

VIETNAM



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New law on competition takes effect

Vietnam's National Assembly passed the new Law on Competition (New Competition Law) on June 12, 2018 and it will be taking effect on July 1, 2019, 14 years after the implementation of the Law on Competition 2004.

The New Competition Law governs (i) the acts in restraint of competition, economic concentrations which have or may have a competition-restraining impact on Vietnam's market; (ii) unfair competitive acts; (iii) competition legal proceedings; (iv) dealing with breaches of the law on competition; and (v) State administration of competition.

The New Competition Law extends the scope of its applicable entities that consist of "related domestic and foreign agencies, organisations and individuals", apart from organisations and individuals conducting business and industry and professional associations operating in Vietnam. These broadened regulations aim to create the mechanism to settle anti-competitive acts and/or cases which may be implemented overseas but have or may have a competition-restraining impact on Vietnam's market and to control acts relating to competition of state authorities. This content is to meet the requirements of economic integration and create a fair competition environment for both domestic and foreign organisation/individuals.

Pursuant to the New Competition Law, there are significant changes in regulating "acts in restraint of competition", which are defined as actions that cause or may cause a competition-restraining impact, including "practices of agreement in restraint of competition, abuse of dominant market position, and abuse of monopoly position". Under the 2004 version of

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Law, the "acts in restraint of competition" apply only to enterprises and consist of "economic concentration", meanwhile, these matters are now no longer provided.

The approaching method under the 2004 version of the law to control "agreements in restraint of competition" is solely based on "combined market share". At present, the New Competition Law manages these agreements by its nature or ability to have a significant competition-restraining impact in the market. The term "significant competition-restraining impact" is newly provided and shall be determined by the National Competition Committee according to market share ratio, barriers to market access or expansion, restriction of research, development and renovation of technologies, etc. The New Competition Law further provides three more types of agreements in its list of "agreements in restraint of competition", including: agreements not to trade with parties not participating in the agreements; agreements to restrain the product sale market

or sources of supply of goods and services of parties not participating in the agreements; and other agreements which have or may have a competition-restraining impact. In addition, the New Competition Law provides the new term of "significant market force", which is a ground to verify "a dominant market position" of an enterprise, apart from the one of "holding of 30 percent or more of the market share in the relevant market".

The management of economic concentration is another noteworthy change of the New Competition Law. Unlike the 2004 version of the law, which determines the prohibited economic concentration by relevant market share ratio, presently, economic concentration shall be prohibited if it causes the effect or is capable of causing the effect of significantly restricting competition in the market of Vietnam. The "significantly restricting competition effect" shall be also confirmed by the National Competition Committee based on specific elements provided in this New Competition Law. Regarding "the unfair competitive acts", the New Competition Law does not re-provide and refer to other acts that are governed under other relevant laws, and "illegal multi-level sales" are excluded from unfair competitive acts.

One last remarkable point of the New Competition Law is to strengthen and ensure the independence of the state administration of competition by having new regulation on the National Competition Committee, which is an agency under the Ministry of Industry and Trade, being in charge of advising and assisting the Minister of Industry and Trade in exercising the function of state administration of competition; carrying out competition legal proceedings and to perform other duties in accordance with the laws.