

LAW ON COMPETITION

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LAW ON COMPETITION

Pursuant to the Constitution of the Socialist Republic of Vietnam;

The National Assembly issues the Law on Competition.

CHAPTER 1

General Provisions

Article 1 *Scope of governance*

This Law regulates practices in restraint of competition and economic concentrations which have or may have a competition-restraining impact on Vietnam's market; unfair competitive practices; competition legal proceedings; dealing with breaches of the law on competition; and State administration of competition.

Article 2 *Applicable entities*

- 1 Organizations and individuals conducting business (hereinafter all referred to as *enterprises*), including enterprises engaged in production or supply of public utility products or services, enterprises conducting business in State monopoly industries and sectors, public professional entities, and foreign enterprises operating in Vietnam.
- 2 Industry and professional associations operating in Vietnam.
- 3 Related domestic and foreign agencies, organizations and individuals.

Article 3 *Interpretation of terms*

In this Law, the following terms are construed as follows:

- 1 *Industry and professional associations* consist of trade associations and professional associations.
- 2 *Practices in restraint of competition* [anti-competitive acts]¹ means practices which cause or may cause a competition-restraining impact [or an adverse effect on competition] including practices of agreement in restraint of competition, abuse of dominant market position, and abuse of monopoly position.
- 3 *Competition-restraining impact* means an impact which removes, reduces, distorts or hinders competition in the market.
- 4 *Agreement in restraint of competition* means an act of agreement between parties in any form which causes or may cause a competition-restraining impact.
- 5 *Abuse of dominant market position or abuse of monopoly position* means practices by an enterprise holding a dominant market position or a monopoly position which cause or may cause a competition-restraining impact.

¹ Allens footnote: Square brackets contain translator's comments only.

- 6 *Unfair competitive practices* means practices by an enterprise which are contrary to the principles of goodwill, honesty, commercial practice and other standards in business and which cause or may cause loss and damage to the legitimate rights and interests of other enterprises.
- 7 *Relevant market* means a market of goods or services which are interchangeable in terms of characteristics, use purpose and price in specific geographical areas with similar competitive conditions and which [areas] are significantly different from neighbouring geographical areas.
- 8 *Competition legal proceedings* means activities of investigating and dealing with competition cases, and resolving complaints against decisions dealing with competition cases in accordance with the sequence and procedures stipulated in this Law.
- 9 *Competition cases* means cases with an indication of a breach of the law on competition which are investigated and dealt with in accordance with the provisions of this Law, consisting of competition-restraining cases, breaches of the provisions on economic concentration, and unfair competition cases.

Article 4 *Application of the law on competition*

- 1 This Law regulates competitive relations generally. Investigation of and dealing with competition cases, exemption for prohibited agreements in restraint of competition, and notification of economic concentration must comply with the provisions of this Law.
- 2 If any other law regulating practices in restraint of competition, forms of economic concentration, unfair competitive practices and dealing with unfair competitive practices is different from the provisions of this Law then the provisions of such law shall apply.

Article 5 *Right to compete and principles of competition in business*

- 1 Enterprises have the right to compete freely in accordance with law. The State guarantees the right to compete lawfully in business.
- 2 Competition must be undertaken on the principles of honesty, fairness and wellbeing; and non-infringement of the interests of the State, the public interest, and the lawful rights and interests of enterprises and consumers.

Article 6 *State policies on competition*

- 1 To create and maintain a healthy, fair, equal and transparent competitive environment.
- 2 To promote competition and ensure the right of enterprises to compete freely in business in accordance with law.
- 3 To enhance accessibility to the market, to improve economic efficiency and social welfare, and to protect the interests of consumers.
- 4 To create favourable conditions for society and consumers to participate in the process of supervising the implementation of the law on competition.

Article 7 *Responsibility for State administration of competition*

- 1 The Government exercises uniform State administration of competition..
- 2 The Ministry of Industry and Trade [MOIT] is the co-ordinating agency which assists the Government in exercising State administration of competition.
- 3 Ministries and ministerial equivalent agencies, within the scope of their respective duties and powers, are responsible to co-ordinate with the MOIT in exercising State administration of competition.
- 4 Provincial people's committees, within the scope of their respective duties and powers, are responsible to exercise State administration of competition.

Article 8 *Prohibited practices relating to competition*

- 1 State agencies perform the following acts which hinder competition in the market:
 - (a) Force, request or recommend that an enterprise, agency, organization or individual conduct or not conduct production, purchase or sale of specific goods, or supply or use of specific services, or purchase or sale of goods, or supply or use of services with a specific enterprise, except for goods and services belonging to State monopoly sectors or in cases of emergency as stipulated by law;
 - (b) Discriminate between enterprises;
 - (c) Force, request or recommend that industry or professional associations, other socio-occupational organizations or enterprises associate with each other aimed at restricting competition in the market;
 - (d) Abuse position or power to interfere illegally with competition.
- 2 Organizations and individuals provide information to, canvass, urge, force or organize for enterprises to conduct practices in restraint of competition and unfair competitive practices.

CHAPTER 2

Relevant Market And Market Share

Article 9 *Determination of relevant market*

- 1 Relevant market is determined based on relevant product market and relevant geographical market.

Relevant product market is a market of goods or services which are interchangeable in terms of characteristics, use purpose and price.

Relevant geographical market means a specific geographical area in which interchangeable goods or services are supplied on similar competitive conditions and which area is significantly different from neighbouring geographical areas.
- 2 The Government provides detailed regulations on clause 1 of this article.

Article 10 *Determination of market share and combined market share*

- 1 On the basis of the characteristics and nature of a relevant market, the market share of an enterprise in the relevant market is determined by one of the following methods:
 - (a) The percentage of turnover from sales of such enterprise over the total turnover from sales of all enterprises in the relevant market on a monthly, quarterly or annual basis;
 - (b) The percentage of turnover of inward purchases of such enterprise over the total turnover of inward purchases of all enterprises in the relevant market on a monthly, quarterly or annual basis;
 - (c) The percentage of quantity of units of goods or services sold by such enterprise over the total quantity of units of goods or services sold by all enterprises in the relevant market on a monthly, quarterly or annual basis;
 - (d) The percentage of quantity of units of goods or services purchased by such enterprise over the total quantity of units of goods or services purchased by all enterprises in the relevant market on a monthly, quarterly or annual basis.
- 2 Combined market share is the total market share in the relevant market of enterprises involved in practices in restraint of competition or economic concentration.
- 3 Turnover to determine market share as prescribed in clause 1 above is determined in accordance with Vietnamese Accounting Standards.

- 4 If an enterprise has not operated for a full financial year, turnover, inward turnover or quantity of units of goods or services sold or purchased to determine the market share prescribed in clause 1 above is calculated from the time the enterprise commences its operation to the time the market share is determined.
- 5 The Government provides detailed regulations on this article.

CHAPTER 3

Agreements In Restraint Of Competition [Anti-competitive Agreements]

Article 11 *Agreements in restraint of competition*

- 1 Agreements either directly or indirectly fixing the price of goods and services.
- 2 Agreements to share customers or to share consumer markets or sources of supply of goods and services.
- 3 Agreements to restrain or control the quantity or volume of goods produced, purchased or sold and services provided.
- 4 Agreements in order for one or more parties to the agreement to win a tender when participating in tendering for supply of goods and services.
- 5 Agreements which prevent, impede or do not allow other enterprises to participate in the market or to develop business.
- 6 Agreements which exclude from the market other enterprises not parties to the agreement.
- 7 Agreements to restrain technical or technological developments or to restrain investment.
- 8 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.
- 9 Agreements not to trade with parties not participating in the agreements.
- 10 Agreements to restrain the product sale market or sources of supply of goods and services of parties not participating in the agreements.
- 11 Other agreements which have or may have a competition-restraining impact.

Article 12 *Prohibited agreements in restraint of competition*

- 1 Agreements in restraint of competition among enterprises in the same relevant market as prescribed in clauses 1, 2 and 3 of article 11 of this Law.
- 2 Agreements in restraint of competition among enterprises as prescribed in clauses 4, 5 and 6 of article 11 of this Law.
- 3 Agreements in restraint of competition among enterprises in the same relevant market as prescribed in clauses 7 to 11 of article 11 of this Law when such agreements cause or have the ability to cause a significant competition-restraining impact in the market.
- 4 Agreements in restraint of competition among enterprises conducting business at different stages in the same chain of production, distribution and supply of a certain type of goods or services as prescribed in clauses 1, 2, 3, 7, 8, 9, 10 and 11 of article 11 of this Law when such agreements cause or have the ability to cause a significant competition-restraining impact in the market.

Article 13 *Assessment of significant competition-restraining impact or ability to cause significant competition-restraining impact of agreements in restraint of competition*

1 The NCC assesses significant competition-restraining impact or the ability to cause significant competition-restraining impact of agreements in restraint of competition on the basis of some of [a number of] the following factors:

- (a) Market share ratio of enterprises participating in the agreement;
- (b) Barriers to market access or expansion;
- (c) Restriction of research, development and renovation of technologies, or restriction of technological capacity;
- (d) Reduction of the ability to access or possess essential infrastructure;
- (dd) Increase of costs and time of customers in purchase of goods or services from enterprises participating in the agreement or when changing to purchase other relevant goods or services;
- (e) Hindering competition in the market via the control of special factors in industries and sectors relating to the enterprises to the agreement.

2 The Government provides detailed regulations on clause 1 of this article.

Article 14 *Exemptions for prohibited agreements in restraint of competition*

1 An agreement in restraint of competition stipulated in clauses 1, 2, 3, 7, 8, 9, 10 and 11 of article 11 and prohibited under article 12 of this Law is entitled to exemption for a definite period if it benefits consumers and satisfies any of the following conditions:

- (a) It has an impact on promoting technical or technological progress or improves the quality of goods and services;
- (b) It increases the competitiveness of Vietnamese enterprises in the international market;
- (c) It promotes uniform applicability of quality standards and technical ratings of product types;
- (d) It unifies the conditions for contract performance [and/or] for delivery of goods and payment, but does not relate to price or any pricing factors.

2 If an agreement on labour or an agreement on co-operation in a special industry or sector is implemented in accordance with the provisions of any other law, such law applies.

Article 15 *Submission of file requesting exemption for prohibited agreement in restraint of competition*

1 Enterprises intending to participate in prohibited agreements in restraint of competition submit a file to the NCC requesting exemption.

2 A file requesting exemption for a prohibited agreement in restraint of competition comprises:

- (a) Application on the standard form issued by the NCC;
- (b) Draft agreement between the parties;
- (c) Copy of enterprise registration certificate or equivalent document of each of the enterprises participating in the prohibited agreement in restraint of competition; if an industry or professional association intends to participate, copy of the charter of the industry or professional association;
- (d) Financial statements of each enterprise to the prohibited agreement in restraint of competition for the two consecutive years immediately preceding the year of submission of the file requesting exemption, or financial statements for the period starting from the time of establishment to the time of

submission of the file in the case of a newly established enterprise, certified by an auditing organization in accordance with law;

- (dd) Detailed explanatory report on how the provisions in article 14.1 of this Law are satisfied, enclosing evidence;
 - (e) Power of attorney to the representative (if any) from the parties participating in the prohibited agreement in restraint of competition.
- 3 The enterprise submitting the file is responsible for the truthfulness of the file. Any document in the file in a foreign language must include its Vietnamese translation.

Article 16 *Acceptance of jurisdiction over file requesting exemption for prohibited agreement in restraint of competition*

- 1 The NCC is responsible to accept jurisdiction over files requesting exemption for prohibited agreements in restraint of competition.
- 2 Within seven working days from the date of receipt of a file requesting exemption, the NCC is responsible to provide written notice to the party which submitted the file on the completeness and validity of the file.

If a file is incomplete or invalid, the NCC is responsible to provide written notice of specific items required to be amended or supplemented by the [relevant] parties within thirty (30) days from the date of the notice.

If, upon expiry of the above period, the required party fails to amend or supplement or fails to amend or supplement the file adequately as required, the NCC returns the file.

- 3 Upon receiving a notice stating that the file is complete and valid, the party which submitted the file must pay a fee for evaluation of the file in accordance with the law on fees and charges.
- 4 The file is accepted from the time the party submitting the file fulfils the obligation to pay the fee for evaluation of the file.

Article 17 *Requirement to supplement information and documents requesting exemption for prohibited agreement in restraint of competition*

- 1 After accepting a file requesting exemption for a prohibited agreement in restraint of competition, the NCC has the right to require that the party which submitted the file supplement other necessary information and documents relating to the intention of performing the agreement in restraint of competition.
- 2 Where the required party fails to supplement or fails to supplement complete information and documents as requested, the NCC considers and issues a decision on the basis of the available information and documents.

Article 18 *Consultation during the process of consideration of file requesting exemption for prohibited agreement in restraint of competition*

- 1 The NCC has the right to consult relevant agencies, organizations and individuals on the contents of a prohibited agreement in restraint of competition for which exemption is requested.
- 2 Within fifteen (15) days from the date of receipt of a request from the NCC for consultation, the agencies, organizations and individuals consulted are responsible to provide a written reply and provide information and documents relating to the contents being consulted.

Article 19 *Withdrawal of file requesting exemption for prohibited agreement in restraint of competition*

- 1 An enterprise has the right to withdraw its file requesting exemption for a prohibited agreement in restraint of competition. The request for withdrawal of the file must be made in writing and sent to the NCC.
- 2 The fee for evaluation of a file requesting exemption is not refundable to the enterprise withdrawing such file.

Article 20 *Authority and time-limit for issuance of decision on exemption for prohibited agreement in restraint of competition*

- 1 The NCC issues a decision consenting or a decision not consenting to the parties' entitlement to an exemption for a prohibited agreement in restraint of competition in accordance with this Law; in the case of not so consenting, the reasons must be specified.
- 2 The time-limit for issuance of a decision on exemption is sixty (60) days from the date of acceptance of jurisdiction over a file.
- 3 In complex cases, the NCC may extend the time-limit for issuing the decision stipulated in clause 2 of this article, but not for more than thirty (30) days. The extension must be notified in writing to the party which submitted the file no later than three working days prior to expiry of the time-limit for issuance of a decision.
- 4 If the NCC commits a breach of the regulations on sequence, procedures and time-limit for issuance of a decision on exemption, enterprises have the right to lodge a complaint or take legal action in accordance with law.

Article 21 *Decision permitting exemption for prohibited agreement in restraint of competition*

- 1 A decision permitting exemption for a prohibited agreement in restraint of competition must contain the following main particulars:
 - (a) Names and addresses of the parties to the agreement;
 - (b) Contents of the agreement to be carried out;
 - (c) Conditions on and obligations of the parties to the agreement;
 - (d) Duration of effectiveness of the exemption.
- 2 A decision permitting exemption for a prohibited agreement in restraint of competition must be sent to the parties to such agreement within seven working days from the date of issuance of such decision.
- 3 The duration of effectiveness of an exemption as prescribed in clause 1(d) above does not exceed five years from the date of issuance of the decision.

Within ninety (90) days prior to expiry of the duration of effectiveness of an exemption, as requested by the parties to the agreement, the NCC considers and decides to continue or not continue to permit exemption for the prohibited agreement in restraint of competition. If the exemption is permitted to continue, the duration of effectiveness of the exemption does not exceed five years from the date of issuance of the decision permitting to continue the exemption.

Article 22 *Carrying out agreement in restraint of competition in cases exemption is permitted*

- 1 The parties participating in an agreement in restraint of competition which satisfy the conditions for entitlement to an exemption as prescribed in article 14.1 of this Law may perform such agreement only after they have a decision permitting exemption as stipulated in article 21 of this Law.

- 2 The parties participating in an agreement in restraint of competition which are entitled to an exemption must correctly implement the decision permitting exemption stipulated in article 21 of this Law.

Article 23 *Cancellation of decision permitting exemption for prohibited agreement in restraint of competition*

- 1 The NCC decides to cancel a decision permitting exemption in the following cases:
 - (a) The conditions for the exemption no longer exists;
 - (b) A fraud in the request for exemption is discovered;
 - (c) The enterprise entitled to the exemption commits a breach of the conditions and obligations for entitlement to exemption in the decision permitting exemption;
 - (d) The decision permitting exemption relied on inaccurate information and documents about the conditions for permitting exemption.
- 2 If the conditions for permitting exemption no longer exist, the party entitled to the exemption is responsible to notify the NCC thereof in order for the latter to issue a decision cancelling the decision permitting exemption.
- 3 The decision cancelling a decision permitting exemption must be sent to the parties to the agreement within seven working days from the date of its issuance.

CHAPTER 4

Abuse Of Dominant Market Position And Abuse Of Monopoly Position

Article 24 *Enterprise and group of enterprises having dominant market position*

- 1 An enterprise is deemed to hold a dominant market position when it has significant market force as determined in accordance with article 26 of this Law or has thirty per cent (30%) or more of the market share in the relevant market.
- 2 A group of enterprises is deemed to hold a dominant market position when they act together to cause a competition-restraining impact and have significant market force as determined in accordance with article 26 of this Law or have aggregate market share falling into one of the following cases:
 - (a) Two enterprises have aggregate market share of fifty per cent (50%) or more in the relevant market;
 - (b) Three enterprises have aggregate market share of sixty five per cent (65%) or more in the relevant market;
 - (c) Four enterprises have aggregate market share of seventy five per cent (75%) or more in the relevant market;
 - (d) Five enterprises or more have aggregate market share of eighty five per cent (85%) or more in the relevant market.
- 3 A group of enterprises which hold a dominant market position as prescribed in clause 2 of this article does not include enterprises which have a market share of less than 10% in the relevant market.

Article 25 *Enterprise having monopoly position*

An enterprise is deemed to hold a monopoly position if no other enterprise competes with the goods or services in which the first enterprise is doing business in the relevant market.

Article 26 *Determination of significant market force [power]*

1 The significant market force [power] of an enterprise or a group of enterprises is determined on the basis of some of the following factors:

- (a) Correlation of market shares [market share ratio] among enterprises in the relevant market;
- (b) Financial strength and scale of the enterprise;
- (c) Barriers to another enterprise to enter or expand the market;
- (d) Ability to possess, access and control the market of distribution and/or consumption of goods or services or supply sources of goods or services;
- (dd) Advantages of technologies and technical infrastructure;
- (e) Ownership and right to possess and access infrastructure;
- (g) Ownership and right to use objects of intellectual property rights;
- (h) Ability to switch to sources of supply and demand of other relevant goods or services;
- (i) Special factors in the industry or sector in which the enterprise is conducting business.

2 The Government provides detailed regulations on clause 1 of this article.

Article 27 *Prohibited acts of abuse of dominant market position or abuse of monopoly position*

1 Enterprises and groups of enterprises holding a dominant market position conduct the following acts:

- (a) Selling goods or providing services below total prime cost, which results in or is capable of resulting in excluding competitors;
- (b) Imposing unreasonable purchase or selling prices for goods and services, or fixing minimum re-selling prices which causes or is capable of causing loss to customers;
- (c) Restraining production or distribution of goods or services, limiting the market, or hindering technical and technological development, which causes or is capable of causing loss to customers;
- (d) Imposing different commercial conditions in similar transactions, which results in or is capable of resulting in hindering other enterprises from participating in or expanding the market or excluding other enterprises;
- (dd) Imposing on other enterprises conditions for signing contracts for purchase and sale of goods and services or requesting other enterprises or customers to accept obligations which are unrelated in a direct way to the subject matter of the contract, which results in or is capable of resulting in hindering other enterprises from participating in or expanding the market or excluding other enterprises.

(e) Hindering the participation in or expansion of the market by other enterprises;

(g) Conducting acts of abusing the dominant market position which are prohibited by other laws.

2 Enterprises holding a monopoly position conduct the following acts:

(a) Conducting the acts prescribed in sub-clauses (b) to (e) of clause 1 of this article;

(b) Imposing conditions to the disadvantage of customers;

(c) Abusing the monopoly position to unilaterally change or rescind signed contracts without justifiable reasons;

(d) Conducting acts of abusing the monopoly position which are prohibited by other laws.

Article 28 *Control of enterprises operating in State monopoly sectors*

- 1 The State controls enterprises operating in State monopoly sectors by the following measures:
 - (a) Deciding the purchase and selling prices of goods and services in State monopoly sectors;
 - (b) Deciding the quantity, volume and market scope of goods and services in State monopoly sectors;
 - (c) Orienting [directing] and organizing markets relating to goods and services belonging to State monopoly sectors in accordance with this Law and other provisions of relevant laws.
- 2 Where an enterprise which operates in a State monopoly sector conducts other business activities outside State monopoly sectors, such business activities of the enterprise are not subject to the governance of the provisions in clause 1 above, but are still subject to other provisions of this Law.

CHAPTER 5

Economic Concentration

Article 29 *Forms of economic concentration*

- 1 Forms of economic concentration comprise the following:
 - (a) Merger of enterprises;
 - (b) Consolidation of enterprises;
 - (c) Acquisition of an enterprise;
 - (d) Joint venture between enterprises;
 - (dd) Other forms of economic concentration as stipulated by law.
- 2 Merger of enterprises means the transfer by one or more enterprise(s) of all of its lawful assets, rights, obligations and interests to another enterprise and, at the same time, the termination of the business activities or the existence of the merging enterprise(s).
- 3 Consolidation of enterprises means the transfer by two or more enterprises of all of their lawful assets, rights, obligations and interests to form one new enterprise and, at the same time, the termination of the business activities or the existence of the consolidating enterprises.
- 4 Acquisition of an enterprise means the purchase by one enterprise of all or part of the capital contribution or assets of another enterprise sufficient to control or govern the acquired enterprise or any of its trades or business lines.
- 5 Joint venture between enterprises means two or more enterprises together contribute a portion of their lawful assets, rights, obligations and interests to form a new enterprise.

Article 30 *Prohibited economic concentration*

Enterprises carrying out an economic concentration which causes the effect or is capable of causing the effect of significantly restricting competition in the market of Vietnam.

Article 31 *Assessment of significant competition-restraining impact or ability to cause significant competition-restraining impact of economic concentration*

- 1 The NCC assesses significant competition-restraining impact or the ability to cause significant competition-restraining impact of economic concentration on the basis of any of or a combination of the following factors:
 - (a) Combined market share of enterprises participating in the economic concentration in the relevant market;

- (b) Extent of concentration in the relevant market before and after the economic concentration;
- (c) Relationship of the enterprises participating in the economic concentration 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 [assist] each other;
- (d) Competitive advantages brought by the economic concentration in the relevant market;
- (dd) Ability of an enterprise after economic concentration to significantly increase prices or the rate of return on sales;
- (e) Ability of an enterprise after economic concentration to exclude or hinder other enterprises from entering or expanding the market;
- (g) Special factors in the industry or sector in which the enterprises participating in the economic concentration operate.

2 The Government provides detailed regulations on clause 1 of this article.

Article 32 *Assessment of positive impact of economic concentration*

1 The NCC assesses positive impact of economic concentration on the basis of one or a combination of the following factors:

- (a) Positive impact on the development of industries, sectors, and science and technology in accordance with the State strategies and master plans;
- (b) Positive impact on the development of small and medium-sized enterprises;
- (c) Enhancement of the competitiveness of Vietnamese enterprises in the international market.

2 The Government provides detailed regulations on clause 1 of this article.

Article 33 *Notification of economic concentration*

1 Enterprises which participate in an economic concentration must submit a file notifying the economic concentration to the NCC as stipulated in article 34 of this Law prior to carrying out the economic concentration if [such economic concentration] reaches the threshold requiring notification of economic concentration.

2 The threshold requiring notification of economic concentration is determined on the basis of one of the following criteria:

- (a) Total assets in the market of Vietnam of the enterprises participating in the economic concentration;
- (b) Total turnover in the market of Vietnam of the enterprises participating in the economic concentration;
- (c) Transaction value of the economic concentration;
- (d) Combined market share in the relevant market of the enterprises participating in the economic concentration.

3 The Government provides detailed regulations on this article in line with the socio-economic conditions in each period.

Article 34 *File notifying an economic concentration*

1 A file notifying an economic concentration comprises:

- (a) Notification of the economic concentration on the standard form issued by the NCC;

- (b) Draft contents of the agreement on economic concentration, or draft contract or memorandum of understanding on economic concentration between the enterprises;
 - (c) Valid copy of the enterprise registration certificate or equivalent document of each of the enterprises participating in the economic concentration;
 - (d) Financial statements of each enterprise participating in the economic concentration for the two consecutive years immediately preceding the year of notification, or financial statements for the period starting from the time of establishment to the time of notification of the economic concentration in the case of a newly established enterprise, certified by an auditing organization as required by law;
 - (dd) List of parent companies, subsidiary companies, member companies, branches, representative offices and other subsidiary entities (if any) of each of the enterprises participating in the economic concentration;
 - (e) List of all types of goods and services in which each of the enterprises participating in the economic concentration is currently conducting business;
 - (g) Information about market share of each enterprise participating in the economic concentration in the sector in which the economic concentration is proposed to be implemented for two consecutive years immediately preceding the year of notification of the economic concentration;
 - (h) Plans for overcoming the ability to cause competition-restraining impact by the economic concentration;
 - (i) Report on assessment of the positive impact of the economic concentration and measures for enhancing the positive impact of the economic concentration.
- 2 The enterprise submitting a file notifying an economic concentration is liable for the truthfulness of the file. Any document in a foreign language in the file must include its Vietnamese translation.

Article 35 *Receipt of file notifying an economic concentration*

- 1 The NCC is responsible to receive files notifying an economic concentration.
- 2 The NCC is responsible, within seven working days from the date of receipt of a file notifying an economic concentration, to provide written notice to the party which submitted the file of the completeness and validity of the file.

If the file is incomplete or invalid, then the NCC is responsible to provide written notice of the specific contents required to be amended or supplemented in order for the [filing] parties to amend or supplement the file within thirty (30) days from the date of notice.

If upon expiry of the above period, the requested party fails to amend or supplement the file or fails to amend or supplement the file completely as requested, the NCC returns the file notifying an economic concentration.

Article 36 *Preliminary appraisal of economic concentration*

- 1 The NCC is responsible to conduct a preliminary appraisal of an economic concentration. The contents of preliminary appraisal of an economic concentration comprise:
 - (a) Combined market share of the enterprises participating in the economic concentration in the relevant market;
 - (b) Extent of concentration in the relevant market before and after the economic concentration;
 - (c) Relationship of the enterprises participating in the economic concentration in the chain of production, distribution and supply of a certain type of goods or services or whether their business lines are mutual inputs or complementary to [assist] each other.

- 2 Within the time-limit of thirty (30) days from the date of receipt of a complete file notifying an economic concentration, the NCC must issue a notice of the results of a preliminary appraisal of the economic concentration with either of the following contents [preliminary conclusion]:
 - (a) The economic concentration may be conducted;
 - (b) The economic concentration must be subject to an official appraisal.
- 3 If the NCC has not issued a notice of the results of the preliminary appraisal upon expiry of the time-limit stipulated in clause 2 of this article , then the economic concentration may be conducted and the NCC is not permitted to issue a notice with the content prescribed in clause 2(b) above.
- 4 The Government provides detailed regulations on clause 1 of this article and criteria for determining economic concentrations which must be subject to an official appraisal as stipulated in clause 2(b) of this article.

Article 37 *Official appraisal of economic concentration*

- 1 The NCC conducts an official appraisal of an economic concentration within ninety (90) days from the date of issuance of a notice of the results of preliminary appraisal with the content prescribed in article 36.2(b) of this Law.

In complex cases, the NCC may extend the time-limit for official appraisal but not exceeding sixty (60) days and sends a written notice to the enterprise which submitted the file notifying the economic concentration.

- 2 The official appraisal of an economic concentration contains the following contents:
 - (a) Assessment of significant competition-restraining impact or ability to cause significant competition-restraining impact of the economic concentration in accordance with article 31 of this Law, and measures for remedying competition-restraining impact;
 - (b) Assessment of positive impact of the economic concentration in accordance with article 32 of this Law and measures for enhancing positive impact of the economic concentration;
 - (c) Overall assessment of the ability to cause competition-restraining impact and the ability to cause positive impact of the economic concentration as the basis for consideration and decision on the economic concentration.

Article 38 *Further information about economic concentration*

- 1 During the process of official appraisal of an economic concentration, the NCC [may] request the enterprise which submitted the file notifying the economic concentration to supplement information and documents, but on not more than two occasions.
- 2 The enterprise which submitted the file is responsible to supplement information and documents relating to the economic concentration, and is responsible for the completeness and accuracy of supplemented information and documents as requested by the NCC.
- 3 If the requested party fails to supplement or fails to supplement completely information and documents as requested, the NCC considers and makes a decision on the basis of the available information and documents.
- 4 The period for supplementing information and documents as prescribed in clause 2 of this article is not included in the time-limit for appraisal of the economic concentration stipulated in article 37.1 of this Law.

Article 39 *Consultation during evaluation of economic concentration*

- 1 During evaluation of an economic concentration, the NCC has the right to consult with the agencies managing the industries or sectors in which enterprises participating in such economic concentration are operating.

Within fifteen (15) days from the date of receipt of a written request for consultation from the NCC, the agency being consulted is responsible to provide a written reply regarding the contents consulted.

- 2 During evaluation of an economic concentration, the NCC may consult with other related enterprises, organizations and individuals.

Article 40 *Responsibility for provision of information and documents by agencies, organizations and individuals involved in evaluation of economic concentration*

- 1 Relevant agencies, organizations and individuals are responsible to promptly provide complete and accurately information and documents as requested by the NCC during evaluation of an economic concentration, unless otherwise stipulated by law.

- 2 The NCC is responsible to keep confidential, in accordance with law, information and documents provided.

Article 41 *Decision on economic concentration*

- 1 Upon completion of an official appraisal of an economic concentration, the NCC, on the basis of the contents of the official appraisal, makes a decision on one of the following contents:

- (a) The economic concentration may be conducted;
- (b) The economic concentration is subject to conditions as set out in article 42 of this Law;
- (c) The economic concentration falls within the prohibited category.

- 2 The decision on an economic concentration as prescribed in clause 1 of this article must be sent to the enterprises participating in the economic concentration within five working days from the date of issuance of the decision.

- 3 If the NCC does not issue a decision within the stipulated time-limit, thereby causing loss and damage to the enterprise, it must pay compensation in accordance with law.

Article 42 *Economic concentration subject to conditions*

Economic concentration subject to conditions means an economic concentration which may be conducted but must satisfy one or more of the following conditions:

- 1 Division, separation, and/or reselling part of the capital contribution or assets of the enterprises participating in the economic concentration;
- 2 Controlling content related to the purchase or selling price of goods, services or other transaction conditions in contracts of the enterprise formed after the economic concentration;
- 3 Other measures for overcoming the ability to cause the effect of restricting competition in the market;
- 4 Other measures for enhancing the positive impact of the economic concentration.

Article 43 *Implementation of economic concentration*

- 1 An enterprise which implements an economic concentration as set out in clauses 2(a) and 3 of article 36 and clauses (a) and (b) of article 41.1 of this Law is permitted to carry out economic concentration procedures in accordance with the law on enterprises and other provisions of relevant laws.

- 2 An enterprise which participates in an economic concentration and falls into the category set out in article 41.1(b) of this Law must fully implement the conditions on economic concentration in accordance with a decision of the NCC on economic concentration, both before and after implementing the economic concentration.

Article 44 *Breaches of provisions on economic concentration*

- 1 Enterprises failing to notify an economic concentration in accordance with this Law.
- 2 Enterprises implementing an economic concentration without a notice of the results of preliminary appraisal from the NCC as prescribed in article 36.2, except for the case stipulated in article 36.3 of this Law.
- 3 Enterprises falling into the category requiring official appraisal of the economic concentration and implementing the economic concentration when the NCC has not yet issued a decision as prescribed in article 41 of this Law.
- 4 Enterprises failing to perform or failing to perform fully the conditions set out in the decision on economic concentration as prescribed in article 41.1(b) of this Law.
- 5 Enterprises implementing an economic concentration in the case prescribed in article 41.1(c) of this Law.
- 6 Enterprises implementing an economic concentration which is prohibited by article 30 of this Law.

CHAPTER 6

Prohibited Unfair Competitive Practices [Acts]

Article 45 *Prohibited unfair competitive practices*

- 1 Infringing secret information in business in the following forms:
 - (a) Accessing or collecting secret information in business by hacking the security measures taken by the owner of such information;
 - (b) Disclosing or using secret information in business without permission from the owner of such information.
- 2 Coercing customers or business partners of another enterprise by threatening or coercive conduct in order to compel them not to make or to cease a transaction with such other enterprise.
- 3 Providing untruthful information about another enterprise by way of directly or indirectly spreading untruthful information about [such other] enterprise which adversely impacts on the reputation, financial position or business activities of such other enterprise.
- 4 Causing disruption to the business activities of another enterprise by way of directly or indirectly hindering or interrupting the lawful business activities of such other enterprise.
- 5 Illegally inducing customers in the following forms:
 - (a) Providing false or misleading information to customers about an enterprise or goods, services, promotion or transaction conditions for goods or services provided by such enterprise in order to attract the customers of another enterprise;
 - (b) Comparing its goods or services with goods or services of the same type of another enterprise without being able to prove the contents.
- 6 Selling goods or providing services below total prime cost, resulting in or possibly resulting in excluding another enterprise from conducting business in the same type of goods or services.

- 7 Other prohibited unfair competitive acts as stipulated by other laws.

CHAPTER 7

National Competition Committee

Article 46 *National Competition Committee [NCC]*

- 1 The NCC is an agency under the MOIT and consists of a Chairman, Deputy Chairmen and members. The Competition Investigation Agency and other functional agencies are the assisting apparatus of the NCC.
- 2 The NCC has the following duties and powers:
- (a) To advise and assist the Minister of Industry and Trade in exercising the function of State administration of competition;
 - (b) To carry out competition legal proceedings; to control economic concentrations; to make decisions on exemption for prohibited agreements in restraint of competition; to resolve complaints against decisions dealing with competition cases; and to perform other duties in accordance with this Law and other relevant laws.
- 3 The Government provides detailed regulations on duties, powers and organizational structure of the NCC.

Article 47 *Chairman of the National Competition Committee*

The Chairman of the NCC shall be the head who is legally responsible for organization of operation of the NCC.

Article 48 *Members of the National Competition Committee*

- 1 Members of the NCC perform duties of participating in councils for dealing with competition-restraining cases and/or councils for resolving complaints against decisions dealing with cases of restraint of competition in accordance with the sequence and procedures of competition legal proceedings in this Law.
- 2 The number of members of the NCC is no more than fifteen (15), comprising: the chairman of the NCC and other members. Members of the NCC are officials of the Ministry of Industry and Trade and of relevant ministries and branches, and experts and scientists.
- 3 Members of the NCC are appointed and removed by the Prime Minister at the request of the Minister of Industry and Trade.
- 4 The term of office of a member of the NCC shall be five years and such member may be re-appointed.

Article 49 *Standards for members of the National Competition Committee*

- 1 Being a Vietnamese citizen, having good ethics, and being incorruptible and honest.
- 2 Having a university degree or higher majoring in law, or in economics or finance.
- 3 Having at least a total of nine (9) years working experience in one or more of the sectors stipulated in clause 2 of this article.

Article 50 *Competition Investigation Agency*

- 1 The Competition Investigation Agency is under the NCC with the function of investigating breaches prescribed in this Law.

- 2 The Competition Investigation Agency has the following duties and powers:
- (a) Collecting and receiving information for the purpose of detecting acts with indications of breaches of the law on competition;
 - (b) Organizing investigation into competition cases;
 - (c) Proposing application, change or cancellation of preventive measures and ensuring resolution of administrative breaches during investigation and resolution of competition cases;
 - (d) Conducting professional measures for investigating during investigation in compliance with law;
 - (dd) Other duties as assigned by the Chairman of the NCC.

Article 51 *Head of the Competition Investigation Agency*

- 1 The Head of the Competition Investigation Agency is appointed and removed by the Chairman of the NCC.
- 2 The Head of the Competition Investigation Agency is responsible to organize the operation of the Competition Investigation Agency in order to perform the functions, duties and powers stipulated in article 50 of this Law.

Article 52 *Investigators of competition cases*

- 1 Investigators of competition cases are appointed and removed by the Chairman of the NCC.
- 2 Investigators of competition cases conduct investigation into competition cases as assigned by the Head of the Competition Investigation Agency.

Article 53 *Standards for investigators of competition cases*

- 1 Being a Vietnamese citizen, having good ethics, and being incorruptible and honest.
- 2 Being an official of the NCC.
- 3 Having a university degree or higher majoring in law, or in economics finance, or information technology.
- 4 Having at least a total of five years of working experience in one or more of the sectors stipulated in clause 3 of this article.
- 5 Having undertaken training and refresher training in investigation professional and technical skills.

CHAPTER 8

Competition Legal Proceedings

Section 1

General Provisions

Article 54 *Principles of competition legal proceedings*

- 1 Activities of competition legal proceedings of agencies conducting competition legal proceedings, persons conducting competition legal proceedings, participants in competition legal proceedings, and related organizations and individuals, must comply with the provisions of this Law.

- 2 The agency and persons carrying out the competition legal proceedings, and participants in competition legal proceedings must, within the scope of their respective responsibilities, powers and obligations, maintain the confidentiality of information relating to competition cases and business secrets of enterprises in accordance with law.
- 3 To respect the lawful rights and interests of the enterprises, organizations and individuals concerned in competition legal proceedings.

Article 55 *Spoken and written language used in competition legal proceedings*

The written and spoken language used in competition legal proceedings is Vietnamese. Persons participating in competition legal proceedings have the right to use their native written and spoken language, and in such case an interpreter shall be required.

Article 56 *Evidence*

- 1 Evidence means anything which is true and is used as grounds for determining whether or not a practice is in breach of the law on competition, whether or not an enterprise is in breach and other meaningful elements² in resolution of a competition case.
- 2 Evidence is collected from the following sources:
 - (a) Readable, audible or visible documents or electronic data;
 - (b) Material objects;
 - (c) Testimony or statements of witnesses;
 - (d) Testimony, statements or explanations of the complainant and/or the investigated party, or of organizations or individuals concerned;
 - (dd) Conclusions of expert evaluation;
 - (e) Minutes made during investigation and resolution of the competition case;
 - (g) Other materials or objects or other sources as stipulated by law.
- 3 Determination of evidence is regulated as follows:
 - (a) A readable document is deemed to be evidence if it is the original, or a copy lawfully notarized or certified, or provided and certified by any related or competent agency, organization or individual;
 - (b) An audible or visible document is deemed to be evidence if, when presented, it is accompanied by written explanations of the person possessing such document about its origin where such person made the audio or video recording by himself/herself, or written confirmation of the person providing [such document] to the presenting person of the origin of such document, or [if it is it is accompanied by] a document on the facts relating to such audio or video recording;
 - (c) An electronic data message may be presented in the form of exchange of electronic data, electronic source documents, emails, telegrams, telegraphs, facsimiles and other similar forms as stipulated in the law on electronic transactions;
 - (d) For material objects to be evidence, they must be original exhibits relating to the case;
 - (dd) Testimony or statements of witnesses; testimony, statements or explanations of the complainant, the defendant, the investigated party or of organizations and individuals involved are deemed to be evidence if they are recorded in the form of written documents, of audio or video tapes or disks, or other aural or video storage forms as prescribed in sub-clauses (a) and (b) above, or declared orally at an investigative hearing;

² Allens footnote: Such as mitigating circumstances.

- (e) The conclusions of an expert evaluation are deemed to be evidence if such evaluation was conducted in accordance with procedures stipulated by law.

4 The Government makes detailed provisions for this article.

Article 57 *Responsibility for coordination and support in dealing with competition cases*

- 1 Competent agencies and authorized persons³ are, within the scope of their respective functions, duties and powers, responsible for coordinating and supporting the investigation process and handling of competition cases as requested by the NCC, the Competition Investigation Agency and/or councils for dealing with competition-restraining cases.
- 2 Enterprises, agencies, organizations and individuals are responsible to provide completely, accurately and promptly information and documents under their management or possession relating to competition cases as requested by the NCC, the Competition Investigation Agency and/or councils for dealing with competition-restraining cases.

Section 2

Agencies Conducting Competition Legal Proceedings and Persons Conducting Competition Legal Proceedings

Article 58 *Agencies conducting competition legal proceedings and persons conducting competition legal proceedings*

- 1 Agencies conducting competition legal proceedings comprise:
- (a) The National Competition Committee;
 - (b) Councils for dealing with competition-restraining cases;
 - (c) Councils for resolving complaints against decisions dealing with competition cases;
 - (d) The Competition Investigation Agency.
- 2 Persons conducting competition legal proceedings comprise:
- (a) The Chairman of the NCC;
 - (b) Chairmen of councils for dealing with competition-restraining cases;
 - (c) Members of councils for dealing with competition-restraining cases;
 - (d) Members of councils for resolving complaints against decisions dealing with competition cases;
 - (dd) The Head of the Competition Investigation Agency;
 - (e) Investigators of competition cases;
 - (g) Secretaries to investigative hearings.

Article 59 *Duties and powers of Chairman of the National Competition Committee when conducting competition legal proceedings*

- 1 To make a decision establishing a council for dealing with a competition-restraining case to resolve such case, and to appoint a secretary of the investigative hearing from among the officials of the NCC.
- 2 To make decisions replacing members of a council for dealing with a competition-restraining case and/or a secretary to an investigative hearing.

³ Allens footnote: This terminology usually refers to State agencies and State employees.

- 3 To establish a council for resolving complaints against a decision dealing with a competition-restraining case and to act concurrently as the chairman of such council.
- 4 To resolve complaints against decisions dealing with breaches of the provisions on economic concentration or unfair competition.
- 5 To request competent agencies to apply, change or cancel preventive measures and ensure settlement of administrative breaches during investigation and resolution of competition cases in accordance with the law on dealing with administrative breaches.
- 6 To make decisions dealing with breaches of the provisions on economic concentration.
- 7 To make decisions dealing with unfair competitive cases.
- 8 Other duties and powers as stipulated in this Law.

Article 60 *Council for dealing with a competition-restraining case*

- 1 A council for dealing with a competition-restraining case is established under a decision of the Chairman of the NCC to deal with a specific case of restraint of competition. The council terminates its operation and dissolves itself upon fulfilment of its duties. The council operates independently and complies with law only.
- 2 The number of members of a council for dealing with a competition-restraining case is 3 or 5 as selected by a decision of the Chairman of the NCC among the members of the NCC, one of whom is assigned as the chairman of the council.
- 3 A council for dealing with a competition-restraining case deals with such case on a collective basis and adopts decisions by majority.

Article 61 *Duties and powers of council for dealing with a competition-restraining case, and of chairman and members of the council*

- 1 A council for dealing with a competition-restraining case has the following duties and powers:
 - (a) To decide to open an investigative hearing;
 - (b) To summons persons to participate in the investigative hearing;
 - (c) To summons witnesses at the request of parties;
 - (d) To decide to seek an expert evaluation; to decide to change an evaluation expert or interpreter;
 - (dd) To request that the Competition Investigation Agency conduct further investigation;
 - (e) To decide to stay resolution of the competition-restraining case;
 - (g) To decide to deal with the competition-restraining case;
 - (h) To request the Chairman of the NCC perform the duties and powers prescribed in clauses 2 and 5 of article 59 of this Law;
 - (i) Other duties and powers as stipulated in this Law.
- 2 The chairman of a council for dealing with a competition-restraining case has the following duties and powers:
 - (a) To organize dealing with the competition-restraining case;
 - (b) To convene and chair meetings of the council;
 - (c) To sign documents of the council;
 - (d) Other duties and powers as stipulated in this Law.

3 Members of a council for dealing with a competition-restraining case have the following duties and powers:

- (a) To attend all meetings of the council;
- (b) To discuss and vote on matters within the scope of duties and powers of the council.

Article 62 *Duties and powers of the Head of the Competition Investigation Agency when conducting competition legal proceedings*

1 The Head of the Competition Investigation Agency has the following duties and powers:

- (a) To make decisions to investigate competition cases on the basis of an approval by the Chairman of the NCC;
- (b) To make decisions assigning investigators of competition cases;
- (c) To request agencies, organizations and individuals to provide documents, information, material and explanatory statements relevant to the facts of a case as requested by an investigator of a competition case;
- (d) To make decisions replacing the investigator of a competition case;
- (dd) To make decisions calling for expert evaluation; to make decisions changing evaluation experts or interpreters during the process of investigation;
- (e) To make decisions summoning witnesses at the request of parties;
- (g) To make decisions extending time-limits for investigation, and to make decisions staying investigation of competition cases upon approval of the Chairman of the NCC;
- (h) To propose that the Chairman of the NCC request competent agencies to apply, change or cancel preventive measures and ensure settlement of administrative breaches during investigation;
- (i) To conclude investigation of competition cases;
- (k) To attend investigative hearings;
- (l) To perform other duties and powers as stipulated in this Law.

2 Upon completion of the investigation process, the Head of the Competition Investigation Agency signs conclusions of the investigation of the competition case, and transfers the report on the investigation, conclusions of the investigation and all files on the competition case to the Chairman of the NCC.

Article 63 *Duties and powers of investigator of a competition case when conducting competition legal proceedings*

- 1 To conduct the investigation into the competition case as allocated by the Head of the Competition Investigation Agency;
- 2 To write a report upon completion of investigation into the competition case;
- 3 To preserve in safe custody the documents provided;
- 4 To be responsible before the Head of the Competition Investigation Agency and before the law for the exercise of his/her duties and powers.
- 5 To attend investigative hearings.
- 6 To take investigative measures during investigation in compliance with law;

- 7 To recommend that the Head of the Competition Investigation Agency make decisions on extension, stay and conclusion of investigation into the competition case, and to seek an expert's assessment, or replacement of an expert or interpreter during investigation;
- 8 To make a report to the Head of the Competition Investigation Agency in order to recommend that the Chairman of the NCC require application of measures by competent agencies to prevent and ensure settlement of administrative breaches during investigation.
- 9 Other duties and power prescribed by this Law.

Article 64 *Duties and powers of secretary to investigative hearing*

- 1 To prepare the necessary technical matters prior to the opening of the investigative hearing;
- 2 To disseminate the internal rules applicable to the investigative hearing;
- 3 To report to the council for dealing with a competition-restraining case on who is in attendance and who is not in attendance amongst the persons summonsed to attend;
- 4 To prepare minutes of the investigative hearing;
- 5 To undertake other tasks assigned by the chairman of the council for dealing with the competition-restraining case.

Article 65 *Replacement of persons conducting competition legal proceedings*

- 1 A member of a council for dealing with a competition-restraining case, an investigator of a competition case, or a secretary to an investigative hearing must refuse to conduct competition legal proceedings or must be replaced in any of the following circumstances:
 - (a) He or she is a relative of the investigated party or the complainant;
 - (b) He or she is a person with rights or interests related to the competition case;
 - (c) There are clear grounds to demonstrate that he or she is not objective in the exercise of his or her duties.
- 2 The Chairman of the NCC may himself/herself make a decision replacing a member of the council for dealing with a competition-restraining case or of the secretary to the investigative hearing or make such decision at the request of the council for dealing with the competition-restraining case.
- 3 During an investigative hearing, if a member of the council for dealing with the competition-restraining case or the secretary to an investigative hearing must be replaced, the council for dealing with the competition-restraining case issues a decision adjourning the investigative hearing and at the same time, recommends that the Chairman of the NCC replace such member of the council for dealing with the competition-restraining case or the secretary to an investigative hearing. The adjournment duration of the investigative hearing shall not exceed fifteen (15) days from the date of the decision adjourning the investigative hearing.

Section 3

Participants in Competition Legal Proceedings

Article 66 *Participants in competition legal proceedings*

- 1 Complainants.
- 2 Defendants.
- 3 Investigated parties.

- 4 Persons with related interests and obligations.
- 5 Persons protecting lawful rights and interests of complainants, defendants, investigated parties or persons with related interests and obligations.
- 6 Witnesses.
- 7 Evaluation experts.
- 8 Interpreters.

Article 67 *Rights and obligations of complainants, defendants and investigated party*

- 1 A complainant being any organization or individual whose complaint file prescribed in article 77 of this Law has been received and considered by the NCC for investigation in accordance with article 78 of this Law has the following rights:
 - (a) The rights prescribed in clause 3 of this article;
 - (b) To recommend that the Chairman of the NCC apply measures to prevent and ensure resolution of administrative breaches during investigation and resolution of the competition case.
- 2 A defendant being any organization which or an individual who is the subject of a complaint regarding an act in breach of the law on competition has the following rights:
 - (a) To be informed about the fact that it/he/she is the subject of a complaint;
 - (b) To explain the contents of the complaint.
- 3 An investigated party being any organization or individual whom the NCC decides to investigate in the circumstances set out in article 80 of this Law has the following rights:
 - (a) To participate in the stages of the competition legal proceedings;
 - (b) To provide information, documents and material to protect its/his/her legal rights and interests;
 - (c) To be informed about information, documents and material presented by the complainant or the Competition Investigation Agency;
 - (d) To study the documents in the competition case file and to record and photocopy necessary documents in such file in order to protect its/his/her legal rights and interests, except for documents or evidence which must not be made public pursuant to law;
 - (dd) To participate in and present opinions at the hearing sessions;
 - (e) To request that a witness be summonsed;
 - (g) To request an expert evaluation;
 - (h) To recommend replacement of the persons conducting or the persons participating in the competition legal proceedings;
 - (i) To authorize a person protecting its/his/her lawful rights and interests to participate in the competition legal proceedings;
 - (k) To request that the Competition Investigation Agency or the council for dealing with the competition-restraining case agree to permit persons with related interests and obligations to participate in the competition legal proceedings;
 - (l) Other rights in accordance with law.
- 4 An investigated party and a complainant have the following obligations:

- (a) To fully, truthfully, accurately and promptly provide the necessary information, documents and material relating to their recommendations and claims;
- (b) To present themselves in accordance with the summons issued by the Competition Investigation Agency and the council for dealing with the competition-restraining case;
- (c) Not to disclose any investigation secrets learned in the course of participating in the competition legal proceedings; and not to use any recorded or photocopied copies of any documents in the competition case file for the purpose of infringing the interests of the State or the legal rights and interests of any organization or individual;
- (d) To implement the decisions of the NCC, the Competition Council and the Competition Investigation Agency.

Article 68 *Persons protecting lawful rights and interests of complainants, defendants, investigated parties or persons with related interests and obligations*

- 1 A person protecting the lawful rights and interests of a complainant, defendant, investigated party or person with related interests and obligations means the person who participates in competition legal proceedings at the written request of such complainant, defendant, investigated party or person with related interests and obligations, in order to protect their lawful rights and interests.
- 2 Any of the following persons is permitted to act as the person protecting the lawful rights and interests of a complainant, defendant, investigated party or person with related interests and obligations:
 - (a) A lawyer in accordance with the law on lawyers;
 - (b) A Vietnamese national having full capacity for civil acts, having knowledge of law, not currently subject to criminal prosecution and not having a police record.
- 3 A person protecting the lawful rights and interests of a complainant, defendant, investigated party or person with related interests and obligations may protect the lawful rights and interests of multiple parties in the same case if such parties do not have opposing lawful rights and interests. Multiple persons protecting lawful rights and interests may jointly protect the lawful rights and interests of one party in the case.
- 4 When carrying out the procedures for registration of persons protecting lawful rights and interests of complainants, defendants, investigated parties or persons with related interests and obligations, the registering persons must produce a written request for protection of related interests and obligations of such complainants, defendants, investigated parties or persons with related interests and obligations.
- 5 When participating in competition legal proceedings, persons protecting lawful rights and interests of complainants, defendants, investigated parties or persons with related interests and obligations have the following rights and obligations:
 - (a) To participate in the various stages of competition legal proceedings;
 - (b) To verify and collate information or evidence and to provide information or evidence in order to protect the lawful rights and interests of their represented party;
 - (c) To study the documents in the competition case file and to record or photocopy necessary documents in such file in order to take action to protect the lawful rights and interests of their represented party;
 - (d) To recommend, on behalf of their represented party, the replacement of a person conducting or persons participating in the competition legal proceedings;

- (dd) To respect the truth and the law; and not to bribe, compel or entice others to give false evidence or to provide false documents;
- (e) To present themselves in accordance with an invitation letter or a summons from the NCC, the Competition Investigation Agency or the council for dealing with the competition-restraining case;
- (g) Not to disclose investigation secrets learned in the course of participation in the competition legal proceedings; not to use recorded or photocopied copies of any documents in the competition case file for the purpose of infringing the interests of the State or the lawful rights and interests of any organizations and individuals.
- (h) Other rights and obligations in accordance with the law.

Article 69 *Witnesses*

- 1 A person with knowledge of circumstances relating to the contents of a competition case may be summonsed as a witness by the Competition Investigation Agency or the council for dealing with the competition-restraining case. A person lacking civil capacity may not act as a witness.
- 2 Witnesses have the following rights and obligations:
 - (a) To provide all documents, papers and material in their possession relating to resolution of the competition case; to testify truthfully before the Competition Investigation Agency or the council for dealing with the competition-restraining case about all circumstances they know which are relevant to resolution of such case;
 - (b) To participate in hearing sessions and to present before the council dealing with the competition-restraining case;
 - (c) To be entitled to leave from work when summonsed by the Competition Investigation Agency or the Competition Council to participate in a hearing session or to give testimony, if the witness works for an agency, organization or enterprise;
 - (d) To be entitled to payment for related expenses in accordance with law;
 - (dd) To be entitled to refuse to testify if the testimony involves State secrets, professional secrets, trade secrets or private life secrets, or if the testimony would have an adverse or disadvantageous effect on the complainant or an investigated party with a close relationship with the witness;
 - (e) To pay compensation and to be responsible before the law for any false testimony causing damage and loss to a complainant, an investigated party or another organization or individual;
 - (g) To present themselves at a hearing session in accordance with a summons issued by the council for dealing with the competition-restraining case if the testimony of such witness must be given publicly at the hearing session;
 - (h) To guarantee to the Competition Investigation Agency or the Competition Council that they will perform their rights and obligations, unless the witness is a minor;
 - (i) To be protected in accordance with law.
- 3 Any witness who refuses to testify, who provides false testimony or documents, or who is absent without a legitimate reason when summonsed by the Competition Investigation Agency or the council for dealing with the competition-restraining case shall be liable in accordance with law except in the case set out in clause 2(dd) of this article.

Article 70 *Evaluation expert*

- 1 An evaluation expert means a person who has the necessary understanding and knowledge about a sector in which expert evaluation is required and who is sought by the Head of the Competition Investigation Agency or the council for dealing with a competition-restraining case, or who is

recommended by the concerned parties for his/her expert evaluation in cases where the Head of the Competition Investigation Agency or the council for dealing with the competition-restraining case refuses to seek an expert evaluation.

- 2 Evaluation experts have the following rights and obligations:
 - (a) To access the documents in the competition case file relating to the matter subject to their expert evaluation; to request the agency, organization or person seeking their expert evaluation or person recommending their expert evaluation to provide documents required for the expert evaluation;
 - (b) To question any participants in the competition legal proceedings on issues relevant to the matters subject to their expert evaluation;
 - (c) To present themselves in accordance with a summons issued by the agency conducting competition legal proceedings, to answer issues relevant to the expert evaluation and to give a truthful, grounded and objective expert evaluation conclusion;
 - (d) To have to notify in writing the agency seeking their expert evaluation or person recommending their expert evaluation of their inability to conduct an expert evaluation because the matters requiring expert evaluation are beyond their expertise or because the documents sent to them are inadequate or unable to be used as a basis for an expert evaluation;
 - (dd) To have to preserve any documents received by them and to return them together with their expert evaluation conclusions or notification of inability to conduct the expert evaluation, to the agency seeking the expert evaluation or person recommending the expert evaluation;
 - (e) Not to collate documents on their own to conduct an expert evaluation, not to make private contact with other participants in the competition legal proceedings if such contact would affect the objectivity of the results of the expert evaluation; not to disclose confidential information learned while conducting the expert evaluation, and not to notify the results of the expert evaluation to any person other than the agency conducting legal proceedings or person recommending the expert evaluation in cases where the Head of the Competition Investigation Agency or the council for dealing with a competition-restraining case declines to seek an expert evaluation;
 - (g) To be entitled to payment of related expenses in accordance with the law.
- 3 Any evaluation expert who refuses to provide his or her expert evaluation conclusion without a legitimate reason, who gives a false expert evaluation conclusion or who is absent without a legitimate reason when summonsed by the agency conducting competition legal proceedings shall be liable in accordance with law.
- 4 An evaluation expert must refuse to participate in competition legal proceedings or must be replaced in the following cases:
 - (a) He or she is the complainant, investigated party, person with related interests and obligations or relative of a complainant, investigated party, person with related interests and obligations;
 - (b) He or she has already participated in the same competition legal proceedings as a person protecting the lawful rights and interests, or as a witness or an interpreter;
 - (c) There are clear grounds to demonstrate that he or she may not be impartial in the exercise of his or her duties

Article 71 *Interpreters*

- 1 An interpreter means a person with the ability to translate into the Vietnamese language from another language and vice versa if a participant in the competition legal proceedings is unable to speak Vietnamese. An interpreter may be required by the Competition Investigation Agency or the council for dealing with a competition-restraining case for interpretation or selected by the complainant, the

defendant, investigated party or person with related interests and obligations or selected as agreed by the parties but must be approved by the Competition Investigation Agency or the council for dealing with the competition-restraining case.

- 2 Interpreters have the following rights and obligations:
 - (a) To present themselves in accordance with a summons;
 - (b) To interpret truthfully, objectively and correctly;
 - (c) To request additional explanation of the contents to be interpreted from the persons conducting and the persons participating in the competition legal proceedings;
 - (d) Not to make contact with other participants in the competition legal proceedings if such contact affects the truthfulness, objectivity and correctness of their interpretation;
 - (dd) To be entitled to payment of related expenses in accordance with the law.
- 3 An interpreter must refuse to participate in the competition legal proceedings or must be replaced in the following cases:
 - (a) He or she is the complainant, defendant, investigated party, person with related interests and obligations or relative of a complainant, defendant, investigated party, person with related interests and obligations;
 - (b) He or she has already participated in the same competition legal proceedings as a person protecting the lawful rights and interests, or as a witness or an evaluation expert;
 - (c) There are clear grounds to demonstrate that he or she may be not impartial in the exercise of his or her duties.
- 4 The provisions in this article also apply to a person who understands the sign language of a person with a hearing or speaking disability participating in the competition legal proceedings. If the only person competent in the sign language of a person with such disability participating in the competition case is the representative or relative of such deaf person or dumb person, then the Competition Investigation Agency or the council for dealing with the competition-restraining case may approve their acting as the interpreter for such person with such disability.

Article 72 *Persons with related interests and obligations*

- 1 Person with related interests and obligations means a person who does not make a complaint about the competition case and is not an investigated party; however, the resolution of the competition case involves his/her interests and obligations, so the participation of such person in the legal proceedings in the capacity of a person with related interests and obligations may be requested by himself/herself, or by the complainant or investigated party, and accepted by the Competition Investigation Agency and/or the council for dealing with the competition-restraining case; or the Competition Investigation Agency and/or the council for dealing with such case may include such person in the legal proceedings in the capacity of a person with related interests and obligations.
- 2 Persons with related interests and obligations may make an independent request or participate in competition legal proceedings with [on the same side as] the complainant or the investigated party.

The procedures for persons with related interests and obligations to make an independent request are carried out in accordance with the procedures for complaints about competition cases.
- 3 A person with related interests and obligations who makes independent claims or who participates in competition legal proceedings with [on the same side as] the complainant or who only has interests, has the rights and obligations set out in clauses 1 and 4 of article 67 of this Law.

- 4 A person with related interests and obligations who participates in competition legal proceedings with [on the same side as] the investigated party or who only has obligations, has the rights and obligations set out in clauses 3 and 4 of article 67 of this Law.

Article 73 *Refusal to act as an evaluation expert or interpreter and request for replacement of evaluation expert or interpreter*

Any refusal to act as an evaluation expert or interpreter or any request for replacement of an evaluation expert or interpreter must be made in writing, specifying the reasons therefor.

Article 74 *Decision on replacement of evaluation expert or interpreter*

- 1 The replacement of an evaluation expert or interpreter is decided by the Head of the Competition Investigation Agency, except for the cases prescribed in clause 2 of this article.
- 2 During resolution of a competition restraint case, the council for dealing with the competition-restraining case makes a decision replacing an evaluation expert or interpreter.

If an evaluation expert or interpreter must be replaced during at a hearing session, the council for dealing with such case issues a decision adjourning the hearing session. Seeking another evaluation expert or appointing another interpreter complies with articles 70 and 71 of this Law.

Section 4

Sequence and Procedures for Investigation of and Dealing with Competition Cases

Article 75 *Provision of information about practices in breach*

- 1 Any organization which or individual who discovers a practice showing an indication of a breach of the law on competition is responsible to notify and provide the NCC with information and/or evidence.
- 2 Organizations and individuals are responsible for providing truthful information and evidence provided to the NCC.
- 3 Where requested, the NCC takes the measures required to keep confidentiality of information and of the identity of organizations and individuals providing information and/or evidence.

Article 76 *Receipt, verification and evaluation of information about practices in breach*

- 1 The NCC is responsible to receive, verify and evaluate information and/or evidence provided by organizations and individuals of practices showing indications of a breach of the law on competition.
- 2 The NCC has the right to request the organizations and individuals prescribed in article 75.1 of this Law to provide additional information or evidence to clarify the practice in breach.

Article 77 *Complaints about competition cases*

- 1 Organizations and individuals who consider that their lawful rights and interests have been infringed as a result of a breach of the provisions of the law on competition have the right to lodge a complaint with the NCC about a competition case.
- 2 The limitation period for lodging a complaint is three years from the date on which the act indicating a breach of the law on competition was conducted.
- 3 A complaint file comprises:
- (a) Complaint application on the standard form issued by the NCC;
 - (b) Evidence proving that the contents of the complaint are well grounded and lawful;
 - (c) Other relevant information or evidence which the complainant considers necessary to resolve the case.

- 4 Complainants must be responsible for the truthfulness of the information and evidence they submit to the NCC.

Article 78 *Receipt and consideration of complaint files*

- 1 The NCC, within seven working days from the date of receipt of a complaint file, is responsible to consider the completeness and validity of the file; if the file is complete and valid, the NCC shall notify the complainant of the receipt of the file and at the same time, notify the defendant.
- 2 The NCC, within fifteen (15) days from the date of notification to the parties concerned as prescribed in clause 1 above, considers the complaint file; if the complaint file fails to satisfy the requirement in article 77.3 of this Law, the NCC notifies the complainant in writing thereof for the complainant to supplement the file.

The time-limit for supplementing the complaint file is no more than thirty (30) days from the date of receipt of the notice requesting addition to the complaint file. The NCC may extend the period for supplementing the file once for no more than fifteen (15) days at the request of the complainant.

- 3 Within the time-limit prescribed in clauses 1 and 2 above, the complainant has the right to withdraw the complaint file and the NCC then ceases its consideration of the complaint file.

Article 79 *Return of complaint files*

The NCC returns a complaint file about a competition case in the following cases:

- 1 The limitation period for lodging the complaint has expired.
- 2 The complaint does not fall within the scope of authority of the NCC.
- 3 The complainant fails to fully supplement the file as prescribed in article 78.2 of this Law.
- 4 The complainant applies to withdraw the complaint file.

Article 80 *Decisions on investigation of competition cases*

The Head of the Competition Investigation Agency makes a decision on investigation of a competition case in the following cases:

- 1 The complaint about the competition case satisfies the requirements prescribed in article 77 of this Law and does not fall into the cases prescribed in article 79 of this Law;
- 2 The NCC discovers a practice showing signs of a breach of the law on competition within three years from the date on which the practice showing signs of a breach of the law on competition was conducted.

Article 81 *Time-limit for investigating competition cases*

- 1 The time-limit for investigating a case of restraint of competition is nine months from the date of the decision to conduct an investigation and may be extended once for no more than three months in complex cases.
- 2 The time-limit for investigating a breach of the provisions on economic concentration is ninety (90) days from the date of the decision to conduct an investigation and may be extended once for no more than sixty (60) days in complex cases.
- 3 The time-limit for investigating an unfair competitive case is sixty (60) days from the date of the decision to conduct an investigation and may be extended once for no more than forty five (45) days in complex cases.
- 4 Any extension of the time-limit for an investigation must be notified to the investigated party and all parties concerned at least seven working days prior to expiry of the time-limit for investigation.

Article 82 *Application of preventive measures and measures to ensure resolution of administrative breaches during investigation and resolution of competition cases*

- 1 During investigation and resolution of a competition case, the Chairman of the NCC, within the scope of his/her duties and powers, requires that competent agencies apply the following preventive measures and ensure resolution of administrative breaches in accordance with the law on dealing with administrative breaches:
 - (a) Temporary detention of material evidence and facilities in breach, licence or practising certificate;
 - (b) Search of vehicles and other objects;
 - (c) Search of places for hiding material evidence and facilities in breach.
- 2 The Government provides regulations on the sequence and procedures for applying preventive measures and measures to ensure resolution of administrative breaches during investigation and resolution of competition cases.

Article 83 *Taking evidence*

- 1 Investigators of competition cases take evidence from complainants, investigated parties, persons with related interests and obligations, witnesses and other related organizations and individuals to collect and verify information and/or evidence required to resolve the competition case.
- 2 The taking of evidence stipulated in clause 1 of the article is implemented at the headquarters of the NCC, but in necessary cases may be implemented outside such headquarters.
- 3 Minutes of evidence must be re-read by, or re-read to, the declarant who must then sign or make a fingerprint on each page of the minutes. The declarant has the right to require that the minutes record any amendments of or additions to the evidence, which the declarant verifies by signing or making a fingerprint. Minutes must also bear the signatures on each page of the person taking the evidence and of the person writing the minutes.
- 4 Where the person providing the evidence refuses to sign or to make a fingerprint on the minutes, the investigator of a competition case taking evidence must record the refusal in the minutes and specify the reason therefor.

Article 84 *Summons of witnesses during investigation*

- 1 During the process of an investigation, the parties have the right to request that the Competition Investigation Agency summons witnesses. The party requesting summons of a witness is obliged to present the reasons why it is necessary to invite such witness in order that the Competition Investigation Agency may make a decision.
- 2 The taking of evidence from the witness must be minuted in accordance with the provisions of article 83 of this Law.

Article 85 *Transfer of files in the case of discovery of acts with indications of a criminal offence*

- 1 If indications of a criminal offence are identified during investigation, the investigator of a competition case must make a report to the head of the Competition Investigation Agency for consideration and recommendation to the Chairman of the NCC in order to transfer part or all of the file relevant to such indications of a criminal offence to the competent State agency for resolution in accordance with law.
- 2 Where it is determined that there are no grounds for instituting a criminal prosecution or the institution of a criminal prosecution is not conducted in relation to breach of the provisions on competition, the competent State agency returns the file to the NCC to continue the investigation in accordance with this Law. The time-limit for an investigation is calculated from the date of receipt of the returned file by the NCC.

Article 86 *Stay of investigations*

The head of the Competition Investigation Agency issues a decision staying investigation of a competition case in the following circumstances:

- 1 If during investigation it is impossible to collect any proof to prove a practice in breach in accordance with the provisions of this Law.
- 2 The complainant has withdrawn the complaint file and the investigated party undertakes to terminate the practice subject to investigation and to take measures to remedy the consequences, and the Competition Investigation Agency so approves.
- 3 In the case of an investigation conducted in accordance with article 80.2 of this Law, the investigated party undertakes to terminate the practice subject to investigation and to take measures to remedy the consequences, and the Competition Investigation Agency so approves.

Article 87 *Resumption of investigation*

- 1 The head of the Competition Investigation Agency, by himself/herself or at the request of the Chairman of the NCC or at the request of related parties, resumes an investigation in the following circumstances:
 - (a) The investigated party fails to implement or fails to implement correctly or completely the undertaking prescribed in clauses 2 or 3 of article 86 of this Law;
 - (b) The decision approving the undertaking of the investigated party was based on incomplete, incorrect or misleading information provided by parties.
- 2 The time-limit for an investigation after the decision resuming investigation is made, is four months.

Article 88 *Investigation reports*

- 1 Upon completion of an investigation, an investigator of a competition case prepares an investigation report with the following main particulars for submission to the head of the Competition Investigation Agency:
 - (a) Summary of the case;
 - (b) Identification of the breach;
 - (c) Verified incidents and evidence;
 - (d) Proposed measures for resolution.
- 2 The head of the Competition Investigation Agency is responsible to issue conclusions of investigations, and transfer files on competition cases, investigation reports and conclusions of investigations to the Chairman of the NCC in order to organize resolution in accordance with this Law.

Article 89 *Dealing with breaches of the provisions on economic concentration*

- 1 The Chairman of the NCC must, within thirty (30) days from the date of receipt of a file on a case, an investigation report and conclusions of an investigation, issue one of the following decisions:
 - (a) Dealing with the breaches of the provisions on economic concentration;
 - (b) Requesting that the Competition Investigation Agency conduct an additional investigation in cases where it is realized that the collected evidence is insufficient to determine a practice in breach of the law on competition. The time-limit for an additional investigation is thirty (30) days from the date of issuing the decision;
 - (c) Staying resolution of the case in breach of the provisions on economic concentration.

- 2 The time-limit for resolution of a breach of the provisions on economic concentration in the case of an additional investigation is twenty (20) days from the date of receipt of the file, the investigation report and the conclusion of the additional investigation.

Article 90 *Dealing with unfair competition cases*

- 1 The Chairman of the NCC must, within fifteen (15) days from the date of receipt of a file on a case, an investigation report and conclusions of an investigation, issue one of the following decisions:
 - (a) Dealing with the unfair competition case;
 - (b) Requesting that the Competition Investigation Agency conduct an additional investigation in cases where it is realized that the collected evidence is insufficient to determine a practice in breach of the law on competition. The time-limit for an additional investigation is thirty (30) days from the date of issuing the decision;
 - (c) Staying resolution of the unfair competition case.
- 2 The time-limit for resolution of an unfair competition case in the case of an additional investigation is ten (10) days from the date of receipt of the file, an investigation report and conclusions of an additional investigation

Article 91 *Dealing with cases of restraint of competition*

- 1 The Chairman of the NCC must, within fifteen (15) days from the date of receipt of a file on a case, an investigation report and conclusions of an investigation, issue a decision establishing a council for dealing with a competition-restraining case in order to deal with such case.
- 2 The council for dealing with a competition-restraining case may, within thirty (30) days from the date of establishment, require that the Competition Investigation Agency conduct an additional investigation in cases where it is realized that the collected evidence is insufficient to determine a practice in breach of the law on competition. The time-limit for an additional investigation is sixty (60) days from the date of requirement
- 3 The council for dealing with a competition-restraining case must , within sixty (60) days from the date of establishment or the date of receipt of an investigation report and conclusions of an additional investigation, issue a decision staying resolution of the competition case in accordance with article 92 of this Law or issue a decision dealing with the competition case in accordance with article 94 of this Law.
- 4 Before issuing the decision dealing with the case of restraint of competition, the council for dealing with such case must open an investigative hearing in accordance with article 93 of this Law.
- 5 The council for dealing with the competition-restraining case issues a decision dealing with such case on the basis of discussions, secret ballot and decision by majority.

Article 92 *Stay of resolution of competition cases*

- 1 The Chairman of the NCC considers [issuing] a decision staying resolution of a case in breach of the provisions on economic concentration or an unfair competition case in the following circumstances:
 - (a) The complainant has withdrawn the complaint and the investigated party undertakes to terminate the practice subject to investigation and/or undertakes to implement measures for remedying the consequences;
 - (b) In the case of an investigation conducted in accordance with article 80.2 of this Law, the investigated party undertakes to terminate the practice subject to investigation and/or undertakes to implement measures for remedying the consequences.

- 2 The council for dealing with a competition-restraining case considers deciding to stay resolution of a case of restraint of competition in the following circumstances:
 - (a) The complainant has withdrawn the complaint and the investigated party undertakes to terminate the practice subject to investigation and/or undertakes to implement measures for remedying the consequences;
 - (b) In the case of an investigation conducted in accordance with article 80.2 of this Law, the investigated party undertakes to terminate the practice subject to investigation and/or undertakes to implement measures for remedying the consequences.
- 3 The decision staying resolution of a competition case must be sent to the complainant and the investigated party, and must be published.

Article 93 *Investigative hearing*

- 1 The council for dealing with a competition-restraining case must, no later than fifteen (15) days prior to the expiry of the time-limit prescribed in article 91.3 of this Law, open an investigative hearing.
- 2 An investigative hearing is conducted in public. If the matters investigated concern State secret or business secrets, the investigative hearing is conducted in camera.
- 3 The decision opening an investigative hearing and a summons to the investigative hearing must be sent to the complainant, the investigated party and related organizations and individuals no later than five working days prior to opening the investigative hearing; If [any of them] is absent without a legitimate reason from a hearing session after being summonsed by the council for dealing with the competition-restraining case or is still absent from a hearing session after being properly summonsed for the second time, the council for dealing with such case still proceeds with the resolution of the case in accordance with regulations.
- 4 The following persons participate in a hearing:
 - (a) Members of the council for dealing with the competition-restraining case;
 - (b) Complainant;
 - (c) Investigated party(ies);
 - (d) Person(s) protecting the lawful rights and interests of the complainant or the investigated party(ies);
 - (dd) Head of the Competition Investigation Agency and investigator of a competition case who has already investigated the competition case;
 - (e) Secretary to the investigative hearing;
 - (g) Persons with related interests and obligations and other persons as stated in the decision opening the investigative hearing.
- 5 At the hearing session, the participants express their opinions and arguments in order to protect their legitimate rights and interests. The opinions and arguments at the hearing session must be minuted.

Article 94 *Decision resolving a competition case*

- 1 The decision resolving a competition case contains the following main particulars:
 - (a) Summary of the case;
 - (b) Analysis of the case;
 - (c) Conclusion on resolution of the case.

- 2 The decision resolving the competition case is served on the organizations and individuals concerned within five working days from the date of signing.
- 3 The service of a decision resolving a competition case must be conducted by one or more of the following methods:
 - (a) Directly;
 - (c)⁴ Via an authorised third person.
- 4 If the service is unable to be conducted by one of the methods prescribed in clause 3 above, the decision resolving the competition case must be displayed publicly or notified on the mass media.

Article 95 *Effectiveness of decision resolving a competition case*

A decision resolving a competition case shall be legally effective from the date of expiry of the time-limit for a complaint prescribed in article 96 of this Law, except for the case prescribed in article 99.2 of this Law.

Section 5

Dealing With Complaints Against Decisions Resolving Competition Cases

Article 96 *Right to complain against decision resolving a competition case*

Within a time-limit of thirty (30) days from the date of receipt of a decision resolving a competition case, any organization which or individual who disagrees with part or the whole of the decision dealing with the competition case has the right to lodge a complaint with the Chairman of the NCC.

Article 97 *Complaint against decision resolving a competition case*

- 1 A complaint against a decision resolving a competition case must contain the following main particulars:
 - (a) Full date of the complaint;
 - (b) Name and address of the complainant;
 - (c) Number and full date of the decision resolving the competition case which is the subject of complaint;
 - (d) Reasons for the complaint and requests of the complainant;
 - (dd) Signature and seal (if any) of the complainant.
- 2 A complaint against a decision resolving a competition case must be accompanied by additional evidence or information (if any) proving that there are grounds for the complaint and that the complaint is legal.

Article 98 *Acceptance of jurisdiction over complaint against decision resolving a competition case*

Within a time-limit of ten days from the date of receipt of a complaint, the Chairman of the NCC is responsible to accept jurisdiction and notify the complainant and the parties concerned in writing of the content of the complaint; and in the case of non-acceptance of jurisdiction, must respond in writing and specify the reasons therefor.

Article 99 *Consequences of complaint against decision resolving a competition case*

- 1 A decision resolving a competition case which is the subject of complaint shall remain enforceable except in the case stipulated in clause 2 of this article.
- 2 If during the process of resolving a complaint, the Chairman of the NCC considers that the enforcement of part or the whole of the decision resolving the competition case which is subject to complaint will cause consequences which are difficult to remedy, the Chairman of the NCC issues a

⁴ Allens footnote: There is no sub-clause (b) in the Vietnamese version.

decision to temporarily suspend such enforcement in accordance with law. The decision on temporary suspension made by the Chairman of the NCC shall expire from the date on which the decision resolving the complaint against a decision resolving a competition case is legally enforceable.

Article 100 *Resolution of complaint against decision dealing with a competition case*

- 1 Resolution of a complaint in respect of a case of restraint of competition is stipulated as follows:
 - (a) Within a time-limit of five working days from the date of acceptance of jurisdiction over a complaint, the Chairman of the NCC makes a decision establishing a complaint resolution council in order to decide on dealing with such complaint, which consists of the Chairman of the NCC and all other members of the NCC, excluding members who have participated in the council for dealing with the competition-restraining case;
 - (b) The issuance of a decision resolving the complaint requires the participation of at least two thirds of the total number of members of the complaint resolution council;
 - (c) The decision resolving the complaint is passed by the complaint resolution council on the principle of a majority vote and, in the case of a tied vote, the decision is that of the chairman of the complaint resolution council;
 - (d) The time-limit for resolution of a complaint is thirty (30) days from the date of the decision establishing the complaint resolution council.
- 2 Resolution of a complaint against a breach of the provisions on economic concentration or unfair competition is stipulated as follows:
 - (a) After accepting jurisdiction over such complaint, the Chairman of the NCC is responsible to resolve the complaint in accordance with his/her authority;
 - (b) The time-limit for resolving the complaint is thirty (30) days from the date of acceptance of jurisdiction over the complaint.
- 3 If it is a complicated case, the time-limit for resolving the complaint stipulated in clause 1 or 2 above may be extended, but not exceeding forty five (45) days.

Article 101 *Decision resolving complaint against decision dealing with a competition case*

- 1 To uphold the original decision.
- 2 To amend part or the whole of the original decision.
- 3 To revoke the original decision resolving the competition case for re-resolution in the following cases:
 - (a) The composition of the council for dealing with the competition-restraining case did not comply with the provisions of this Law;
 - (b) There was a serious breach of competition legal proceedings;
 - (c) There is a new circumstance which is likely to lead to a fundamental change of the decision dealing with the competition case and which could not have been known previously during the investigation or resolution of the competition case.
- 4 If the decision dealing with the competition case is revoked in accordance with clause 3 above, the Chairman of the NCC returns the file to the Competition Investigation Agency or establishes a council for dealing with the competition-restraining case in accordance with this Law. Any member of the council for dealing with the competition-restraining case or investigator in breach in the cases prescribed in sub-clauses 3(a) and 3(b) above may not continue to participate in investigation or dealing with such case.

Article 102 *Effectiveness of decision resolving a complaint*

- 1 A decision resolving a complaint against a decision resolving a competition case is legally effective as from the date of its signing.
- 2 Within a time-limit of five working days from the date of signing, the decision resolving a complaint against a decision resolving a competition case must be sent to any organization or individual concerned for execution.

Article 103 *Instituting proceedings in relation to decision resolving a complaint*

- 1 In the case of disagreement with a decision resolving a complaint, an organization or individual has the right to institute proceedings against a part or the whole of such decision at a court having jurisdiction in accordance with the Law on Administrative Proceedings, within thirty (30) days from the date of receiving such decision.
- 2 If a court accepts jurisdiction over proceedings as stipulated in clause 1 of this article, the Chairman of the NCC is responsible to transfer the file on the competition case to the court within a time-limit of ten (10) days from the date of receipt of a request from the court.

Section 6

Announcement of Decisions of the National Competition Committee

Article 104 *Decisions required to be publicly announced*

- 1 The following decisions must be publicly announced, except for the contents prescribed in article 105 of this Law:
 - (a) Decisions permitting exemption for prohibited agreements in restraint of competition;
 - (b) Decisions on economic concentrations;
 - (c) Decisions dealing with competition cases;
 - (d) Decisions staying resolution of competition cases;
 - (dd) Decisions resolving complaints against decisions dealing with competition cases.
- 2 The NCC publicly announces the decisions prescribed in clause 1 above after such decisions have taken legal effect.

Article 105 *Contents not to be announced*

The Chairman of the NCC decides not to announce any content relating to State secrets and trade secrets of enterprises in the decisions prescribed in article 104.1 of this Law.

Article 106 *Publication of contents of decisions required to be announced*

The contents permitted to be announced in the decisions prescribed in article 104.1 of this Law must be published on the website of the NCC for a duration of ninety (90) consecutive days from the effective date of such decisions.

Article 107 *Announcement and publication of annual reports on operational results of the NCC*

The NCC announces and publishes its annual reports on operational results on its website.

Section 7

International Co-operation in Competition Legal Proceedings

Article 108 *International co-operation in competition legal proceedings*

- 1 The NCC carries out activities of co-operation with foreign competition agencies in competition legal proceedings in order to promptly discover, investigate and deal with any practice showing signs of breach of the law on competition.
- 2 The scope of international co-operation in competition legal proceedings includes consultation, exchange of information, documents, or other appropriate activities of international co-operation in accordance with the law of Vietnam and international treaties of which the Socialist Republic of Vietnam is a member.

Article 109 *Principles for international co-operation in competition legal proceedings*

- 1 International co-operation in competition legal proceedings is implemented on the principles of respect for national independence, sovereignty and territorial integrity, non-interference in each other's internal affairs, equality and mutual benefit, and compliance with the Constitution and the law of Vietnam and international treaties of which the Socialist Republic of Vietnam is a member.
- 2 Where the Socialist Republic of Vietnam has not signed or acceded to a relevant international treaty, international co-operation in competition legal proceedings is implemented on the principles of reciprocity without conflict with the Constitution or the law of Vietnam, and in compliance with international law and international custom.

CHAPTER 9

Dealing With Breaches of Law on Competition

Article 110 *Principles of dealing with breaches, forms of dealing with breaches, and measures for remedying consequences of breach of the law on competition*

- 1 Any organization which or individual who commits a breach of the law on competition is, depending on the nature and seriousness of the breach, disciplined, subject to an administrative penalty, or prosecuted for criminal liability; if loss and damage is caused to the interests of the State or to the lawful rights and interests of [other] organizations or individuals, compensation must be paid for such loss and damage in accordance with law.
- 2 For each practice in breach of the law on competition, the individual or organization in breach must be subject to one of the following main forms of penalty:
 - (a) A warning;
 - (b) A fine.
- 3 Depending on the nature and seriousness of the breach, one or more of the following additional forms of penalty may also be applied to an individual or organization in breach of the law on competition:
 - (a) Withdrawal of enterprise registration certificate or equivalent document; deprivation of the right to use a licence or practising certificate;
 - (b) Confiscation of exhibits and facilities used to commit the breach of the law on competition;
 - (c) Confiscation of proceeds from conducting the breach.

- 4 In addition to the forms of penalty stipulated in clauses 2 and 3 of this article, one or more of the following measures for remedying consequences may also be applied to an individual or organization in breach of the law on competition:
- (a) Restructure of an enterprise which abuses its dominant market position or abuses its monopoly position;
 - (b) Removal of illegal terms and conditions from a contract, agreement or business transaction;
 - (c) Division, separation or sale of part or all of capital contribution or assets of an enterprise which is formed after economic concentration;
 - (d) Being subject to the control of the competent State agency in terms of the purchase prices or selling prices of goods and services or other trading conditions in the contracts of an enterprise which is formed after economic concentration;
 - (dd) Public correction;
 - (e) Other measures necessary to remedy the effects of the practice in breach.
- 5 The Government provides detailed regulations on forms of penalties and measures for remedying consequences applicable to each practice in breach of the provisions of the law on competition.

Article 111 *Fines for breach of law on competition*

- 1 A fine for breach of the provisions on agreements in restraint of competition or abuse of dominant market position or monopoly position shall be no more than ten per cent (10%) of the total turnover of the enterprise conducting the practice in breach in the relevant market in the financial year immediately preceding the year in which the prohibited practice or act took place, but shall be lower than the lowest level of fines applicable to the practices in breach prescribed in the Criminal Code.
- 2 A fine for breach of the provisions on economic concentration shall be no more than five per cent (5%) of the total turnover of the enterprise in breach in the relevant market in the financial year immediately preceding the year in which the prohibited practice took place.
- 3 A fine for breach of the provisions on unfair competition shall be no more than 2,000,000,000 dong.
- 4 A fine for other breaches stipulated in this Law shall be no more than 200,000,000 dong.
- 5 The maximum fines prescribed in clauses 1, 2, 3 and 4 above apply to practices in breach of an organization; if an individual conducts the same practice in breach of the law on competition, the maximum fines equals one half of the maximum fine applicable to an organization.
- 6 The Government provides detailed regulations on amounts of fines for breaches of the provisions of this Law.

Article 112 *Leniency policy*

- 1 An enterprise voluntarily declaring to help the NCC discover, investigate and deal with a practice [being] an agreement in restraint of competition prohibited by article 12 of this Law may be entitled to exemption or reduction of the level of penalty in accordance with the leniency policy.
- 2 The Chairman of the NCC makes a decision exempting or reducing the level of penalty in accordance with the leniency policy.
- 3 The exemption or reduction of the level of penalty as prescribed in clause 1 of this article is implemented on the basis of satisfaction of all the following conditions:
- (a) Having participated or currently participating as a party to an agreement in restraint of competition prescribed in article 11 of this Law;

- (b) Voluntarily declaring the act in breach before the competent agency issues a decision on investigation;
 - (c) Declaring honestly and providing all available information and evidence on the act in breach which is significantly valuable [helpful] for the discovery, investigation and resolution of the act in breach;
 - (d) Co-operating fully with the competent agency during investigation and resolution of the act in breach.
- 4 The provisions in clause 1 above do not apply to enterprises which play the role of forcing or organizing other enterprises to participate in the agreement.
- 5 The leniency policy applies to no more than the first three enterprises submitting an application for leniency to the NCC and satisfying the conditions prescribed in clause 3 of this article.
- 6 Bases for determination of entitlement of an enterprise to leniency are stipulated as follows:
- (a) Order [sequence] of declaration;
 - (b) Timing of declaration;
 - (c) Degree of honesty and value of provided information and evidence.
- 7 Exemption or reduction of fines is implemented as follows:
- (a) The first enterprise which made an application for leniency and which satisfies all the conditions prescribed in clause 3 of this article is entitled to an exemption of 100% of the level of fines.
 - (b) The second and third enterprises which made the application for leniency and which satisfy all the conditions prescribed in clause 3 of this article are entitled to a reduction of 60% and 40% of the level of fines respectively.

Article 113 *Authority and forms of dealing with breaches of law on competition*

- 1 Where a State agency conducts a practice prescribed in article 8.1 of this Law, the NCC is responsible to require that such State agency terminate its practice in breach and remedy the consequences. Such State agency must terminate the practice in breach, remedy consequences and compensate for loss and damage in accordance with the law.
- 2 Where an organization or individual conducts a practice prescribed in article 8.2 of this Law, the Chairman of the NCC or the council for dealing with the competition-restraining case has the following authorities:
- (a) Issue a warning;
 - (b) Impose a fine as prescribed in article 111.4 of this Law;
 - (c) Apply the measures stipulated in sub-clause (b) and (c) of clause 3 and sub-clauses (dd) and (e) of article 110.4 of this Law;
 - (d) Request the competent State agency to apply the measures stipulated in article 110.3(a) of this Law.
- 3 In the case of a breach of the provisions on agreements in restraint of competition, abuse of dominant market position, and abuse of monopoly position, the council for dealing with the competition-restraining case has the following authorities:
- (a) Issue a warning;
 - (b) Impose a fine as prescribed in article 111.1 of this Law;
 - (c) Apply the measures stipulated in sub-clauses (b) and (c) of clause 3 and sub-clauses (a), (b), (d), (dd) and (e) of article 110.4 of this Law;

- (d) Request the competent State agency to apply the measures stipulated in clauses 3(a) and 4(a) of article 110 of this Law.
- 4 In the case of breaches of the provisions on economic concentration, the Chairman of the NCC has the following authorities:
- (a) Issue a warning;
 - (b) Impose a fine as prescribed in article 111.2 of this Law;
 - (c) Apply the measures stipulated in sub-clauses (b) and (c) of clause 3 and sub-clauses (a), (c), (d) and (e) of article 110.4 of this Law
 - (d) Request the competent State agency to apply the measures stipulated in clauses 3(a) and 4(a) article 110 of this Law.
- 5 In the case of breaches of the provisions on unfair competition and other breaches of the provisions of this Law which do not fall into the cases stipulated in clauses 1, 2, 3 and 4 above, the Chairman of the NCC has the following authorities:
- (a) Issue a warning;
 - (b) Impose a fine as prescribed in clauses 3 and 4 of article 111 of this Law;
 - (c) Apply the measures stipulated in sub-clauses (b) and (c) of clause 3 and sub-clauses (dd) and (e) of article 110.4 of this Law
 - (d) Request the competent State agency to apply the measures stipulated in article 110.3(a) of this Law.
- 6 The practices prescribed in article 45.7 of this Law are dealt with in accordance with other relevant laws.

Article 114 *Enforcement of decisions resolving competition cases*

- 1 After fifteen (15) days from the effective date of a decision resolving a competition case, if the judgement debtor fails to voluntarily implement the decision, the judgment creditor or the NCC has the right to request that a competent State agency enforce the decision.
- 2 If the decision resolving the competition case relates to assets of a judgment debtor, the NCC requests that the competent civil judgment enforcement office enforce the decision.

Article 115 *Enforcement of decisions resolving complaints against decisions resolving competition cases*

- 1 After fifteen (15) days from the effective date of a decision resolving a complaint against a decision resolving a competition case, if the judgment debtor fails to voluntarily implement the decision or has not instituted court proceedings pursuant to article 103 of this Law, the judgment creditor or the NCC has the right to request that a competent State agency enforce the decision.
- 2 If the decision resolving the complaint against a decision resolving the competition case relates to assets of a judgment debtor, the NCC has the right to request that the competent civil judgment enforcement office enforce the decision.

CHAPTER 10

Implementing Provisions

Article 116 *Amendment, addition and repeal of provisions in a number of other laws*

- 1 A number of articles of Law on Enforcement of Civil Judgements 26-2008-QH12 as amended by Law 64-2014-QH13 is amended as follows:

- (a) The phrase "decisions of Competition Councils dealing with competition cases" in articles 1, 35.2(e) and 56.1(a) is replaced with the phrase "decisions dealing with a competition case of the Chairman of the NCC or the council for dealing with a competition-restraining case, or decisions resolving complaints against a decision dealing with a competition case of the Chairman of the NCC or the council for resolving complaints against a decision dealing with a competition case";
 - (b) The phrase "the Competition Council" in articles 26 and 27 is replaced with the phrase "the Chairman of the NCC, the council for dealing with a competition-restraining case or the council for resolving complaints against a decision dealing with a competition case";
 - (c) Article 2.1(dd) is amended as follows:
 - "(dd) The decisions dealing with a competition case of the Chairman of the NCC or of the council for dealing with a competition-restraining case or decisions resolving a complaint against a decision dealing with a competition case of the Chairman of the NSS or of the council for resolving complaints against a decision dealing with a competition case after fifteen (15) days from the effective date of the decisions, if the concerned party fails to voluntarily implement the decision or has not instituted court proceedings;"
- 2 Article 19.6 of the Law on Telecommunications 41/2009/QH12 is repealed.
 - 3 Paragraph 4.1 of sub-clause 4 of Section II of Part A of Appendix 1 to the Law on Charges and Fees 97/2015/QH13 is repealed.

Article 117 *Effectiveness*

- 1 This Law is of full force and effect as of 1 July 2019.
- 2 The Law on Competition 27-2004-QH11 shall no longer be effective as from the effective date of this Law.

Article 118 *Transitional clause*

From the effective date of this Law, practices in breach of the law on competition as prescribed by the Law on Competition No. 27-2004-QH11 continue to be considered and resolved as follows:

- 1 [If] Any practice in breach being investigated or dealt with is determined as not being in breach of the provisions of this Law, the investigation or resolution [of such breach] shall be stayed.
- 2 If any practice in breach which is being investigated or dealt with or for which a complaint against the decision dealing with the competition case is being resolved is determined as being in breach of the provisions of this Law, such breach shall continue to be investigated or dealt with or the complaint continue to be resolved in accordance with this Law. If the form of penalty or the level of fines applicable to the practice in breach prescribed in this Law are higher than those prescribed in the Law on Competition No. 27-2004-QH11, the provisions of the Law on Competition No. 27-2004-QH11 shall apply.

This Law was passed by Legislature XIV of the National Assembly of the Socialist Republic of Vietnam at its fifth Session on 12 June 2018.

Chairwoman of the National Assembly
NGUYEN THI KIM NGAN

