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Introduction of Competition Law and Competition Policy in Viet Nam

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**Workshop on Promoting Competition Assessment
for Improved Market Efficiency in Viet Nam
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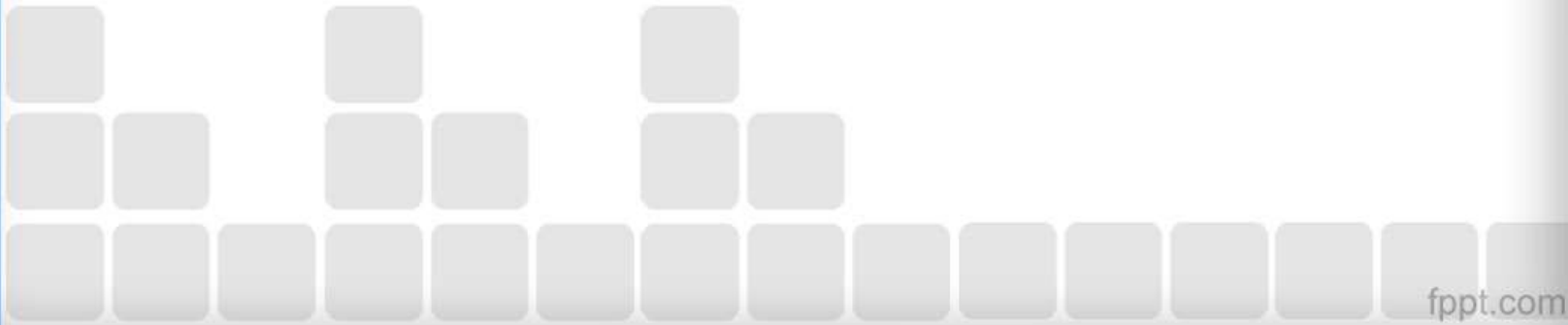
**Presentation 1:
Introduction of Competition Law and
Competition Policy in Vietnam**

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- ❖ **Warm up**
- ❖ **Introduction of Competition Law and Competition Policy in Vietnam**
- ❖ **Competition Policy in Vietnam: Expectations vs Reality**



I. Warm up

Why do we need the warm up section ?

Issues:

- The regulatory role of the State over competition has been widely recognized →> State's support for the invisible hand of the market
- Consider the level of State's intervention in the competitive market: State intervention must always respect the inherent rules of the economy, without detrimental impacts to the freedom of doing business.
- Broad approach to competition policy, including policies and legislation on anti-trust, curbing unfair competitive practices and other market development policies, including the market entry requirements, general business regulations and the state's interventions to help businesses compete on a level playing field.
- > Overall, CP covers not only Competition Law and its enforcement but also other law and policies on market expansion, development and liberalization to make all kinds of market more competitive, dynamic and efficient.

I. Warm up

Competition Policy (CP)



Concept of Competition Policy: Broad and Narrow

- * Broad concept: Competition policy includes all of the State's measures to maintain competition.

The concept of competition policy under includes legislation, mechanisms to ensure implementation, as well as the economic measures to stimulate competition in the market

- Narrow concept: Competition Law is the basic content of Competition Policy. It includes all provisions against unfair competitive practices and competition-restraint practices.

I. Warm up

- Thus, competition policy is understood to include all measures undertaken by the State to protect competition as a means to regulate the market economy. Competition policy is a fundamental element of a country's economic policy.
- For a long time, competition policy was understood as legislation to resolve businesses' anti-competitive practices. However, in the last few decades, competition policy is understood in a broader sense, which comprises all laws and policies affecting the role of competition in the economy.
- In fact, the application of competition law is not enough to ensure competitiveness in the economy when competition-restraint effect is produced by various regulations of the Government, government agencies or from the State ownership.

I. Warm up

- **Competition Policy and instruments to protect competition**

Competition Policy refers to the macroeconomic measures and instruments that the State has undertaken to encourage competition and protect consumers against monopolies.

Competition policy is implemented primarily through controlling the structure of the market and, in certain cases, directly controlling market behavior, such as controlling the price of a certain item to limit the profitability of a given industry.

There are two primary approaches to control market structure and behavior:

1/ Directive approach: Establish acceptable standards of market structure and behavior and prohibit all behaviors that breach these standards. (For example, prohibiting the abuse of market power to impose prices, or abuse of market power to discriminate, etc)

2/ Guiding approach. This is a more pragmatic approach. Accordingly, behaviors adversely affecting fair competition and integrity will be assessed (on both positive and negative aspects) to determine whether the actors are allowed to perform. This approach is shown via exceptional regulations or exemptions.

I. Warm up

- **Essential functions of CP in a market economy**
 1. Establish foundation for competition process, sustain and promote free competition or protect and promote efficient competition.
 2. To regulate competition process to serve the set objectives, for example, to achieve high economic efficiency, protect SMEs, sustain equitability and integrity in business, protect consumers' rights...
- **Different regulatory instruments:** instruments to create an enabling environment for competition and instruments to intervene behaviors that damage or distort competition.
 - The first set of measures includes provisions safeguarding business freedom, tax policies, price control instruments...
 - The second set of instruments includes provisions against unfair competitive and competition-restraint practices, monitor monopoly formation and combat the abuse of market power to promote and protect competition.

The second set of instruments is competition policy

I. Warm up

Overview of international practices on competition policy

Competition policy is established and enforced differently in different nation, economy.

Basically, competition policy consists of two components (according to ASEAN Regional Guidelines on Competition Policy 2010):

First, competition law, including all relevant legal documents, court decisions and specific regulations to prevent anti-competitive behavior, abuse of market power and anti-competitive M&A and provisions on businesses' unfair practices.

Second, Relevant policies of the State to promote competition in the market (reform of trade policies, removal of trade practices obstructing competition, facilitating market entry and exit, minimizing unnecessary government interventions, etc.).

(Source: ASEAN Regional Guidelines on Competition Policy 2010)

Generally, CP is briefly understood to include two parts: i) Competition Law and ii) other relevant policies and regulations.

I. Warm up

- ***Competition law*** is considered as the pillar of public economic law, the "constitution" of the market. Therefore, **competition law is understood as a synthesis of laws regulating competition in the market, promoting fair competition and prohibiting acts that distort or restrain competition**

“While the law cannot create competition, the law can revive competition or prohibit restrictive practices. By issuing regulations to restore courage and opportunity for competition, we can suppress and prevent monopoly”

Thomas Woodrow Wilson – the 28th President of the United States, who contributed greatly to enact the Clayton Antitrust Act.

- **Note:**
 - Competition Policy does not have direct objective to enhance the competitiveness of enterprises and the entire economy.
 - An enterprise's competitiveness primarily relies on economic – technical factors rather than the direct support from competition policy.

Section II: Introduction of Competition Law and Competition Policy in Vietnam

Part A: Competition Policy in Vietnam

- * Vietnam continues to develop, finalise and implement competition policy.**

Continue to create a competitive, fair, open, transparent environment, which control monopolies.

→> Many reform measures have been implemented by the State to establish and develop competitive market in Vietnam

Section II: Introduction of Competition Law and Competition Policy in Vietnam

Section A: Competition Policy in Vietnam (cont)

- Resolution No. 05-NQ/TW issued on 1st Nov 2016 at the 4th Conference of the 7th Party Central Committee.
- Resolution No. 24/2016/QH14 on 8th Nov 2016 of the 14th National Assembly on restructuring the economy, reforming the growth model, improving the quality of growth, productivity and competitiveness of the economy for the period of 2016-2020, which set out a task of developing a ***“Master plan for national competition policy”*** .

The Government of Vietnam issued ***Resolution No. 27/NQ-CP on 21st Feb 2017*** on the Action Plan of the Government to implement the above mentioned resolutions.

Section A: Competition Policy in Vietnam (cont)

From resolution to action:

- The Government issued Decree No.131 (effective as of 29th September 2018), defining the functions, tasks, authority and organizational structure of the ***Commission for the Management of State Capital at Enterprises***.
- + The Commission is a State's functional body, whose abbreviation is CMSC.
- + The Commission directly represents ownership at ***19 corporations, groups and enterprises***.

List of 19 corporations and groups:

- a) State Capital Investment Corporation (SCIC);
- b) Vietnam Oil and Gas group (PVN);
- c) Vietnam Electricity (EVN);
- d) Vietnam National Petroleum Group (Petrolimex);
- đ) Vietnam National Chemical Group (Vinachem);
- e) Vietnam Rubber Group (VRG);
- g) Vietnam National Coal – Mineral industries holding corporation (Vinacomin);

Section A: Competition Policy in Vietnam (cont)

The Commission directly represents ownership at 19 corporations, groups and enterprises.

List of 19 corporations and groups (cont):

- h) Vietnam Posts and Telecommunications Group (VNPT);
- i) Mobifone Corporation;
- k) Vietnam National Tobacco Corporation (VINATABA);
- l) Vietnam Airlines;
- m) Vietnam National Shipping Lines (VINALINES);
- n) Vietnam Railways;
- o) Vietnam Expressway Corporation (VEC);
- p) Airports Corporation of Vietnam (AVC);
- q) Vietnam National Coffee Corporation (VINACAFE);
- r) Vietnam Southern Food Corporation (VINAFOOD II);
- s) Vietnam Northern Food Corporation (VINAFOOD I);
- t) Vietnam Forestry Corporation (VinaFor).

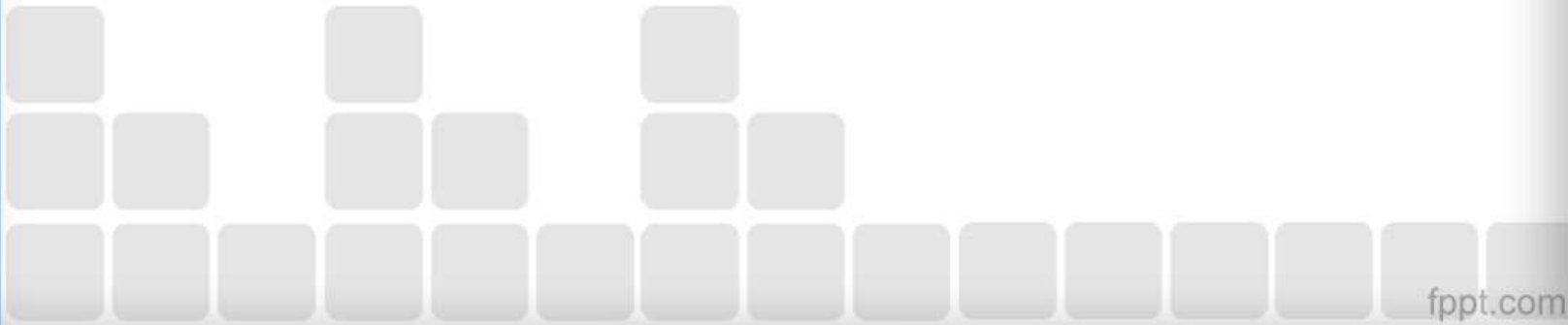
Comment: Compare to the requirement for abolishing excessive power of State monopolies...

Section II: Introduction of Competition Law and Competition Policy in Vietnam

Section A: Competition Policy in Vietnam (cont)

Despite some initial successes, the competition policy in Vietnam is still facing problems and new challenges.

- ❖ However, there remain problems and new challenges →> See more in section ‘Competition Policy in Vietnam: expectations and Reality’**



Section II: Introduction of Competition Law and Competition Policy in Vietnam

Section B: Competition Law 2018 (effective as of 1st July 2019)

- Overall comment: a step forward in developing competition law and policy
- **New contents of the Competition Law 2018**

First, broaden the scope of regulation and applicants compared to the Competition Law 2004.

- Many practices, many transactions of enterprises occur outside the territory of Vietnam... → that have impact and have a certain impact on the Vietnamese market.

→ falls within the scope of the Competition Law 2018.

Second, the Law has amended, supplemented, and clarified the prohibited practices of state functional bodies.

- Based on the fact that many State's managerial departments, especially the provincial People's Committees, managerial departments and agencies have promulgated documents with unfavorable impacts and discriminatory treatments which create competition-restraint effect in the market.
- The act of abusing positions and authority to illegally intervene in competition and penalties for this type of practices are added in the Competition Law 2018 → > *To improve the effectiveness of the enforcement of Competition Law.*

Section B: Competition Law 2018 (effective as of 1st July 2019)

Third, finalize regulations to control **competition restriction agreement** and supplement regulations on **leniency program** to enhance the effectiveness of competition law enforcement.

@ Supplement some practices classified as competition-restraint agreement

Beside the competition-restraint agreement practices regulated in Competition Law 2004, Article 10 of the Competition Law 2018 regulates three new practices:

@ Prohibit agreements among enterprises in the same related market

Article 12 of the Competition Law of 2018 supplements the prohibition of agreements between enterprises in the same related market, which has the potential to significantly restrain competition or result in competition-restraint agreements between enterprises operating in different stages in the same chain of production, distribution and supply for a certain kind of goods or services.

@ Factors to assess the impact of competition-restraint agreement

Article 13 (market shares of enterprises involving in agreement, barrier to entry or expansion...)

@ The duration for the exemption of the competition restriction agreement shall not exceed five years

@ Regulation on Leniency

* **New contents of the Competition Law 2018 (cont)**

Fourth, supplement **criteria to determine market power**.

@ Competition Law 2004: to determine whether a business has dominant position? → based on the criterion that the business has more than 30% of market share.

Competition Law 2018 added “market power” factor

Determining the position of businesses is prerequisite to assess the abusive practices of enterprises.

@ Competition Law 2004 only regulates 4 groups of enterprises but Competition Law 2018 regulates 5 groups of enterprises having dominant positions.

Noticeably, enterprises having dominant position have market shares above 10%.

It means that if a group dominates the market but one enterprise of that group has less than 10% of market share, that group is not considered having the dominant position in the market.

@ **Identify significant market power (Article 26)**

Accordingly, the significant market power of enterprises or groups of enterprises is determined based on a number of factors such as relative market share between enterprises, financial strength, size of enterprises, technological advantages, Infrastructure,

Section B: Competition Law 2018 (effective as of 1st July 2019)

New contents of the Competition Law 2018 (cont)

Fifth, fundamental changes of the regulations on the control of economic concentration

@ Enterprises participating in economic concentration must submit notification

- Competition Law 2004 only requires enterprises having 30% to 50% market share to submit notification before economic concentration.
- Competition Law 2018 requires all enterprises to submit notification (Article 33) of if they fall within the economic concentration threshold (Article 34).

@ Assess positive impact of economic concentration

The National Competition Committee (NCC) assesses positive impact of economic concentration based on one or a combination of factors: positive impact on the development of an industry, sector, science, technology in line with the State's strategy and plan; support SMEs; enhance competitiveness of Vietnam's enterprises in international markets.

New contents of the Competition Law 2018 (cont)

Fifth, fundamental changes of the regulations on the control of economic concentration (cont)

@ Conditional economic concentration (Article 42)

Upon finishing the official assessment, based on the results, the NCC makes one of the decisions below:

- Economic concentration is allowed;
- Economic concentration is allowed under conditions stipulated at Article 42
- Economic concentration is prohibited.

@ Identify prohibited economic concentration not only based on the combined market shares of concentrated enterprises.

- Competition Law 2004: Economic concentration is banned if combined market shares of enterprises exceed 50% of the the relevant market.

Competition law 2018 identifies prohibited economic concentration practices based on the impacts/potential impacts of the case to create significant competition restriction in Vietnam market.

@ Abolish exemption for economic concentration

Exemptions for economic concentration in Article 19 Competition Law 2004 are no longer stipulated in Competition Law 2018.

@ The authority to decide on exemptions belongs to the NCC

Section B: Competition Law 2018 (effective as of 1st July 2019)

New contents of the Competition Law 2018 (cont)

Sixth, the new law has supplemented and amended regulations about unfair competitive practices

@ **Indirect goods and services comparison is considered unfair competitive practice**

- Competition Law 2018: Compare one's goods and services of the same kind with other enterprises without justification → *is still considered unfair competitive practice*

.

@ **Changes of regulations on unfair competitive practices**

- Unfair competitive practices regulated in Competition Law 2014 that have been removed from Competition Law 2018 are:
 - *Discrimination of associations;*
 - *Illegal pyramid selling.*

Competition Law 2018 added one case: "Selling goods or providing services below total cost that potentially eliminates other enterprises selling/providing the same goods and services"

@ **Increase maximum fine for unfair competitive practices.**

- The maximum fine for unfair competitive practices in the Competition Law 2004 is 100 million VND for individuals and 200 million VND for organizations.
- Competition Law 2018 increases the maximum fine for unfair competitive up to VND 2,000,000,000.

Section B: Competition Law 2018 (effective as of 1st July 2019)

New contents of the Competition Law 2018 (cont)

Seventh, restructure Competition bodies

Competition Law 2004: 2 functional bodies that manage and resolve problems regarding competition are Vietnam Competition Authority and Vietnam Competition Council

Competition Law 2018: combined those 2 in one body called National Competition Committee (NCC).

Authority:

- Advise the Minister of Industry and Trade to perform function of competition management
- Conduct competition proceedings; control economic concentration; decide on the exemptions for prohibited competition-restraint agreement; settle complaints and make decision on competition cases and other duties in accordance with Competition Law 2018 and other related regulations.

Eighth, the Law accomplishes provisions on procedures for competition proceedings in a simple way. Many procedures are shortened in time and more clearly defined between stages and responsibilities of stakeholders in implementing and resolving competition-restraint cases.

Section B: Competition Law 2018 (effective as of 1st July 2019)

@ The new law is already in place →> Prepare for guiding Decree and Circulars →> There will be 03 Decrees detailing the new Competition Law

❖ *Implementation plan of the Competition Law*

(Decision No. 1227/QĐ-TTg).

- **Ministry of Industry and Trade** is in charge of drafting documents and organization → Finalize, propagate and disseminate key contents and new contents of the Law and guiding documents.

- **Ministry of Information and Communication...**

Radio the voice of Vietnam, Vietnam Television, central and local press shall be in charge of and coordinate with the Ministry of Industry and Trade, the People's committee of all levels

- * **Provincial and municipal People's Committees** and relevant agencies propagate...

Simultaneously, provincial and municipal People's Committees will review the legal documents related to competition; amend or propose to competent bodies to promptly amend, supplement, replace, abolish or issue new regulatory documents to ensure that they do not have contents contradicting Article 8 of the Law..

Section B: Competition Law 2018 (effective as of 1st July 2019)

There will be 03 Decrees detailing the new Competition Law

- Decree detailing the functions, tasks, powers and organizational structure of National Competition Committee;
- Decree detailing and guiding the implementation of a number of articles of the Law;
- Decree detailing the Law on Competition in dealing with competition breaches.

Recently, some workshops to disseminate Competition Law were held in some provinces/cities.

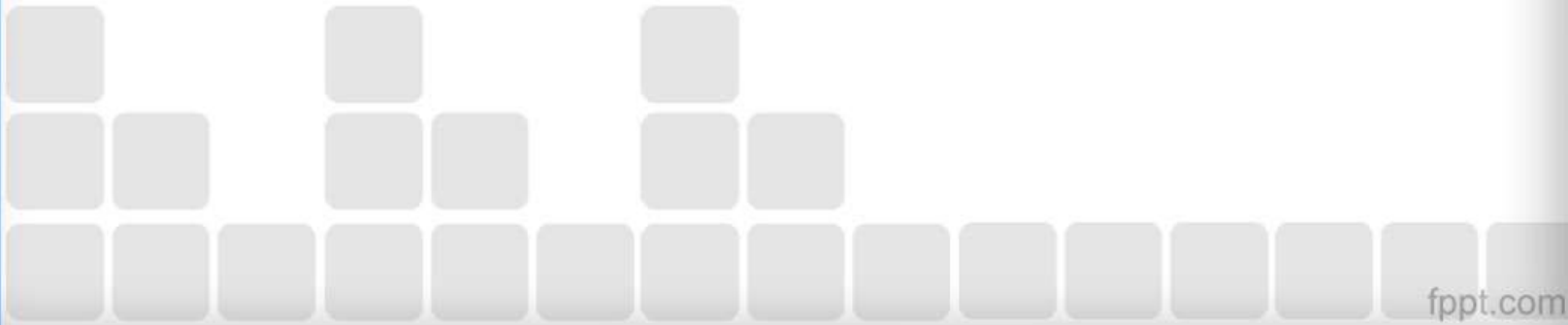
The new law is already in place →> the preparation of guiding Decrees is conducted →> The implementation plan has been promulgated by the Prime Minister

**→> The key problem now is enforcement!
How to ensure efficient enforcement ?**

Section B: Competition Law 2018 (effective as of 1st July 2019)

- ❖ Decree detailing and guiding the implementation of a number of provisions of the Law;

Some concerns ...



Section III: Competition Policy in Vietnam: expectations and reality

Expectations:

- Review State's policies, regulations and remove or amend regulations that restrain competition.
- Limit anti-competitive practices of enterprises
- Create environment, conditions to implement competition policy effectively. Strictly implement competitive neutrality principles.
- Reform State monopolized sectors

Continue to reform the State monopoly structure and effectively control, monitor and limit monopoly pricing practices

- Implement competitive neutrality between state-owned enterprises and other enterprises.

* Facilitate third parties' access to core/essential infrastructure

* Improve regulation over anti-competitive practices and enhance the competency of the enforcement bodies.

* Establish and develop market of production factors

EXPECTATIONS
REALITY

Section III: Competition Policy in Vietnam: expectations and reality

❖ **Despite initial results, the competition policy in Vietnam still exposes many problems:**

- Vietnam's economy still lacks dynamism and creativity. Its competitiveness has improved but remained low compared to the world average and ASEAN.
- Global Competitiveness Index 2016: Vietnam ranked 60/138 countries; Ranked 80/138 countries in terms of domestic competition; antitrust efficiency index ranked 89/138 countries.

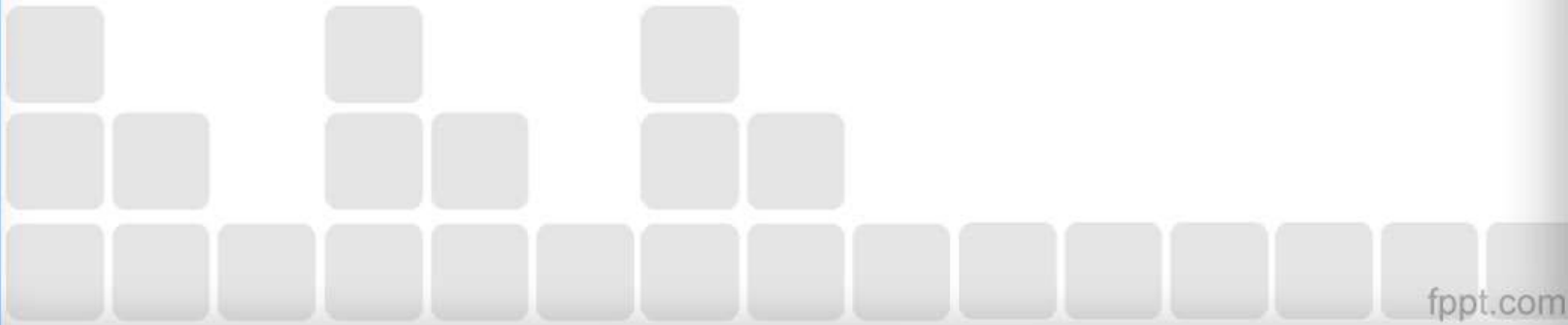
Although in 2017, Vietnam ranked 55th out of 137 economies, moving up five places compared to 2016, but that was far below other Southeast Asian countries whose rankings were very high such as Singapore (3rd); Malaysia (23rd), Thailand (32nd) and Indonesia (36th).

However, Vietnam's 2017 ranking in the Global Competitiveness Index 4.0 was only 74/135.

2018: Vietnam dropped by 3 positions in the Global Competitiveness Index ranking (77 out of 140 countries and territories)

Section III: Competition Policy in Vietnam: expectations and reality

- ❖ *To limit the anti-competitive practices of enterprises (practices that reduce, falsify or obstruct competition in the market, including competition-restraint agreements, abuse of dominant position or monopoly position, ...)*
- See more: **New contents of Competition Law 2018... in Section II**
- **Reality: Challenges for law enforcement in the future**



Section III: Competition Policy in Vietnam: expectations and reality

❖ **Competitive non-neutrality still exists**

- between SOEs and private sector
- between crony enterprises and non-crony enterprises.

❖ **Inefficient allocation and use of social resources**, without following market signals, disobeying the law of competition. State's capital allocation negatively influenced the efficiency and productivity of the economy.

2016: remain relatively distant from ASEAN-6 (for example: 14.3 times compared to Singapore; 5.7 times compared to Malaysia). Until November 2018 the situation has not much improved...

❖ **Unfair competitive practices are common, especially in industrial property**, causing damages for businesses targeting fair competition, consumers and the society.

Section III: Competition Policy in Vietnam: expectations and reality

❖ *On reviewing and amending regulations that restrain competition*

- Many policies/regulations that restrain competition have been reviewed, eliminated or amended and improved. Particularly, institutional reform for market entry (business freedom, free competition, free trade) and regulations on business conditions and conditional business lines.
 - ➔ *The roles and effort of VCCI and business associations and business community*
- **However**, there are still many regulations restricting competition and business freedom of individuals and enterprises.
 - Still there are many barriers to entry for individuals and enterprises.
 - Access to land in practice after the issuance of the Law on Land 2013
 - The “disguise” of business conditions in other forms of procedures, processes that some entities cannot meet.

Section III: Competition Policy in Vietnam: expectations and reality

- ❖ *Prohibition of State agencies' practices that impede competition, but such practices exist in one way or another.*

The Competition Law 2004 already stipulated the practices by State agencies that are prohibited. The Constitution 2013 states that “entities of all economic ownership are equal, cooperate and compete in line with regulations”

... yet in fact, some local agencies issued some formal documents to pre-determine the suppliers of goods and services (encourage consumption of local goods).

The Competition Law 2018 emphasizes further: Article 8 and ...

→> *Restrict entries of other entities, restrain of competition...*

EXPECTATION
VS
REALITY

... the reality

- A few “typical cases”:

Competition-restraint practices of State’s functional bodies

- Hanoi Department of Education and Training recommends schools only enter insurance contracts with 5 insurance companies;
- Nghe An People's Committee and some districts in Ha Tinh province issued documents requesting agencies, units and local people to prioritize the use of Hanoi, Saigon and Vida beer.
- Quang Nam People's Committee requests local state agencies to use Xuan Thanh Cement;
- Quang Ninh Provincial People's Committee asked local agencies and units to use the payment service provided by Techcombank.
- *"Initiatives" to prioritize the consumption of each other's products on behalf of "Vietnamese goods prioritization"*

Is there a breach?

Comment

Section III: Competition Policy in Vietnam: expectations and reality (cont)

- ❖ ***Other expectations about “fair and reasonable access to essential infrastructure for third parties”*** such as power grid, gas pipelines, railways, airports and media network. In other words ***“to facilitate third parties to access essential infrastructure”***

and

“Implement “competitive neutrality” between SOEs and other enterprises

What is the reality?

The State has been attentive, but the outcomes are below expectations

Section III: Competition Policy in Vietnam: expectations and reality (cont)

... New challenges in the internet, digital, smart mobility world.... Industry 4.0

- Case: Vinasun – Grab lawsuit ... and the next will be hotels against Airbnb? Perhaps.

- E-government →> Ministries, sectors, People's Committees of all levels ...

 - > Requirement on information transparency

 - > The people and business community need to know and be able to comment on the policies and regulations that apply to them from the conceptualization to the adoption/approval phase

 - > One of the requirements for Competition Assessment Framework.



Section III: Competition Policy in Vietnam: expectations and reality (cont)

The way forward

- * Competition policy is an important priority of APEC in general and Vietnam in particular...

It is necessary to study and apply Competition Assessment

➔ The APEC-OECD framework on Competition Assessment provides a clear framework to identify laws and regulations that could restrict competition and areas that need reforms.

Question: If competition law is difficult to be implemented in some cases, should we rely on market entry barriers? Note that the common weakness is the systemic approach to simplify market entry restriction.

If yes, why?

If not, why?



THANK YOU FOR LISTENING

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