with this Law.

Article 54. Chairman of Competition Council

1. The Prime Minister of the Government shall appoint from amongst the members of the Council, and dismiss, the chairman of the Competition Council on the proposal of the Minister of Trade.

2. The chairman of the Competition Council shall be responsible to organize the activities of the Competition Council.

3. The chairman of the Competition Council shall make a decision on establishment of a council to deal with a competition case, consisting of at least five of the members of the Competition Council, one of whom shall act as chairman of the investigative hearing, in order to resolve a specific competition case.

Article 55. Standards for members of Competition Council

1. Persons who satisfy the following standards may be appointed as members of the Competition Council:

(a) Having good ethics, being honest and objective, and having the spirit of protecting the socialist legal system;

(b) Having a bachelor degree in law or in economics or in finance;

(c) Having at least nine or more years work experience in one of the sectors stipulated in clause 1(b) of this article;

(d) Having the ability to complete the tasks assigned.

2. The term of office of a member of the Competition Council shall be five years, and the term may be renewed.

Chapter V

INVESTIGATIONS AND DEALING WITH COMPETITION CASES

Section 1. GENERAL PROVISIONS

Article 56. Principles of competition legal proceedings

1. The resolution of competition cases concerning practices in restraint of competition shall be carried out in accordance with this Law.

2. The resolution of competition cases concerning unfair competitive practices shall be carried out in accordance with this Law and the laws on dealing with administrative offences.

3. During the course of competition legal proceedings, investigators, the head of the administrative body for competition and members of the Competition Council shall, within the scope of their respective responsibilities, maintain the confidentiality of the business secrets of enterprises and respect the lawful rights and interests of the organizations and individuals concerned.

Article 57. Spoken and written language used in competition legal proceedings

The written and spoken language used in competition legal proceedings shall be Vietnamese. Parties participating in competition legal proceedings shall have the right to use their native written and spoken language, and in such case an interpreter shall be required.

Article 58. Complaints about competition cases

1. Organizations and individuals considering that their lawful rights and interests have been infringed as a result of a breach of the provisions of this Law (hereinafter referred to as complainants) shall have the right to lodge a complaint at the administrative body for competition.

2. The time-limit for lodging a complaint shall be two years from the date on which the conduct indicating a breach of this Law was carried out.

3. A complaint file must contain the following main documents:

(a) Complaint application in the form issued by the administrative body for competition;

(b) Evidence of the offending practice.

4. Complainants shall be responsible for the truthfulness of the evidence that they submit to the administrative body for competition.

Article 59. Acceptance of jurisdiction over complaint files

1. The administrative body for competition shall be responsible to accept jurisdiction over complaint files.

2. Within a time-limit of seven working days from the date of receipt of a complaint file, the administrative body for competition shall be responsible to provide written notice to a complainant about acceptance of jurisdiction.

3. Complainants must pay provisional costs for dealing with competition cases in accordance with law.

Article 60. Evidence

1. Evidence means things which are true and are used by investigators and councils dealing with competition cases as grounds for determining whether or not a practice is in breach of this Law.

2. Evidence shall be determined from the following sources:

(a) Physical evidence, including things used as tools or means of breach, money and other things which have value in proving a breach of this Law;

(b) Declarations of witnesses and explanatory statements of organizations or individuals concerned;

(c) Original documents, or copies or translations of original documents which are notarized or lawfully certified or which are provided or authenticated by a competent body or organization;

(d) Expert conclusions.

Article 61. Application of administrative preventive measures

1. The head of the administrative body for competition and the chairman of the Competition Council shall have the right to apply a number of administrative preventive measures in accordance with the laws on dealing with administrative offences in the circumstances stipulated in clause 6 of article 76 and clause 4 of article 79 of this Law.

The Government shall provide specific regulations on administrative preventive measures which the head of the administrative body for competition and the chairman of the Competition Council have the right to apply.

2. The following persons shall have the right to recommend application of administrative preventive measures:

(a) A complainant shall have the right to make a recommendation to the head of the administrative body for competition or the chairman of the Competition Council;

(b) An investigator shall have the right to make a recommendation to the head of the administrative body for competition;

(c) The chairman of an investigative hearing shall have the right to make a recommendation to the chairman of the Competition Council.

3. In the case of application of administrative preventive measures at the request of a complainant, the complainant shall be responsible to deposit a security sum in accordance with regulations of the Government.

In the event of incorrect application of administrative preventive measures causing loss to the party subject to investigation due to the fault of the complainant, the complainant must pay compensation. The amount of compensation shall be agreed by the complainant and the party subject to investigation; where the parties fail to reach an agreement, there shall be

the right to institute court proceedings requesting compensation for loss in accordance with civil laws.

4. In the event of incorrect application of administrative preventive measures at the request of an investigator or the chairman of an investigative hearing causing loss to the party subject to investigation, the administrative body for competition or the Competition Council must pay compensation. The amount of compensation shall be agreed by the party subject to investigation and the administrative body for competition or the Competition Council; where the parties fail to reach an agreement, the party subject to investigation shall have the right to institute court proceedings requesting compensation for loss in accordance with civil laws. In this case, the administrative body for competition or the Competition Council must determine the liability, including material liability, of the applicant¹ and of related persons in order that appropriate disciplinary action may be taken, and the administrative body for competition or the Competition Council shall be indemnified for the amount of compensation which has been paid to the party subject to investigation.

5. Any party against which administrative preventive measures are applied shall have the right to lodge a complaint about the decision on application of such measures in accordance with the laws on complaints and denunciations.

Article 62. Fees for dealing with competition cases

Fees for dealing with a competition case shall be used to conduct such case. The Government shall provide regulations on the rates, payment, management and use of fees for dealing with competition cases in accordance with the laws on fees and charges.

Article 63. Liability for payment of fees for dealing with competition cases

1. The party which is concluded to be in breach of this Law must pay the fees for dealing with the competition case.

2. If the party subject to investigation is not in breach of this Law, the complainant must pay the fees for dealing with the competition case.

3. In the case of an investigation into a competition case conducted pursuant to clause 2 of article 65 of this Law, if the party subject to investigation is not in breach of this Law, the administrative body for competition must bear the fees for dealing with the case.

SECTION 2. PARTICIPANTS IN COMPETITION LEGAL PROCEEDINGS ARTICLE 64 PARTICIPANTS IN COMPETITION LEGAL PROCEEDINGS PARTICIPANTS IN COMPETITION LEGAL PROCEEDINGS SHALL COMPRISE:

1. Complainant;

2. Party(ies) subject to investigation;

3. Lawyers;

4. Witnesses;

5. Experts;

6. Interpreters;

7. Persons with related interests and obligations.

Article 65. Party subject to investigation in competition case

A party subject to investigation in a competition case (hereinafter referred to as the party subject to investigation) means any organization or individual against which or whom the administrative body for competition issues a decision to investigate in the following circumstances:

1. A complaint is lodged against such party pursuant to article 58 of this Law;

2. The administrative body for competition discovers that such party has been or is currently conducting a practice with indications of a breach of the laws on competition within two years from the date on which the practice with indications of a breach of the laws on competition was conducted.

Article 66. Rights and obligations of parties

1. Parties subject to investigation shall have the following rights:

(a) To lead their own evidence and documents, and to know about² the documents and evidence which the complainant or the administrative body for competition leads;

(b) To participate in investigative hearings;

(c) To request that an investigator or a member of a council dealing with a competition case be replaced if it is discovered that such investigator or member falls within one of the categories stipulated in article 83 of this Law;

(d) To authorize a lawyer to participate in the competition legal proceedings;

(dd) To request that a witness be invited;

(e) To propose that the administrative body for competition seek an expert opinion;

(g) To recommend replacement of the persons conducting and participating in the competition legal proceedings in accordance with this Law.

2. Complainants shall have the following rights:

(a) The rights stipulated in clause 1 of this article;

(b) To request the head of the administrative body for competition or the chairman of the Competition Council to apply administrative preventive measures relating to the competition case.

3. Parties subject to investigation and complainants shall have the following obligations:

(a) To provide fully, truthfully, accurately and promptly the necessary evidence relating to their claims or requests; Subscription 57 (1/2005-2006)
31 December 2005

(b) To attend in accordance with a summons issued by the administrative body for competition or the council dealing with the case. In the event of failure to attend without a legitimate reason despite service of a summons to attend, the council dealing with the case shall proceed to deal with the matter on the basis of the information available;

(c) To implement any decision of the administrative body for competition or the council dealing with the case.

Article 67. Lawyers for complainant and for party subject to investigation

1. Any lawyer who satisfies the conditions to participate in legal proceedings as stipulated by the laws on lawyers and is authorized by a

complainant or by a party subject to investigation shall have the right to participate in competition legal proceedings in order to protect the lawful rights and interests of the party represented by such lawyer.

2. Lawyers shall have the following rights and obligations when they participate in competition legal proceedings:

(a) To participate in the stages of competition legal proceedings;

(b) To verify and collate evidence and to lead evidence in order to protect the lawful rights and interests of the represented party;

(c) To investigate documents in the file of a competition case and to copy by hand or photocopy necessary documents in such file in order to take action to protect the lawful rights and interests of the represented party;

(d) To request, on behalf of the represented party, replacement in accordance with this Law of a person conducting or persons participating in competition legal proceedings;

(dd) To assist the represented party with the laws relating to protection of the lawful rights and interests of such party;

(e) To respect the truth and the law; and not to bribe, compel or entice others to give false testimony or to provide false documents;

(g) To attend in accordance with a summons from the council dealing with the competition case;

(h) Not to disclose investigation secrets learned during the course of participation in competition legal proceedings; not to use documents copied from files of competition cases for the purpose of infringing the interests of the State or the lawful rights and interests of organizations and individuals.

Article 68. Witnesses

1. A council dealing with a competition case may summons as a witness a person with knowledge of circumstances relating to contents of a competition case, or the administrative body for competition may invite such person to act as a witness at the request of concerned parties. A person lacking civil capacity may not act as a witness.

2. Witnesses shall have the following rights and obligations:

(a) To provide all documents and other things in their possession relating to resolution of a competition case; to testify directly or in writing before the administrative body for competition or the council dealing with a competition case about all incidents relating to resolution of a competition case that they know;

(b) To participate in investigative hearings and to testify before the council dealing with a competition case;

(c) To be entitled to leave from work when summonsed by or providing evidence to the administrative body for competition or the council dealing with a competition case, if the witness works for a State body or for an organization or enterprise;

(d) To be entitled to travelling expenses and other regimes provided by law;

(dd) To be entitled to refuse to testify if the evidence of the witness involves State secrets, professional secrets or private life secrets, or if the testimony would adversely impact on or cause harm to the interests of a complainant or a party subject to investigation having a close relationship with the witness;

(e) To provide truthful testimony about all incidents relating to resolution of a competition case that they know;

(g) To pay compensation and to be responsible before the law for any false testimony causing loss to a complainant, to a party subject to investigation or to another person;

(h) To attend an investigative hearing in accordance with a summons issued by the council dealing with a competition case, if the testimony of such witness must be given publicly in the investigative hearing;

(i) To warrant to the administrative body for competition or the council dealing with a competition case that rights will be exercised and obligations will be discharged, except in cases where the witness is a minor.

3. Except in the cases stipulated in clause 2(dd) of this article, any witness who refuses to testify, who provides false testimony or documents, or who is summonsed by the council dealing with a competition case but fails to attend without a legitimate reason shall be liable in accordance with law.

4. Witnesses shall be protected in accordance with law.

Article 69. Experts

1. An expert means a person with essential knowledge in a sector in which expertise is required and who is called by the head of the administrative body for competition or the council dealing with a competition case, or whom the parties concerned suggest be called and the head of the administrative body for competition or the council dealing with the competition case so agrees in accordance with law.

2. Experts shall have the following rights and obligations:

(a) To read documents in the file of a competition case relating to the matter on which their expertise is sought; to request the body which called them to provide documents required for the provision of an expert opinion;

(b) To put questions to persons participating in the competition legal proceedings on issues relating to the matters on which their expertise is sought;

(c) To attend in accordance with a summons issued by the body calling them; to answer questions relating to the matters on which their expertise is sought and to provide their conclusions honestly and objectively and stating the grounds therefor;

(d) To notify in writing the body calling them if they are unable to act as an expert because the matters on which their expertise is sought are beyond their professional expertise or because the documents sent to them are inadequate or unable to be used as a basis for an expert opinion;

(dd) To preserve any documents received by them and to return [such documents]³ together with their conclusions to the body requesting expertise or a notice that they are unable to provide an expert opinion;

(e) Not to collate their own documents to provide an expert opinion, not to make private contact with other persons participating in the competition legal proceedings if such contact would affect the objectivity of the expert conclusion; not to disclose confidential information learned during the course of providing an expert opinion, and not to notify their expert conclusion to any person other than the person signing the decision calling the expert;

(g) In the case where a number of experts are called to provide a joint opinion, to provide their conclusions if they differ from that of the other experts provided in the joint opinion;

(h) To be entitled to travelling expenses and other regimes provided by law.

3. Any expert who refuses to provide his or her conclusion without a legitimate reason, whose conclusion contains false testimony, or who is summonsed by the body calling the expert but fails to attend without a legitimate reason shall be liable in accordance with law.

4. An expert shall refuse to act as an expert or shall be replaced in the following circumstances:

(a) He or she belongs to one of the categories stipulated in article 83 of this Law;

(b) He or she has already participated in the same competition case as a lawyer for one of the parties, as a witness or as an interpreter;

(c) He or she has already participated in the same competition case as a member of the council dealing with the competition case.

Article 70. Interpreters

1. An interpreter means a person with the ability to translate into the Vietnamese language from another language and vice versa in the case where a person participating in the competition case is unable to speak the Vietnamese language. Interpreters shall be selected by agreement between the parties concerned and approved by the council dealing with the competition case or shall be appointed by the council dealing with the competition case.

2. Interpreters shall have the following rights and obligations:

(a) To attend in accordance with a summons from the council dealing with the competition case;

(b) To interpret truthfully, objectively and correctly;

(c) To request additional explanation of matters to be interpreted from persons conducting and participating in the competition case;

(d) Not to make contact with other persons participating in the competition legal proceedings if such contact would affect the truthfulness, objectivity and correctness of their interpretation;

(dd) To be entitled to travelling expenses and other regimes provided by law;

(e) To warrant to the council dealing with the competition case that they will exercise their rights and discharge their obligations.

3. If an interpreter deliberately interprets incorrectly, or is summonsed by the council dealing with the competition case but fails to attend without a legitimate reason, he or she shall be liable in accordance with law.

4. An interpreter shall refuse to act as an interpreter or shall be replaced in the following circumstances:

(a) He or she belongs to one of the categories stipulated in article 83 of this Law;

(b) He or she has already participated in the same competition case as a lawyer for the complainant or the party subject to investigation, as a witness or as an expert;

(c) He or she has already participated in the same competition case as a member of the council dealing with the competition case.

5. The provisions in this article shall also apply to a person understanding the sign language of a deaf person or a dumb person participating in a competition case.

If the only person competent in the sign language of a deaf person or a dumb person participating in a competition case is the representative or relative of such deaf person or dumb person, the council dealing with the competition case may approve such representative or relative to act as interpreter for the deaf person or dumb person.

Article 71. Persons with related interests and obligations in competition cases

1. Persons with related interests and obligations may request to participate in competition legal proceedings independently or with the complainant or with the party subject to investigation.

2. A person with related interests and obligations who makes a request to participate in competition legal proceedings independently or with the complainant or who only has interests shall have the rights and obligations of the complainant stipulated in article 66 of this Law.

3. A person with related interests and obligations who participates in competition legal proceedings with the party subject to investigation or who only has obligations shall have the rights and obligations of the party subject to investigation stipulated in article 66 of this Law.

Article 72. Procedures for refusal to act as expert or interpreter and for request of replacement of expert or interpreter

1. Any refusal to act as an expert or interpreter or any request for replacement of an expert or interpreter prior to opening of an investigative hearing must be made in writing and shall specify the reasons therefor.

2. Any refusal to act as an expert or interpreter or any request for replacement of an expert or interpreter during an investigative hearing must be recorded in the minutes of the investigative hearing.

Article 73. Decision on replacement of expert or interpreter

1. Prior to opening of an investigative hearing, the chairman of the Competition Council shall make a decision on replacement of an expert or interpreter.

2. During an investigative hearing, the council dealing with the competition case shall make a decision on replacement of an expert or interpreter after hearing the opinions of the person proposed to be replaced and of other persons participating in the competition legal proceedings.

If an expert or interpreter must be replaced, the council dealing with the competition case shall issue a decision on adjournment of the investigative hearing, and the calling of another expert or interpreter shall be implemented in accordance with articles 69 and 70 of this Law.

Section 3. BODIES CONDUCTING COMPETITION LEGAL PROCEEDINGS AND PERSONS CONDUCTING COMPETITION LEGAL PROCEEDINGS

Article 74. Bodies conducting competition legal proceedings

Bodies conducting competition legal proceedings shall comprise the administrative body for competition and the Competition Council.

Article 75. Persons conducting competition legal proceedings

Persons conducting competition legal proceedings shall comprise members of the Competition Council, the head of the administrative body for competition, investigators, and secretaries to investigative hearings.

Article 76. Duties and powers of head of administrative body for competition when conducting competition legal proceedings

The head of the administrative body for competition shall have the following duties and powers when conducting competition legal proceedings:

1. To make decisions assigning investigators to specific competition cases;
2. To supervise the activities of an investigator of a competition case;
3. To make decisions on amendment or revocation of decisions of investigators conducting competition cases when the latter decisions are without grounds or contrary to law;
4. To make decisions on replacement of the investigator conducting a competition case;
5. To make decisions calling for expert opinions;
6. To make decisions on application, amendment or revocation of administrative preventive measures prior to transferring a file on a competition case to the Competition Council for resolution;
7. To make decisions on preliminary investigations, on stay of investigations, and on opening of an official investigation into a competition case within the authority of the administrative body for competition;

8. To invite witnesses at the request of parties during the investigative stage;
9. To sign conclusions of an investigation of a competition case when submitted by the assigned investigator;
10. To transfer files on competition cases to the Competition Council where such competition cases concern practices in restraint of competition;
11. To resolve complaints and denunciations within the authority of the administrative body for competition.

Article 77. Rights of investigators when conducting competition legal proceedings Investigators shall have the following rights when conducting competition legal proceedings:

1. To require organizations and individuals concerned to provide all necessary information and documents relating to the competition case;
2. To require the party subject to investigation to provide documents and/or explanatory statements relating to the case which is the subject of investigation;
3. To recommend that the head of the administrative body for competition seek an expert opinion;

4. To recommend that the head of the administrative body for competition apply administrative preventive measures relating to the competition case.

Article 78. Obligations of investigators when conducting competition legal proceedings Investigators shall have the following obligations when conducting competition legal proceedings:

1. To serve the decision to conduct an investigation as issued by the head of the administrative body for competition on the party subject to investigation;

2. To maintain the confidentiality of the business of enterprises;

3. To keep the documents provided in safe custody;

4. To conduct the investigation into the competition case as assigned by the head of the administrative body for competition;

5. To write a report upon completion of a preliminary investigation and official investigation into the competition case;

6. To be responsible to the head of the administrative body for competition and before the law for the exercise of their duties and powers.

Article 79. Duties and powers of chairman of Competition Council when conducting competition legal proceedings

1. To establish a council to deal with a competition case pursuant to clause 3 of article 54 of this Law;
2. To make decisions on replacement of members of a council dealing with a competition case, secretary to an investigative hearing, experts or interpreters prior to opening of an investigative hearing pursuant to clause 1 of article 73, article 83 and clause 1 of article 85 of this Law;
3. To make decisions on appointment of replacement members of a council dealing with a competition case or secretary to an investigative hearing pursuant to clause 2 of article 85 of this Law;
4. To make decisions on application, amendment or revocation of administrative preventive measures as from receipt of the file on a competition case.

Article 80. Councils dealing with competition cases

1. When resolving competition cases, councils dealing with competition cases shall act independently and shall obey the law only.
2. Any decision dealing with a competition case passed by the council dealing with such case shall be on the principle of a majority vote and, in the case of a tied vote, the decision shall be that of the side of the chairman

of the investigative hearing.

Article 81. Duties and powers of chairman of investigative hearing

The chairman of an investigative hearing shall have the following duties and powers:

1. To arrange research into the file on a competition case;
2. On the basis of the decision of the council dealing with the competition case, to sign a recommendation to the chairman of the Competition Council to apply, amend or revoke administrative preventive measures; to make a decision on return of the file on a competition case to the administrative body for competition and to request an additional investigation; or to make a decision on suspension of dealing with a competition case;
3. On the basis of the decision of the council dealing with the competition case, to sign a decision on opening of an investigative hearing;
4. To make a decision on summons of persons to participate in the investigative hearing;
5. To sign and issue decisions on dealing with competition cases and other decisions of the council dealing with a competition case;

6. To conduct other activities within his or her authority in accordance with this Law when dealing with competition cases.

Article 82 Secretary to investigative hearing

1. A secretary to an investigative hearing shall have the following duties and powers:

(a) To prepare the necessary technical matters prior to opening of the investigative hearing;

(b) To disseminate the rules on investigative hearings;

(c) To report to the council dealing with the competition case on who is in attendance and who is not in attendance amongst the persons summonsed to attend;

(d) To prepare minutes of the investigative hearing;

(dd) To undertake other work assigned by the chairman of the investigative hearing.

2. A secretary to an investigative hearing must refuse to so act or shall be replaced if he or she belongs to one of the categories stipulated in article 83 of this Law.

Article 83. Cases of compulsory refusal by and replacement of investigators, members of councils dealing with competition cases, secretaries to investigative hearings, experts and interpreters

A member of a council dealing with a competition case, an investigator, the secretary to an investigative hearing, an expert or an interpreter must refuse to carry out their duties and shall be replaced in any of the following circumstances:

1. He or she is a relative of a complainant or of a party subject to investigation;
2. He or she is a person with rights or interests related to the competition case;
3. There are other clear grounds to demonstrate that he or she is not impartial in the exercise of his or her duties.

Article 84. Procedures for refusal to conduct proceedings or for replacement of members of councils dealing with competition cases or secretaries to investigative hearings

1. Any refusal to conduct proceedings or any request for replacement of a member of a council dealing with a competition case or the secretary to an investigative hearing prior to opening of an investigative hearing must be made in writing and shall specify the reasons therefor.

2. Any refusal to conduct proceedings or any request for replacement of a member of a council dealing with a competition case or the secretary to an investigative hearing during an investigative hearing shall be recorded in the minutes of the investigative hearing.

Article 85. Decision on replacement of members of councils dealing with competition cases or secretaries to investigative hearings

1. Prior to opening of an investigative hearing, the chairman of the Competition Council shall make a decision on replacement of a member of the council dealing with the competition case or of the secretary to the investigative hearing.

2. During an investigative hearing, the council dealing with the competition case shall make a decision on replacement of a member of such council or of the secretary to an investigative hearing after hearing the opinions of the person sought to be replaced and of other persons participating in the proceedings. The council dealing with the competition case shall deal with such matter in camera⁴ and shall reach a majority decision thereon.

If a member of the council dealing with the competition case or the secretary to an investigative hearing must be replaced, the council shall issue a decision on adjournment of the investigative hearing. The chairman of the Competition Council shall make a decision on the person to replace the member of the council dealing with the competition case or the secretary to an investigative hearing.

Section 4. INVESTIGATION OF COMPETITION CASES

Article 86. Preliminary investigation

A preliminary investigation of a competition case shall be conducted pursuant to a decision of the head of the administrative body for competition in the following circumstances:

1. After the administrative body for competition has accepted jurisdiction over a complaint file of a competition case;
2. After the administrative body for competition discovers there is an indication of a breach of the provisions of this Law.

Article 87. Time-limit for preliminary investigation

1. The time-limit for a preliminary investigation shall be thirty (30) days from the date of a decision to conduct a preliminary investigation.
2. Within the time-limit stipulated in clause 1 above, the investigator assigned to investigate the case must complete the preliminary investigation and make a recommendation to the head of the administrative body for competition to either issue a decision to conduct an official investigation or to stay the investigation.

Article 88. Decision to stay investigation or decision to conduct official investigation

The head of the administrative body for competition shall, based on the result of the preliminary investigation and the recommendation of the investigator, issue one of the following decisions:

1. A decision to stay the investigation if the results of the preliminary investigation reveal that there is no practice in breach of the provisions of this Law;

2. A decision to conduct an official investigation if the results of the preliminary investigation reveal that there are indications of a breach of the provisions of this Law.

Article 89. Contents of official investigation

1. In respect of an investigation of an agreement in restraint of competition, an abuse of dominant market position or monopoly position, or a case of economic concentration, the following issues shall be investigated:

(a) Verification of the relevant market;

(b) Verification of the relevant market share of the party subject to investigation;

(c) Collation and analysis of evidence of the practice in breach.

2. In respect of an unfair competition case, the investigator must identify the grounds for concluding that the party subject to investigation has engaged or is currently engaging in an unfair competitive practice.

Article 90. Time-limit for official investigation

The time-limit for an official investigation shall be provided for as follows:

1. The time-limit for an investigation of an unfair competitive case shall be ninety (90) days from the date of the decision to conduct an official investigation. In necessary cases, the head of the administrative body for competition may extend this time-limit, but not by more than sixty (60) days.

2. The official time-limit for an investigation of an agreement in restraint of competition, an abuse of dominant market position or monopoly position, or a case of economic concentration shall be one hundred and eighty (180) days from the date of the decision to conduct an official investigation. In necessary cases, the head of the administrative body for competition may extend this time-limit, but on not more than two occasions and each extension may not exceed sixty (60) days.

3. An investigator must notify any extension of the time-limit for an investigation to all parties concerned at least seven working days prior to expiry of the time-limit.

Article 91. Minutes of investigation

1. When conducting an investigation, the investigator must prepare minutes, specifying the location, dates and times when the investigation is conducted, the persons carrying out the investigation, the party subject to investigation, the contents being investigated, the complaints, and the requests of the party subject to investigation.
2. The investigator of a competition case must read out the minutes to the party subject to investigation prior to all of them signing the minutes.
3. Where the party subject to investigation refuses to sign the minutes, the investigator must record the refusal in the minutes and specify the reasons therefor.

Article 92. Request for witnesses during investigation

1. During the process of an investigation, the parties shall have the right to request that the administrative body for competition invite witnesses. The party requesting that a witness be invited shall be obliged to present the reasons why it is necessary to invite such witness in order that the administrative body for competition may make a decision.
2. The invitation letter for witnesses issued by the administrative body for competition shall specify the full name and place of residence of the invitee, the location and time for providing testimony, the parties and the subject matter of the case.
3. The testimony of the witness shall be minuted and read out by the investigator to the witness prior to both parties signing the minutes.

Article 93. Report on investigation

1. Upon completion of an investigation, the head of the administrative body for competition must send a report on the investigation together with the whole of the file on the competition case to the Competition Council.

2. A report on an investigation shall contain the following main particulars:

(a) Summary of the case;

(b) Features of the case and the evidence which was verified;

(c) Suggestions on measures for dealing with the case.

Article 94. Transfer of files on competition cases with indications of criminal offences

If indications of a criminal offence are identified during investigation of a competition case, the investigator must make an immediate recommendation to the head of the administrative body for competition to consider the transfer of the file to the State body with authority to institute a criminal prosecution.

Article 95. Return of file when no grounds for instituting criminal prosecution

If the State body with authority to institute a criminal prosecution considers that there are no grounds for instituting a criminal prosecution pursuant to the Criminal Procedure Code, such body shall return the file to the administrative body for competition to continue the investigation in accordance with this Law. The time-limit for an investigation stipulated in article 90 of this Law shall be calculated from the date of receipt of the returned file.

Article 96. .Additional investigation and time-limit for conducting additional investigation

1. The investigator of a competition case must conduct an additional investigation at the written request of the council dealing with the competition case.

2. The time-limit for conducting an additional investigation shall be sixty (60) days calculated from the date of the written request of the council dealing with the competition case.

Article 97. Responsibility to co-ordinate and assist with investigations

Local authorities, police authorities and other bodies and organizations shall be responsible to co-ordinate and assist with investigations at the request of the head

of the administrative body for competition.

Section 5. INVESTIGATIVE HEARINGS

Article 98..Competition cases which must be considered and dealt with by way of investigative hearing

Competition cases within the authority for resolution of the Competition Council must be considered and dealt with by way of an investigative hearing.

Article 99..Preparation for conducting investigative hearing

1. Upon receipt of the investigation report and the complete file of a competition case forwarded by the head of the administrative body for competition, the chairman of the Competition Council shall issue a decision on establishment of a council to deal with the competition case.

2. Within a time-limit of thirty (30) days from the date of receipt of the file on the competition case, the council dealing with the competition case must issue one of the following decisions:

(a) To conduct an investigative hearing;

(b) To return the file for additional investigation;

(c) To stay resolution of the competition case.

3. Within a period of fifteen (15) days from the date of a decision to conduct an investigative hearing, the council dealing with the competition case must open the investigative hearing.

4. Where the file has been returned for additional investigation, within fifteen (15) days from the date of receipt of the returned file⁵, the council dealing with the competition case shall issue one of the decisions stipulated in clause 2 of this article.

Article 100. Return of file for additional investigation

If the council dealing with the competition case considers that the evidence collected is insufficient to determine whether or not there has been a practice in breach of the provisions of this Law, it shall issue a decision returning the file and requesting additional investigation.

Article 101. Stay of resolution of case within authority for resolution of Competition Council

1. The council dealing with the competition case shall issue a decision to stay resolution of a case within the authority for resolution of the Competition Council in the following circumstances:

(a) Where the head of the administrative body for competition proposes a stay of resolution of a case because there is insufficient evidence to prove a practice in breach of the provisions of this Law and the council dealing with the competition case agrees that such proposal is legitimate;

(b) The parties subject to investigation have terminated voluntarily the practice in breach, remedied the consequences caused, and the complainant has withdrawn voluntarily the complaint;

(c) Where the investigation of the competition case is carried out in accordance with clause 2 of article 65 of this Law, the parties subject to investigation have terminated voluntarily the practice in breach and remedied the consequences caused, and the head of the administrative body for competition proposes a stay of resolution of the case.

2. The decision to stay resolution of a competition case shall be sent to the party subject to investigation, the complainant (if any) and the administrative body for competition.

Article 102. Decision to conduct investigative hearing

1. The decision to conduct an investigative hearing must be delivered to the parties stated in the decision no later than ten (10) days prior to opening of the hearing.

2. The decision to conduct an investigative hearing shall specify the following particulars:

- (a) Party(ies) subject to investigation;
- (b) Complainant, or administrative body for competition when the investigation of the competition case is conducted pursuant to clause 2 of article 65 of this Law;
- (c) Specific articles and clauses of this Law being breached;
- (d) Time and location where the investigative hearing is to be opened;
- (dd) Whether the hearing is to be conducted in public or not in public;
- (e) Full name of members of the council dealing with the competition case;
- (g) Full name of the investigator who has already investigated the competition case and of the secretary of the investigative hearing;
- (h) Full name of lawyers;
- (i) Full name of interpreters;
- (k) Full name of witnesses;
- (l) Full name of experts;

(m) Any person with related rights and obligations.

Article 103. Summons to persons who must attend investigative hearing

The council dealing with the competition case shall, on the basis of the decision to conduct an investigative hearing, send a summons to persons who must attend such hearing no later than ten (10) days prior to opening of the hearing.

Article 104. Investigative hearing

1. An investigative hearing shall be conducted in public. If the matters investigated concern national security or business secrets, the investigative hearing shall be conducted in camera.

2. The following persons shall participate in a hearing:

(a) Members of the council dealing with the competition case and the secretary of the investigative hearing;

(b) Party(ies) subject to investigation;

(c) Complainant;

(d) Lawyers;

(dd) Investigator who has already investigated the competition case;

(e) Other persons as stated in the decision to conduct the investigative hearing.

3. After hearing the opinions of and the exchange of arguments by all participants, the council dealing with the competition case shall hold its own discussion and reach a majority decision by secret ballot.

Section 6. EFFECTIVENESS OF DECISION ON RESOLUTION OF COMPETITION CASE

Article 105. Decision on resolution of competition case

1. A decision on resolution of a competition case must contain the following main particulars:

(a) Summary of the facts of the case;

(b) Analysis of the case;

(c) Conclusion on how to deal with the case.

2. The chairman of the investigative hearing shall sign the decision on resolution of a competition case.

3. The decision on resolution of a competition case must be sent to the parties concerned within seven working days of the date of signing of such decision.

Article 106. Effectiveness of decision on resolution of competition case

A decision on resolution of a competition case shall become effective after thirty (30) days from the date of its signing, unless a complaint is lodged within such period pursuant to article 107 of this Law.

Section 7. DEALING WITH COMPLAINTS AGAINST DECISIONS ON RESOLUTION OF COMPETITION CASES WHICH HAVE NOT YET BECOME LEGALLY EFFECTIVE

Article 107. Complaining against decision on resolution of competition case

1. In the case of disagreement with a part or all of a decision on resolution of a competition case made by the council dealing with such case, the parties shall have the right to lodge a complaint with the Competition Council.

2. In the case of disagreement with a part or all of a decision on resolution of a competition case made by the head of the administrative body for

competition, the parties shall have the right to lodge a complaint with the Minister of Trade.

Article 108. Complaint against decision on resolution of competition case

1. A complaint against a decision on resolution of a competition case must contain the following main particulars:

(a) Full date of the complaint;

(b) Name and address of the complainant;

(c) Number and full date of the decision on resolution of the competition case which is the subject of complaint;

(d) Reasons for the complaint and requests of the complainant;

(dd) Signature and seal (if any) of the complainant.

2. A complaint must be lodged with the body which issued the decision on resolution of the competition case, together with any additional evidence proving that there are grounds for the complaint and the complaint is legal.

Article 109. Acceptance of jurisdiction over complaint against decision on resolution of competition case Within a time-limit of five working days from

the date of receipt of a complaint against a decision on resolution of a competition case, the body which issued the decision must verify the validity of the complaint pursuant to article 108 of this Law.

Article 110 Consequences of complaint against decision on resolution of competition case

1. Any part of a complaint against a decision on resolution of a competition case which is the subject of complaint shall not be transferred for enforcement.

2. Within a time-limit of fifteen (15) days from the date of receipt of a complaint against a decision on resolution of a competition case, the body which accepted jurisdiction to resolve the complaint shall consider it and then transfer the complaint, the whole of the file on the competition case and the recommendations of such body to the Competition Council or to the Minister of Trade in accordance with the provisions of article 107 of this Law.

Article 111. Time-limit for resolution of complaint against decision on resolution of competition case

Within a time-limit of thirty (30) days from the date of receipt of a complaint file, the Competition Council or the Minister of Trade shall be responsible to resolve the complaint in accordance with their authority. In especially complex cases, this time-limit may be extended but not for more than thirty (30) days.

Article 112. Powers of Competition Council when resolving complaint against decision on resolution of competition case by council dealing with competition case

When the Competition Council considers resolution of a complaint against a decision on resolution of a competition case by a council dealing with a competition case, the Competition Council shall have the following rights:

1. If it considers that there are insufficient grounds for the complaint, to uphold the original decision;
2. If it considers that the original decision was not correct in accordance with law, to amend a part or the whole of the original decision;
3. To revoke the original decision and transfer the file on the competition case to the council dealing with it for reconsideration in the following circumstances:
 - (a) Evidence has not been sufficiently collected and verified;
 - (b) Membership of the council did not comply with the provisions of this Law or there was some other serious breach of the provisions on competition legal proceedings.

Article 113. Powers of Minister of Trade when resolving complaint against decision on resolution of competition case by administrative body for competition

When the Minister of Trade considers resolution of a complaint against a decision on resolution of a competition case made by the administrative body for competition, the Minister of Trade shall have the rights stipulated in clauses 1 and 2 of article 112 of this Law; and if evidence has not been sufficiently collected and verified, the Minister of Trade shall have the right to revoke the original decision and request that the administrative body for competition reconsider its original decision in accordance with the procedures stipulated in this Law.

Article 114. Effectiveness of decision on resolution of complaint

A decision on resolution of a complaint against a decision on resolution of a competition case shall be legally effective as from the date of its signing.

Article 115. Instituting proceedings in relation to decision on resolution of complaint

1. If any party concerned disagrees with a decision on resolution of a complaint against a decision on resolution of a competition case, such party shall have the right to institute administrative proceedings with respect to a part or the whole of such decision at the people's court of a province or city under central authority which has jurisdiction.
2. If a court accepts jurisdiction over proceedings as stipulated in clause 1 of this article, the Minister of Trade or the chairman of the Competition Council shall be responsible to direct that the file on the complaint against the decision on resolution of a competition case must be transferred to the

court within a time-limit of ten (10) working days from the date of receipt of a request from the court.

Article 116. Consequences of instituting proceedings

Any part of a decision on resolution of a competition case which is not the subject of court proceedings shall continue to be transferred for enforcement.

Section 8. DEALING WITH BREACHES OF LAWS ON COMPETITION

Article 117. Forms of penalties to be imposed for breaches of laws on competition and measures for remedying consequences

1. For each practice in breach of the laws on competition, the individual or organization in breach must be subject to one of the following main forms of penalty:

(a) A warning;

(b) A fine.

2. Depending on the nature and seriousness of the breach, one or more of the following additional forms of penalty may also be applied to an individual or organization in breach of the laws on competition:

(a) Withdrawal of business registration certificate; revocation of the right to use a licence or practising certificate;

(b) Confiscation of exhibits and facilities used to commit the breach of the laws on competition.

3. In addition to the forms of penalty stipulated in clauses 1 and 2 of this article, one or more of the following measures for remedying consequences may also be applied to an individual or organization in breach of the laws on competition:

(a) Restructure of an enterprise which abuses its dominant market position;

(b) Division or separation of enterprises which merged or consolidated; compulsory re-sale of that part of an enterprise which was acquired;

(c) Public rectification;

(d) Removal of illegal terms and conditions from a contract or business transaction;

(dd) Other measures necessary to remedy the effects of the restraint on competition caused by the practice in breach.

4. Where a practice in breach causes loss to the interests of the State or to the lawful rights and interests of other individuals or organizations, compensation must be paid for such loss in accordance with law.

Article 118. Level of fines for breach of laws on competition

1. A body authorized to impose penalties may impose a fine up to no more than ten (10) per cent of the total turnover of the organization or individual in breach in the financial year preceding the year in which the prohibited practice took place where the breach involves an agreement in restraint of competition, an abuse of dominant market position or monopoly position, or an economic concentration.

2. The body authorized to impose penalties shall deal with unfair competitive practices and other conduct in breach of this Law outside the cases stipulated in clause 1 of this article in accordance with the laws on dealing with administrative offences or in accordance with relevant laws.

3. The Government shall provide detailed regulations on the level of fines applicable to practices in breach of this Law.

Article 119. Authority to impose fines and deal with breaches of laws on competition

1. A council dealing with a competition case and the Competition Council shall have the following powers:

(a) To issue a warning;

(b) To impose a fine as stipulated in clause 1 of article 118 of this Law;

(c) To confiscate exhibits and facilities used to commit the breach of the laws on competition;

(d) To apply the measures stipulated in sub-clauses (c), (d) and (dd) of clause 3 of article 117 of this Law;

(dd) To request the competent State body to withdraw the business registration certificate or to revoke the right to use a licence or practising certificate;

(e) To request the competent State body to apply the measures stipulated in sub-clauses (a) and (b) of clause 3 of article 117 of this Law.

2. The administrative body for competition shall have the right to apply the measures stipulated in sub-clause (a) of clause 1, sub-clause (b) of clause 2 and sub-clause (c) of clause 3 of article 117 and clause 2 of article 118 of this Law.

3. Other bodies authorized to impose penalties for unfair competitive practices relating to intellectual property shall do so in accordance with the laws on dealing with administrative offences.

Article 120. Dealing with breaches by State employees and officials

Any State employee or official who commits a breach of the laws on competition shall, depending on the nature and seriousness of the breach, be disciplined or be subject to criminal prosecution; and if loss is caused, he or she must pay compensation for it in accordance with law.

Article 121. Enforcement of decisions on resolution of competition cases

1. After a time-limit of thirty (30) days from the date of effectiveness of a decision on resolution of a competition case, if one of the parties fails to implement voluntarily the decision and has not instituted proceedings before the court pursuant to Section 7 of this Chapter, the judgment creditor shall have the right to lodge a request with a competent State administrative body to enforce the decision pursuant to the functions, duties and powers of such body.

2. If the decision on resolution of the competition case relates to assets of a judgment debtor, the judgment creditor shall have the right to request the civil judgment enforcement office of the city or province under central authority where the judgment debtor has its head office or resides or where there are assets of the judgment debtor to enforce the decision on resolution of the competition case.

Chapter VI

IMPLEMENTING PROVISIONS

Article 122. Effectiveness

This Law shall be of full force and effect as of 1 July 2005.

Article 123. Implementing guidelines

The Government and the People's Supreme Court shall provide detailed regulations for implementation of this Law.

This Law was passed by Legislature XI of the National Assembly of the Socialist Republic of Vietnam at its 6th Session on 3 December 2004.

THE CHAIRMAN OF THE NATIONAL ASSEMBLY

Nguyen Van An