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Competition Law Enforcement of Viet Nam and the Necessity of a Transparent Regional Competition Policy

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Abstract: *Competition is becoming an important issue among the countries of the Association of Southeast Asian Nations (ASEAN). However, having a transparent and positive competition policy is much more difficult than enacting a competition law. Competition policy strongly depends on the enforcement of competition law and the way the government positions competition law in its general policy for developing the national economy. This paper discusses the enforcement of Viet Nam's competition law and argues for the need for a regional competition policy for ASEAN and the East Asia area which enhances an individual country's competition policy and prevents conflicts of interest among countries.*

Keywords**:** Competition policy, industrial policy, regional competition policy, Viet Nam, ASEAN, East Asia, extraterritorial application, compliance, state-owned enterprises.

JEL Classification**:** K21

1. Introduction

As a member of the Association of Southeast Asian Nations (ASEAN), Viet Nam is enforcing a dynamic competition law. Enacted in 2004 and implemented starting 1 July 2005 through the Vietnam Competition Authority (VCA), the Government of Viet Nam has been promoting a fair-competition environment for the business community. The Competition Law 2004 is considered a remarkable instrument dealing with unfair competition acts and acts that restrict competition. The VCA has investigated 132 competition cases and reviewed 21 merger cases, including those conducted outside Viet Nam.[1] However, an analysis of the law and its enforcement from a broader socioeconomic perspective reveals two major issues confronting policy makers and the government, its foreign counterparts, the VCA, and the private sector.

The first issue is the enforcement of the Competition Law 2004 concurrently reflects the competition and industrial policies of which the goals are sometimes at conflict. Unlike the competition policy which aims to enhance a fair competitive market, Viet Nam's industrial policy is more conservative. The interaction of the two policies adversely affects the operation of the market and the relationship between the VCA and its foreign counterparts.

Second, because of international economic integration and the country's commitments under the free trade agreement (FTA), Viet Nam is opening markets to foreign companies, especially transnational corporations (TNCs). Business transactions governed by Viet Nam's laws are, therefore, not only those within the territory of Viet Nam but also international ones. This requires a more flexible interpretation of the Competition Law 2004 and a high readiness of VCA to deal with cross-border anticompetitive behaviours.

This paper discusses the rising problems of Viet Nam's competition law enforcement and suggests a framework of a regional competition policy for the ASEAN and East Asia countries. In the first part, the discussion focuses on the relationship between the Competition Law 2004 and the industrial policy of Viet Nam.

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[1] Vietnam Competition Authority, *2013 Annual Report*, http://vca.gov.vn/uploads/file/2014/04_08/Annual%20Report(1).pdf (accessed 20 August 2014).

This part presents the background of the industrial policy and the position of competition law. The discussion argues that the competition law is more of an instrument of industrial policy than of competition policy, which would harm the integration of regional competition laws as well as cooperation among regional competition authorities. The second part of this paper discusses the application of the Competition Law 2004 on foreign companies by describing how the law deals with extraterritorial cases and compliance of TNCs with the law. Finally, this paper recommends regional actions.

2. Competition Law and the Industrial Policy in Viet Nam

2.1. Industrial Policy

Since the end of World War II, when many countries were rebuilding their economies, Viet Nam had been involved in two severe wars—one against France and one against the United States (US)—which lasted until 1975, badly damaging Viet Nam's economy. After independence and national unification, Viet Nam's economy in general and industry in particular suffered the inefficiency of a centrally planned economy. Since it launched its renovation policy (*Doi Moi)* in the late 1980s, Viet Nam has started to liberate its economy and foster industrial development. This industrial policy is aimed to enhance sectors that employ a large number of workers and could become highly competitive internationally, such as automobile manufacturing, consumer product industries, and agriculture and sea product industries. Like Japan or the Republic of Korea, Viet Nam has been pursuing an industrial policy that requires government support such as tax reduction, land and credit accessibility, and other incentives.

Viet Nam's industrial policy has two basic goals: make domestic products more competitive against imported products, and enhance the capacity of products for export. This policy is reflected in a number of legal documents or resolutions of the National

Assembly and the government. The industrial policy is stated directly in a number of decisions made by the prime minister.[2]

To strengthen the competitiveness of domestic products and companies, the government strongly focuses on the small and medium-sized enterprises (SMEs). According to the Vietnam Chamber of Commerce and Industry, 97 percent of Vietnamese firms are SMEs, employing 51 percent of the workforce and contributing more than 40 percent of the gross domestic product.[3] Besides granting tax incentives, the government has established a fund for guaranteeing loans for SMEs (Guaranteeing Fund) based on the Decision 58/2013/QĐ-TTg of the prime minister.

The Guaranteeing Fund, a non-profit financial institution, guarantees the financial obligations of SMEs that are unable to perform or incorrectly perform such obligations. SMEs, especially newly established ones, are unable to borrow money from banks because of their complicated requirements. Small firms are therefore deprived of the chance to enter markets and expand. Through Decision 58/2013/QĐ-TTg, the government allows the establishment of the Guaranteeing Fund in the provinces to give SMEs a chance to access capital. This policy serves to correct the imbalance between small firms and bigger ones, especially state-owned enterprises (SOEs) and TNCs, which are strongly supported by holding companies.

Besides providing capital for SMEs, enhancing the capacity of manufacturing industries is a government priority. In 2008, the prime minister issued Decision 160/2008/QĐ-TTg approving the strategy to protect domestic manufacturing industries in accordance with Viet Nam's international commitments and the rules of the World Trade Organization (WTO) (the Strategy). The first guiding rule of the Strategy is that state protection must create and enhance the competitive advantage of Viet Nam's manufacturing industries, in general, and of prioritised or national champion industries, in particular. The second guiding rule is that the protection methods should treat all economic sectors equally.[4]

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[2] According to Article 67 of Law on *Law Enactment 2008,* the Decisions of the Prime Minister are a source of law.

[3] Thúy Hải, 'Small and Medium-Sized Enterprises Rapidly Growing up Under the Pressure of Competition', *Saigon giaiphong*, http://www.sggp.org.vn/kinhte/2012/4/285015/, 2008, (accessed 11 April 2014).

[4] Decision 160/2008/QĐ-TTg approving a strategy to protect the domestic manufacturing industries in accordance with the international commitment of Vietnam and the rules of the WTO, 2008, section I.

The Strategy's target of protecting domestic manufacturing reflects the core purpose of industrial policy, which consists of four elements. First, the Strategy supports producers in gradually enhancing their domestic competitiveness and, step by step, expanding to foreign markets. Second, the protections serve to mobilise national and foreign resources to foster national industrialisation and modernisation. Third, protecting domestic manufacturing contributes to stabilising society and the economy in the process of international economic integration so as to create more jobs, improve living conditions, and meet the economy's demands. Finally, the Strategy focuses on protecting the interests of not only manufacturers but also domestic consumers.[5]

In general, the purposes and guiding rules of the industrial policy are clear and positive. The Strategy's support for protecting domestic manufacturing not only makes industries more competitive but also respects the international commitments of Viet Nam and the rules of the WTO. The second rule states that the Strategy does not privilege any economic sector. This means that domestic industries are strengthened by resource mobilisation to achieve international competitiveness but not by negative protective methods that harm international trade.

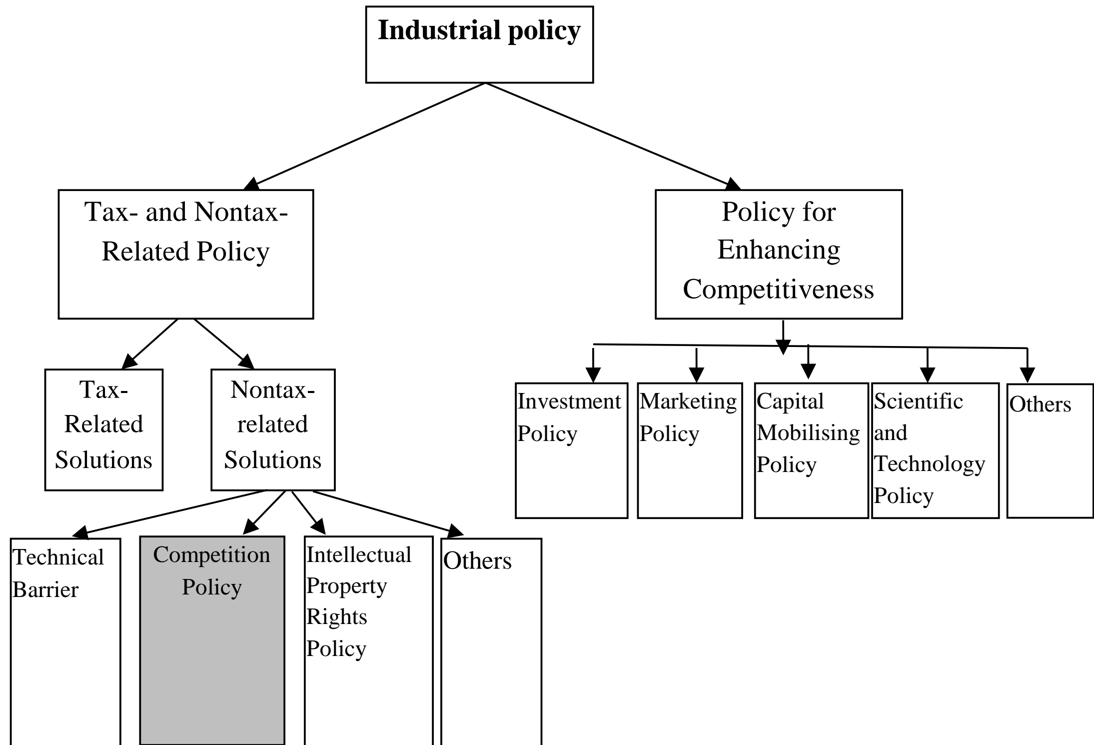
The industrial policy also states that apart from fostering the capacity of domestic manufacturing industries, the interest of domestic consumers is a priority. Producers and consumers normally have contrary interests: most producers seek to exploit the consumers. The industrial policy, therefore, protects domestic industries only by giving them chances to expand but not allowing them to conduct anticompetitive transactions. The Strategy's protection of domestic manufacturing is reflected in the Competition Law 2004.

To achieve the goals of the industrial policy, the Strategy points out a number of solutions, notably in Section V, where competition policy is mentioned as a non-tax solution. It requires the authorities to "improve the competition policy and reduce the monopoly so as to create a fair competition environment. Besides, it is necessary to prevent business transactions that result in barriers for competition and development".[6] This means that the industrial policy takes into account the importance of competition

[5] Ibid., section II.
[6] Ibid., section V.

policy in maintaining a fair competition environment. However, the competition policy is not considered a major solution to achieve industrial policy goals (Figure 1).

Figure 1: Position of the Competition Policy in Relation to the Industrial Policy



Although the Strategy clearly states the government's purpose by providing guidelines to protect and enhance the competitiveness of domestic industries, the methods and benefits it provides are unclear because of its wide scope of application. To make the policy clearer and more specific, therefore, the Prime Minister issued decisions approving the policy for developing specific key industries, such as Decision 12/2011/QĐ-TTg, on policies for developing some supporting industries; and Decision 177/2004/QĐ-TTg, approving the plan for developing the automobile industry toward 2020.

Although Viet Nam has been developing manufacturing industries since its *Doi Moi* policy, their domestic value-added is low because they depend on imported semi-finished products, thus restraining the expansion of downstream industries. Therefore,

focusing on auxiliary products as input for mechanical manufacturing is becoming a priority of the industrial policy. Decision 12/2011/QĐ-TTg provides the policy for developing auxiliary industries, electronic-information technologies, automobile assembly, textiles and garments, leather and shoes, and industries that support high-technology industries.[7] Under this policy, the government encourages and favours domestic and foreign companies that invest in the auxiliary industries. Incentives are related to market information, infrastructure, technology and human resources, and finance.[8]

Similar to auxiliary industries, automobile manufacturing is considered an important industry that should be developed to serve modernisation and industrialisation. In 2004, the prime minister issued Decision 177/2004/QĐ-TTg, which approved the plan to enhance the capacity of the automobile industry to meet domestic and international demand by 2020. Aside from financial or technology support, the plan also provides policy and methods for industry management to encourage big companies to restructure themselves as holding companies and groups of supplementary companies. This means that the policy encourages mergers and cooperation among manufacturing firms to enhance their scale and competitiveness.

Although the policy focuses on the domestic industry, the government does not discriminate between domestic and foreign investments. In practice, many foreign invested firms are beneficiaries of Viet Nam's industrial policy. However, granting incentives to some companies without strengthening the enforcement of the competition policy may bring a number of anticompetitive consequences to the markets.

2.2. Competition Law in Relation to the Industrial Policy

Viet Nam's industrial policy spans many economic areas by supplying resources such as credit, land, or information. The Competition Law 2004 provides a mechanism for the authorities and private sector to facilitate the country's industrial policy. While other laws facilitate the industrial policy by providing regulations directly named 'industrial policy' or 'enterprise-supporting policy', such a facilitation of the

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[7] See Decision 12/2011/QĐ-TTg on policies for developing some supporting industries, 2011, Article 1.

[8] Ibid., Article 3.

Competition Law 2004 appears in the form of exemptions for agreements that restrict competition and for economic concentrations.

2.2.1. Exemptions for Agreements that Restrict Competition

The Competition Law 2004 provides eight types of exemptions to the following:

1. Agreements that directly or indirectly fix the prices of goods or services;
2. Agreements that distribute outlets, sources of supply of goods, and provision of services;
3. Agreements that restrict or control produced, purchased, or sold quantities or volumes of goods or services;
4. Agreements that restrict technical and technological development, which result in the restriction of investments;
5. Agreements that impose on other enterprises conditions on signing of purchases for goods or services or sales contracts, or that force other enterprises to accept obligations that have no direct connection with the subject of such contracts;
6. Agreements that prevent, restrain, or disallow other enterprises to enter the market or to develop their business;
7. Agreements that exclude enterprises other than the parties of the agreements from the market; and
8. Conniving to enable one or all of the parties of the agreement to win bids for the supply of goods or for the provision of services.'[9]

According to Article 9 of the Competition Law 2004, these eight types of agreements can be grouped into two in terms of their illegality. The first group, which consists of the last three types of agreements, is illegal per se and cannot be exempted. In contrast, the second group, which consists of the first five types of agreements, is illegal only if the combined market share of the parties is 30 percent or more of the relevant market. The Competition Law 2004 also provides conditions to exempt some types of agreements that restrict competition. According to Article 10, agreements of the second group shall be considered exempted for a certain period if they meet one of the following conditions, which reduce costs to benefit consumers:

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[9] See Article 8, *Competition Law 2004.*

1. Rationalising the organisational structure, business model, and raising business efficiency;
2. Promoting technical and technological advances, and raising goods and service quality;
3. Promoting the uniform application of quality standards and technical norms of products of different kinds;
4. Harmonising business, goods delivery, and payment conditions, which have no connection with prices and price factors;
5. Enhancing the competitiveness of small and medium-sized enterprises; and
6. Enhancing the competitiveness of Vietnamese enterprises in the international market.'

The exemptions in the Competition Law 2004 for agreements that restrict competition as expressed in Article 8, Article 9, and Article 10 are awkward. First, the Competition Law 2004 does not consider hard-core cartels such as price fixing, market allocation, or production restriction as illegal per se but considers the aggregate market share of the participating firms. Second, even in cases where cartels are illegal, the Competition Law 2004 still gives participating firms a chance to be exempted as long as they reduce costs to benefit consumers. However, since the ultimate goal of cartel activities is to exploit consumers, the conditions for exemptions and the nature of cartel activities are, therefore, adverse. This paper does not aim to discuss this awkwardness of the law but the purpose of these exemptions.

From an industrial policy perspective, granting such exemptions is a form of support for domestic companies. The exemptions have two purposes: enhance the efficiency and competitiveness of SMEs in the domestic market, and strengthen exporting companies' capacity in the international market. Since the prerequisite for exemption is reducing costs to benefit consumers, exemptions cannot be granted to restrictive agreements that harm the domestic market, such as those involving price fixing, market allocation, or production restriction even when the size of participating firms is small or medium. Thus, the second purpose can be implemented.

In practice, some Vietnamese companies engage in some form of cartel-style activity. For example, rice is a strong export product. The price of rice in the

international market is unstable and competitive and Vietnamese companies have to compete with those of Thailand and other countries. However, exporting companies need to follow the floor price set by the Vietnam Food Association under the approval of the ministries.

Setting a floor price of exported rice is similar to price fixing. According to Article 19 of the Decree 109/2010/NĐ-CP on exporting rice, the Ministry of Finance, in collaboration with the Ministry of Industry and Trade, the Ministry of Agriculture and Rural Development, the People's Committee of provinces that produce rice, and the Vietnam Food Association, gives guidelines for setting the floor price of exported rice. In accordance with 109/2010/NĐ-CP, the Ministry of Finance issued Circular 89/2011/TT-BTC specifying the formula for calculating the floor price for exported rice.

In theory, this pricing policy serves to protect the farmers and agriculture-related industries. Rice farming employs a large number of farmers who, compared with rice-trading companies, are vulnerable since they are unable to forecast the demand of the rice market and have to bear all the risks before harvest. Without a floor price, rice-trading companies would engage in fierce competition to win export contracts. Consequently, such competition reduces the buying price for rice harvest and harms the farmers. In addition, rice-trading companies in Viet Nam are subject to the government's food security policy. To secure the supply of rice in emergency cases, Article 12 of the Decree 109/2010/NĐ-CP on exporting rice requires an exporting company to stockpile at least 10 percent of the volume of rice it has exported in the previous six months. This policy ensures that the government, through the rice-trading companies, will have enough stock to use in emergencies such as domestic natural disasters or for international aid. However, implementing this policy often depletes the resources of rice-trading companies since rice stockpiling requires warehouses equipped to maintain the quality of stock, and requires firms to have the financial capacity to buy and store a huge amount of rice for a certain period.

Due to this policy, trading firms that need to recoup expenses follow the floor price of exported rice. The floor price is not meant to exploit consumers but to ensure that trading firms can make profit after following government policies. Without a floor

price, stiff competition would force trading firms to refuse to comply with the society-oriented policies or to withdraw from the rice market.

Although setting a floor price for exported rice is a form of cartel activity, it can enhance competition. For the national market, the floor price eliminates competition between firms and consumers are thus unable to select the most efficient seller whose quality of rice is high and price is low. Internationally, however, sellers are unable to control the market price because of competition from other countries. For trading firms, the floor price should be high enough for them to recover the costs of complying with the policies, but also low enough for them to compete with firms from other countries. Therefore, international competition makes trading firms unable to exploit consumers.

In practice, however, setting a floor price does not work as it should. Because the floor price set by the Vietnam Food Association does not come with sanctions against the cheater, some trading companies do not comply and instead bid to export rice. Due to the low export price, such exporting companies abuse their purchasing power in domestic market to decrease their buying price from the farmers.

Aside from being unable to protect the farmers and the farming industries, this policy may be in violation of the competition law of countries to which the rice is exported. The policy of setting a floor price for exported rice should, therefore, be reviewed. Rather than allowing a price-fixing agreement, the government should introduce an alternative measure to protect farmers and the farming industry and enhance the capacity of trading firms.

Similarly, the Vietnam Association of Seafood Exporters and Producers has proposed setting a floor price for exported catfish[10] in response to a heavy anti-dumping duty imposed by the US and the European Union on Vietnamese catfish. A floor price is, therefore, deemed to prevent dumping prices and benefit exporting companies. The association has also asserted that a floor price for exported catfish is necessary to prevent a price war among Vietnamese firms and to benefit firms that raise catfish. However, the VCA has warned against this proposal because of the risks involved. Although setting a floor price for exported catfish can be granted exemption

[10] See Ngo Son (2011), 'Saving Catfish', *Lao Dong*, http://laodong.com.vn/kinh-doanh/giai-cuu-ca-tra-6142.bld (accessed 11 April 2014).

under Article 10 of the Competition Law 2004, exporting companies run the risk of violating the competition laws of importing countries, especially the US.

Thus, in the context of industrial policy, although exemptions for cartel activities that enhance the competitiveness of Vietnamese enterprises in the international market seem to contribute to the development of Vietnamese industries in particular and economy in general, such exemptions, from a broader view, harm not only companies involved in the cartel but also the government's relationships with importing countries. Industrial policy makers should, therefore, take into account the risks and negative consequences coming from outside Viet Nam when considering the cost and benefit of such a policy.

Regarding the cost and benefit to member firms of the exporting cartels, the exemption in the Competition Law 2004 does not protect them from punishment by the competition authority of importing countries, since the doctrine of extraterritorial power of competition law is in effect in many countries. Because a price-fixing cartel activity may harm importing markets and their consumers, the competition authorities of those countries may investigate and impose sanctions on the cartels.

Apart from severe sanctions from the importing market, another risk is that exemptions for exporting cartels may restrain the implementation of FTAs between Viet Nam and other countries. Viet Nam has signed FTAs with countries such as Japan and Chile, and the Customs Union and is likely to sign more with other partners such as the European Union and the Republic of Korea. In FTAs, the chapter on competition always emphasises the responsibility of the parties to enforce competition law properly to eliminate agreements that restrict competition, especially when such agreements harm trade between the signing parties. In such a situation, the Vietnamese authorities cannot grant exemptions that enhance the efficiency of domestic firms or industries but restrain trade with countries with which Viet Nam has signed an agreement. Thus, commitments to FTAs are rendering obsolete industrial policy in the form of exemptions for exporting cartels.

Besides, exemptions for exporting cartels harm cooperation between competition authorities of countries. As anticompetitive transactions, especially cartel arrangements, become more and more international, competition authorities around the world tighten their cooperation in many ways such as through technical assistance,

information exchange, or joint investigation as the Competition Authority of Vietnam has with many of its counterparts. The VCA has received information from competition authorities regarding some international cartels that may affect Viet Nam's territory. Though this may not have resulted in any cooperation, it has strengthened the mutual reliance among competition authorities. As it has been performing its functions as a responsible competition authority in relation with its counterparts, the VCA or the government of Viet Nam has no reason to grant exemptions for hard-core cartel activities that are targets of investigation by other competition authorities.

In sum, because the competition law serves to protect the economy from anticompetitive transactions, there is no reason to exempt any illegal per se business activity such as hard-core cartels. With markets becoming international, efficiency should not be assessed within a country's territory. Therefore, an industrial policy that exempts export cartel activities should be reconsidered in the context of international trade.

2.2.2. Exemptions for Prohibited Economic Concentration

According to the Competition Law 2004, an economic concentration is illegal if the aggregate market share of participating firms exceeds 50% of the relevant market. A merger that results in a small or medium-sized enterprise is legal per se regardless of its anticompetitive status. However, the law deems that an economic concentration that has a combined market share exceeding 50 percent is illegal per se. Therefore, the Competition Law 2004 provides cases of exemption from prohibited economic concentration. According to Article 19, prohibited economic concentration, as prescribed in Article 18 of this law, may be considered for exemption in the following cases:

1. one or more of the participants in the economic concentration is/are in danger of dissolution or bankruptcy, and
2. the economic concentration expands exports or contributes to socioeconomic development and technical and technological advancement."[11]

[11] See the *Competition Law of Vietnam,* Article 19, 2004.

Similar to exemptions granted for agreements that restrict competition, those granted for prohibited economic concentration also aim to (i) enhance the capacity of SMEs, and (ii) strengthen the competitiveness of export-oriented companies.

Turning first to the purpose of enhancing the capacity of SMEs, the Competition Law 2004 considers this a reason to deem economic concentration as legal per se. This regulation is consistent with the industrial policy of making SMEs more competitive or developing specific industries (Section I).

Table 1: Firm Size Classification

Size / Business Area	Small		Medium	
	Total Capital (US$ million)	**Total Labour (person)**	**Total Capital (US$ million)**	**Total Labour (person)**
I. Agriculture, forestry, and aquaculture	<= 1	From 10 to 200	From 1 to 5	From 200 to 300
II. Industry and construction	<= 1	From 10 to 200	From 1 to 5	From 200 to 300
III. Trading and service	<= 0.5	From 10 to 50	From 0.5 to 2.5	From 50 to 100

Source: Decree 56/2009/ND-CP dated 30 June 2009.

However, size does not accurately reflect a company's market power. Sometimes, especially when the geographical market is small, an SME may possess market power and distort competition. According to the classification of the Decree 56/2009/ND-CP about SMEs, the charter capital of a medium-sized enterprise may reach US$5 million. Hence, a small or medium-sized firm can possess market power especially when it receives financial support from industrial policy.

Besides enhancing the capacity of SMEs, exemptions for prohibited merger aim to strengthen the competitiveness of Viet Nam's export-oriented companies. This reflects the industrial policy contained in Decision 177/2004/QĐ-TTg of the Prime Minister, which approved the plan to develop Viet Nam's automobile industry toward 2020. Article 1 encourages automobile manufacturing firms to restructure and

establish big companies in the form of holding companies and groups of supplementary companies.

Unlike the exporting cartel, which can harm the importing market regardless of the size of its firm or its aggregate market share in an economic concentration, the merger of automobile manufacturing firms is not illegal per se as the illegality in the importing countries of an economic concentration depends on its anticompetitive nature. Therefore, granting exemptions for export-oriented mergers may achieve the goals of the industrial policy without harming foreign markets.

In a national market, a merger that gives participating firms a combined market share exceeding 50 percent of the relevant market may result in a firm that possesses substantial market power. But when the market is international, such a merger may not result in a powerful company because of the competition pressure from competitors in the importing country and in other exporting countries. In trying to expand the market for export-oriented firms of Viet Nam through a merger, it is necessary for the competition authority to warn participating firms the impact of such a merger on the importing countries before granting exemption.

In general, an FTA requires the parties to take all necessary measures in accordance with their respective laws to prevent and restrict anticompetitive practices that affect trade between the parties. Based on this, exemption to a merger is granted by the countries that are signatories to an FTA once the participating firms have made sure that such a merger will not distort the market of any of the countries involved. The industrial policy of Viet Nam should therefore be in accordance with the international commitment in such a way that the allowed merger could enhance the capacity of domestic companies or industries without harming any foreign market.

2.3. Industrial Policy and the Competition Law 2004 Revision and Enforcement

A policy normally consists of visible and non-visible components where the former is the content of the law or a set of laws that reflects the statement of the policy. In a proper law-making process, the policy must be established first and then the law is written based on the spirit of such a policy. While law is the visible part of a policy, the enforcement and the revision of such a law is the non-visible one. The success of

a policy strongly depends not only on the law's content but also on the enforcement and revision of the law(s) that materialise such a policy.

Viet Nam started to draft the Competition Law 2004 in 2000 because of internal and external pressures. At that time, Viet Nam was negotiating with other members to join the WTO and was under pressure from many countries to liberalise its economy and enact a competition law, which was also an internal demand. The economy was then starting to transform from a centrally planned one to a market model, and regulatory authorities, therefore, were unable to intervene in business transactions of firms using administrative methods. Thus, the economy needed a competition law to maintain efficiency.

The Competition Law 2004 was enacted to prove that Viet Nam's legal system had been improved to meet the requirements for international economic integration. However, the economy was in the process of transformation. The Competition Law 2004, therefore, contained a number of problems. For one, the drafters of the law had a limited idea of competition and of competition laws and, as a result, the law was an awkward copy of some foreign competition laws.

In 2012, the VCA, together with the Japan International Cooperation Agency, reviewed the Competition Law 2004[12] and made an official report that analysed all its provisions and summarised the eight-year enforcement by the VCA to point out its problems. The report also comparatively studied the competition laws of countries such as Japan, the US, and Canada to highlight the unusual approach of the Competition Law 2004. This report provided the justification for the urgent need to revise the Competition Law 2004 to enhance its enforcement.

Based on the VCA report, the two notable problems constraining the law's enforcement are the requirement of market share and the model of the competition authority.

First, the law uses market share as a prerequisite for deeming a transaction a violation. In practice, it is not always easy to define the relevant market and measure the market share of firms. Therefore, this requirement sometimes constrains the competition authority in enforcing the law and firms in following it.

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[12] Vietnam Competition Authority and JICA, *Review Report on Vietnam Competition Law*, http://qlct.gov.vn/NewsDetail.aspx?ID=1429&CateID=244, 2012, (accessed 12 May 2014).

Second, the current model of the VCA is a significant problem in the enforcement of the law. Although legally an independent agency, the VCA is practically a department under the Ministry of Industry and Trade (MOIT), the structure of which impairs its enforcement of the law because the MOIT has substantial power to select the VCA's general director, and the budget of the VCA depends on the budget of the MOIT.

Since the MOIT is a regulatory body, the granting of support to the many industries it governs may impede the enforcement of the Competition Law 2004. From an industrial policy perspective, the MOIT should enforce programs to support the development of domestic industries. Thus, it is hard to ensure fairness and transparency in enforcing the Competition Law 2004 when the MOIT has such dual power.

Given that the VCA is an agency under the MOIT, its power to supervise the compliance of other agencies is weak, especially when such agencies are under ministries other than the MOIT. Article 6 of the Competition Law 2004 prohibits state management agencies from preventing competition in the market.[13] In practice, because of the current structure, the VCA is unable to intervene in the work of other agencies.

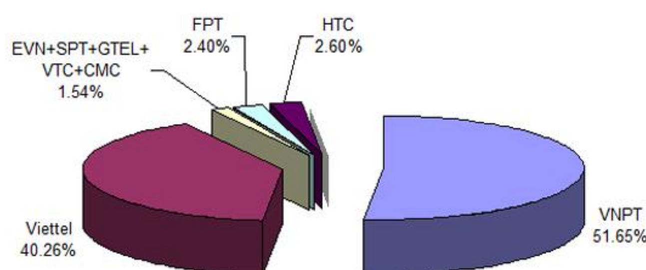
Despite these problems, the MOIT and the National Assembly have yet to schedule the Competition Law 2004 for revision, perhaps because the competition policy is not an urgent concern of the MOIT, especially compared with the industrial policy. It may also mean that the MOIT is not ready to change how the Competition Law 2004 is enforced, especially the position of the VCA, which may influence the industrial policy.

Although the VCA has enforced the Competition Law 2004, some cases show that compliance is low among state agencies. Some agencies enforce the industrial policy without considering the prohibitions of the competition law. The Viettel-EVN case is a typical example.

[13] *Competition Law of Vietnam,* Article 6.

Vietnam Electricity or EVN is a 100 percent SOE with its main businesses related to the operation of the national network of electricity.[14] During the period when most SOEs of Viet Nam invested money in businesses other than their main business, EVN founded EVN Telecom, which provided telecommunications services. Competition in the telecommunications market, in which EVN lacked experience, was severe. Although EVN tried to back EVN Telecom, its efforts were not enough to rescue the latter from big losses. In 2011, Viet Nam's economy was in crisis and most of the SOEs, including EVN, were losing money. As a result, EVN was under great pressure in late 2011 to withdraw its capital from EVN Telecom.

Figure 2: Market Shares of Telecommunications Companies, 2011[15]



Note: EVN = Vietnam Electricity, GTel = Global Telecommunications Corporation, HTC = Hanoi Telecom Corporation, SPT = Saigon Post and Telecommunications Service Corporation, VNPT = Vietnam Posts and Telecommunications Group.
Source: Ministry of Information and Telecommunications of the Socialist Republic of Viet Nam.

However, the withdrawal of EVN from EVN Telecom was a big problem for the competition in the telecommunications market. At that time, the telecommunications market consisted of nine firms that could be divided into two groups: leaders and followers.[16] Most of the leaders—Vietnam Posts and Telecommunications Group (VNPT), Mobifone, and Viettel, for example—were SOEs that held high market shares and owned essential telecommunication facilities.[17] The followers were firms with low

[14] 'Tập Đoàn Điện Lực Việt Nam - Lĩnh Vực Hoạt Động Của Tập Đoàn Điện Lực Việt Nam, [the Vietnam Electricity - Business Domains of the Group]' company homepage, *The Vietnam Electricity*, May 28, 2011, (accessed 02 June 2013).
[15] See footnote 15, 'Market Shares of Telecommunication Turnover 2011'.
[16] Ministry of Information and Telecommunications of the Socialist Republic of Viet Nam, 'Market Shares of Telecommunication Turnover 2011', *Statistic,* 2012, http://mic.gov.vn/solieubaocao/solieuthongke/vienthong/Trang/Th%E1%BB%8Bph%E1%BA%A7nthu%C3%AAbaodi%C4%91%E1%BB%99ng3G.aspx (accessed 09 April 2013).
[17] Mobifone is a mobile telecommunication service provider under the VNPT group.

market shares leasing the facilities of the leaders—Global Telecommunications Corporation (GTel), Hanoi Telecom Corporation (HTC), Saigon Post and Telecommunications Service Corporation (SPT), and EVN Telecom.

When EVN expressed its desire to withdraw from EVN Telecom, HTC and Viettel were the primary candidates for buying EVN Telecom. HTC was a private company providing Internet services, VoIP, GSM-based mobile phone, and 3G services.[18] In 2009, the joint candidate of HTC and EVN Telecom won the license for supplying 3G services in Viet Nam.[19] For this reason, HTC wanted to buy the 3G business from EVN Telecom, but only that particular business.

Viettel was an SOE under the Ministry of Defense.[20] In 2008, Viettel was in the group of firms dominating a number of telecommunication markets, mobile phone and 3G services.[21] In 2009, Viettel also won a license to 3G service. Viettel was the candidate favoured by the authorities the entire business of EVN Telecom. The reason for this selection was not clear and the method of selection was not explained even to the Competition Authority. According to the *Saigon Times*, an anonymous official of the government explained that Viettel was selected because only this company was able to rescue the business of EVN Telecom.[22]

HTC strongly opposed the plan of transferring EVN Telecom to Viettel because the plan was related to the 3G market. Viettel was a direct competitor of the joint candidate of the HTC and EVN Telecom in the 3G service market, and if it were to take over EVN Telecom, including its 3G service business, it would dominate the 3G

[18] HTC, 'Công Ty Cổ Phần Viễn Thông Hà Nội, [the Hanoi Telecom Corporation]', company homepage, www.hanoitelecom.com (accessed 8 April 2013).

[19] The other suppliers that won 3G licenses were Viettel, VNPT, and VMS. (Lê Mạnh, 'Trao Giấy Phép 3G Cho 4 Doanh Nghiệp Viễn Thông, [To grant the 3G service licenses to 4 telecommunications companies], *Ministry of Information and Communications News*, 13 August 2009,
http://mic.gov.vn/tintucsukien/tinhoatdongcuabo/Trang/traogiayphep3gcho4doanhnghiepvientho ng.aspx (accessed 8 April 2013).

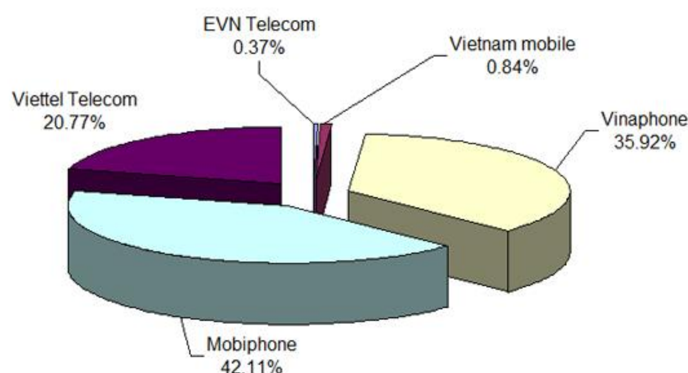
[20] Viettel Group, company homepage, http://viettel.com.vn/Home.html, (accessed 11April 2013).

[21] Quyết Định 1622/QĐ-BTTTT Của Bộ Thông Tin Và Truyền Thông Về Bộ Thông Tin Và Truyền Thông Về Việc Ban Hành Danh Mục Dịch Vụ Và Doanh Nghiệp Hoặc Nhóm Doanh Nghiệp Viễn Thông Chiếm Thị Phần Khống Chế, [Decision number 1622/QĐ-BTTTT of the Ministry of Information and Telecommunications on the list of services and firms or group of firms dominating the markets].'

[22] Vân Oanh, 'EVN Telecom Có Thể Được Chuyển Giao Cho Viettel, [EVN Telecom may be transferred to Viettel', *The Saigon Times*, 19 October 2011, http://www.thesaigontimes.vn/63796/EVN-Telecom-co-the-duoc-chuyen-giao-cho-Viettel.html (accessed 9 April 2013).

service market. Besides, the business of HTC in the 3G joint candidate would be under threat if EVN Telecom were to partner instead with Viettel. This transaction would make HTC the sole 'follower' competing in this market with the top three 'leaders' holding 98.8 percent market share (Figure 3).[23]

Figure 3: Market Shares of 3G Mobile Phone Service Providers, 2011[24]



Source: Ministry of Information and Telecommunications of the Socialist Republic of Viet Nam.

Unlike HTC, Viettel did not consider this merger a business transaction but a duty assigned by the authorities to prevent the indebted EVN Telecom from losing the state's capital.[25] According to Viettel, only the 3G service of EVN Telecom was profitable while the rest of EVN Telecom businesses were losing money and were inefficient. Thus, Viettel would not take over EVN Telecom without the 3G business.

On 12 May 2011, the prime minister issued Decision No. 2151/QD-TTg (Decision 2151) to transfer EVN Telecom from EVN to Viettel Group. In fact, this transaction was a merger. However, Decision 2151/QD-TTg did not rely on the Competition Law 2004 which should have governed the transaction between EVN Telecom and Viettel.

Article 18 of the Competition Law 2004 proscribes mergers where the combined market shares of the participating firms exceed 50 percent in the relevant market.[26]

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[23] HTC provided 3G and mobile phone services in the name of Vietnam mobile.
[24] Ministry of Information and Telecommunications of the Socialist Republic of Vietnam, http://mic.gov.vn/solieubaocao/solieuthongke/vienthong/Trang/Th%E1%BB%8Bph%E1%BA%A7nthu%C3%AAbaodi%C4%91%E1%BB%99ng3G.aspx, 2012, (accessed 9 April 2013).
[25] Vân Oanh, 'Viettel Determined to Take over EVN Telecom', 26 October 2011, (accessed 9 April 2013).
[26] *Competition Law of Vietnam,* Article 18, 2004.

However, contrary to what the HTC claimed, the Viettel-EVN merger was not illegal because the combined market share of the two firms was not as high as 50 percent even in some highly concentrated relevant markets, as shown in the charts.

However, the combined market share of Viettel and EVN Telecom was large enough to trigger the notification requirement under Article 20 of the Competition Law 2004. Firms with a combined market share of 30–50 percent must notify the VCA of their economic concentration so it can check whether such a merger restricts competition or not. Decision 2151 deprived the VCA of the opportunity to examine the likely competitive impact of the transaction.

In this case, Viettel and EVN Telecom had an obligation to notify the VCA about the merger even though the transaction was arranged upon direction of the prime minister. The Competition Law 2004 does not give the prime minister any competence to allow an economic concentration without any legal procedure.

In sum, the acquisition by Viettel of EVN Telecom was a competition case that should have complied with the Competition Law 2004. The state agencies and the firms participating in the merger lacked good legal and political sense when they advised the Prime Minister to issue Decision 2151 without referring to the provisions of the Competition Law 2004 or consulting the VCA. The merger notification or the application for exemption could have prolonged the merger procedure but also prove that the state agencies pursued the industrial policy in compliance with the competition law.

3. Foreign Companies and the Competition Law 2004

3.1. Extraterritorial Power of Law, Foreign Firms, and the Possibility of Violating the Competition Law of Viet Nam

The industrial policy of Viet Nam aims to enhance the competitiveness of its firms. Besides competing for a share in the international market, Vietnamese firms have to improve their efficiency to maintain their hold on the domestic market and effectively face foreign competition. This section discusses the relationship between foreign firms doing business in Viet Nam and the Competition Law 2004.

Since the *Doi Moi* policy, foreign companies have been investing in Viet Nam, and since 2006, when the legal system of Viet Nam was considerably reformed, the flow of foreign direct investment has increased year by year. General Statistics Office figures show that foreign companies have invested US$100.2 billion in Viet Nam from 1988 to 2012.[27] The 12,312 foreign companies in the country include a number of big international companies such as Toyota, Coca Cola, Intel, and Microsoft.

Table 2: Statistics of Vietnamese Companies in 2012[28]

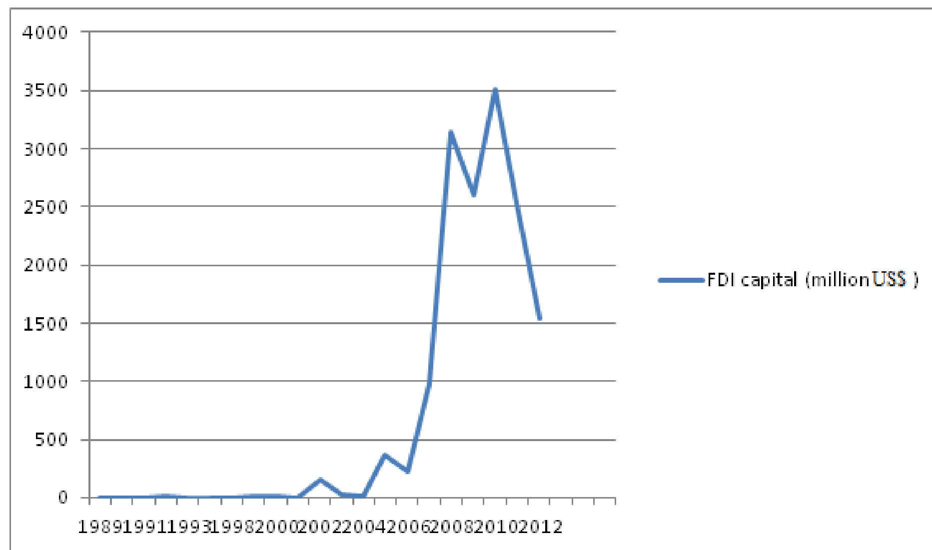
	Total	**Components**		
		SOEs	**Vietnamese Private Companies**	**FDI Companies**
Registered	541,103	4,715	524,076	12,312
Operating business	375,732	3,807	362,540	9,385
Registered but not yet operating business	17,547	26	16,505	1,016
Temporarily stopped operating business	23,689	35	23,422	232
Waiting to be dissolved	31,425	637	30,092	696
Others or status unverified	92,710	210	91,517	983

Note: FDI = foreign direct investment, SOE = state-owned enterprise.
Source: General Statistics Office of Viet Nam.

In general, foreign direct investment contributes to Viet Nam's economic development. It helps boost many industries such as automobiles, information technology, and food and beverages, and has created jobs. Foreign firms have also helped influence Vietnamese employees in adopting a modern working style.

[27] Foreign Direct Investments Registered during the Period 1988–2012, http://www.gso.gov.vn/default.aspx?tabid=392&idmid=3&ItemID=14346, 2014 (accessed 29 April 2014).
[28] Statistics of Vietnamese Enterprises, 2012. http://www.gso.gov.vn/default.aspx?tabid=382&idmid=2&ItemID=12481, 2014 (accessed 29 April 2014).

Figure 4: Foreign Direct Investment Capital, By Year (1988–2012)[29]



Note : FDI = foreign direct investment.
Source: General Statistics Office of Viet Nam.

Article 2 of the Competition Law 2004 provides that, "this Law shall apply to business organizations and individuals (hereinafter referred collectively to as enterprises), including also enterprises producing, supplying products, providing public-utility services, enterprises operating in the State-monopolized sectors and domains, and foreign enterprises operating in Viet Nam."[30] However, the law does not specify the word "operating" while the Standing Committee has not make any interpretation on this word.

Given the unclear of the law, there are two different understanding among the practitioners and law enforcers on the "foreign enterprises operating in Viet Nam" that are subject to the Competition Law 2004. The first opinion asserts that the Competition Law can only govern acts conducted by foreign enterprises when two conditions are satisfied. First, the alleged act is taken place in the Vietnamese territory. Second, the foreign enterprise must register its business in Viet Nam in the form of foreign direct invested company, branch, or representative office. This opinion asserts that it is impossible for the Vietnamese authority to conduct the investigation as well as enforce the final decision in a foreign territory. Moreover, the exercise of the Vietnamese

[29] Foreign Direct Investments Registered During the Period 1988–2012.
[30] Competition Law of Vietnam 2004, Article 1.

jurisdiction over acts conducted by foreign enterprise abroad will violate international comity.

Those who support the first opinion argue that the Competition Law 2004 should state more clearly its extraterritorial jurisdiction if it intend to do so. This argument may be supported by comparing with the Penal Code of Viet Nam which was passed five years earlier than the law. Article 6(2) of the Penal Code provides clearly that "[f]oreigners who commit offenses outside the territory of the Socialist Republic of Viet Nam may be examined for penal liability according to the Penal Code of Viet Nam in circumstances provided for in the international treaties which the Socialist Republic of Viet Nam has signed or acceded to."[31]

The second opinion on the extraterritorial jurisdiction of the Competition Law 2004 (the second opinion), in contrast, asserts that the law can cover acts conducted abroad by foreign enterprises as long as such acts have effects to Viet Nam. Those who support the second opinion argue that the term "operating" is broad. It covers a wide range of activities including commercial purposes. According to Article 3(1) of Commercial Law of Viet Nam, "commercial operation" means "activity for profit-making purposes, which include, purchase and sale of goods, provision of services, investment, commercial enhancement, and other activities for profit-making purposes."[32] Therefore, any foreign firm doing any profit-making activity is covered by the Competition Law 2004 regardless of its registration the territory where it is located. Article 3(3) of the Competition Law 2004 also defines acts that restrict competition as "acts performed by enterprises to reduce, distort and prevent competition in the market, including agreements to restrict competition, abuse of a dominant position in the market, abuse of the monopoly position and economic concentration".[33] This means the law does not exclude any act that restricts competition in the Vietnamese market even when it is conducted outside the territory of Viet Nam.

Regarding the two conditions proposed by the first opinion, the second opinion rebuts that the Competition Law 2004 has absolute jurisdiction over any violation conducted in its territory including those of the foreign enterprises. Besides, the

[31] Penal Code of Vietnam 1999, Article 6 paragraph 2.
[32] Commercial Law of Vietnam 2005, Article 3 paragraph 1.
[33] Competition Law of Vietnam 2004, Article 3 paragraph 3.

business registration in Viet Nam is not necessary to determine the jurisdiction of Competition Law because on the one hand, according to article 4(9) of Law on Enterprise of Viet Nam, a foreign direct invested company in Viet Nam is a Vietnamese enterprise, not a foreign company.[34] On the other hand, the conduct of a branch or a representative office of a foreign company is that of the foreign company, therefore it is still regarded as a conduct taken place in a foreign territory. Therefore the second opinion contends that the phrase "operating in Viet Nam" refers to the link between the alleged conduct of a foreign enterprise taken place abroad and its effects to Viet Nam. This opinion reflects the effects doctrine as discussed in other jurisdictions above.

In the early days of the VCA, the opinion that the Competition Law 2004 does not apply to acts conducted abroad used to be common. It stemmed from the fact that, at that time, the VCA was unable to enforce the law even against anti-competitive acts that happened inside Viet Nam. Therefore, some staffs of the VCA, tried to interpret that the law does not apply to transactions conducted outside Viet Nam to avoid dealing with this kind of cases.

After nine years of building capacity, the VCA has become capable of dealing with complicated cases, including offshore mergers. As a result, the second opinion becomes prevailing in practice. The first case proving the extraterritorial jurisdiction of the Competition Law 2004 was *Insurance*. In April 2010 the VCA received an application for consultation made by Prudential Plc (Prudential) based in England and the American International Group Inc (AIG) based in the United States concerning the acquisition of Prudential to AIA Group Limited (AIA) - a subsidiary of AIG. Prudential and AIA at the time of application had subsidiaries in Viet Nam. The subsidiary's combined market share in the life insurance market of Vietnam was 46.64%.[35] In this case, the merger was not conducted in the Vietnamese territory and the participants were not Vietnamese companies. However, such a merger would substantially affect the Vietnamese life insurance market through their affiliates of which the combined market share was relatively high. Despite the fact that the merger and merger participants were located abroad, Prudential and AIG worked with the

[34] Law on Enterprise of Vietnam 2014, Article 4 paragraph 9.
[35] Annual Report of the Vietnam Competition Authority 2010, 29, accessed November 4, 2014, http://www.vca.gov.vn/NewsDetail.aspx?ID=1425&CateID=244

VCA for the procedure of submitting their merger notification. This case then was closed in June 2010 because the participants ceased the acquisition.

The second case proving the extra-territorial jurisdiction of the Competition Law of Viet Nam is the *P3* case in 2014. P3 was an alliance of three big shipping companies of which the headquarters are located outside the Vietnamese territory: Maersk Line, Mediterranean Shipping Co, and CMA CGM. The participating companies planned to set up a joint-venture company named Network Centre (NC) to operate the P3 network. NC was registered in England. Given the operation of this network would affect the Vietnamese container shipping market participating firms submitted a merger notification to the VCA pursuant to the requirement of article 20 of the Competition Law 2004. This case was then closed and P3 did not come into effect since China's Ministry of Commerce, a competition authority on the route where P3 operates, refused to approve the merger.

Besides the *Insurance* and *P3* cases, there have been some offshore merger cases where the participating parties went ahead to consult with the VCA before concluding the transactions. These cases then came to an end because the combined market share of the participating parties exceeds 50% of the relevant market, which means the merger is prohibited by the Competition Law 2004. This practice of merger control of the VCA means the second opinion on the extraterritorial jurisdiction of the Competition Law 2004 becomes an official approach in Viet Nam. The law therefore regulates not only conducts in the Viet Nam territory but also those taken place in a foreign territory but affect the Vietnamese market. This opinion is consistent with the effects doctrine in other jurisdictions as mentioned in previous sections.

In practice, foreign firms—including those unregistered but doing business in Viet Nam—have a high risk of violating the Competition Law 2004. According to Article 11, 'Enterprises shall be considered to hold the dominant position on the market if they have market shares of 30% or more on the relevant market or are capable of restricting competition considerably'.[36] Big foreign firms normally fit this description and are prohibited from performing transactions set forth in Articles 13 and 14. Besides, the Competition Law 2004 proscribes anticompetitive agreements and economic concentration based on the aggregate market share of participating firms. Therefore,

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[36] *Competition Law of Viet Nam,* Article 11.

such firms mostly consult law firms or the VCA before doing business so as to comply with the Competition Law 2004.

3.2. Compliance Program and the Prevention of Law Infringement

The Competition Law 2004 took effect in 2005, but three years after, the majority of the members of the Vietnamese Insurance Association (VIA) created a cartel by signing an agreement to fix the fee of motorised vehicle insurance (the 'Insurance Case'). Firms joined this cartel not because they wanted to intentionally undermine the law but because they thought their price-fixing agreement was legal. This case highlights the importance of having a corporate compliance program to prevent violations of the law, which is still unfamiliar among firms in the Vietnamese business community.

On 15 July 2008, the VIA hosted the 6th conference for nonlife insurance chief executive officers, resulting in a cooperation agreement on cargo, insurance, and motorised vehicle insurance. The agreement, which included a provision on fixing fees for motorised vehicle insurance, was signed and sealed by 19 out of 25 VIA members. Before reaching this fee-fixing provision, these nonlife insurance companies had faced a price war in the form of insurance fee discounts, commission increases, or both. The VIA members, therefore, initiated this agreement to prevent losses caused by such a price war.

The adverse behaviour of certain VIA members regarding the agreement was notable. Some foreign-owned member companies of VIA refused to join the agreement since this kind of agreement was illegal per se under the competition law of their home countries and in violation of their corporation's compliance program. Meanwhile, most Vietnamese-owned firms that are members of the VIA joined the price-fixing agreement with the full signature and seal of their chief executive officers. It was most interesting—and perhaps suggestive that the companies were not aware of its illegality—that the VIA posted this agreement on its official website and publicly forced signing parties to comply.

Investigated by the VCA, the firms insisted they had not done anything wrong because they merely agreed to use a standard formula to calculate insurance fees, something found in any book on economics. As it was, these companies failed to

recognize that they were investigated because of their price-related agreement, no matter how standard the formula used was. The case was soon resolved and VND1.71 billion (US$81,290) in fines were imposed upon 19 cartel members. The most lenient sanction was imposed because the VCA took into account the firms' cooperation during the investigation.

The legal consequences for VIA members who joined the agreement and those who refused demonstrate the importance of a competition law compliance program. This program has two basic goals: help firms recognise the risks of violating the competition law and enhance the culture of compliance in the business community.

A program to ensure compliance with the competition law is important for all companies regardless of size, but especially for TNCs, firms that join industry associations, and those that possess substantial market power.

Since TNCs operate in different countries, competition compliance programs help their staffs adapt to rules and regulations of the host countries, and ensure the culture of compliance among their local employees. It is common in countries like Viet Nam for a company to encourage its staff to disregard law prohibitions to maximise profit. The competition law compliance program of TNCs in these countries can change this negative perception by the local staff and prevent employees mobilised from other countries from influencing this culture of the host countries.

For companies that join industry associations, the competition law compliance program is a shield that prevents members from in advertently forming a cartel. The adage that 'birds of the same feather flock together' reflects the relationship among members of an association where they tend to strengthen cooperation to survive even though they compete with each other. Moreover, as matters regarding prices, fees, production, and other sensitive subjects associated with hard-core cartels become favourite topics of association members, these companies are always at a high risk of violating the competition law. The 'Insurance Cartel' of Vietnam is a typical example. A competition law compliance program serves to keep the staffs of these companies aware of such cartel-like temptations.

Finally, a competition compliance program is especially important for firms with substantial market power as it is a reminder that their freedom to contract is limited vis-a-vis that of normal firms. In contract theory, all companies have a right to contract

or not to contract, or to offer their contracting partners unfavourable terms and conditions as long as the parties reach an agreement. However, since the competition law seeks to protect a fair and free competition environment, firms that hold a dominant or monopoly position are sometimes not allowed to refuse to deal with partners or to impose unfavourable conditions in their contracts with partners. As the line between a legal transaction and a violation is sometimes not clear to these companies, a competition compliance program helps firms with substantial market power scrutinise their business decisions and avoid violating the competition law, especially with regard to abusive acts.

In sum, although a compliance program is not a magic wand that will eliminate violations, it is an effective tool that helps companies recognise risks and actively prevent their employees from violating the Competition Law 2004. The high awareness of some foreign companies of this law can change the attitude of Vietnamese firms toward the law. Together with the efforts of the VCA, the cooperation of companies will make the compliance program a common tool that will eventually benefit these firms.

4. Conclusion and Suggestions

In conclusion, it is not difficult to draft a competition law but it is not easy to enforce it. A competition law and its enforcement depend not only on the statement of the law but on the ultimate goal of such policy. In countries where the competition policy is transparent, the gap between the law on paper and the law in action is narrow. But where the competition law serves a more complicated policy rather than the competition policy itself, enforcement becomes uncertain and unpredictable.

Thus, regional governments and competition authorities must recognise and adopt a common goal for a competition policy. First, a common goal will narrow the gap among countries in terms of content and enforcement of the competition law. Such a common goal will guide regional member countries that have yet to enact competition laws. Second, a transparent common goal of the competition policy will take into account the interest of regional countries and, therefore, eliminate the

negative externality generating from a certain country. For example, under a common regional goal, it would be impossible for a country's competition authority to allow a hard-core cartel or an anticompetitive merger only because it does not harm that country's domestic market.

The regional competition authorities should establish a database of companies with regional or international market power. The authorities should update the market share and compliance history of said companies to analyse cross-border merger cases. It is normally difficult for a competition authority to measure exactly the market share of a TNC because of lack of data and information. A mechanism that allows regional competition authorities to share data and information will help to more effectively control mergers and firms that possess a dominant position. The database of firms' compliance history will also serve to build up competition credit for firms doing business in more than one country.

Finally, competition authorities should work to advocate regional competition laws for companies operating in the region. This will establish a channel for competition authorities to advocate competition laws, introduce new programs, and make law enforcement transparent. The business community can find helpful information about the competition law and the policy of a specific country and compare it with that of other countries in terms of issues such as merger regulation. Competition authorities can also use this channel to warn companies about new trends of violation or a change of law interpretation that may result in more infringement of competition laws. This project will also provide a forum for the business community to give its views and feedback on the regulation as well as the enforcement of regional competition laws. Such a two-way interaction mechanism will make the regional competition policy more transparent and strengthen the compliance of the business community, especially transnational firms, with the competition law.

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