



**Asia-Pacific
Economic Cooperation**

2019/EC/WKSP3/010

Session: 8

Applicability of APEC-OECD Framework on Competition Assessment for Viet Nam: Key Institutional Requirements

Submitted by: Viet Nam



**Workshop on Promoting Competition Assessment
for Improved Market Efficiency in Viet Nam
Da Nang, Viet Nam
1-2 April 2019**

APEC - CIEM WORKSHOP:

“Promoting competition assessment for improved market efficiency in Vietnam”

Da Nang, Vietnam – April 2019

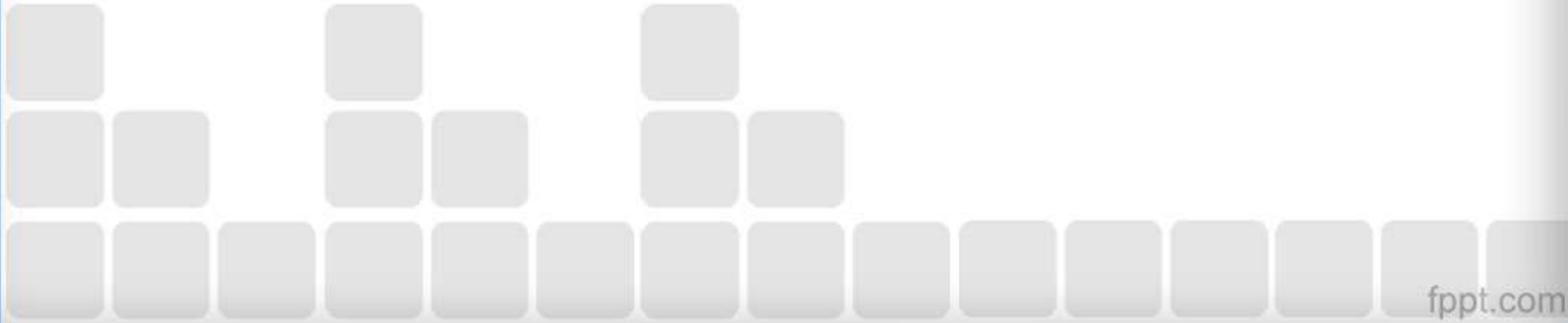
Presentation 12: Applicability of APEC-OECD Framework on Competition Assessment for Vietnam: Key institutional requirements

Dr. Dinh Thi My Loan

***Former General Director of Vietnam Competition Authority,
Arbitrator of Vietnam International Arbitration Center***

Content

- ❖ **APEC-OECD Framework on Competition Assessment: What is it? Why? When? How?**
- ❖ **Competition Assessment authority
Who can be responsible for competition assessment?**
- ❖ **Capacity building requirement and other requirements?**



APEC-OECD Framework on Competition Assessment: What is it? Why? When? How?

- One of six contents of national competition policy according to international good practices is to reform market entry and regulations on business conditions and conditional business lines (or to remove/amend regulations having potential to restrain competition).
- Experience from many countries indicated that major impediments to competition in many industries, sectors originate from the State's regulations, by the State's functional bodies or through state ownership such as policy-induced monopoly or administrative monopoly in providing public facilities, licenses, business conditions, etc.
- Competition assessment for laws and regulations is a process to identify legal constrains for competition and to develop substitute polices with less restriction that still achieve the government's goals.

APEC-OECD Framework on Competition Assessment: What is it? Why? When? How?



- Law and regulations are critical to achieve public policy objectives, such as consumer protection, public health and environmental protection, as well as prevent enterprises from abusing their market power or resolve market failure. However, when regulations are too restrictive, they can hinder competition and have negative impacts on the economy.
- To prevent restrictive regulations and ensure that regulations help achieve the benefits of competition, an essential technique is competition assessment.

This technique ensures that regulations **do not excessively restrain to market competition. It is the focus of the framework.**

APEC-OECD Framework on Competition Assessment: What is it? Why? When? How?

Competition assessment can be implemented at different phases:

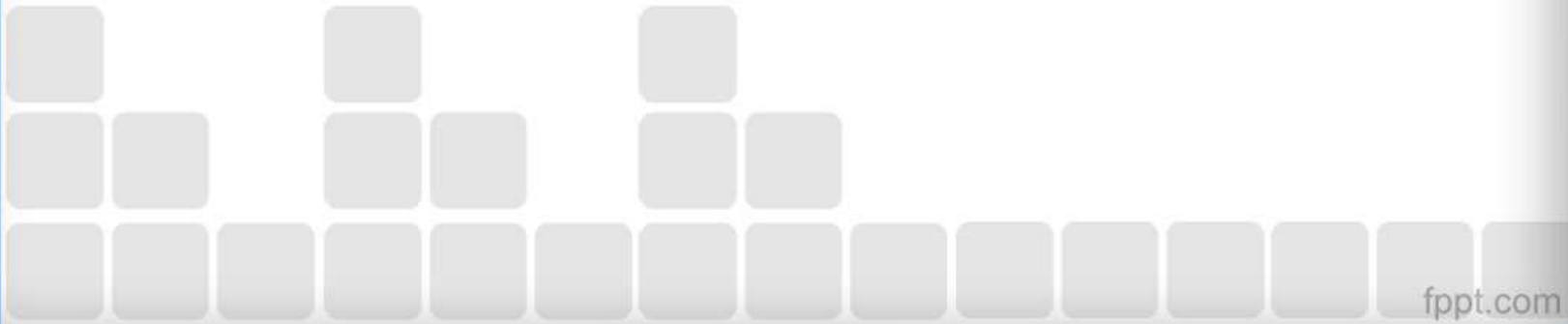
- Competition assessment to existing/in-effective regulations and
- Competition assessment for policies and regulations in the conceptual phase, drafting process, or during impact analysis, etc.. In other words, at the early development of new laws and regulations.
- Ex ante and ex post approaches: consideration and selection

APEC-OECD Framework on Competition Assessment: What is it? Why? When? How?

The answers are within presentations of speakers in this workshop

See more at the workshop agenda

We are not only shared with in-depth knowledge about theory and practices of competition assessment in APEC economies, but also introduced to pilot competition assessment in a few industries such as technology-based services (Uber, Grab, Airbnb...); film industry; pay-TV services, etc.



Competition Assessment Authority

Who can be responsible for competition assessment?

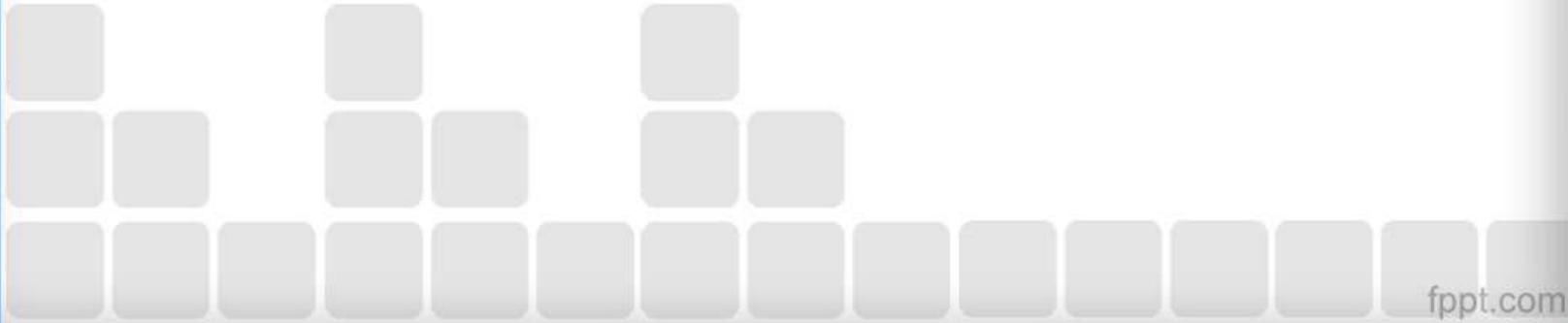
❖ *Identify: potential agencies to take responsibility in competition assessment are those having authority to review competition regulations and policies*

❖ **Competition assessment agencies →>**

Should be separated into two groups:

* **In-charge agencies**

* **Supporting agencies**



Competition Assessment authority

Who can be responsible for competition assessment?

(From perspective of independent expert)

In-charge agencies

Vietnam Competition agencies

Ministry of Justice

Provincial and municipal People's Committee

→> to assess competition at local level

Supporting agencies:

Central Institute for Economic Management (CIEM)

Vietnam Chamber of Commerce and Industry (VCCI)

Office of Government

Competition Assessment authority

Who can be responsible for competition assessment?

- ❖ **Reasons to choose competition assessment agencies:**
 - *Position, role*
 - *Functions, tasks/authority*
 - *Based on knowledge, experience in review and analysis → Propose to amend, supplement, replace, abolish or renew regulatory documents*
 - *Reputation in business community and society*
 - *Attitude and protection towards competition*

How about at provincial/municipal level?

Note: ***How about competition assessment at provincial/municipal level? →> Competition assessment at local level***

Provincial or municipal People's Committees review competition regulatory documents →> ***(apply APEC-OECD framework on competition assessment)***

Promptly amend, supplement, replace, abolish or renew regulatory documents

Or,

Propose to competent agencies to promptly amend, supplement, replace, abolish or renew regulatory documents

Capacity building requirement and other requirements?

❖ Challenges for Competitive Assessment Agencies in Vietnam:

- * Implement the objective of protecting competition when there are many barriers
- * Requirement of effective competition policy
- * Limited experience about competition assessment
- * A few government officials do not have knowledge about competition policy and competition law
- * Difficulties in analysis in both legal and economic perspectives
- * Difficulties from provisions on competition

(for example: Article 4, clause 2 of the 2018 Competition Law: the application of competition law)

❖ Challenges for Competitive Assessment Agencies in Vietnam (cont) :

Difficulties arising from competition regulations

The 2004 Competition Law

Article 5. Application of this Law, other relevant laws and international treaties

Item 1. Where there is *any disparity between the provisions of this Law and those of other laws on competition restriction acts or unfair competition acts*, the provisions of this Law shall apply.

The 2018 Competition Law

Article 4. Application of competition Lawh

Item 2: *If there is any discrepancy between this Law and other laws in terms of anti-competitive practices, economic concentration, unfair competition practices and handling of unfair competition practices*, the latter shall prevail.

Challenges for Competitive Assessment Agencies in Vietnam (cont):

Difficulties arising from competition regulations

- A “backward move” in spirit and mindset of competition?
- Concerns if “*other laws*” are inconsistent with competition mindset, or even conflict with the Competition Law?

Comments/Discussions



Capacity building requirement and other requirements?

- ❖ **Capacity building requirement:**
 - * **Develop a specialized team for competition assessment**
 - * **Knowledge about competition policy and competition law**
 - * **In-depth analytical skills**
 - * **Ability to propose solutions**

- ❖ **... other requirements?**
 - * **Coordination between competition assessment agencies**
 - * **Trainings and good practices with domestic and international experts in competition**
 - * **Learn from the experience of APEC's economies in competition assessment**

*Thank
you*



Thank you for listening

***Dr. Dinh Thi My Loan
Former General Director of Vietnam Competition Authority,
Arbitrator of Vietnam International Arbitration Center
loanmydinh@gmail.com***

