

LEGAL
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New Competition Law of Vietnam

On 12 June 2018, the National Assembly of Vietnam passed a new Competition Law (“**New Law**”), which will replace the current Competition Law of 2004 (“**Old Law**”) from 1 July 2019. In this Article, we look at the notable changes of the New Law compared to the Old Law.

1. Scope of application

The New Law now governs anti-competitive acts and economic concentrations of both Vietnamese and foreign organizations, agencies and individuals, provided that such anti-competitive acts and economic concentrations have or potentially have a “competition restraining impact” on Vietnamese market.

“Competition restraining impact” is defined as “impact which excludes, reduces, distorts or hinders competition in the market”. This is a broad definition and may be open to interpretation.

In short, under the New Law, Vietnamese authority may claim **authority over offshore activities or transactions** in cases where there is an impact on Vietnamese market. This means that the New Law would apply to any foreign companies which are related to competition-restricting agreements, economic concentration, or unfair competition, regardless of whether they have any subsidiaries in Vietnam.

Additionally, the new Competition Law also applies to public service units, for example, hospitals, schools etc., which were not governed under the Old Law.

2. Regulatory bodies restructure

The New Law introduces the National Competition Committee (“NCC”), which is consolidated from the Vietnam Competition Authority and the Vietnam Competition Council under the Old Law. The NCC assists the Ministry of Industry and Trade in competition administration, organizing investigations, handling competition cases, reviewing exemption requests and economic concentrations.

3. Anti-competitive agreements

The New Law provides new types of prohibited anti-competitive agreements, including: (i) agreements to share customers, (ii) agreements not to trade with parties not participating in the agreements, (iii) agreements to restrain the product sale market or sources of supply of goods and services of parties not participating in the agreements, and (iv) “other agreements” which have or potentially have competition restraining impact.

Below is a summary table on the new approach of the New Law compared to the Old Law:

Prohibited anti-competitive agreements	New law	Old law
Agreements either directly or indirectly fixing the price of goods and services	Prohibited if among enterprises in the same relevant market	Prohibited if combined market share of the parties is 30% or above (Agreement to share customers not regulated)
Agreements to share customers or to share consumer markets or sources of supply of goods and services		
Agreements to restrain or control the quantity or volume of goods produced, purchased or sold and services provided		
Agreements to restrain technical or technological developments or to restrain investment	Prohibited if the agreement has or potentially has a significant competition restraining impact	Prohibited if combined market share of the parties is 30% or above
Agreements to impose on other enterprises conditions for signing contracts for purchase and sale of goods or supply of services, or to force other enterprises to accept obligations which are not related in a direct way to the subject matter of the contract.		

The NCC will assess whether an agreement has or potentially has a significant competition restraining impact in the market based on several factors, including but not limited to the following:

- Market share of the parties;
- Barriers to entry, market expansion;
- Limitations on research, development, and technological innovations; and
- Limitations on technological capabilities.

Another key change with respect to anti-competitive agreements regulation is the introduction of a leniency program. Accordingly, a company that has engaged in an anti-competitive agreement may be entitled to leniency (i.e. exemption or reduction of penalties) if the company voluntarily reports their participation to the competent authority prior to the authority's decision to investigate. This is made available to only the first three successful applicants.

4. Economic concentration

The New Law now prohibits all economic concentrations which have or potentially have a significant competition restraining impact in the market. The old law only prohibited economic concentrations where the combined market shares of the participating enterprises is above 50%. The assessment by the NCC of whether an economic concentration has or potentially has a significant competition restraining impact will be based on several factors, including but not limited to:

- Combined market share in the relevant market of participating enterprises;
- Level of concentration in the relevant market before and after the economic concentration;
- Relationship of the participating enterprises in the chain of production, distribution and supply of a certain type of goods or services or whose business lines are mutual inputs or complementary to each other; and
- Competitive advantages brought by the economic concentration in the relevant market.

The Government likely will provide further guidance on the above factors.

Regarding the threshold for prior notifications, the New Law provides that the threshold will be determined in detailed guidance by the Government based on several factors: (i) participating enterprises' total assets in the Vietnamese market, (ii) participating enterprises' revenues in the Vietnamese market, (iii) the total value of the transaction, and/or (iv) the participating enterprises' combined market share in the relevant market.

The New Law also removed regulations on exemptions for prohibited economic concentrations.

5. Significant market power

Under the New Law, an enterprise is in market-dominant position if it has (i) market share of 30% or above, or (ii) significant market power. "Significant market power" is a new concept introduced by the New Law, which will be determined using several criteria, including but not limited to:

- Correlation of market shares among enterprises in the relevant market;
- Financial strength and scale;
- Advantages of technologies and technical infrastructure;
- Ownership and right to possess and access infrastructure;
- Ownership and right to use objects of intellectual property rights; and
- Special factors specific to the industry/sector in which the enterprise is conducting business.

The Government likely will provide further guidance on the above criteria.

The New Law aims to incorporate international antitrust practice as well as combine economic and legal thinking for regulating competition and is expected to provide an equal and competitive environment for businesses.

If you have any questions or require any additional information, you may contact [Phuong Nguyen, Duc Tran](#), or the ZICO Law partner you usually deal with.

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