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NEW REGULATIONS ON THE PENALTIES FOR ADMINISTRATIVE VIOLATIONS AGAINST COMPETITION LAWS

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On 26 September 2019, the Government has promulgated the Decree No. 75/2019/ND-CP (the “**Decree 75/2019**”) on the penalties for administrative violations against regulations on competition which shall take effect from 01 December 2019 and replace the Decree No. 71/2014/NĐ-CP dated 21 July 2014 (the “**Decree 71/2014**”).

In general, the Decree 75/2019 has met the demand on and been consistent with the changes and new points in the Law on competition 2018 as follows:

The applicable subject of the Decree 75/2019 is similar to that one in the Law on competition 2018. Accordingly, Decree 75/2019 is applied for any relevant domestic and foreign authorities, organizations and individuals. It means that if a foreign organization violates the Law on competition 2018, the organization may be imposed a penalty under the Decree 75/2019.

The provisions in Decree 75/2019 on administrative violations against regulations of the competition law are more detailed than the same in Decree 71/2014. Particularly, the administrative violations against regulations of the competition law under the Decree 75/2019 including: (i) Violations against

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regulations on anti-competitive agreements; (ii) Violations against regulations on the abuse of dominant position or exclusive position; (iii) Violations against regulations on economic concentrations; (iv) Violations against regulations on unfair competition; (v) Violations against other provisions in the competition law.

Besides detailing violations against regulations of the competition law, Decree 75/2019 also sets forth the mitigating and aggravating circumstances into particulars (as stipulated previously in Article 85 of the Decree No. 116/2005/ND-CP). In which the mitigating circumstances mainly come from the voluntary in declaration, remedy for violations, the violations due to coercion or dependence on others, first-time violations. In contrary, the aggravating circumstances are applied for the organized violations, violation which has been committed for more than once or repeated, the deliberate concealment of violations...

The Decree 75/2019 has amended, supplemented the regulations on fines which are consistent with the changed provisions in the Law on competition 2018. Particularly, Decree 75/2019 stipulates separate maximum fines for each violation against regulations on anti-competitive agreements; regulations on the abuse of dominant position or exclusive position; and regulations on economic concentrations and the fine is calculated based on total turnover of the violating enterprise earned from the relevant market in the preceding fiscal year in which the violations are made. This provision helps competent authorities to define the fine amount to each violation accurately on its nature as well as to be easier for the application of fines to violations.

Another noteworthy point is the maximum fine to the violations against regulations on unfair competition under the Decree 75/2015 is increased ten times in comparison with the same in the Decree 71/2014, specifically it grew from VND 200,000,000 to VND 2,000,000,000. Such change shows the attention of the legislators to violations against regulations on unfair competition and their intention in controlling/restricting these violations on the market.

To satisfy new regulations of the Law on competition 2018, Decree 75/2019 has added provisions on the violations and fines to actions of providing information for or mobilizing, inciting, coercing or enabling enterprises to engage in anti-competition or unfair competition activities. Accordingly, the main penalty to the violations could be up to VND 50,000,000, additionally the violating entities may be imposed other additional penalties and remedies such as the public correction of information.

The competent authorities for deciding penalties to violations are National Competition Committee, Inspections or the chief Inspector of the Ministry of Industry and Trade, of which National Competition Committee is a new authority established by the merge between Competition and Consumer Authority and Competition Committee.

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