



**Asia-Pacific
Economic Cooperation**

Advancing Free Trade
for Asia-Pacific **Prosperity**

Competition Assessment of Regulations: A Pilot Assessment in Viet Nam Using APEC- OECD Framework on Competition Assessment

APEC Economic Committee

January 2019

APEC Project: EC 03 2018A

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APEC#219-EC-01.1

INTRODUCTION

The Economic Committee (EC) and CPLG have recently renewed efforts to promote the effectiveness of competition policy and market functioning in the APEC region. Improving competition policy is a focus of structural reforms in developing APEC economies like Viet Nam. A number of APEC-wide initiatives and economy-based measures have been undertaken, which sought to enhance efficiency of markets, i.e. the APEC New Strategy for Structural Reform (ANSSR) for 2011-2015, the Renewed APEC Agenda for Structural Reform (RAASR) for 2016-2020, “Competition Week” with a series of workshops on competition policy issues in 2017, etc.

In 2017, the APEC-OECD Framework on Competition Assessment was endorsed by APEC Economic Committee to: (i) set out non-binding principles and approaches to implement systematic and consistent competition assessment in APEC member economies; (ii) identify needs and build capacity to APEC member economies to implement competition assessment; (iii) introduce principles of competition assessment into APEC’s on-going work in Good Regulatory Practices; and (iv) promote APEC-wide and APEC-OECD cooperation on competition assessment.

For a developing economy like Viet Nam, the APEC-OECD Framework on Competition Assessment offers a systematic, rigorous and justifiable approach to enhance regulatory quality for sound market competition and promotion of private sector development. Specifically, building capacity for regulators and policy enforcers in Viet Nam on competition assessment will help minimize adverse implications of existing and future regulations to market competition. Successful adoption of the APEC-OECD Framework on Competition Assessment in pilot cases in Viet Nam can demonstrate and promote the applicability of such framework in APEC developing economies in similar situation like Viet Nam.

This “Pilot Competition Assessment of Regulations in Viet Nam” is implemented on the basis of using the APEC-OECD Framework in Viet Nam. The assessment was implemented by using regulatory review methodology. Throughout the implementation of the study, the APEC-OECD Framework on Competition Assessment was used as the guide and foundation. The research team implemented extensive and in-depth reviews of regulations, reports, studies and literature for the purpose of the assessment. The assessment also benefited a great deal from interviews with experts, academia, business associations. Initial findings, including the initial lists of the sub-sectors included in the assessment, were presented at an APEC Training Course on “*Improving Capacity in Competition Assessment in Regulation Making in Viet Nam*” held on 5-6 November 2018 in Ho Chi Minh City, Viet Nam. The assessment benefited tremendously from inputs and comments from participants of the training course and from other presenters from Australia and OECD.

This assessment is not exhaustive due to its limited scope and resource. As a pilot, it is aimed at assessing the competition in some selected sectors. It also aims to showcase - via pilot case study - the applicability of systematic competition assessment for a developing economy like Viet Nam.

In addition, the report aims (i) to promote the systematic utilization of APEC-OECD Framework on Competition Assessment in regulatory and competition policy reform, which in turn will contribute to more effective competition policy and enhanced market efficiency in Viet Nam, and (ii) to share experiences in using APEC-OECD Framework on Competition Assessment in policy formulation and enforcement in Viet Nam.

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CHAPTER I

INTRODUCTION OF COMPETITION POLICY IN VIET NAM

I. THE ADVENT OF VIET NAM COMPETITION LAW

Viet Nam adopted a comprehensive Competition Law in 2004. Before the promulgation of the law, anticompetitive acts or monopolies in some specific areas had been regulated by separate and scattered provisions in a number of legislations such as the Ordinance on Price, the Ordinance on Telecommunications, the Law on Credit Institutions, Commercial Law, and Electricity Law. However, implementation of this type of legislation was not really effective, partly due to lack of a complete and consistent legal framework, lack of state management competency on competition and monopoly control, and lack of effective sanctions (Trinh, 2013).

The major purpose of adopting the Competition Law was to demonstrate the economy's commitment to a market-based system. To administer the law implementation, the government has established the Viet Nam Competition Agency (VCA), under management of the Ministry of Industry and Trade, and a separate independent adjudicative body, the Viet Nam Competition Council (VCC), comprising of eleven to fifteen members appointed by the Prime Minister. In June 2018, the government promulgated a new Competition Law, which will take effect from July 2019, replacing the 2004 one.

With 118 articles being incorporated in 10 chapters, the Competition Law 2018 aims at: (i) control competition-restricting acts or acts that would likely result in competition restriction, particularly in the context of market opening-up and global economic integration; (ii) protect from unfair competition actions the legitimate rights of enterprises to do business, and; (iii) create and sustain a fair competitive environment. To achieve these objectives, the Competition Law classifies its scope of application into two major behaviors: competition restrictive acts and unfair competition acts. As for competition restrictive acts, the Law regulates three forms of acts, including competition-restriction agreement, abuse of the dominant position or a monopoly position on the market and economic concentration. As for unfair competition acts, the Law regulates 10 types of acts, including misleading indications, infringement upon business secrets, constraint in business, discrediting other enterprises, etc. and others unfair competition. Concerning the subject of application, the Law applies to two major groups, including business organizations and individuals (enterprises) i.e. enterprises producing or supplying products, as well as providing public-utility services; enterprises operating in state-monopolized sectors and domains; and foreign enterprises operating in Viet Nam and professional associations operating in Viet Nam¹.

The Competition Law, to a large extent, has been constructed by legal transplantation with the support of international donors such as the World Bank and the Asian Development Bank. Although the drafters referred to competition laws of various economies such as the United States, Canada, Australia, the European Union, China etc., the law has relied more on the European Community model than the United States model. The scope of the Competition Law is quite broad and regulates not only the three standard types of practices (agreements in restraint of competition, the abuse of a dominant or monopoly position, and anticompetitive economic

¹ Website of the Viet Nam Competition Authority: <http://www.vca.gov.vn>

concentrations) but also covers unfair competitive practices that harm competitors and/or deceive consumers. It should be noted that enterprises that operate in state monopoly sectors and/or are engaged in public utility sectors are under the control of the government and are outside the purview of the competition law so far as the activity that they are engaged in stays within the state monopoly sector and/or the provision of public utility products and services (Luu, 2015).

The promulgation of the Competition Law marked a new milestone in the development and creation of a market economy in Viet Nam. Right after the promulgation of the law, detailed legal documents guiding the implementation were quickly developed and promulgated. Many other relevant legal documents have been conducted and amended to comply with the provisions of the Law. The Competition Law and its detailed regulations and guidelines, and relevant documents have established a uniform legal system, creating favorable conditions for the operation of the business community, promoting healthy competition in most sectors of the economy².

II. ACHIEVEMENTS GAINED SINCE THE COMPETITION LAW WAS INTRODUCED

1. The Competition Law and its implementation

The Competition Law has identified anti-competitive behaviors of enterprises as a basis for establishing regulations that limits these similar behaviors. Actions that have the potential to cause anti-competitive effects or anti-competitive behaviors of enterprises have been defined by the Competition Law as being comparable with competition laws of many countries in the world. (They are behaviors that reduce, distort, and obstruct the competition in the market, including agreements restricting competition, abuse of dominant market position, and abuse of monopoly positions). In addition, the Competition Law enforcement has initially been fruitful. After 12 years of implementation, 87 pre-litigation investigations were conducted, 8 cases involving in restrictions of competition were officially investigated, of which, 6 cases were handled by the Competition Council³.

2. Other laws and policies related to market competition

The government has successfully eliminated or minimized a range of unreasonable barriers, which limit the market competition. Market entry regulations have been gradually improved, especially those on business registration. Market access procedures are simplified and reduced, allowing firms to reduce both time and cost of entering the market. The average processing time for new enterprise registration was 2.9 days, and the average processing time required to change the business sector was just 2 days nationwide.

Furthermore, business conditions have decreased significantly compared to 2004. The list of prohibited business lines and conditional business lines is publicly disclosed on the national business registration information page, assisting investors to know the conditions to be

² ‘Báo cáo Tổng kết 12 năm thi hành Luật Cạnh tranh’, Bộ Công Thương [‘Final Report on 12 Years of Implementing the Competition Law’, the Ministry of Industry and Trade], 2017

³ ‘Dự thảo Đề án Quốc gia về Chính sách Cạnh tranh’, Bộ Kế hoạch và Đầu tư, [‘Draft National Program on Competition Policy’, the Ministry of Planning and Investment], 2017

met. The number of prohibited business lines is reduced from 49 (according to the Investment Law 2005) to 6 (according to the Investment Law 2014). The number of conditional business lines has fallen from 398 (the Investment Law 2005) to 267 (the Investment Law 2014) and then 243 (the Law on Amendment and Addition to a Number of Articles of the Investment Law 2016). Accordingly, the right and the level of business freedom of businesses are increasingly expanding. Discriminatory mechanisms and policies for market players have been reduced to create a more equal business environment, especially to ensure fairness in competition between state-owned enterprises (SOEs) and private enterprises. The number of fields and sectors with the participation of the state has been reduced. Many state-owned monopolies have been equitized to provide more business opportunities for various market players and promote effective competition. Moreover, most of the policies and laws have been adjusted and finalized in order to form a common legal framework for all types of enterprises, irrespective of ownership.

3. Shortcomings of the current competition legal system

After 12 years of implementation, the provisions of the Competition Law, including provisions on agreements restricting competition, abuse of monopoly position, economic concentration, and unfair competition, have revealed deficiencies. The rules of order and procedures are not specific and clear, making it difficult for firms to comply with, discouraging firms and consumers to detect, provide information about violations and actively cooperate throughout the process of settling cases⁴. The legal framework of competition is still different with international frameworks, so the objective of restraining the anti-competitive behavior of enterprises has not been achieved.

Additionally, regulations on state monopolies are unclear and insufficient. In principle, the goal of the state monopoly is to ensure the consumer's basic needs and to meet the requirements of national security. In reality, the activity of state monopolies is still inadequately controlled by competition regulations, especially those regulations involved in quality and price. More importantly, the Competition Law contains provisions on monopoly and market dominance but there is no specific guidance or regulation on these behaviors of business groups or SOEs. Thus, in fact, many business groups and SOEs monopolize or dominate markets (such as markets of electricity, oil and gas, telecommunications, natural resource exploitation) but are not subject to the Competition Law and relevant regulations. This distorts commercial activity in these markets, affecting consumers' interests.

Moreover, while the Vietnamese legal system is rapidly extending with a number of specialized laws regulating competition in areas such as finance, banking, insurance, telecommunications, construction, and bidding, the basic provisions of the Competition Law have not been referred. Many provisions of these laws contradicted or differed widely from those of the Competition Law. This reduces the effectiveness of the Competition Law and at the same time does not ensure the consistence between the objectives of the sector development and the objective of creating and maintaining a competitive environment and protecting consumers.

⁴ 'Báo cáo Tổng kết 12 năm thi hành Luật Cạnh tranh', Bộ Công Thương, ['Final Report on 12 Years of Implementing the Competition Law', the Ministry of Industry and Trade], 2017

Viet Nam's competition authorities have undertaken a large number of investigations and made a limited number of important final decisions in respect of some breaches of competition law. There has been just one major private litigation case. There are a number of other important legal provisions that tend to undermine the effectiveness of both public and private enforcement. Still, the competition authorities has a role of advocating for unnecessary impediments to competition to be removed or reformed but, with so many tasks to be done with so little resources, the number of occasions in which it has been invited to participate in regulatory debates is very limited (OECD, 2018).

The total number of competition cases under investigation and settlement, and the process of enforcing the Competition Law, have been hindered by some negative factors, namely a lack of competition culture, a lack of resources (human and budget), and weakness and loopholes in the current legal framework, which needs revising or supplementing to be in conformity with good practices. To ensure effectiveness in the course of enforcing the Law, and to satisfy practical demands from business in the context of the new economy, more research and any amendments in the Law will need to be done in a quick and comprehensive manner by competent agencies (Trinh, 2013).

CHAPTER II

CASE STUDIES OF SECTOR-SPECIFIC REGULATIONS

In this section, regulations in the sectors of transportation, and food & beverage are studied to and assess from competition perspective. The assessment has been implemented by using APEC-OECD Framework on Competition Assessment.

I. LIMITS THE NUMBER OR RANGE OF SUPPLIERS

1. Grants of exclusive rights

Over more than 30 years of renovation, the state monopoly has narrowed significantly in both scale and scope. Nevertheless, Viet Nam seems to be far from the international practices. Concerning transport monopoly, railway and aviation subsectors deserve to get most attentions.

Viet Nam has a relatively complete and early railway system in the Southeast Asia region. Operating over a hundred years, the system's infrastructure quality, rolling stock, signaling and telecom systems are backward, and not frequently maintained due to the fact that the annual funding for maintenance allocated by the government can only satisfy about 30% of the demand⁵. Viet Nam Railways, a state owned corporation, has for years been granted exclusive rights to operate, manage, and maintain the whole railway network, including tracks, stations, transport business, and railway infrastructure assets. This has made it difficult for private investors to join. This also caused a disincentive to improve quality, reduce prices, and becoming a weak industry. In 2017, there were only 9.5 million passengers comparing to 11.2 million in 2010. The market share of goods transport reduced from 0.97% to 0.39% during the period⁶.

Concerning aviation industry, the International Air Transport Association has forecast that Viet Nam will be among the five fastest-growing markets over the period 2015-2035. The market is boosted a burgeoning middle class, with the economy's airlines placing multi-billion dollar aircraft orders and the nation unveiling plans to shore up infrastructure⁷. The market share of customers travelling by air increased from 0.5 per cent in 2012 to 0.8 per cent in the early of 2016. This indicates that more people are travelling by airway⁸.

However, the supply system of aviation services has created an oligopolistic market. Viet Nam has seven aviation firms, out of which only four are commercial airlines, with 180 planes. Although the private firms has been deeply involved in the subsector, contributing to improving the quality and reducing ticket prices, the scale and scope of monopoly still be severe, especially when an organization, the Viet Nam Aviation Corporation, is assigned to exclusively operate all

⁵ 'Viet Nam Railways: Challenges, Opportunities and Development', UIC electronic newsletter, 553

⁶ 'Cải cách độc quyền nhà nước để xóa bỏ độc quyền kinh doanh', ['State monopoly reform to abolish monopoly'], Baohaiquan.vn, 2018

⁷ 'The sky is no limit for Vietnamese aviation', Ven.vn, 2017

⁸ 'Cơ hội mới cho nhà đầu tư mở hãng hàng không', ['New opportunities for investors to open airlines'], Nld.com.vn, 2018

22 commercial airports⁹. Viet Nam Airlines, a carrier with 86% owned by the government, controls around half of the domestic market while its two affiliates (Jetstar Pacific and Viet Nam Air Service Company) have another combined 15 percent share. The merger between Viet Nam Airlines and Jetstar Pacific Airline, proposed by the Ministry of Transport, in 2011 got serious criticisms as it raised great concern from the public for the risk of competition harm. But it seemed to be ignored by the authorities, and finally was approved by the Prime Minister in 2012 (Luu, 2015). As a consequence of the monopoly, Viet Nam Airlines and its affiliates have received a lot of complaints on their low services quality, which is not accordance with their high prices.

Many international experiences of monopoly reforms are difficult to apply to Viet Nam. The government promulgated a competition law in 2004, (and its new revised version was issued in June 2018), including articles involving in abuse of monopoly positions. However, the enforcement has been very weak. Some efforts for reform just turned the state monopolies into enterprises monopolies without social supervision and participation. Still, pricing mechanism is not transparent in the economy and there is not an authority to monitor monopolies yet. The fact that most of the public services and state monopoly sectors are using the

On April 1, 2008, Vinapco, the sole supplier of petrol for airplanes in the Viet Nam, unilaterally suspended fuel supply to Pacific Airlines due to a dispute over pumping fees. It caused a delay of 30 Pacific flights. About 5,000 passengers on Pacific's flights were affected by the suspension before the Prime Minister required Vinapco to resume fuel supplies to the airline. The petrol supplier, a subsidiary of Viet Nam Airlines, was fined more than VND3 billion (US\$168,000) for violating Vietnamese Competition Law in an unprecedented trial. It is also proposed by the Ministry of Industry and Trade to be split from Viet Nam Airlines and all monopolized services closely controlled.

(Source: "Cây thê độc quyền, Vinapco bị phạt hơn 3 tỷ đồng". [“Abuse of monopoly position, Vinapco was fined more than VND 3 billion”], thanhnieen.vn, 15/4/2009)

form of appointment of contractors, which is not in compliance with the contents specified in the Law on Competition and the Law on Procurement, also contributes to competition harms.

Reduction in state monopoly in the above subsectors will have a big impact on the economy.

Recently, the Ministry of Transport promulgated the new Law on Railways, dated 16 June 2017, which took effects in July 2018, replaces the old law dated 14 June 2005. The law introduces unique preferential mechanisms which will attract investors to engage in railway projects. The railway projects taking shape in the form of public-private partnerships (PPP) shall follow the guidelines on investment in the form of PPP¹⁰. There was also a proposal requiring to separate functions of infrastructure management and transportation business of the Viet Nam Railways Corporation and to facilitate private investment. It suggested to revising the Law of Railways with specific contents, aiming to make the industry more attractive to domestic and foreign private investors, as the ministry supposes that private firms run transportation businesses more effectively¹¹. The proposal got objections from Viet Nam Railways over some contents, including

⁹ 'Cải cách độc quyền nhà nước để xóa bỏ độc quyền kinh doanh', [‘State monopoly reform to abolish monopoly’], Baohaiquan.vn, 2018

¹⁰ 'Viet Nam's railway sector set to pick up PPP steam', Vir.com.vn, 2018

¹¹ 'Dự án Luật Đường sắt (sửa đổi) đủ điều kiện để trình ra Quốc hội trong Kỳ họp tới', [‘The (revised) Railway Law eligible for submission to the National Assembly in the next meeting’], Mt.gov.vn, 2016

the separation. The corporation argued that the separation is impractical and unreasonable, as the transport market is small and outfitted with regressive technology. However, the ministry insists that the radical change is necessary as it is in line with the corporation's restructuring plan, approved by the government in 2013. This view is supported by many ministries, including Ministry of Justice, the Ministry of Finance, and the National Assembly's Science, Technology, and Environment Committee. Local experts also suggest that it is necessary to establish an independent agency to manage railway infrastructure, and develop a mechanism to approach and connect the infrastructure of railway network ensuring fair competition for new train owners engaging in the railway transport business¹².

Regarding aviation, local experts have insisted on ensuring airlines' fair and equal access to airport infrastructure at reasonable costs, conducting a mechanism to manage airport management units, and reducing Airport Corporation of Viet Nam's monopoly over airports. They have also called for restructuring the economy in tandem with privatizing state-owned enterprises and narrowing the fields of state monopoly¹³. The establishment of a competition supervisory authority was also suggested.

2. Establishes a license, permit or authorization process as a requirement of operation

With a market of 93 million people, Viet Nam has seen rapidly growing consumer demand for food products, offering great opportunities for the sector to expand. Viet Nam's annual consumption of food and beverage products makes up about 15% of Gross Domestic Product, and this rate will increase in the future, according to the Ministry of Industry and Trade. The economy is expected to be among the top three Asian economies posting the highest growth rate of the food industry by 2019.¹⁴ It is expected to have around 1,200-1,300 supermarkets, 180 shopping centers, and 157 department stores by 2020. Distribution centers including cold storage offer investment opportunities for investors, as such centers continue to increase in capacity and number to satisfy the increasing demand of the food sector.¹⁵ However, for food suppliers, business conditions and licenses are headache issues.

To establish a food business in Viet Nam, a firm requires a number of licenses for operations and usually takes much longer in comparison to neighboring economies. It depends on legal framework including Viet Nam's international agreements, national laws and regulations, the master economic development plan of the city or province where the business is located, financial capability, capital, facilities, and human resources of the investment project. All firms that want to trade foods must satisfy certain conditions on health and safety in order to be licensed. In addition, firms that deal with high risk foods must obtain a Certificate on Satisfaction of Standards on Food Hygiene and Safety. All these standards must be maintained throughout the lifetime of the

¹² 'Cải cách độc quyền nhà nước để xóa bỏ độc quyền kinh doanh', ['State monopoly reform to abolish monopoly'], Baohaiquan.vn, 2018

¹³ 'Cải cách độc quyền nhà nước trong các ngành công nghiệp mạng lưới', ['State monopoly reform in the networking industries'], Bnews.vn, 2018

¹⁴ 'Ngành thực phẩm và đồ uống 'lên ngôi', Việt Nam sẽ thuộc top 3 Châu Á về tăng trưởng', ['Food and beverage industries 'rising', Viet Nam will be among the top three in growth in Asia'], Vietnambiz.vn, 2018

¹⁵ 'Growing Food & Beverage Sector in Viet Nam', Evbn.vn, 2018

business. A food establishment (e.g. a workshop or store used by a food producer, supplier or canteen service centre, and even equipment and premises used) should satisfy certain health and safety criteria. Any location where food is processed, stored, sold must meet hygienic environmental requirements. All employees who come into direct contact with food must have a periodic health check to assure that they meet health conditions mandated by the Ministry of Health. Moreover, they must have a training certificate of food safety and hygiene, and must be supervised so that they follow applicable regulations (Russin & Vecchi, 2017).

Up to September 2018, there were 243 economic fields in Viet Nam still bound by 4,284 business conditions. It is difficult for firms operating in these fields as these conditions change frequently. Still, some of the conditions were set by different ministries and agencies. For example, business conditions for food processing and trading enterprises are set by the Ministry of Agriculture and Rural Development (MARD), the Ministry of Health (MOH) and the Ministry of Industry and Trade (MOIT). In addition, the Ministry of Science and Technology (MOST) is responsible for the development of standards, laboratory accreditation and the quality control of goods. MOH has overall responsibility, though not authority, to direct other ministries. Food business conditions may be even provided in a law and four government decrees. In addition, many food safety activities and resources are decentralized to provincial and lower levels. Viet Nam probably has around 5,000 food inspectors (World Bank, 2017).

“Too many kinds of licenses are required in one clean food shop, while policies change all the time”...“We have the food hygiene certificate granted by the National Agro-Forestry-Fisheries Quality Assurance Department. However, when officials from the Market Management Taskforce inspect our shop, they require a certificate on meeting requirements on food safety granted by local industry and trade departments”...“Before and after the New Year holiday, just within three months, we had to receive about 10 delegations of inspectors from state management agencies”, said Nguyen Khanh Trinh, CEO of a clean food supply chain in Ha Noi. Trinh wants to change traditional cultivation habits and allow Vietnamese to use clean food. To date, he has opened 20 shops in seven districts in Ha Noi and runs a 10 hectare farm in Soc Son, which are considered the initial success of the project. However, he will have to face with many barriers in order to bring his products to consumers.

(Source: “Big difficulties discourage agriculture startups”, *vietnamnet.vn*, 28 June 2018)

The most crucial reason for requirement of these business conditions and licenses is to protect consumers. In Viet Nam, food safety is of great and increasing importance to consumers and policymakers alike. A survey of World Bank conducted in 2017 indicated that food safety is one of the two most pressing issues in Viet Nam, even more important than education, health care or governance. These issues are the consequence of both widespread soil and water pollution, and bad practices by agricultural producers, food suppliers and consumers. They could cost Viet Nam millions of dollars alone every year from illnesses treatment.

However, business conditions remain troublesome, limiting market entry, competitiveness and labor productivity of local firms, and leading to harassment¹⁶. Still, many conditions that do not comply with real situations are still applied. State agencies considering the requirements for business license and control regulations base on their management needs and traditional views. For example, for the declaration of conformity to food safety regulations in Decree

¹⁶ ‘Cắt giảm 675 điều kiện kinh doanh: Cần hành động đến cùng’, [‘Cutting 675 business conditions: Drastic actions needed’], *Cafef.vn*, 2017

38/2012/ ND-CP, many firms have recommended that it is an ineffective solution because this is the control in the paper, which absolutely does not affect the food safety. When the enterprises present the samples for testing, they might remove unsatisfactory samples. Experience from developed economies for this safety ensuring is the use of on-the-spot controls or probability controls and the imposition of severe penalties for legal violations. In addition, the decree should focus on high risk groups rather than low risk groups as current practice. 99% of poisoning cases occur in streets, collective kitchens, but state authorities just try to control food safety of packed food, which usually has a much lower risk of food insecurity than other foods as reported by the government¹⁷.

During 2017, MOIT has revised and removed 675 business and investment conditions among 1,216 conditions under its management. MARD also planned to modify 53 business conditions and abolish 65 others out of 345 conditions under its management. However, the ministry has not thrashed out specific modifying solutions. In January 2018, the government issued Decree No. 08/2018/ND-CP amending some decrees relating to business and investment conditions under the state management of the MOIT. The decree abolished a majority of food business conditions in purchase and sale of food, including some general conditions for ensuring food safety for food business establishments. MARD and MOH were required by Prime Minister to further remove from one-third to half of their business conditions this year as well¹⁸.

3. Limits the ability of some types of suppliers to provide a good or service

Noi Bai is one of the two biggest international airports in Viet Nam and the gateway of the capital with huge passenger traffic throughput. In 2016, Noi Bai Airport served 20.6 million passengers. The number was estimated to reach 22 million, with 65,000 passengers used the airport daily in 2017¹⁹.

Recently however, the Noi Bai Airport has been criticized for being too restrictive in regulating taxi operations. By the middle of 2017, the airport signed contracted with only 14 taxi firms. Representatives of the firms claimed that the many conditions of the Noi Bai International Station were stricter than those regulated by the Ministry of Transport, making it difficult for taxi firms in franchising activities and driving to an unfair competition in taxi services supplying²⁰.

Concretely, the Viet Nam Automobile Transport Association complained that the length of service of a taxi was unreasonably cut from eight to six years by managers of the airport. This is a violation of the Resolution No. 86/2014/NĐ-CP on Transportation Business issued by the Ministry of Transport. The resolution states that a taxi can work for 8 years in special urban areas and 12 years elsewhere. Noi Bai Airport is an important location, managed under state-owned Airports Corporation of Viet Nam, so it needed to follow the regulations. The airport's rule

¹⁷ 'Quản lý an toàn thực phẩm vẫn chỉ trên giấy?', ['Food safety management is still on paper?'], 24h.com.vn, 2017

¹⁸ 'Cắt giảm, đơn giản hoá 50% điều kiện kinh doanh', ['Cutting, simplifying 50% of business conditions'], Tuoitre.vn, 2018

¹⁹ 'Nội Bài đặt luật riêng cho taxi sân bay?', ['Noi Bai Airport sets own laws for airport taxis'], Tienphong.vn, 2018

²⁰ 'Sân bay Nội Bài quá chặt chẽ khi quy định về hoạt động taxi', ['Noi Bai airport sets strict laws on taxi operations'], Anninhthudo.vn, 2018

stipulating that only taxi firms selected by the Airport managers can pick up passengers from the airport should also be removed²¹.

According to the association, about 1,300 taxis and 28 electric cars under 17 firms have contracts to work at the airport. Those who do not have contracts can only drop off passengers and return to the city's centre empty. This is a waste as they have to run without passengers for dozens of kilometers. The airport can charge some fees from all taxi firms to pick up passengers instead of allowing only a few firms supply the service.

Other irrational conditions include: (i) A taxi firm must have a minimum of 100 cabs and must be the owner of 100 percent of the total number of cabs which apply for franchising business at the airport; (ii) Each taxi must be equipped with a card payment machine (VND 10 million/taxi); (iii) Taxi drivers must get a minimum score of 300 of the TOEIC English test; (iv) Taxi firm's employees working at non-aviation service stations must get a minimum score of 350 of the TOEIC test²².

In respond to the complaints, the director of Noi Bai Airport stated that the rules on how to select taxi firms to operate at Noi Bai Airport was set up in 2014 in accordance with the laws. The Circulation No. 17/2016/TT-BGTV issued by the Ministry of Transport speculates that the Noi Bai Airport operators are allowed to select taxi firms that are licensed to operate at the station in terminal in accordance with the principle of transparency and competition, to issue regulations managing taxi operation at the station, and to set a minimum number of taxis can operate to meet the demand and the passenger volume according to their operating schedule²³. The airport's regulations aim to find capable, experienced firms to improve the airport's services. Regarding the condition of the maximum 6 years operation, the representative argued that it is required basing on the airport's distance from the city and high frequency of taxi operation (each car runs 3-4 times per day, from 250 - 350 km, namely about 90,000 km per year). A taxi operating at the airport for 6 years therefore can be seen as equivalent to 8 years of taxis in the city. The issuance of the specific condition will helps to ensure the quality of passenger service. The other selection criteria such as taxi's operating age, the number of taxis, installation of card payment machine, English testing standards for taxi firms' drivers and employees are completely in accordance with the law as well as meet the actual needs of the station.

Taxi firms then argue that they have to invest hundreds million VND on each car, and need 6-7 years to get back the investment. The regulations will cause losses to the firms. Moreover, in the fierce competition with ride-hailing taxis such as Uber and Grab, traditional taxis lost considerable market share and should extend its operating time to offset the lost. Finally, in response to the expectations of the taxi community, the Ministry of Transport has requested that Noi Bai International Airport comply with Resolution No. 86, allowing taxi cabs of up to eight years in operation to pick up passengers at the airport station²⁴.

²¹ 'Nội Bài đặt luật riêng cho taxi sân bay?', ['Noi Bai Airport sets own laws for airport taxis'], Tienphong.vn, 2018

²² 'Sân bay Nội Bài quá chặt chẽ khi quy định về hoạt động taxi', ['Noi Bai airport sets strict laws on taxi operations'], Anninhthudo.vn, 2018

²³ 'Taxi không quá 6 tuổi mới được chở khách ở Nội Bài?', ['Only taxis not exceeding 6 years old can pick up passengers at Noi Bai airport?'], Vietnamnet.vn, 2017

²⁴ 'Bộ GTVT bác bỏ tiêu chí riêng về taxi sân bay của Nội Bài', ['Ministry of Transportation rejected Noi Bai Airport Taxi's regulations'], Tapchigiaothong.vn, 2017

The rest of this sub-section debates on unreasonable regulations restricting taxi operation in the inner city of Ha Noi. In October 2017, the Ha Noi Department of Transport issued a draft regulation dealing with the public transportation services by car within the city boundaries. City authorities suppose that restrictions speculated in the regulation are necessary to exert greater traffic control²⁵.

A major critical point for the firms is a provision that states taxis will only be permitted to pick up passengers in the area where the vehicles are registered, and will not be able to park or pick up passengers from elsewhere. Concretely, Ha Noi will be divided into two areas numbered one and two. Number one will cover districts within the city boundaries and number two will encompass districts in the city's extended areas. Depending on their license plates, taxis will not be allowed to park and wait for passengers in areas that they are not assigned. They can, of course, drop off passengers anywhere in the city from their assigned areas.

All taxis are required to follow strict regulations on several aspects of their operations, including pickup and drop-off zones and handover times for each shift and location. For instance, within a month, a taxi must maintain a minimum of 70% of its operating time within its assigned region, and is only allowed to stop for passengers for a maximum of two minutes at pickup and drop-off zones. The draft also does not allow taxis from freely staying in public parking lots reserved for hired vehicles for more than twenty minutes while they wait for passengers in their assigned area. After 20 minutes, taxis must either move out from the parking lot or pay extra money to stay.

Đo Quoc Binh, Ha Noi Taxi Association's Chairman, commented on the regulation of splitting the city into two areas: "It will prove to be impossible. The division between administrative regions would increase the empty distance that taxi drivers cover, travelling back and forth from one area to the other without a passenger, since they are not allowed to pick up anyone outside their assigned region. This will push up sunk costs in operation and monitoring, and lower competitiveness"
(Source: "Taxi firms slam impossible restrictions", VietnamNews.vn, 10 August 2017)

Taxi firms complained the new draft regulation will make them more difficult to survive, even leading them to bankruptcy. The Ha Noi Taxi Association also claimed that the boundary between the two areas might not be distinguishable at all times.

4. Significantly raises cost of entry or exit by a supplier

Sometime, laws and policies that raise the costs of entry to a market do not encourage some potential entrants and so reduce the number of participants in the market over time. This sub-section discusses such regulations involving in conditions for business registration and badges for vehicles. Decree No. 86/2014/ND-CP on Business and Conditions for Transportation Business by Automobile states that to fulfill a business registration procedure, enterprises and cooperatives engaged in passenger transport along fixed routes from 300 km or more must have 20 autos or more for units, i.e. enterprises and cooperatives, whose head office is located in centrally-run cities, and 5 autos or more for units whose head office is located in poor districts. This provision will cause a great financial burden to new firms which intent to enter the market as even most

²⁵ 'Taxi firms slam 'impossible' restrictions', Vietnamnews.vn, 2017

existing transport firms possessing fewer than 5 vehicles. (According to 2014 statistics, of the total 24,580 transportation business units nationwide, the number of transport business units having fewer than 5 vehicles is 17,799, accounting for 72.4%). In addition, if a firm or cooperative gathers enough 5 vehicles to meet the requirement but these autos are low quality, then its transport services as well as technical safety may not be equal to a business with 3 high quality vehicles equipped modern facilities. The provision should be modified to promote high quality of vehicles instead of quantity of vehicles as the high quality of vehicles will enhance the firm's reputation, contributing to improve the image of the transport industry²⁶.

A truck of a foreign invested enterprise (FIE), which was on the way from the enterprise's factory to its storehouse, was stopped by inspectors from the HCMC Transport Department. The inspectors stated that the driver violated the Decree 86 and the Circular 63 on conditions for providing transportation services. The regulations require some kinds of vehicles to bear a badge when in circulation. The truck did not have a badge, and the inspectors decided to seize the driver's D-class driving license. The enterprise's representative argued that it does not provide transportation services and does not collect fees from anyone under any form. The truck was just carrying products from its factory to the storehouse. Additionally, as an FIE it is not allowed to provide transportation services and thus would have no badge. The representative said the enterprise has lodged complaints to many state management agencies asking for intervention in the case. It will still be fined if its trucks continue rolling on roads.
(Source: "7.000 giấy phép con: Không tự cắt bỏ, nghĩ chiêu biến tấu", ["7000 sub-licenses: Not be cut off, think of circumvention"], vietnamnet.vn, 28 April 2016)

In addition, in order to get the business permit, the decree speculates that transport operator must have professional qualification in transport from the intermediate level or above or college or higher education of economic or technical majors and continuous work time at transport units from three years or more. This requirement is recommended to be removed as it unreasonably restricts number of eligible operators and significantly costs new firms to find a qualified transport operator.

There are also conflicts among regulations. For example, Circular No. 63/2014/TT-BGTVT stipulates on requirements for companies providing goods transport service without direct collection of money that must have a business license: "A company providing goods transport service without direct collection of money shall obtain the license for automobile transport if such company: (i) Uses vehicles for

transporting hazardous goods specified by the government on list of dangerous goods and provisions regarding transport of hazardous goods and competence to issue license for transport of hazardous goods; (ii) Uses vehicles for transporting oversize/overweight goods according to regulations on vehicular weight and dimensional limits of road, use of overloaded vehicles, vehicles exceeding the dimensional limits, tracked vehicles on road, transport of oversized/overweight cargo, limits on goods loaded on road vehicles running on public roads; (iii) Owns at least 05 vehicles; (iv) Uses a vehicle that has carrier capacity of 10 tons or more for transporting goods." However, according to the Decree No. 107/2014/NĐ-CP, all automotive vehicles of goods transported with a designed capacity of 10 tons must bear specific badges. Meanwhile, only enterprises having the business license for conducting a transport business via automotive vehicles can apply for such badges. Accordingly, it may happen that a trading firm does not do transportation services with some 10-tons or more vehicles, which serve for its

²⁶ 'Bổ sung Đóng góp Ý kiến đối với Dự thảo Nghị định Thay thế Nghị định Số 86/2014/ND-CP', Bộ Giao Thông Vận tải, ['Additional comments on the draft decree replacing to the Decree No. 86/2014/ND-CP', the Ministry of Transport'], 2018.

operation only. The firm is not qualified for the mentioned business license for automobile transport, and thus, cannot apply for badges for their 10-tons-or-more vehicles. In order to use the vehicles, the firm must circumvent the regulation by paying an annual fee to a cooperative and get badges under the cooperative's name. Otherwise, it should stop using the vehicles (Cat Tuong, 2018).

The regulation of vehicles bearing badges also creates opportunities for corruption. Many officials of provincial departments of transportation often attempt to delay the issuance of badges to firms for months. Business owners usually have to bribe them VND 2 million to speed up the issuing process. Otherwise, their vehicles may be fined due to operation without the badges²⁷.

5. Restricts the flow of goods, services, capital and labor

Since 2011, Ha Noi Department of Transport has stopped issuing licenses to establish new taxi firms. However, many firms tried to evade the regulations by registering their taxis in other provinces to register then bring them to Ha Noi. Since 2016, the department has also banned on over 3,000 taxis registered from other provinces but operating in the capital²⁸. It also planned to ban motorbikes from other provinces in the next few years. The department has grant new badges to city taxis. The taxis are required to display the badge, which are of different design to vehicles licensed outside the city. Taxis without the city badge are not allowed to operate in the city, and traffic inspectors and local police keep a close watch on the situation. The city also attempt to address congestion problem and plan to limit the number of motorbikes in the capital. From 2020, the department will restrict the number of motorbikes in the Old Quarter during the weekend and from 2021, they will entirely prohibit motorbikes from other provinces going to the inner city during daily time. The department also proposes to limit the number of cars on several routes and will collect congestion charges on vehicles entering to the city centre during rush hours. All these practices are surely restricts flow of transport services²⁹.

Up to now, Ha Noi has over five million registered motorbikes, 500,000 cars and over one million bicycles and electric bicycles, not to mention vehicles from other provinces. The city traffic police are struggling to regulate the flows during rush hours. Without measures to restrict more vehicles registration, by 2025, Ha Noi will have 7.3 million motorbikes and 1.3 million cars. The city infrastructure cannot afford to the growth and traffic demand will exceed the capacity of the road system by 12 times and vehicles would not be able to move. According to Ha Noi Department of Transport `s plan to limit the use of private vehicles, public transport will be able to meet 25% of the city's demand, or 5.78 million trips a day by 2020. The city plan open 15 to 20 new bus routes a year and invest in over 500 new buses, including mini buses. The department has also set the goal to put into operation of five metro lines during this time³⁰.

²⁷ 'Doanh nghiệp xe tải chờ 3 tháng không xin được phù hiệu "xe tải" vì... cán bộ!', ['Truck companies waited 3 months to get the "truck" badge because of... administrative officers' sluggishness'], Dantri.com.vn, 2018

²⁸ 'Hà Nội "dọn" 3.000 taxi ngoại tỉnh "trả đường" cho... 600.000 ô tô', ['Ha Noi "removed" 3,000 taxis from other provinces to return roads for...its 600,000 vehicles'], Viettimes.vn

²⁹ 'Đề xuất cấm xe máy ngoại tỉnh vào Hà Nội từ năm 2021', ['Proposed ban on motorbikes from other provinces operating in Ha Noi in 2021'], News.zing.vn, 2016

³⁰ 'Hà Nội ban on motorbikes from other provinces sparks controversy', Vnnews24h.vn, 2016

However, objectors argued that though tight control over taxis in big cities is necessary, the bans are unreasonable. If the bans take effect, a taxi carrying passengers from a neighboring province to Ha Noi might have to let their passengers off on the outskirts of the city, for example³¹. They suggested that it

is better to improve the traffic infrastructure to help taxis operate in a more orderly fashion. Parking lots for taxis can

Nguyen Minh Thanh, a resident of Hoang Hoa Tham Street, said that his relative, who lived in northern Ninh Binh Province, about 93 kilometres away from Ha Noi, usually caught a two-way taxi to save money. "She has to go to hospital for health treatment every month. Thus, getting a two-way taxi is really economical because of the policy of taxi firms to discount up to 80 per cent of the cost for the return journey. She only pays VND250,000 (US\$11.70) instead of VND800,000 (\$37.70). But, if the ban takes effect, she might have to take a bus to save money", said Thanh.

(Source: "Ha Noi to allow only city-licensed taxis", VietnamNews.vn, 14 August 2014)

help to address the problem. In other economies, there are always parking lots for idle taxis near residential areas. Taxis cannot move around when they have no passengers³². As the motorbike is the main form of transport in Ha Noi, the plan also got many criticisms on the motorbike ban. Representative from Ha Noi Transport Association argues that the city need measures to ease congestion, prevent air pollution and limit motorbike, however, the plan needs to be more detailed. The city can only ban motorbike when the people adopt public transport and give up on personal vehicles. In order to achieve this end, affordable, high-quality public transport is required³³.

Another example of restricting flow of goods and services are efforts to limit and ban on street food suppliers.

Street food vendors have been an integral part of Ha Noi's street life for centuries. Women in conical straw hats, balancing twin baskets suspended from bamboo poles, are one of the city's most interesting images. Selling goods from bamboo baskets and bicycles also provides income to villagers with little education and few other means of support³⁴. In nationwide term, street food trading addresses major social and economic problems in developing economies through the provision of ready-made meals at relatively inexpensive prices and employment for teeming population along its value chain (Alimi, 2016). It should be aware that this trading sector contributes to keep a nationwide low rate of unemployment (3.18% in 2017), and to support a significant part of the nation's population and their family³⁵.

The economic challenges of making living are not the same among street vendors. It can be unofficially classified the vendors into a three tiers. The lowest tier includes hyper-mobile street vendors who carry their stuffs on their backs and move around the city, and are usually migrants living with very low earnings. This type of vendors is perceived to have a lower status than their street food supply counterparts. The second tier tends to operate in the same spot every day. These two tiers of vendors usually share a rented room in the city with other street vendors, returning to

³¹ 'Bị cấm tuyến, taxi bỏ khách giữa đường', ['Due to banned routes, taxis let passengers off in outskirts'], Plo.vn, 2017

³² 'Ha Noi to allow only city-licensed taxis', Vietnamnews.vn, 2014

³³ 'Hiệp hội Vận tải HN: Cấm xe máy người dân đi làm bằng gì?', ['Ha Noi Transport Association: If motorcycle is banned, how do people go to work?'], Antt.vn, 2016

³⁴ 'Ban on street vendors threatens livelihoods', Irinnews.org, 2008

³⁵ 'Saigon street food: 'There's no future for my son selling food this way'', Theguardian.com, 2015

their province to visit family on a monthly basis. They are constantly afraid of being chased away by police. Many of them are likely to find workarounds, dodging police when they show up and returning to their places later. But the cat-and-mouse routine makes their low-paying job more stressful and risky³⁶. The top tier is fixed storefront vendors, usually including those people who have lived in the cities for a long time. They have adequate money to rent or own a brick and mortar storefront and usually live and sell at the same place³⁷. Street vendors usually have to compete with other sidewalk vendors as well as from established retailers. Competition among street vendors themselves is intense because entering into street food market is easy. Suitable conditions to become a street vendor is an ease of access to wholesalers who may offer trade credit, price-sensitive consumers, ease of undercutting established retailers' prices, and police who are preoccupied with other, more serious crimes. Economic downturns not only lead to more competition but also reduce the demand for foods. A complex competition between mobile and fixed-storefront street vendors has been found in many economies, including Viet Nam. Street vendors are also considered to conduct unfair competition with established retailers since they do not pay or pay very little for the most valuable commercial spaces. They can also cause annoyance to retailers by blocking the entrances of retail shops and using excessive noise to attract potential customers for their goods. It is not surprising that some established retailers want these street vendors evicted. Smaller store owners particularly feel animosity toward peddlers because they are their direct competitors. However, larger retailers only see the peddlers as annoying and causing unattractive surroundings (Wongtada, 2013).

Many attempts to limit and ban this kind of food vendors occurred in recent years. Since March 2017, police raids on street vendors have occurred more frequently in downtown Ha Noi. The city authority has also planned to ban street fruit stands and ensure fruit is in stores in order to better manage fruit sales and food safety. Also during 2017, major cities in this economy have been raising campaigns to promote public order, food safety, and clear the sidewalks, driving thousands of street food vendors into the shadows and threatening a culinary tradition³⁸.

Two most concerns on this kind of food supply are their informal nature of business and food safety. Despite its ubiquity, street food vending in Viet Nam is a grey market. While a registration to authorities is dependent on surpassing a certain threshold of earnings, a report of International Labor Office in 2014 showed that 78% of these suppliers operate illegally. This illegal business operation makes difficult to authorities in many management and control.

Regarding food safety, according to a study in Ho Chi Minh City in 2016, street food vendors usually have a poor knowledge of food safety which is also in accordance with their inadequate facilities and unhygienic practices during the vending of the foods. Most of street food vendors have low educational levels and do not get any formal food safety training. 52.5% of the vendors do not wash their hands before handling, preparing and serving foods, while 80% use their bare hands during these practices. In addition, they have difficulties in accessing to potable water and almost 90% sell food in unhygienic places. Viet Nam adopted regulations controlling street food safety in the food safety laws since 2011, which are announced through various channels. However, it may not be transformed into the knowledge and practices of the food suppliers yet.

³⁶ 'Efforts to Ease Congestion Threaten Street Food Culture in Southeast Asia', *Nytimes.com*, 2017

³⁷ 'Saigon street food: 'There's no future for my son selling food this way'', *Theguardian.com*, 2015

³⁸ 'Efforts to Ease Congestion Threaten Street Food Culture in Southeast Asia', *Nytimes.com*, 2017

One explanation is that due to their poor education levels, the street food vendors are excluded from certain communication channels (Samapudo et al., 2016).

The “sidewalk reclamation” campaigns in 2017 in big cities have received breathless coverage in mass media and fueled a nationwide debate about how to regulate street vending. Many consumers express that feel familiar with some vendors as though they have become cooks for their family. Some experts argue that street food is not inherently less sanitary than restaurant food. “If you’re eating fried foods or things that are really steaming hot, then there’s probably not much difference at all”, said an epidemiologist at the Australian National University³⁹. Other experts criticize that the cities has no programs to help mobile vendors find alternative employment. No institution has taken up their case. These traders do not belong to a labor union as they are literally on the run all the time⁴⁰. Some economists suggest that rather than banning street food vendors the government should cooperate with relevant institutions such as Viet Nam’s Food Association to conduct training short-courses on food safety for them. Other strategies should also be identified to raise the food safety awareness and practices of the street food vendors. In addition, it is necessary to improve the operating facilities of the vendors by providing clean protected structures, access to potable water and efficient waste collection and disposal system (Samapudo et al., 2016). However, while imposed health and safety regulations on street food practices are important, Viet Nam is still a low income economy that can make meeting these standards difficult⁴¹.

II. LIMITS ON THE ABILITY OF SUPPLIERS TO COMPETE

1. Controls the prices at which goods or services are sold

The price of powdered milk in Viet Nam had increased nearly 30 times during the period 2008 - 2014. The retail price of powdered milk was about 1.4 USD per liter in 2014, almost 1.5 times as compared with Thailand and Malaysia, making the economies among the highest in the world. Powder milk market in Viet Nam was very competitive, with more than 800 milk products for children under 6 years old, causing a very high cost of advertisement and marketing for producers, which then turned into higher cost for the consumers⁴². In addition, an investigation of Youth Review indicated that infant formulas products had been sold at three or four times of their import prices as firms were paying doctors and nurses to recommend their products to pregnant women and new mothers and advertise them at medical conferences⁴³. The public’s repeated complaints about high dairy product prices have forced the government to apply the ceiling price. It wants to keep prices reasonably high to both ensure profits for producers and make products affordable to consumers⁴⁴.

³⁹‘Efforts to Ease Congestion Threaten Street Food Culture in Southeast Asia’,Nytimes.com, 2017

⁴⁰ ‘Ban on street vendors threatens livelihoods’, Irinnews.org, 2008

⁴¹ ‘Is it the End of Viet Nam's Street Food?’, Theculturetrip.com, 2018

⁴² ‘Price Control on Milk Products in Viet Nam’, Nationalinterest.in, 2016

⁴³ ‘Sữa ngoại giá cao do chi đậm vào hoa hồng, quảng cáo’, [‘Prices of imported milks are high due to high rates of commission and advertising’],Tuoitre.vn, 2013

⁴⁴ ‘Is formula milk in Viet Nam most expensive in region?’, Vietnamnet.vn, 2014

In August 2010 the Ministry of Finance (MOF) issued a regulation on price registration and control. The new regulation covers a range of key consumer and producer goods, including milk and milk powder. It allows the MOF and Chairmen of Provincial People's Committees to "apply price stabilization measures" when domestic prices rise faster or fall slower than input costs. Price stabilization instruments described in the regulation include setting ceiling and floor prices or price ranges for the goods on the controlled list. Producers and suppliers of these goods must register prices when the goods are first put on the market and whenever prices are changed. The objectives of the policy are to reduce or stabilize prices of dairy products, particularly infant and child powdered milk. The government believes that dairy firms raise powdered milk prices because they invest too much on advertising and promotion (Pincus, 2010).

In October 2013, the Ministry of Health approved a decision about controlling the dairy products for children below the age of six. This decision aims at limiting an increase in dairy product prices. In late 2013 and early 2014 the price of dairy product in Viet Nam varied a lot, increasing from 7- 10 % (Nguyen and Tran, 2014).

In April 2014, MOF set ceiling prices on 25 milk products, which later affected almost 600 products, for children below the age of six in a move to address a hyperinflation in price of milk powder in few years preceding 2014. The price ceilings were based on three grounds: the inspection at five dairy firms, price progress of the dairy market and prices of similar products on regional markets. Retailers were also required to reduce their costs, be reasonable with their profit margins and charge prices not exceed 15% over the ceiling⁴⁵.

The price control measures have raised many criticisms. Experts said in the short term, customers have enjoyed lower prices thanks to the price ceiling. But in the mid and long term, the control would be an obstacle to the development of milk industry and restrict competition. The price ceiling for dairy products of children under six would not be for the long term as Viet Nam should comply with free trade agreements signed which forbade it from using price control to manage the market⁴⁶.

Some consequences of the price ceiling regulations are as follows⁴⁷:

- Some milk suppliers replaced products whose prices were to be capped under the regulation with new ones a week before the ceiling prices take effect. They worked around the regulation by introducing new products with new labels but similar ingredients at much higher prices.
- Though the ceiling on advertising spend for milk products was removed, advertising and marketing by milk producers declined due to limited margin after the price control.
- The research carried out by AC Nielsen in 2015 indicated that the market for formula milk for children under six shrunk by 11% in the 12 months after the regulation in 2014

⁴⁵ 'Price Control on Milk Products in Viet Nam', Nationalinterest.in, 2016

⁴⁶ 'Bỏ áp trần giá sữa: Khách hàng sẽ hưởng lợi', ['Remove milk's ceiling prices: Customers will benefit'], Cafef.vn, 2017

⁴⁷ 'Price Control on Milk Products in Viet Nam', Nationalinterest.in, 2016

was implement⁴⁸. Up to 60% of the public report that they have experienced moderate to no benefit from the government price interventions⁴⁹. Moreover, the consumption of milk products for children below the age of six actually went down after the price ceiling was in force. This was counter intuitive to the authorities when deciding to control the prices.

- In April 2015, the European Union abolished milk production quotas which existed for more than 30 years, leading to a reduction in milk prices worldwide. This made the cost of importing powder milk cheaper than sourcing milk from local cow farmers. One interesting outcome of the quota removal was that local cow farmers sold record number of cattle. For instance, in Cu Chi District, Ho Chi Minh City, nearly 10,000 cattle of 40,000 being reared were sold in the last 12 months.

After nearly three years of imposing the ceiling prices, the prices of formula milk products for children aged below six have been stable. The Ministry of Industry and Trade (MOIT) has taken over the Ministry of Finance's job to try new measures to control formula prices and review the ceiling prices on formula products⁵⁰. The ministry has collected opinions of firms, associations and other stakeholders on the draft circular on controlling functional food and formula milk. The survey's findings indicate that the price ceiling mechanism had many limitations so abolishing the mechanism was necessary and suitable with price management measures in a market economy. Then, the government removed price ceilings on dairy products for children under six from April 2017, according to the MOIT's proposal⁵¹.

After the removal, the MOIT has continued to control the prices, but with new measures in accordance with the general provisions of the Pricing Law and its guiding documents. Under these documents, firms producing and trading dairy products for children under six must follow regulations on price registrations. They can selling prices when the state's policies change, or the input costs fluctuate. In case they raise the selling price by less than 5%, they must send written notices about the new prices to management authorities before making the adjustment. If they raise the price by more than 5%, they have to declare prices as required. In case the authorities do not agree with the new prices, firms will not be able to apply the new prices⁵².

The European Chamber of Commerce in Viet Nam's Nutritional Foods Group (NFG) recommended that the government should refrain from controlling the price and return to market-base pricing as the control is against a free-market economy. "We are concerned that such measures not only impact the business performance of enterprises in the short- to medium-term, but also affect long-term trade and investment prospects in general. The government's interference in the business decisions of enterprises sends a negative signal to investors that Việt Nam's investment climate is not genuinely stable, open or integrated", NFG said.

(Source: "Scrap ceiling price on milk products, says NFG", *VietnamNews.vn*, 03 March 2017)

⁴⁸ 'Bỏ áp trần giá sữa: Khách hàng sẽ hưởng lợi', ['Remove milk's ceiling prices: Customers will benefit'], *Cafef.vn*, 2017

⁴⁹ 'Bỏ áp trần: Cách nào chống loạn giá sữa?', ['Remove milk's ceiling prices: How to prevent prices' fluctuation'], *Vietnamnet.vn*, 2017

⁵⁰ 'Giá sữa sẽ được quản lý thế nào sau khi bỏ trần', ['How to manage milk's prices after removing price ceiling?'], *Dantri.com.vn*, 2017

⁵¹ 'Ceiling formula price for milk removed', *Vietnamnet.vn*, 2017

⁵² 'Sữa không áp giá trần vẫn phải có cơ chế kiểm soát', ['Milk's prices need a control mechanism after removing price ceiling'], *Vietnambiz.vn*, 2017

Price ceilings were meant to promote the consumption of milk and help to stabilize the dairy market. However, these regulations did not make any stakeholder happy: consumers continued to complain about high prices, producers' sale and profit reduced while the poor farmers might have to sell cattle to respond to the crisis⁵³. The European Chamber of Commerce and many dairy producers and suppliers have applauded the removal of the ceiling price policy.

2. Restricts advertising and marketing

In Viet Nam, there are limited regulations of food marketing. Specifically, in the Advertising Law, the advertising conditions for food and drink products only mention “having the food hygiene, safety and quality registration certificate”, and thus do not include any restrictions on the marketing of unhealthy food and drink products. The law does restrict advertisements in newspapers and magazines and restrict the duration and frequency of advertising on audio and visual media, but it does not limit types of food and drink products or services advertised, (with few exceptions including advertising beverage contains 150 alcohol or above, products being breast milk substitutes for children under 24 months old, and dietary supplements for children under 06 months old). In addition there no limitations over food advertising to children or the forms of media and promotional strategies employed (e.g. in school marketing). Just until the end of 2017, the Prime Minister approved a ban on advertising carbonated drinks and other harmful snacks in public schools as an attempt to address child obesity issue in the economy. The advertising control regulations do not also mention on advertising or promotion directly targeting customers (e.g. delivery of free samples, leaflets at customers' home or in public places). The Circular on Advertisements for Foods regulates only five groups of food products (including functional foods, micronutrient-fortified foods, mineral water and bottled water, food additives and processing aids, and food packing materials). Advertisements for these products are required to register with authorities.

The rest of this sub-section will analyze issues relating to advertising restrictions on alcohol beverage and dairy products for children in this economy.

Joris Janssen, marketing director for a beer brand, said that the authorities should consider removing beer from advertising control regulations as it causes no damage and should be encouraged as an alternative drink. Especially, the advertising ban should be lifted in the period from 6 pm to 9 pm because beer advertising provides users with information and helps customers to make their own decisions on the brand they want to buy. Advertising does not raise the consumption of beer, as in economies that restrict advertising the consumption of beer is also not affected in comparison with beer advertisements. "We need to change the habits of consumers, encourage customers to use beer, alcohol safely to prevent the inconvenience of themselves and society. Entrepreneurs and producers should be promoted to take responsible alcohol and beer education", said Janssen.

(Source: “*Cấm quảng cáo rượu bia là không hợp lý*”, [*“Ban on beer advertisement is unreasonable”*], *Dantri.com.vn*, 12 September 2018)

Viet Nam's Advertising Law 2013 bans promotion for alcohol beverages above 15%, which means beer promotions are permitted. However, alcohol producers and importers in Viet Nam still

⁵³ ‘Price Control on Milk Products in Viet Nam’, Nationalinterest.in, 2016

use several other ways to make their products known by the public, especially the young people. For example, they usually send promotional staffs to public places where young people frequent like discotheques, bars and restaurants etc. to introduce their products. They can also distribute some give-away items like paper saucers etc.⁵⁴. In addition, there is widespread advertisement of all alcohol in digital marketing and in below the line activities (point-of-sale, associations with events and product placement) (Castwell et al., 2018). Since May 2018, the Ministry of Health has circulated a draft law which proposed to ban on beer and liquor promotion to customers, (e.g. using beer and liquor as prizes in competitions, advertising beer on social networks and supplying beer and liquor free of charge). The demand for beer and liquor increased quickly in Viet Nam, especially beer. On average, each Vietnamese person consumes 6.6 liters of pure alcohol per year in 2018, which is nearly double of the number of five years ago (3.8 liters). It is forecast that the number will be seven liters per year by 2025 compared to the average number of the world, around 6.1 liters, which has been stable in the past 15 years. Therefore, a management on beer advertisement is required. Viet Nam is seen as an attractive market for beer and liquor firms, only after Mexico. The economy does not have any regulations on beer promotion, thus any adolescent can access to beer advertisement. Many studies of the Ministry of Health showed that a person drinking more than 330ml of beer per day can be committed by seven kinds of cancer such as breast, liver, stomach and large intestine. About 15% of cases in mental hospitals are patients suffering mental diseases because of beer and liquor recently. There has been traffic accidents related to beer and liquor as well⁵⁵.

The advertising controls however receive many objections. Breweries very disagree with the ban on advertising, sponsoring, promotion, and ban on internet sales. According to representatives of beer firms, ban on beer advertising violates the current advertising law. A ban on alcohol advertising is unreasonable as many firms supply modern, healthy beer such as beer without alcohol. Using beer or wine in a modest volume is also good for customers' health. In addition, the draft regulation prohibits outside advertising, sports programs and social networks to strongly influence business and economic development, it will discourage beer firms from sponsoring many cultural, sport, and educational events. It also will discourage beer and alcohol firms to finance political activities and events⁵⁶.

Concerning dairy market, the government's current regulation is to discourage spending on advertising and promotional activities. The tax policy of Viet Nam does not facilitate these investments. Under the Law on Corporate Income Tax, firms can only be deducted tax on advertising expenditures up to ten percent of gross revenue. Beyond this restriction, spending on advertising get directly from profits. The government supposes that milk producers spend too much on advertising, and a tax on advertising spending will reduce the investment, lowering production costs and hence the price of milk to consumers. They estimate a fall of 30% of milk prices thanks to the tax. Dairy firms believe that the main objective is to increase effective tax rates. Others guests that the ten percent cap is a protection measure for domestic firms that have to compete with foreign firms that possess attractive global brands, greater experience in marketing and larger advertising budgets (Pincus, 2010).

⁵⁴ 'Alcoholic drinks in Viet Nam', Factsanddetails.com

⁵⁵ 'Bộ Y tế đề nghị cấm quảng cáo bia', ['The Ministry of Health proposes ban on beer advertising'], Suckhoe.vnexpress.net, 2018

⁵⁶ 'Cấm quảng cáo bia rượu là không hợp lý', ['Ban on beer advertising is unreasonable'], Dantri.com.vn, 2018

Economic experts argue however that this belief has been based on the non-competitive market assumption. The reason is simple, if the market is competitive, then producers cannot simply turn advertising costs to consumers in the form of higher prices. On the other hand, building a firm's brands is the most common form of signaling to customers of high quality of products. Advertising and marketing activities are crucial to the development of the firm's brand. In Viet Nam's dairy markets, advertising and brand development are essential to domestic firms to inform customers that their products quality are as high as well-known and expensive foreign brands as well. Without advertising and promotion that are needed to build the brand, firms cannot enter the dairy product market. In addition, consumers will not be informed about product characteristics and quality, and not trust the goods. Instead of investing in the brand promotion, producers may not reduce prices as high prices may be a signal of product quality. Thus, a lower investment in advertising may lead to fewer products on the market, less competition, and most likely higher prices (Pincus, 2010). In addition, according to a report of McKinsey & Co, advertising helps boost economic growth via encouraging competition, consumption and raising consumers' awareness and understanding. The report estimates that advertising activities have created an average GDP growth rate of 15% in a number of G20 economies in recent years, with the highest possible growth rate of 20%⁵⁷. Experts suggest that the government should remove punitive taxation of advertising and promotion and the cap of 10% of revenue on these investments.

In another aspect, WHO and UNICEF's experts express concern about the marketing and advertising of milk products for infants and young children. They indicates that as many breast-milk substitutes sold in Viet Nam are incorrectly labeled as "complementary food", or as "nutrition products", they are not subject to price control and marketing restrictions imposed by the Advertisement Law and the International Code on Marketing Breast milk Substitutes, causing health risks to Vietnamese children. The formula firms just want to make profits and they need to advertise a lot to sell more products. These firms use misleading claims and promotional messages such as "have a health advantage, improve children's vision, reduce allergies, make children more intelligent, and gain weight" to make a false knowledge of parents on the products. The government cannot address the aggressive marketing tactics unless the products are classified as breast-milk substitutes, and thus are subjects of the advertising law. The experts hope that the government will facilitate the very best infant and young child feeding practices in Viet Nam by actively enforcing the ban on the marketing of breast-milk substitutes for children below 24 months⁵⁸.

3. Sets standards for product quality

Business conditions and licenses cause huge obstacles to Vietnamese firms and create a significantly unfair business environment. A survey by the Viet Nam Chamber of Commerce and Industry (VCCI) in 2017 indicated that businesses operated under the regulation of 7,000 sub-

⁵⁷ 'Competitive Landscape in the Market for Infant Formula Products (0-12 months) in Viet Nam between 2009-2011', CUTS International, 2012

⁵⁸ 'WHO, UNICEF và 'Alive and Thrive' bày tỏ quan ngại về tình hình sức khỏe của trẻ em Việt Nam từ các sản phẩm sữa bột (sữa công thức)', ['WHO, UNICEF and 'Alive and Thrive' expressed concerns about the health of Vietnamese children, who used powdered milk (formula milk)'], Un.org.vn, 2014

licenses or 7,000 business conditions⁵⁹. According to a Central Institute for Economic management's report, firms have to annually spend around VND 14.3 trillion (over USD 641 million) and around 28.6 million workdays to comply with authorities' requirements which are scattered in 414 legal documents, including 30 laws and ordinances, 97 decrees and 284 circulars. The number of goods subject to specialized management is nearly 100,000⁶⁰. Many sub-licenses, another name of business conditions, are complex, overlapping or unreasonable, causing confusions to businesses in compliance. In recent years, Prime Minister had consistently required ministries to quickly abolish unreasonable business conditions which are costing enterprises remarkably and severely hurting the business environment. However, the removal process was relatively slow. Experts from VCCI suggested that in order to effectively reduce the number of business conditions, the management of business conditions should be assigned to the Legal Department. At the moment, because different departments under several ministries have the right to grant business licenses, they have no incentive to reduce the amount of business conditions⁶¹.

This sub-section begins with examples in food and beverage sector. A dairy product for example must obtain food safety certificates from three ministries: Ministry of Health, Ministry of Industry and Trade, and Ministry of Agriculture and Rural Development. To be granted the certifications, the product's samples must be taken an expensive test, which making up around 1% of the total value of the product. But it is just for product with single ingredient. The test will be more complicate for multiple-ingredient product. Another example is production of chocolate cakes using 12 imported materials, which means the manufacturer must obtain 12 import permits with 12 separate dossiers plus a dossier for product quality declaration certification. In other words, a chocolate cake carries on its back 13 permits. The requirements for import permits and product quality certification are overlapping. When manufacturer only alters some minor input materials which does not influence the product quality, it is still required to apply for a new permit. This raises irrational costs and significantly causes a delay of production. Still, firms have to wait for a long time to get a permit. Although the authorities have fixed the responding time for each form of an application, in many cases, some days before the deadline, applicants are requested to modify their dossiers, often not only once but many times. And this time limit will be re-counted from the beginning for each modification⁶².

Recently, the Tien Giang Enterprises' Association complained to the Prime Minister on a rice business condition, which unreasonably forces every rice export company to export more than 10,000 tons of rice every year. The Decree 109/2010/NĐ-CP also requires rice export firms must have certain material growing areas and the areas must increase year after year.
(Source: "Businesses get lost in forest of sub-licenses", Vietnamnet.vn, 16 May 2016)

Similar to firms in food and beverage businesses, Transport firms face major difficulties including training to change FC-type driving license, weight of vehicle tonnage, location of road toll stations regulation, business conditions and granting of transport business license, and fund of road maintenance.

⁵⁹ 'Cơ thể doanh nghiệp chỉ 40kg, gánh trên lưng 3 - 4 tạ với 7000 giấy phép con thì sống sao nổi', ['A business weighted only 40kg carries on its back 3 - 4 quintals of 7000 licenses, how can it lives'], Cafef.vn, 2016

⁶⁰ 'PM urges removal of business barriers', Vietnamlawmagazine.vn, 2016

⁶¹ 'Can thiệp kinh doanh bằng giấy phép con, chúng ta sẽ đuổi doanh nghiệp ra khỏi Việt Nam', ['Interfering with the business' work by the license, we will expel the business out of Viet Nam'], Baohaiquan.vn, 2018

⁶² 'PM urges removal of business barriers', Vietnamlawmagazine.vn, 2016

For example, since July 2010 trailer drivers have required to have FC-type driving license while training courses for this type of license have been not available in many regions, so that a large number of drivers could not get a FC license by deadline causing stagnation of transport activities. Another example, Circular No. 90/2004/TT-BTC on “introduction of collection, payment, management and usage of road tolls” required the minimum distance between two toll stations being at least 70 kilometers. However, Circular No. 106/2009/TT-BTC allow 545 Construction Joint Stock Company to collect tolls at the two stations of Hoa Phuoc and southern Hai Van tunnel with the toll level which is double the starting level and the distance between the two stations is only about 30 kilometers. Obviously, there is a conflict between the two circulations. The latter raised cost for transport firms which have been translated into higher cost to customers⁶³. Another typical story is the requirement of badge for vehicles even in case they do not run for commercial purpose. In order to be granted a badge, a firm must have a transport license, which will not be issued to a firm with foreign capital accounting for more than 51%. Consequently, many firms with significant foreign investment cannot comply with this regulation⁶⁴. A Center Institute of Economic Management’s economist expresses a disappointment on the Decree 86, which requires that transport firms in central provinces and cities must have at least 20 vehicles, and this number for firms in other provinces must be 10 vehicles. He argues that, in passenger transport, only three requirements are needed: safe vehicles, good roads, qualified drivers.

4. Raises the costs of some suppliers relative to others

Since 2014, Viet Nam market has witnessed a tension race of two popular ride-hailing service brands Grab and Uber. Thanks to the advance of smart-phone technology that has enabled customers to hail these firms’ taxi via their smart-phones instead of going out and hailing on street. The ride-hailing taxi service offers facilities such as reducing searching and meeting time, transparent price, and flexible paying methods. It could be seen that the ride hailing service platform leads to significant impacts on the riding service system. The taxi market has been extremely competitive since Grab and Uber operate in Viet Nam, which forced the traditional taxi firms to struggle to survive in the market (Nguyen and Tran, 2018).

Although many traditional taxi firms have invested in conducting their own ride-hailing service mobile applications such as Mai Linh, Vinasun, and Thanh Cong, they cannot compete with Uber and Grab, which have strong financial potential and advanced technologies. Licensed traditional taxis with less than nine seats in HCM City have fallen from 20,000 in 2010 to 11,000 in 2017⁶⁵. The conventional taxi firms have seen its market share gradually sized by ride-hailing taxi firms. Vinasun, once the biggest traditional business, announce that its revenue reduced in 2016-2017 period around VND 40 billion⁶⁶. Its nine-month revenue only reached 58 percent of the company's

⁶³ ‘Tổng hợp thông tin báo chí về Ngành GTVT ngày 17/11/2009’, [‘Press information summary on transportation industry on 17 November 2009’], Mt.gov.vn, 2009

⁶⁴ ‘PM urges removal of business barriers’, Vietnamlawmagazine.vn, 2016

⁶⁵ ‘Taxis claim unfair competition’, Vietnamnews.vn, 2017

⁶⁶ ‘Grab đề nghị tòa hủy vụ kiện đòi đền bù 40 tỷ của Vinasun’, [‘Grab asked the court to cancel Vinasun's claim for compensation of 40 billion’], News.zing.vn, 2018

annual target, Vinasun has lost 10,000 employees so far in 2017⁶⁷. Rival traditional firm Mai Linh also has lost 6,000 employees this year, 20 percent of its total drivers⁶⁸.

Representatives from taxi associations and normal taxi firms complain that the government has showed favoritism toward ride-hailing firms. These firms behave and charge like traditional counterparts while enjoying growth unrestricted and unregulated by authorities, distorting competition and resulting in discrimination. Business conditions for traditional firms are strict in terms of parking areas, registration licenses, logos, price lists, uniform and price registration, while Grab and Uber are not subject to any conditions. In addition the normal firms should comply with 13 regulations while the technology-based firms just have to follow 3⁶⁹.

Tax policies are also causing concern for conventional taxi firms as they have to pay 10% value added tax and 20% corporate income tax while those numbers for ride-hailing taxi firms are just 3% and 2%. The low tax rates imposing on technology-based taxi firms are not only unfair to traditional firms but also hurt the state budget. The traditional taxi firms insist that a common tax policy should be imposed for both types of taxis of 5%. General Taxation Department's data indicates that the total tax collection from 15,000 Uber and Grab taxis in 2014-15 was VND19 billion (US\$832,000), while Vinasun, one of the biggest traditional firms, contributed VND 692 billion from its 6,000 taxis⁷⁰.

Trade promotion is another issue. According to the Trade Law and the government's Decree 37 issued in 2006, the duration of total promotion deals should not exceed 90 days and the maximum length for a promotion program is 40 days. In addition, firms seeking to conduct promotion events must register with regional commercial department. Meanwhile recently, Grab has conducted aggressive promotion deals and discounts. Those practices should be considered as a dumping in transport services sector⁷¹. Furthermore, Grab raised its fee of 25-28% from the taxi drivers' earnings as commissions. More questionably, Grab's charter capital was VND 40 billion while it reported a loss of VND 938 billion, which leads to a special supervision by the Ministry of Finance⁷². The firm is also accused of causing problems to state management activities in tax collection and ensuring social security for Grab's employees⁷³.

Grabs' lawyers, on the other hand, see the accusations are baseless and that the firm's technology use creates a fair competition between traditional taxis firms indeed. They also suppose that evidences and methods of loss calculations are questionable and the court should suspend the

⁶⁷ '10.000 nhân viên Vinasun nghỉ việc trong 9 tháng', ['10,000 Vinasun employees left for 9 months'], Nguoiduatin.vn, 2017

⁶⁸ "'Sốc" 6.000 nhân viên nghỉ việc, Chủ tịch Mai Linh vẫn nói... "cứng"', ["Being shocked" because 6,000 employees left, Mai Linh's chairman still stubbornly said ... '], Nhadautu.vn, 2017

⁶⁹ 'Vietnamese taxi company sues Grab for unfair business practices', Sggpnews.org.vn, 2018

⁷⁰ 'Taxis claim unfair competition', Vietnamnews.vn, 2017

⁷¹ 'Vụ Vinasun kiện Grab đưa ra xét xử ngày 6/2', ['the case of Vinasun suing Grab will be brought to trial on February 6'], News.zing.vn, 2018

⁷² 'Xử vụ kiện Vinasun đòi Grab Taxi bồi thường hơn 41 tỷ đồng', ['Vinasun's lawsuit demanding Grab Taxi to pay more than VND41 billion now in court'], Vietnamplus.vn, 2018

⁷³ 'Vietnamese taxi company sues Grab for unfair business practices', Sggpnews.org.vn, 2018

lawsuit or reject the case entirely⁷⁴. The firm consistently considers itself software and technology providers, and for a long time Grab declared its revenue was from "connection software fees"⁷⁵.

Some economic and policy experts have taken the side of the technology based firms, asking the government for a special treatment of ride-hailing cars as a way to facilitate new technologies and business model instead of deeply intervene in their business. They insist that forcing ride-hailing taxis to operate like traditional ones reveals a non-innovative mindset while referring to the latest draft decree on transport management, which requires technology-based firms to comply with the same conditions as normal taxis. Firms that mainly used software cannot be considered a transportation business and the draft regulation is not suitable to the government's aim of removing at least half of current business conditions. Although the latest draft does not impose many conditions such as logos, paint colors, board signs, an operating center, communication equipment and uniforms for drivers on the ride-hailing taxis as normal taxis, it requires the technology-based firms to send their transport contract information to the local Transport Department before serving their clients and requires that the firms have a management team to ensure traffic safety. However, these requirements are criticized to create more room for the authorities' intervention into the technology-based firms' operation and the government should disapprove the draft⁷⁶. A representative of the Minister of Transport even argues that without ride-hailing taxis, traditional taxi firms would never change improve their services quality, and that the ministry would only be responsible for orientation and policy guidance, not for maintaining a free and competitive market⁷⁷.

Nguyen Dinh Cung, director of the Central Institute for Economic Management, argues that the application of information technology in the transport business by Uber and Grab is indeed a sign of progress in Viet Nam. "I would say that taxi companies have the right to protest, which is normal. But I believe the authorities should not forbid [Uber and Grab] from doing business as usual. Their growth is as unstoppable as it is fair. While the two companies indeed disadvantage traditional taxi companies, the latter need to adapt instead of demanding their competitors' demise", said Cung.

(Source: "Hailstorm ahead for ride-hailing services in Viet Nam", *Vietnamnews.vn*, 16 February 2018)

III. REDUCTIONS IN THE INCENTIVES FOR SUPPLIERS TO COMPETE VIGOROUSLY

1. Self-regulation and co-regulation

Trade associations in Viet Nam are voluntary organizations but their establishment should be permitted by the government. Vietnamese trade associations involving in key industries such as seafood, coffee, and tea are often dominated by state own enterprises (SOEs) and enjoy close political links with the managing ministries. In reality, trade associations often play a crucial role

⁷⁴ 'Xử vụ kiện Vinasun đòi Grab Taxi bồi thường hơn 41 tỷ đồng', ['Vinasun's lawsuit demanding Grab Taxi to pay more than VND41 billion now in court'], *Vietnamplus.vn*, 2018

⁷⁵ 'Cuộc đấu Vinasun-Grab từ thị trường đến pháp đình', ['Vinasun-Grab battle from the market to legal court'], *Vnreview.vn*, 2018

⁷⁶ 'Don't treat ride-hailing firms as taxis, Viet Nam government advised', *Vnexpress.net*, 2018

⁷⁷ 'Hailstorm ahead for ride-hailing services in Viet Nam', *Vietnamnews.vn*, 2018

in assisting their members to deal with anticompetitive agreements. But sometime trade associations' self-regulation or co-regulation causes restriction of competition (Luu, 2015).

This sub-section analyses the case of Viet Nam Food Association (VFA). Established in 1989, VFA is a social organization of firms operating in the fields of food producing, processing and trading, being established under a charter ratified by the Ministry of Home Affairs and managed by Ministry of Agriculture and Rural Development (MARD)⁷⁸. It was assigned by the government to control over the rice sector. Concretely, it is responsible to set floor prices for farmers and firms, to support producers selling rice at times of surplus, and to allocate export quotas among nearly 100 large traders, of them many are SOEs. VFA also controls rice export contracts and the number of companies that qualify for export (World Bank, 2018).

Since the promulgation of the Decree, some firms had shown doubtfully about the decision-making role given to VFA. They argued that the Ministry of Industry and Trade should play that role as it is difficult to ensure that the association will treat non-members and members alike⁷⁹.

Recently, VFA has been complained about its favoritism toward SOEs, lax business practices and overall incompetency in the rice sector⁸⁰. A lack of representative for farmers in the association and the resistance by SOEs, which have close connections with VFA, to any reform that would hurt their profits were also among the weaknesses of the association⁸¹.

Viet Nam Institute of Economic Policy Research (VEPR) argued that VFA has preferentially treated SOEs as evidenced by the promotion of many government-to-government contracts and does not support farmers and private firms in agricultural field. The association is simply a state management body and an extended governing arm to allocate rice export quotas instead of protecting the interests of all of its members. In addition, the association uses a top-down and involuntary approach to make allocation decisions without consulting with its member firms. Its requirement of certificate of rice trading eligibility is one of the biggest obstacles for small-scale firms to join the association. Even in case a firm produces high added-value food products, it is usually not eligible to become a VFA's member due to this requirement⁸².

⁷⁸ Website of the Viet Nam Food Association-Organization-Activities section: <https://www.vietfood.org.vn/>

⁷⁹ 'New decree to disqualify many rice exporters next year', qdnd.vn, 2009

⁸⁰ 'Sớm cải tổ Hiệp hội Lương thực Việt Nam', ['Viet Nam Food Association will be soon reformed'], kinhdothi.vn, 2018

⁸¹ 'Against the grain', Economist.com, 2014

⁸² 'Sớm cải tổ Hiệp hội Lương thực Việt Nam', ['Viet Nam Food Association will be soon reformed'], kinhdothi.vn, 2018

Nguyen Duc Thanh, director of VEPR said that the association's trade promotion activities have been ineffective. Not only did the VFA have no specific research and investment proposals for food production, processing and trade, it also failed to create opportunities for its members to receive any domestic and foreign investment capital. This inefficiency is due to the VFA's empowerment by the government, especially when surplus domestic rice output increases and rice exportation plays a more important role. Consequence of the empowerment is that private firms and local authorities have very few opportunities to take initiatives in managing rice purchasing prices, temporary storage and social responsibility for farmers' livelihoods.

(Source: "Food association unfit to lead rice sector: experts", VietnamNews.vn, 31 March 2018)

Other experts complain that VFA does not have a clear market development strategy and resources to support the private sector. It also fails to reduce the inequality in development opportunities between SOEs and private firms. VFA has faced repeated criticism from firms and experts for its allocation of shipment quotas in each locality. Many traders said they have been allowed to export smaller volumes than their capacities while the economy's two largest food SOEs, Vinafood 1 and Vinafood2, enjoyed surprisingly bigger quotas⁸³. VFA's price floor policy has proved a failure and should be modified as soon as possible⁸⁴. As an example, when these SOEs signed a few contracts with very low prices, which lead to the market exit of smaller players, the association got fierce criticisms due to its responsibility in price control and its close

connection with these SOEs⁸⁵. The association is recommended to be reformed in order to regain its competency to control the economy's rice market. Furthermore, VFA's membership eligibility standards should be modified to benefit private firms and farmers and to maximize market potential for domestic sector⁸⁶.

As a response to the criticisms, in April 2018, MARD has deprived the association's rights to allocate rice quotas among domestic firms. The VFA can only allocate rice export quotas. But since 2017, the association has planned to concentrate on auctioning of these quotas as an independent profit seeking firm instead of as a representative of rice producers. In facts, only one enterprise is allowed to undertake these quotas and thus the VFA has no right to allocation quotas at the moment⁸⁷. However, MARD refused to completely diminish the role of the VFA in keeping rice production stable despite some inadequacies as the association has done a good job of regulating foodstuffs trading recently. MARD suggests VFA to focus on production and cooperative development, particularly in specialized rice cultivation, and initiatives for specific export markets, while ensuring products quality and food safety⁸⁸.

2. Requirements to publish information on supplier prices, outputs or sales

In both the Ordinance on Price and the Law on Price issued in 2002 and 2012 respectively, the National Assembly required to publish information on supplier prices for most goods and services

⁸³ 'New decree to disqualify many rice exporters next year', qdnd.vn, 2009

⁸⁴ 'Hiệp hội Lương thực Việt Nam: Kém hiệu quả, kém minh bạch, chỉ là sân riêng của DNNN', ['Viet Nam Food Association: Poor efficiency, less transparency, just a playground of SOEs'], Vietnamfinance.vn, 2018

⁸⁵ 'Trương lai của ngành lúa gạo: Vì sao VFA bị yêu cầu phải cải tổ?', ['The future of the rice sector: Why VFA was asked to reform'], Baomoi.com, 2018

⁸⁶ 'Sớm cải tổ Hiệp hội Lương thực Việt Nam', ['Viet Nam Food Association will be soon reformed'], Kinhhtedothi.vn, 2018

⁸⁷ 'VFA đã không còn cơ hội độc quyền phân quota xuất khẩu gạo', ['VFA has no more chance to exclusively distribute rice export quota'], Bizlive.bn, 2018

⁸⁸ 'VN Food Association risks losing rice monopoly', Vietnamnet.vn, 2018

including those relating to food, beverage, transportation, and real estate sectors. For example the Article 29, Ordinance on Price stipulates: “Production and/or business organizations and individuals must post up prices of goods and/or services at their stores and/or places of goods trading or service provision transaction; the price post-up must be clear, not causing confusion to consumers”. For goods and services with prices set by the government, the prices published are decided by competent state bodies while for goods and services not on the list of those with prices set by the government, the prices are decided by production or business organizations and individuals.

The requirement of publishing of price information may help to improve consumer information and the efficiency of markets. However, it may also significantly assist in the formation of cartels or the collusion of prices, as a key requirement for cartel or collusion operation is that participants in the cartel or collusion can effectively monitor their competitors’ (or co-conspirators’) market behavior. The following is the famous example in the automobile insurance field.

In September 2008, 19 insurance firms signed an agreement of fixing the rate of motor vehicle insurance and premium rate for automobile physical damage at the annual meeting of Viet Nam Insurance Association (VIA). The price cartel of the firms accounted for nearly 98% market share of insurance against automobile physical damages in the economy. After the meeting, the cartel’s firms even sent a letter inviting other member of the association to join the agreement and publicly announced about the agreement’s content. They were not aware of the price fixing prohibition under the Viet Nam Law of Competition (Tran and Nguyen, 2011).

The Viet Nam Competition Authority (VCA) started its investigation into price fixing practices in the insurance sector in November of the same year, following information of collusion provided by customers and other insurance firms. At that time, the investigation was considered at a crucial step in the application of the Law of Competition, as enforcement attempts had formerly been extremely low. According VCA’s reports, some of the cartel’s firms cited a perceived need to respond to fierce price competition in their sector as a main reason for their collusion. In accordance with the standard enforcement process of the economy, VCA then informed its results to Viet Nam’s Competition Council, an organization possessing adjudicative powers relating to relevant cases. The Council conducted an investigation by itself and confirmed the violation of the competition law, driving to imposing the penalties⁸⁹.

Under the Competition Law, firms engaging in unlawful cartel activities can be fined up to 10% of their annual turnover of the preceding year. Nevertheless, in this case the Competition Council argued that the fine amount applied to each cartel’s participant would be calculated as 0.025% of their annual turnover in 2007. Moreover, they have to pay administrative fees of VND 100 million. At such, 19 insurance firms had to pay a total of VND 1.7 billion (around USD 89,000) for their collusion practices. The firms that have been punished include the economy biggest insurers Bao Viet, Petro Viet Nam Insurance, Bao Minh and the Agriculture Bank Insurance.

The price-fixing decision was announced in July 2010. In a press release announcing the decision, the VCA stated that the fine was of a “warning nature”, and the Council has considered the “low awareness” of the Competition Law. It is most significant anti-competition enforcement efforts

⁸⁹ ‘Viet Nam Price-fixing Decision Includes a Warning for All Businesses in the Country’, Mayerbrown.com, 2010

yet by the Vietnamese authorities under a cross-sector competition regime that became operational in 2005. VCA also stated that penalties of a “warning nature” should not be expected in the future and “from now on, all and any practices in restraint of competition shall be strictly dealt with in accordance with the laws of Viet Nam”. As such, the decision should be treated as a signal to the business community in Viet Nam about the incidence for more robust enforcement of the Competition Law and more severe penalties for its identified violations going forward. All firms with operations in the economy should understand and comply with the law.

The second example in this sub-section is about dairy products. While the Competition Law prohibits price collusion, at least five dominant dairy firms have increased retail prices during the first two months of 2014. The repeated milk hikes over the past years made consumers worry but they have been more concerned with a simultaneous price rise by several dominant firms⁹⁰. In March 2014, the Ministry of Finance investigated five dairy firms, including Mead Johnson, Nestlé, Friesland Campina, Vinamilk, and 3A Nutrition, and measured their constant price hikes. The ministry then decided to set a price cap on products for children below six years old as a measure to stabilize prices after the investigation⁹¹.

The five companies, which have got attentions from the public, all rejected allegations about price fixing agreements and indicated high input costs for the recent hikes. Since late 2013, major dairy firms have sent requests to the Ministry of Finance to raise their retail prices by 3-8% to catch up with rising costs. While 70% of milk production depends on imported raw materials, the global prices of ingredients such as milk powder and butter have risen by 30-57% compared to a year ago. Vinamilk revealed it has had to pay dairy farmers 22% more for fresh milk⁹².

There was no consensus among experts. Some argued that there must have been a price collusion which violates the Competition Law as in a market with five major competitors the risks of price agreements causing damages to consumers were high. However, some other, especially those come from management ministries seemed not believe in this possibility by indicating that the agency has monitored milk prices over the past two years and there has been no sign of breaking of the competition law.

⁹⁰ ‘Giá sữa tăng thách thức người tiêu dùng’, [‘Increased milk prices challenge consumers’], Baomoi.com, 2014

⁹¹ ‘Bộ trưởng Đinh Tiến Dũng: Áp giá trần sữa không vi phạm cam kết quốc tế’, [‘Minister Dinh Tien Dung: Milk price ceiling does not violate international commitments’], Baotintuc.vn, 2014

⁹² ‘Dairy firms accused of price fixing in Viet Nam’, Thanhniennews.com, 2014

On the other hand, Youth Review revealed one year before that infant formulas were sold at 3 - 4 times their import prices as doctors and nurses got commission fees from companies to recommend their products to pregnant women and new mothers at medical conferences. Insiders indicate the gap between import and retail prices are larger for brands like Abbott and Mead Johnson⁹³. Dairy costs have been a burden for middle-income families with children, as their parents said formula for their children costs half of their salaries⁹⁴. The burden officially became national when the government informed last year that a USD10 billion program aiming at increasing the population's average height by providing free milk at nurseries and primary schools in the economy's 62 poorest districts would be delayed⁹⁵.

Vu Vinh Phu, former deputy director of the Ha Noi Trade Department, was not optimistic about dairy firm probes given the recent dubious hike in 3G tariffs by local telecommunication firms which inspectors concluded was not price fixing. "High milk prices have been complained about for the past ten years without any solution. Vinamilk recently increased prices by five percent... Is it reasonable? Who is in charge of proving it? There is no transparency in the milk trade. Both the information and coordination [between involved agencies] are not transparent." He said. An anonymous expert also suggested that the Competition Management Department should conduct an independent inspection additionally to the Ministry of Finance's inspectors. (Source: "Dairy firms accused of price fixing in Viet Nam", *ThanhNienNews.com*, 07 March 2014)

3. Exemptions from general competition laws

The Competition Law 2004 gives firms a chance to be exempted from some form of cartel-style practices. For example, the rice price in the market is unstable and competitive and Vietnamese firms have to compete with those of domestic and international firms. However, rice firms need to follow the floor price set by the Viet Nam Food Association. Setting a floor price of rice is a kind of price fixing, indeed (Phan, 2015).

In theory, this pricing policy serves to protect the farmers and agriculture-related industries. Rice farming employs a large number of farmers who, compared with rice-trading companies, are vulnerable since they are unable to forecast the demand of the rice market and have to bear all the risks before harvest. Without a floor price, rice-trading companies would engage in fierce competition to win trade contracts. Consequently, such competition reduces the buying price for rice harvest and harms the farmers.

Due to this policy, trading firms that need to recoup expenses follow the floor price of exported rice. The floor price is not meant to exploit consumers but to ensure that trading firms can make profit after following government policies. Without a floor price, stiff competition would force trading firms to refuse to comply with the society-oriented policies or to withdraw from the rice market.

⁹³ 'Sữa ngoại giá cao do chi đậm vào hoa hồng, quảng cáo', ['Prices of imported milks are high due to high rates of commission and advertising'], *Tuoitre.vn*, 2018

⁹⁴ 'Dairy firms accused of price fixing in Viet Nam', *ThanhNiennews.com*, 2014

⁹⁵ 'Thêm 210.000 tỷ đồng cho kỳ vọng nâng cao thể trạng người Việt', ['An added 210,000 billion for hope of improving Vietnamese people's status'], *Dairyvietnam.com*, 2012

Although setting a floor price for rice is a form of cartel activity, it can enhance competition. For the national market, the floor price eliminates competition between firms and consumers are thus unable to select the most efficient seller whose quality of rice is high and price is low. Internationally, however, sellers are unable to control the market price because of competition from other economies. For trading firms, the floor price should be high enough for them to recover the costs of complying with the policies, but also low enough for them to compete with firms from other economies. Therefore, international competition makes trading firms unable to exploit consumers.

Nguyen Phuong Nam, deputy head of the Viet Nam Competition Authority, has described imposing floor export prices on rice and other items as anti-competitive. Meanwhile, Truong Dinh Hoe from VASEP argued: “Industry associations cannot determine floor prices and force enterprises to comply. Only the Government has authority to set floor prices and ensure their enforcement. However, this is an administrative order, which is no longer appropriate and goes against market rules. It is easily described as a government intervention in export,”
(Source: “VFA defends floor price for export rice”, *The SaigonTimes.vn*, 01 July 2013)

In practice, however, setting a floor price does not work as it should. Because the floor price set by the Viet Nam Food Association does not come with sanctions against cheaters, some trading companies do not comply and instead bid to export rice. Due to the low export price, such exporting companies abuse their purchasing power in domestic market to decrease their

buying price from the farmers. The policy of setting a floor price for rice should, therefore, be reviewed. Rather than allowing a price-fixing agreement, the government should introduce an alternative measure to protect farmers and the farming industry and enhance the capacity of trading firms (Phan, 2015).

IV. LIMITS THE CHOICES AND INFORMATION AVAILABLE TO CONSUMERS

1. Limits the ability of consumers to decide from whom they purchase

This sub-section shows how the authorities restrict consumers from choosing low-price and convenient services of ride-hailing taxi firms such as Grab and Uber as well as reduce market competition.

In order to compete with ride-hailing taxi firms, traditional service providers have to improve the service quality and invest in technology to form a competitive advantage in the market, and to survive in the market. Many traditional taxi firms have launched their own ride-hailing service mobile applications such as Mai Linh, Vinasun, Thanh Cong, Taxi Group⁹⁶.

However in Jun 2017, the Ministry of Transport required local authorities to review the number of participating taxis in Uber and Grab’s 9-month pilot projects in Ha Noi, Ho Chi Minh City and Khanh Hoa province, and stopped allowing new cars from joining these projects. The ministry wanted to avoid an outbreak of ride-hailing taxis, which could cause a pressure on the

⁹⁶ ‘Viettel, VNG, Mai Linh, Vinasun... đầu tư ứng dụng gọi xe cạnh tranh với Uber, Grab’, [‘Viettel, VNG, Mai Linh, Vinasun etc. invest in ride-hailing technology to compete with Uber, Grab’], *Baodautu.vn*, 2017

transportation infrastructure and would lead to an unfair competition to traditional taxi firms. Meanwhile, it is difficult for related authorities to manage and punish these new kinds of taxis in case of violations⁹⁷.

In addition, although being chosen by the Ministry of Transport besides these cities and province, the Da Nang Department of Transport refused to deploy the pilot project to apply technology in contracted passenger transport businesses like Grab and Uber. The department argued that Da Nang is very supportive of business activities and wants to create a friendly environment to business community. However, considering the results of the 9-month pilot projects in Ha Noi and Ho Chi Minh City, the department saw these kinds of services unsuitable. Da Nang is a small city and current forms of transportation can already meet the people's needs. The regulations for these services are of the department's concerns. For example, taxing policy for ride-hailing taxi services is still unclear and cannot ensure fairness with other forms of transportation businesses⁹⁸. Grab was also required by the Ministry of Transport to stop implementing its ride-hailing services at the three provinces of Thua Thien-Hue, Ba Ria-Vung Tau, and Lam Dong. The firm will only be permitted to supply this service after receiving the approval of the transport business firms and of the departments of transport at the cities and provinces⁹⁹.

Still, the ride-sharing services of Grab and Uber that allow people to share rides and split the fare have been banned in Ha Noi since July 2017. The service allows drivers to add additional passengers to the journey of the person who made the original booking. The share feature is embraced by passengers and experts as a way of addressing traffic congestion, allowing up to three people traveling in the same direction to share one car rather than hailing three separate cars. However, the fare-splitting option is considered as a violation of current laws, according to the Ministry of Transport. Under law, ride-hailing cars are permitted to sign only one contract per trip. The sharing services allow drivers to conduct more than one contract and therefore are illegal¹⁰⁰. It should be noted that however sharing rides in traditional taxis are quite common at airports, for example

According to the ministry's statistics, as of April 2017, the number of contracted passenger automobiles, less than nine seats, to join these projects was 13,500, belonging to 235 firms in the three city and province. Concerning traditional taxis, there were 19,200 taxis of 77 firms in Ha Noi. Ha Noi plans to keep the current master plan for taxis and does not allow any firms to increase its fleet. According to the preliminary statistics, the number of ride-hailing taxis in Ha Noi has increased to 7,000. In Ho Chi Minh City, there were about 11,000 traditional taxis for many years now. However, the number of ride-hailing taxis, despite only appearing recently, was twice as many. In particular, at the end of April, there were 22,000 taxis of this kind, "far beyond the imagination" of the city's authorities¹⁰¹.

⁹⁷ 'Bộ Giao thông Vận tải: Dừng cấp phép thí điểm mới với loại hình taxi công nghệ như Uber, Grab', ['Ministry of Transport: Stop the new pilot licensing with technology taxis like Uber, Grab'], Baodautu.vn, 2018

⁹⁸ 'Danang continues to ban Grab and Uber', Vietnamnet.vn, 2017

⁹⁹ 'Bộ GTVT yêu cầu dừng hoạt động tại 3 tỉnh, Grab nói dư luận hiểu nhầm', ['Being asked to stop operating in three provinces by the Ministry of Transport, Grab said the public misunderstandings'], News.zing.vn, 2018

¹⁰⁰ 'Vì sao lại cấm dịch vụ đi chung xe của Grab, Uber tại Hà Nội?', ['Why the authority banned the car sharing-service of Grab, Uber in Ha Noi?'], Doisongphapluat.com, 2017

¹⁰¹ 'Bộ Giao thông Vận tải: Dừng cấp phép thí điểm mới với loại hình taxi công nghệ như Uber, Grab', ['Ministry of Transport: Stop the new pilot licensing with technology taxis like Uber, Grab'], Baodautu.vn, 2018

The decision to stop the taxis services using technology were supported by the departments of Transportation in Ha Noi, Da Nang, and Ho Chi Minh City. Traditional taxis firms zealously put pressure on the Ministry of Transport to ban ride-hailing taxi services as well. A representative of the Ha Noi Transport Association said the new competitors caused many challenges for traditional taxi companies, who are on the edge of bankruptcy. Taxi operations that use Grab and Uber applications have not created new markets but are seizing the existing market share of traditional taxis. These firms usually offer low fees that do not cover their costs in addition to offering promotions, making difficult for traditional taxi operators to compete¹⁰².

On the other hand, many experts showed oppositions to these bans. They argued that the ride-hailing services reflect just one aspect of a much broader movement towards new technologies that are changing the economy situation. For instance, they have disrupted traditional taxi drivers' employment. The rise of Uber and Grab can be a necessary test for how the government reacts to the increasing role of science and technology in the economy's daily lives. The government's restriction of ride-hailing services would be stifling innovation and competition. The new model of taxi services are bringing convenience to consumers and reducing costs for society, users and businesses. Instead of banning ride-hailing companies the government should encourage them¹⁰³. The experts also indicated that the fight between the traditional taxi and Uber and Grab has occurred due to the tight and strict policies for traditional taxi. As there are 13 business conditions for normal taxi business compared to zero for ride-hailing taxi business, it is very difficult and costly for the normal business to compete with the new ones¹⁰⁴. In addition, banning a new enterprise from entering the market is a sign of business protectionism. Closing the doors in front of the new technology using firms is a step backward. Refusing a new model, a new chance at cheaper transportation, has a negative impact on cities' life quality¹⁰⁵.

President Lu Bang of Da Nang Consumer Protection Portal stated that banning GrabTaxi's activities is inappropriate. "In our developing community, people will benefit from several forms of transportation businesses. Banning and limiting these forms can cause difficulties and violate people's rights,"... "The people have the right to choose cheaper, safer, and better serviced vehicles", the said Bang. The president added that Da Nang should develop suitable policies to help these enterprises to compete healthily. The authorities' jobs are to prevent enterprises from tax evasion and illegal activities, not to ban them. (Source: "Khó hiểu Đà Nẵng 'ngăn sông cấm chợ' GrabTaxi", ['Difficult to understand as Da Nang applied 'prevents the river, bans the market' policy to GrabTaxi'], Vietnambiz.vn, 07 March 2017)

The disagreement was also raised from ride-hailing services firms, consumer protection associations and lawyers. Grab's CEO argued: "Traffic problems must be solved by planning, not by banning vehicles. Furthermore, Grab provides services that help share cars, which would lead

¹⁰² 'Taxis take on new competition', Vir.com.vn, 2015

¹⁰³ 'TS. Nguyễn Đức Thành: 'Uber, Grab không phải là loại hình taxi', ['Dr. Nguyen Duc Thanh: 'Uber, Grab are not taxi firms'], Vietnambiz.vn, 2017

¹⁰⁴ 'Uber, Grab không thể 'quản không được thì cấm', ['Cannot apply the policy 'if cannot manage it then ban it' to Uber, Grab'], Nhadautu.vn, 2017

¹⁰⁵ 'Khó hiểu Đà Nẵng 'ngăn sông cấm chợ' GrabTaxi', ['Difficult to understand as Da Nang applied 'prevents the river, bans the market' policy to GrabTaxi'], Vietnambiz.vn, 2017

to less traffic. This model has succeeded in many economies, like Singapore and the United States, among others”¹⁰⁶.

2. Reduces the mobility of customers by increasing the costs of changing suppliers

Regulations may make consumers uncomfortable to switch suppliers by raising switching costs. In this sub-section, we will analyze of changing services of car parking fees and toll fees collection. In both cases, customers, i.e. drivers, can choose other parking place or highway in to avoid a cost rose. However, the changes of services suppliers are unavoidable if we consider other car park/road has its own service supplier.

Currently, Ha Noi has around 1,100 parking lots, 200 of which are on roads and have employees to watch vehicles and collect fees¹⁰⁷. Car parking in Ha Noi suffers from significant confusion at present, causing difficulties for traffic management. Car drivers often struggle to find suitable parking spaces, and have to pay high fees¹⁰⁸.

In March 2017, Ha Noi approved a pilot project that uses software and automation technology to manage public parking zones on two streets in Hoan Kiem District. The project, developed and implemented by the Ha Noi Car Park Exploitation Company, is expected to improve the efficiency of state management over parking areas and benefit local residents. The project involves in the digital mapping of car parking areas, the use of management software, and the installation of cameras to record vehicle registration plates in parking zones¹⁰⁹. Two month latter a smart parking service that helps drivers to find parking spots and pay parking fares using their smart-phones was implemented. All information involving in car parks will be available online, and car drivers will be able to find and book parking spaces in advance on devices such as smart-phones and tablets¹¹⁰.

The technology behind the system allows vehicle drivers to park their cars without help from parking staff. The project is part of the ongoing efforts to improve urban traffic management by monitoring the number of vehicles using parking lots and ensuring transparency in collecting parking fees. Under the project, surveillance cameras are installed at parking lots, recording the number of vehicles, their parking duration and the number of parking slots available. The information will be relayed to a data processing centre. A sensor device is attached to camera poles to read electronic parking cards and record vehicles’ information, such as license number, vehicle type, time-in and time-out. Parking fees are computed based on parking duration, which

¹⁰⁶ ‘Danang continues to ban Grab and Uber’, Vietnamnet.vn, 2017

¹⁰⁷ ‘Công nghệ giám sát xóa loạn giá trông xe’, [‘Monitoring technology eliminates chaos of car parking prices’], Tienphong.vn, 2017

¹⁰⁸ ‘iParking - lời giải cho bài toán quản lý điểm đỗ xe’, [‘iParking - the solution to the problem of car parking management’], Baomoi.com, 2017

¹⁰⁹ ‘Hà Nội sẽ có bãi đỗ xe thông minh nhờ ứng dụng công nghệ’, [‘Ha Noi will have smart parking places thanks to the application of technology’], Baomoi.com, 2017

¹¹⁰ ‘Ha Noi squeezes in smart car-parking app’, Vnexpress.net, 2017

vehicle owners can pay in cash or via bank transfer. Fees are computed automatically to prevent operators from overcharging drivers¹¹¹.

The project's scope includes 17 parking lots with a capacity of 248 cars along Tran Hung Dao and Ly Thuong Kiet streets. 16 lots will be open seven days a week, from 6 a.m. to 10 p.m., and one available 24 hours a day. The hourly rate is VND15,000 (\$0.66) and can be paid via the iParking app with a credit card or by SMS. The smart-phone automatically alerts drivers 15 minutes before their parking times expire, and also allows drivers to extend their parking times from distance¹¹².

Pham Van Duc, deputy director of the Ha Noi Car Park Exploitation Company said that the project implementation would encounter some challenges. Each parking area was granted permission to operate for between three and six months, while it would cost between VND50-60 million (US\$2,200-2,600) to invest in the new technology, excluding land leasing fees for the parking areas. Thus, if each parking area is not allowed to operate for at least five years, it will be difficult for the company to recover their investment.

(Source: "Ha Noi pilots software to manage public car parks", *vov.vn*, 27 February 2017)

iParking has been used in 7 economies (including U.S., France, the U.K., Germany, Australia, Japan, Denmark and Israel) and it is the first mobile phone application for parking lots in Viet Nam. Users can simply download the app from AppStore/CH Play. It is expected to help to solve the Ha Noi's congestion¹¹³.

However, some drivers have been unhappy with the new system. Many are irritated that they cannot use cash and have to waste time installing the application or typing a text message. Some drivers possessing no smart-phone have to buy ones just to use the project's parking lots. Another shortcoming is that only Vinaphone, Mobifone and Viettel offer parking fees payment services via SMS¹¹⁴.

The second case is toll booth crisis. In early August 2017, Cai Lay toll booth was put into operation along National Highway 1 in the southern province of Tien Giang for investors to get back the money spent on a project to resurface the highway and build a new bypass around a local town. However, drivers soon started using small currency notes to pay the toll in protest against the booth. They claimed the booth should have been placed along the new bypass instead. The drivers lamented that they were being forced to pay extra fees for a highway they had already forked out for. Moreover, the fees at the Cai Lay booth are not only unreasonable but also even higher than the fees charged at booths along the Ho Chi Minh City-Trung Luong Expressway¹¹⁵. The protests led to heavy traffic jam for days, forcing the booth's operator to temporarily close it in mid-August. After a three-month discontinuity, the booth resumed operation, only to see disgruntled drivers return with stacks of small change to protest¹¹⁶. The protests had besieged National Highway 1 with traffic chaos, while drivers insisted to have the booth moved or shut down.

¹¹¹ 'Hà Nội sẽ có bãi đỗ xe thông minh nhờ ứng dụng công nghệ', [*'Ha Noi will have smart parking places thanks to the application of technology'*], Baomoi.com, 2017

¹¹² 'Hà Nội: Từ hôm nay, có thể tìm chỗ đỗ xe qua điện thoại di động', [*'Ha Noi: From today, drivers can find parking place by mobile phone'*], Baomoi.com, 2017

¹¹³ 'Ha Noi squeezes in smart car-parking app', Vnexpress.net, 2017

¹¹⁴ 'Ha Noi squeezes in smart car-parking app', Vnexpress.net, 2017

¹¹⁵ 'Vì sao tài xế phản đối trạm thu phí Cai Lay?', [*'Why do drivers oppose Cai Lay booths?'*], Baomoi.com, 2017

¹¹⁶ '18 giờ hỗn loạn tại trạm BOT Cai Lay', [*'18 hours of chaos at Cai Lay BOT toll booth'*], Vnexpress.net, 2017

There are toll booths every 62 kilometers along the highway, which have been built using the build-operate-transfer (BOT) contract model. At the Cai Lay booth, drivers have to pay between VND250,000 - VND140,000 (USD1.10 - USD0.62) depending on the type of vehicles. Construction of the 12-kilometre Cai Lay bypass began in 2014 and cost more than VND1 trillion (USD44 million), while the maintenance component of a 26.5-kilometre sub-section of National Highway 1 costs VND300 billion (USD13.2 million)¹¹⁷. The payback period is expected to be 8-10 years. It is estimated that that a truck of the largest type travelling along the nation, from on National Highway 1 has to pay a total of VND4.54 million (about US\$200) across 29 different toll booths¹¹⁸.

Following the Cai Lay's protest, many similar protests have taken place at toll booths throughout the nation, causing long hold-ups for traffic in many regions. In addition to using small currency notes directly for payment, the drivers have been rolling up VND500 notes, the smallest currency note in common use, and stuffing them into plastic bottles before giving them to toll booth staff. It took up from 15 to 20 minutes for staff to cut open the bottles, flatten the notes and count them¹¹⁹.

The investor of the Cai Lay toll booth argued that was fair because it had also repaired the old road, but drivers indicated those repairs cost very little. The protests made the government decided to stop collecting tolls at the booth for 30 to 60 days until the government could make a final decision. In June 2018, the transport ministry proposed two options for the Cai Lay booth to government. The first option is to reduce the toll for all vehicles as well as for people living close to the booth. The second option is to build another booth at the bypass and collect toll from both the stations¹²⁰. The ministry has also submitted to the government a list of 17 BOT toll booths, including Cai Lay booth, built at the wrong location. Among these, only two booths - La Son-Tuy Loan booth and the booth at the south of the Hai Van Tunnel - have been proposed to be merged with another toll booth or be removed. The ministry has proposed retaining the location of the 15 remaining booths and collecting toll until the project capital is paid back¹²¹.

According to a report released by the government, BOT projects have assisted to reduce the pressure on the state budget but there are also a lot of irregularities that have been appeared during the implementation of these projects, including the selection of investors and project cost assessment¹²².

3. Fundamentally changes information required by buyers to shop effectively

In recent years, the situation of counterfeit goods, intellectual property infringing goods in the field of food safety has caused concern for the public opinion.

¹¹⁷ 'Angry drivers jam up highway toll station by paying with bottles of change in Viet Nam', Vnexpress.net, 2017

¹¹⁸ 'Fees reduced on over half of Viet Nam's toll roads', Nhandan.vn, 2017

¹¹⁹ 'Nhiều tài xế tiếp tục bỏ tiền lẻ trong chai nhựa phản đối trạm thu phí BOT trên Quốc lộ 1', ['Many drivers continue to stuff currency notes in plastic bottles to protest the BOT toll booths on National Highway 1'], Thoibao.today, 2017

¹²⁰ 'Tiền Giang đề xuất 2 phương án thu phí tuyến tránh Cai Lậy', ['Tien Giang proposed 2 ways to collect fees at Cai Lay's bypass'], News.zing.vn, 2018

¹²¹ '17 trạm BOT sai vị trí, Bộ GTVT đề xuất xoá bỏ... 1 trạm', ['17 BOT toll booths in wrong position, Ministry of Transport proposed to remove ... 1 booth'], Dantri.com.vn, 2018

¹²² 'Fees reduced on over half of Viet Nam's toll roads', Nhandan.org.vn, 2017

A typical food fraud practice is “translation” cheaper meat into more expensive meat. According to a police’s report in 2015, many food suppliers had cheated customers by deleting the word “buffalo” on labels of buffalo meat packages. They only printed on the on the packaging thigh, rump meat, etc. then work with food processing shops to fool customers by selling 500 tons of buffalo meat at the same prices as beef. Buffalo meat’s price was from VND50,000 to VND120,000 (\$2.5-\$6) a kilo, but when it becomes beef, the prices double¹²³. In February 2016, Ho Chi Minh City Department of Animal Health confiscated a large amount of pork from a local butcher shop. Inspectors of the department caught the shop’s employees dunking 110 kilograms of pork into a mixture of cow blood and chemicals to look like beef. They also discovered 1,180 kilograms of pork stored in the shop, waiting to be “processed” into “beef.” Another 755 kilograms of processed pork were ready to be labeled as beef and then be sold at price VND130,000-150,000 (US\$5.8-6.7) per kilogram. At such, the shop can earn up to 50% more¹²⁴. A month earlier, authorities in Binh Thuan province arrested a man for selling ‘fake wild boar’ meat. Around 200kg port had been “processed” to become wild boar. The detainee had bought pork from other provinces and then used gas torches to burn the pork to make it look like wild boar meat, then sold the meat to the dealers in Phan Thiet City and Ham Thuan Bac District. About 100kg of pork have been sold each day at the price VND80,000 (US\$ 3.6) per kilogram¹²⁵.

Beverage sector is also a fertile land for fraudulent practices. In January 2016, Ho Chi Minh City police remanded two suspects into custody on alleged charges of production and sale of fake liquor. The police seized tens bottles of liquor that were labeled ‘Chivas Regal’, and equipment to make the wine at home of one suspect. The other suspect was found carrying five bottles of an imported brand labeled ‘Chivas 38’, but the man failed to show any legal invoice proving the liquor’s origin. The man bought empty bottles and filled them with cheap wine, and labeled them, before sold each for VND7 million (US\$314)¹²⁶.

Certificates issued by the Viet Nam Food Administration for food enterprises may contribute to poor choices of customer as they could not cover all of the enterprises’ work. If an enterprise has bad work, it can still rely on the certificate to avoid punishment. Before February 2018, firms must prepare two sets of documents and each set had 11 different kinds of papers to apply for the certificates. The papers included detailed product information, a circulation certificate, a medical certificate, a trademark, a periodic supervising plan and a trading certificate. Depending on regions, completing the procedure could cost VND 6-10 million (\$260-440) and firm owners also had to travel to different offices to complete it. Paradoxically, the certificate stated that firms had to take responsibility for their own products. It meant that food management offices grant firms the certificate, but they did not take the responsibility for the certificate¹²⁷.

¹²³ ‘Thực phẩm bẩn tới mâm cơm người dân thế nào?’, [‘How unsafe foods were in people’s meals’], News.zing.vn, 2015

¹²⁴ ‘Biến heo nái thành thịt bò bằng hóa chất ở cửa hàng bán thịt sạch’, [‘Use of chemicals to turn sows into beef in a butcher shop’], Thanhnien.vn, 2016

¹²⁵ ‘Đem thịt heo nái lên vùng núi để bán ngược về miền xuôi với danh nghĩa heo rừng’, [‘Bring pork to the mountainous areas then sell it back to the lowland like boar meat’], Congan.com.vn, 2018

¹²⁶ ‘TP HCM phá nhiều đường dây sản xuất rượu ngoại giả’, [‘Ho Chi Minh City eliminated many foreign fake liquor production lines’], Vov.vn, 2016

¹²⁷ ‘Blow for food safety in Viet Nam’, Vir.com.vn, 2018

There are several legal regulations promoting good choices of consumers. For example, the Decree No. 89/2006/ND-CP on Labeling of Goods states that all domestically circulated goods, imported and exported goods must have labels presented. The Food Safety Law 2010 stipulates producing and importing food, food additives and processing aids in Viet Nam shall have to implement the foods labeling in complying with the laws on labeling for the date of minimum durability of goods. The Decree No.38/2012/ND-CP also provides some provisions on the supplement foods, prepackage foods, medical nutrient foods, and functional foods¹²⁸. But it needs more laws and regulations to prevent food fraud and help consumers shopping efficiently.

The Viet Nam Food Administration, Ministry of Health has coordinated with the departments of the Ministry of Information and Communications to handle the web sites that advertised untrue contents. Violations which were determined and handled would be published in accordance with the law in the Administration's website.

(Source: "*Chống hàng giả trong lĩnh vực an toàn thực phẩm: cần quyết liệt hơn*", [*'Counterfeiting in the field of food safety: Need more drastic solutions'*], *Baohaiquan.vn*, 13/3/2018)

Another severe problem is the inadequate enforcement. Many agencies were assigned to be in charge of inspection for safety food violations, but the violations were mostly handled by the Market Management Force, Police Authority, and the Customs Authority. The Viet Nam Food Administration should require the local sub-administrations to coordinate more drastically in the prevention of counterfeit foods and intellectual property infringing foods with the local market management force¹²⁹.

Concerning food safety certificates, the Decree 15/2018/ND-CP has taken effect which significantly changes the management mechanism of food safety since February 2018. Under the decree, firms and individuals producing and trading food will announce their product's safety on mass media or at their offices themselves, instead of applying for food safety and hygiene certificates like before. Food traders of course were very happy with the procedure abolishment as it helps them escape a great burden¹³⁰.

¹²⁸'Nutrition Labeling & Claims Viet Nam 2012', Slideshare.net, 2012

¹²⁹ '*Chống hàng giả trong lĩnh vực an toàn thực phẩm: Cần quyết liệt hơn*', [*'Counterfeiting in the field of food safety: Need more drastic solutions'*], *Baohaiquan.vn*, 2018

¹³⁰ '*Blow for food safety in Viet Nam*', *Vir.com.vn*, 2018

CHAPTER III

ADOPTION OF THE FRAMEWORK FOR COMPETITION ASSESSMENT OF LAWS AND REGULATIONS IN VIET NAM

I. EXISTING FRAMEWORK WHICH COULD BE USED AS THE BASIS FOR COMPETITION ASSESSMENT OF LAW AND REGULATIONS IN VIET NAM

This sections review the competition assessment framework in Viet Nam in which competition has been assessed, identifies the gap of with the APEC-OECD Framework on Competition Assessment and where there is an opportunity for further adoption of the Framework.

1. The Competition Law 2018

In June 2018, Viet Nam passed a new Competition Law¹³¹, replacing the 2004 version of the law. The new law will take effect from 1 July 2019.

The Competition Law 2018 recognizes the right of firms to freely compete in the market. However, the competition practices must be within the legal framework and not infringe the national interests, public interest and the rights and interest of other firms and consumers. The Law deals with two categories of competition practices: (i) restraint competition practices, including agreements in restraint of competition, abuses of dominant market position or monopoly position and economic concentration; and (ii) unfair competition practices. It also regulates the establishment, functions and powers of administrative bodies for competition and competition legal proceedings.

Regarding practices in restraining competition, the following articles have some provisions relevant to the APEC-OECD framework:

Clauses 1.a, 1.b, 1.c of the *Article 8* is relevant to the effects A and B of the framework (A. Limits the number of range of suppliers and B. Limits the ability of suppliers to compete). Clause 1.c of the Article 8 is relating to the effects C and D of the framework (C. Reduces the incentive of suppliers to compete and D. Limits the choices and information available to customers). Clause 2. also has some common points with the effect C.1 of the framework (C.1. Creates a self-regulatory or co-regulatory regime).

Article 11 and Article 12 speculate eleven kinds of agreements in restraint of competition that are prohibited by the 2018 Competition Law. These agreements are relevant to the effect C.1 (Creates a self-regulatory or co-regulatory regime) in the APEC-OECD framework.

¹³¹Luật số 23/2018/QH14: Luật Cạnh tranh 2018 [‘Law No. 23/2018 / QH14: Competition Law 2018’]

Article 8 Practices of state authorities which are prohibited

1. State authorities shall not be permitted to perform the following acts in order to hinder competition in the market:

a. Force an enterprise, organization or individual to purchase or sell goods or services with an enterprise appointed by such body, 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 industry associations or enterprises to associate with each other aimed at excluding, restraining or hindering other enterprises from competing in the market;

d. Abuse positions and powers to illegally intervene in competition practices.

2. Organizations and individuals provide information, mobilize, call, coerce or organize for enterprises to conduct acts of restraint of competition or unfair competition.

Article 14 provides that an exemption can be sought for a defined period for agreements that would benefit consumers and satisfy one of the following conditions:

1. The agreement promotes technical or technological progress or improves the quality of goods or services;

2. It increases the competitiveness of Vietnamese enterprises in the international market.

3. The agreement promotes uniform applicability of quality standards and technical ratings of product types;

4. The agreement unifies conditions on trading, delivery of goods and payment but does not relate to price or pricing factors;

In addition, Article 14 also speculates that labor agreements and cooperation agreements in specific fields and sectors which comply with the provisions of other laws shall be implemented in complying with the provisions of such laws.

There is a gap in Article 14, therefore, relative to the effect C.3. (Exempts the activity of a particular industry or group of suppliers from the operation of general competition law) under APEC-OECD Framework.

Concerning unfair competition practices, **Article 45** contains those practices which are prohibited by the competition law. The **Clause 5.a** of the Article can be compared to the effect D.3 (Fundamentally changes information required by buyers to shop effectively) of the APEC-OECD framework. “*5.a. To provide false or confusing information to customers about enterprises or goods, services, sales promotion, transaction conditions related to goods and services provided by enterprises in order to attract customers of other enterprises*”.

2. Law on Protection of Consumer Rights

On 15 November 2010, the National Assembly passed the Law on Protection of Consumers' Rights (LPCR)¹³² to replace the 1999 Ordinance on Protection of Consumers' Rights. The law took effects from 1 July 2011. The law broadens the legal framework for the protection of consumers and provides for additional responsibilities and obligations owed by traders and other third parties to consumers. LPCR provides the rights and obligations of consumers; responsibilities of goods and service traders toward consumers; responsibilities of social organizations for consumer right protection; settlement of disputes between consumers and goods and service traders; and state management responsibilities for consumer right protection.

LPCR specifically deals with the confidentiality of consumers' personal data and private information, with obligations placed on traders who collect such information. It also prohibits traders from carrying out aggressive sales techniques or engaging in behavior that amounts to harassment of consumers or taking advantage of consumers. On discovery that the goods are defective a trader must promptly take all necessary measures to stop the supply of the defective goods on the market and must make a public announcement that the goods are defective. Additionally, the trades have obligations on all warranties that are available for goods, components or spare parts. Obligations of third parties who provide information about products to consumers and sets out the potential liability of those third parties are among important provisions of the law. The law places an obligation on these third parties to ensure the information supplied to consumers about a good or service is complete and accurate information and to request the trader provides the same. Concerning settlement of consumers' complaints, the law allows a consumer and trader to negotiate or mediate to settle any dispute¹³³.

There are some provisions in LPCR should be compared to those in APEC-OECD framework as the follows:

Article 28 establishes contents of consumer right protection by social organizations. Clause 1.e and Clause 2 of the Article can be reviewed with the consideration of effects C.1. (Creates a self-regulatory or co-regulatory regime) of the APEC-OECD framework as industrial and professional associations, for example, can be seen as social organizations and can take part of full responsibility for regulating the conduct of its members, with or without government legislative backing. In addition, Clause 1.d, 1.e, 1.f and Clause 2 of the Article have close links to the effects D (Limits the choices and information available to customers) of the framework and need more considerations.

¹³²Luật số 59/2010/QH12 của Quốc hội :Luật Bảo vệ Quyền lợi Người tiêu dùng [‘Law No. 59/2010 / QH12 of the National Assembly: Law on Protection of Consumer Rights]

¹³³ ‘Consumer Rights Protection Law in Viet Nam’, Mayer Brown, 2010

Article 28 Contents of consumer right protection by social organizations

1. A social organization may protect consumer rights by:
 - a. Guiding, assisting and counseling consumers upon request;
 - b. Representing a consumer to initiate a lawsuit or initiating a lawsuit for public interest;
 - c. Providing a state management agency in charge of consumer right protection with information on goods or service traders' violations of law;
 - d. Independently surveying and testing goods or service quality and announcing its survey and testing results; notifying and warning consumers of goods or services and take responsibility before law for such notification and warning; proposing competent state agencies to handle violations of the law on consumer right protection;
 - e. Participating in the elaboration of laws, guidelines, policies, orientations, plans and measures for consumer right protection;
 - f. Performing tasks assigned by state agencies under Article 29 of this Law;
 - g. Disseminating, popularizing and educating about laws and knowledge on consumption.
2. The Government shall stipulate conditions for social organizations engaged in consumer right protection to exercise the right to initiate lawsuits for public interest under Point b, Clause 1 of this Article.

Article 8, Clause 3 stipulates that consumers have rights “to select goods or services or goods or service traders based on his/her needs and actual conditions; to decide to participate or not participate in transactions and select contents of agreement when making transactions with a goods or service trader”. Thus, a clear connection between this Clause and the effects D (Limits the choices and information available to customers) can be seen.

Article 10, Clause 6 states that “a consumer or a social organization engaged in consumer right protection or a goods or service trader takes advantage of consumer right protection to infringe upon the interests of the state or the legitimate rights and interests of another organization or person.” This Clause can be reviewed with the consideration of all four effects of the framework.

Article 12, Clause 2 establishes a responsibility of goods and service traders of posting up prices of goods or services at business places and service offices. This requirement may be a conflict with the effect C.2. (Requires or encourages information on supplier outputs, prices, sales or costs to be published) and need to be revised. According to OECD's competition assessment toolkit provisions, requiring market participants to publish information on their prices or output levels can significantly support to form cartels, since a crucial requirement for cartel operation is that participants in the cartel can effectively monitor their competitors' market behavior.

3. Law on Investment

Effective on 1 July 2015, the 2014 Investment Law¹³⁴ was expected to attract more domestic and foreign investments to the economy that might change the business environment. The law prescribes business investment activities in Viet Nam and offshore business investment activities

¹³⁴ Văn bản Số: 67/2014/QH13: Luật Đầu tư, 2014 [‘Law No. 67/2014/QH13: Investment Law, 2014’]

from Viet Nam and applies to investors and organizations and individuals engaged in business investment activities.

Article 7 specifies sectors and trades subject to conditional business investment. It speculates that sectors and trades subject to conditional business investment are those sectors and trades in which business investment activities must meet certain conditions for the reason of national defense and security, social order and safety, social ethics or community well-being. The Article can be reviewed with the consideration of effects A, B, C of the framework (A. Limits the number or range of suppliers, B. Limits the ability of suppliers to compete, and C. Reduces the incentive of suppliers to compete).

Article 7. Sectors and trades subject to conditional business investment

1. Sectors and trades subject to conditional business investment are sectors and trades in which business investment activities must meet certain conditions for the reason of national defense and security, social order and safety, social ethics or community well-being.
2. The list of sectors and trades subject to conditional business investment is provided in Appendix 4 to this Law.
3. Conditions for business investment in the sectors and trades prescribed in Clause 2 of this Article shall be prescribed in laws, ordinances, decrees and treaties to which the Socialist Republic of Viet Nam is a contracting party. Ministries, ministerial-level agencies, People's Councils and People's Committees of all levels and other agencies, organizations and persons may not promulgate regulations on business investment conditions.
4. Business investment conditions shall be prescribed in conformity with the objectives specified in Clause 1 of this Article and ensure publicity, transparency and objectiveness, and save time and compliance costs for investors.
5. Sectors and trades subject to conditional business investment and business investment conditions applicable to such sectors and trades shall be published on the national enterprise registration information portal.
6. The Government shall stipulate in detail the publicization and control of business investment conditions.

Article 15 provides forms of investment incentives, investment projects entitled to investment incentives, and projects that are not entitled to investment incentives. Concretely, investment projects entitled to investment incentives include: (i) Those projects prescribed in Clause 1, Article 16 of this Law; (ii) Those in the geographical areas eligible for investment incentives prescribed in Clause 2, Article 16 of this Law; (iii) Those capitalized at VND 6,000 billion or more, disbursing at least VND 6,000 billion within 3 years after obtaining an investment registration certificate or investment policy decision; (iv) Rural investment projects employing at least 500 workers; and (v) Hi-tech enterprises, science and technology enterprises, and science and technology organizations. This Article can be integrated with the effects A, B, C of the framework.

Actually, the Investment Law has been complained to sets out business conditions for 243 industries and in many cases these conditions create impediments to competition. In October

2017, the government passed a resolution which requires regulators to reduce the overall quantity of regulation by one third to one half and in December 2017, the Ministry of Planning and Investment insisted that 21 industries will be excluded from the law altogether. However, in a number of crucial instances the remaining 222 industries have extensive requirements that are unreasonable to protect the public interest. It is recommended to apply the framework in assessing each of the sectors covered by the law (OECD, 2018).

4. Law on Price

Effective on 1 January 2013, the Law on Price¹³⁵ specifies rights and obligations of organizations and individuals in the price domain, and the state responsibilities of price management and regulation. This Law replaced the 2002 Ordinance on Price in prescribing principles of price management. Accordingly, the state performs the price management under the market mechanism, and respects the rights of producers and traders to set and compete in prices in accordance with law. In addition, the state regulates prices in accordance with the Law in order to stabilize prices, and protects the rights and interests of producers, traders and consumers and of the state¹³⁶.

Article 10, Clause 1 provides prohibited acts in the price domain for state management agencies and their officials and employees. There is a gap in the Article relative to all four effects of the APEC-OECD framework. For example a price management agency may issue a document beyond their competence to limit sellers' ability to set the prices for their goods and services. This Article should be reviewed with care in considering with the framework.

Article 10. Prohibited acts in the price domain

- 1. For the competent state management agencies in the price domain; officials and employees of the agencies in the price management domain:*
 - a. Improperly interfering with the functions, tasks and powers prescribed by law into the rights and obligations of production and / or business organizations and individuals in the price domain;*
 - b. Promulgation of documents beyond their competence; not in accordance with the order and procedures;*
 - c. Disclosing and using information supplied by organizations and individuals in contravention of regulations of competent state agencies;*
 - d. Abusing positions, powers and tasks for self-seeking purposes.*

5. Law on Promulgation of Normative Documents

¹³⁵ Luật số 11/2012/QH13 của Quốc hội : Luật Giá [‘Law No. 11/2012/QH13 of the National Assembly: Law on Price’]

¹³⁶ ‘Law on Price’, Viet Nam Law & Legal Forum, 2012

Under the Law on Promulgation of Normative Documents (Law on Law Making), the Government issued Decree No. 34/2016/ND-CP¹³⁷, which took effect on 1 July 2016 detailing a number of articles of, and providing measures for implementing, the Law on Promulgation of Legal Documents.

The Decree, which consists of 189 articles arranged in 11 chapters, focuses on seven issues including: assessment of impacts of policies; format and techniques of presentation of legal documents; Official Gazette and publication of legal documents; translation of legal documents into ethnic minority languages and foreign languages; examination and handling of legal documents; review and systemization of legal documents; and resources for elaboration and promulgation of legal documents.

According to the Law on Law Making and the Decree No.34, before a regulation is made, it is required that a regulatory impact assessment is prepared. **Article 6** of the Decree 34 provides a guidance of regulatory impact assessment. According to the Article, the impacts of a policy to be assessed include economic impacts, social impacts, gender impacts, gender impacts (if any), impacts of administrative procedures (if any), and impacts on the legal system. Regarding economic impacts, the Article focuses on the basis of conducting cost-benefit analysis for one matter or several matters related to production, business, consumption, the investment and business environment, competitiveness of firms, organizations and individuals, national or local economic development structure, public procurement, public investment and other economic matters.

There is an obvious opportunity for the framework for APEC-OECD Framework on Competition Assessment to be integrated the Decree 34 by making it clearer that the assessment of economic impacts and social impact will take into account the key questions as introduced in the APEC-OECD Framework. This will help to improve the quality of regulations in Viet Nam, especially from the prospective of promoting competition in the economy.

6. Other regulations and regulatory reform efforts

In the last five years, the Government of Viet Nam has been firm in implementing reforms to make the business environment to be more transparent, more equal and more competition-friendly. In the last five years, the Government has repeatedly issued annual resolution on improving the business environment of Viet Nam. All resolutions are numbered 19. Resolution 19 aims at moving market entry, e.g. removing or streamlining 3,807 conditional business lines (out of 6,213 existing business conditions as now). Resolution 19 also calls for more active participation of business associations and professional bodies in policy review and valuations as well as closer coordination with Government bodies to support business development and resolve business issues. Through the Resolutions, the Government aims at improving business environment, promoting administrative procedures reforms, ensuring transparency and accountability of state administrative agencies. The resolutions also addressed many of the aspects of the APEC-OECD Framework on Competition Assessment, and therefore become important part of the framework which is covered by this pilot competition assessment.

¹³⁷ Nghị định 34/2016/NĐ-CP Hướng dẫn Luật Ban hành văn bản quy phạm pháp luật [‘Decree No. 34/2016/NĐ-CP Guidelines on Law on Promulgation of Normative Documents (Law on Law Making)’]

II. REQUIREMENTS FOR ADOPTION OF THE APEC-OECD FRAMEWORK

The APEC-OECD Framework on Competition Assessment offers a systematic, rigorous and justifiable approach which Viet Nam can rely on in order to improve regulatory quality. This section discusses requirement for Viet Nam to effectively adopt the framework in the rulemaking process.

1. Adopt the APEC-OECD Framework on Competition Assessment at the political level that establish clear objectives and base for integration

In order to effectively adopt the framework in the legislation process, it is necessary to establish principles of “good regulation”. The good regulation should ensure that the framework is well considered during processes of developing, reviewing, and revising regulations. Other principles of good regulation include: (i) be needed to serve clearly identified policy goals, and effective in achieving those goals; (ii) have a sound legal basis; (iii) produce benefits that justify costs, considering the distribution of effects across society; (iv) minimize costs and market distortions; (v) promote innovation through market incentives and goal based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment - facilitating principles at domestic and international levels¹³⁸.

The economy should create effective and credible mechanisms inside the government for managing and coordinating the integration of the framework into regulations system; avoid overlapping or duplicative responsibilities among regulatory authorities and levels of government. It is necessary to encourage the integration of the framework at all levels of government and in private bodies such as standards setting organizations.

2. Review and integrate the APEC-OECD framework into relevant regulations

Review and integrate the APEC-OECD framework into regulations systematically and ensure a transparent, non discriminatory, efficient rulemaking process. Competition authorities should review regulations (economic, social, and administrative) against the principles of good regulation, provisions of the APEC-OECD framework and from the point of view of the user (e.g. producer, supplier, and consumer) rather than of the regulator. They should target reviews at regulations where the integration of the APEC-OECD framework will yield the highest and most visible benefits, particularly regulations restricting competition and trade, and affecting enterprises. Proposals for new regulations, as well as existing regulations all need to be reviewed. The APEC-OECD framework should be integrated into the development, review, and reform of regulations. Specific legislations that need a thoroughly and scrupulous integration include the

¹³⁸ ‘Work Program 2003-2004’, APEC-OECD Co-operative Initiative on Regulatory Reform: Third Workshop Jeju Island, Korea 16-17 October, 2002

Master Program on National Competition Policy, Decree 34/2016/ND-CP (on Detailing a Number of Articles of, and Providing Measures for Implementing, the Law on Promulgation of Legal Documents), the Competition Law, the Law on Protection of Consumer Rights, the Law on Price etc. Update and integrate the framework into regulations through automatic review methods, such as sun-setting, are required¹³⁹.

Competition authorities should ensure that integration goals and strategies are articulated clearly for affected parties. They should consult with affected parties, while developing or reviewing regulations, ensuring that the consultation itself is transparent. Continuing basis public registries of regulations and business formalities should be created and updated. Alternatively, the authorities may use other means of ensuring that domestic and foreign businesses can easily identify all requirements applicable to them. They should also ensure that procedures for applying regulations are transparent, non-discriminatory, contain an appeals process, and do not unduly delay business decisions.

3. Establishing mechanism to monitor and evaluation the adoption of the APEC-OECD framework

Competition authorities should establish mechanism to monitor and evaluate the integration process at state, provincial, district and even lower levels. The framework should be integrated as early as possible, so as to help capacity building and the implementation of the framework across nation. It should become an automatic part of the legislative process.

4. Prepare financial and human resources for integration the APEC-OECD framework in the rulemaking process

One of the major concerns is the lack of financial resources to cover the costs of reviewing and integrating the framework into regulations, its implementation, enforcement, and the measures to advocate its benefits. It is necessary, therefore to separate the costs of review and integration the framework into regulations and the subsequent costs of its implementation and enforcement. Concerning the initial costs related to the drafting and adoption of the framework, these are usually overstated or inflated due to inefficient procedures. Viet Nam may hire an international consultant group to help to conduct the first draft of regulations.

Effective adoption of the framework requires more than just structural arrangements. A number of additional conditions should be met both inside and outside of the competition authorities. In addition to adequate financial resources, capacity enhancement for law and policy makers is a must. It is necessary to form teams of highly motivated and educated lawyers and economists.

5. Cooperate with other APEC's economies for effectively adopting the APEC-OECD framework

¹³⁹ 'Dự thảo Đề án Tổng thể về Chính sách Cạnh tranh Quốc gia', Bộ Kế hoạch và Đầu tư, ['Draft National Program on Competition Policy', the Ministry of Planning and Investment'], 2017

The APEC economies should determine and agree on a common goal for the framework adoption as the goal will narrow the gap among economies during the rulemaking and integration processes. A close cooperation among the economies in integrating the framework into regulations is necessary as it helps to share experience and expertise in legislation making and allows them to quickly get technical assistances from regional economies.

The APEC's competition authorities should develop a database of firms with regional or international market power. Market share and compliance history of those firms should be frequently updated in order to assist the authorities to deal with cross-border merger cases and to build up competition credit for multi-national firms.

III. IMPLICATIONS FOR VIET NAM AND OTHER APEC DEVELOPING ECONOMIES

This section elaborates on the relevant implications/issues for Viet Nam and other APEC developing economies in promoting competition assessment for improved market efficiency.

1. The necessity of establishing a competition assessment mechanism

At the moment, Viet Nam lacks a mechanism for competition assessment, especially a mechanism for assessing quality of business related regulations. The impact ex-ante assessment of policies and laws is hardly implemented. There is also a lack of continuous review and evaluation of rulemaking process relating to competition. The coordination between the competition authorities and other legislative authorities is inadequate though it is a major requirement for reviewing, assessing, and revising laws and policies. Actually, the drafting and implementation of legal documents are among responsibilities of relevant ministries and their branches. There are currently 20 ministries and ministerial-level agencies authorized to draft and enforce legal documents, including at least 14 ministries and ministerial-level agencies that directly manage business activities. This means that the documents related to business activities, the competition of the market actors are not conducted by competent agencies specialized on competition matters¹⁴⁰.

In addition, acting as “Constitution” in the competition field and encompassing all sectors of the economy, the Competition Law 2018 should be the master law of competition so that all other business related regulations issued by different ministries should refer to and ensure a consistency with. Though both Competition Law 2004 and 2018 mentioned on the responsibility of VCA in advising of competition impacts of regulations issued by state agencies, actually, these agencies have not consulted VCA while developing and revising their regulations. On the other hand, VCA has neither sufficient resources required to fulfill its consulting responsibility nor proactively offered advices to the agencies. Consequently, many anti-competitive regulations have been promulgated and taken effects, causing adverse impacts on the nation's competitive environment.

¹⁴⁰ ‘Dự thảo Đề án Tổng thể về Chính sách Cạnh tranh Quốc gia’, Bộ Kế hoạch và Đầu tư, [‘Draft National Program on Competition Policy’, the Ministry of Planning and Investment’], 2017

In a draft version of the Master Program on National Competition Policy, issued in 2017, the Ministry of Investment and Planning proposed to establish a mechanism that allow competition authorities to monitor and assess competition impacts of regulations, especially, a mechanism for monitoring and assessing quality of business related regulations.

The draft program speculated that the government should:

- Clearly define responsibilities of different ministries, branches and those of competition authorities of competition assessment when developing and revising laws and policies.
- Clearly define responsibilities of state agencies and sanctioning measures involving in handling violations relating to competition regulations caused by state agencies and SOEs in order to establish and maintain a truly competitive business environment for improved market efficiency and productivity.
- Strengthen the competition authorities in term of ensuring their independence and rulemaking rights. Clearly define the authority of other agencies to the competition authority so that these agencies are not allowed to interfere in tasks required experience and expertise of the competition authorities in dealing with competition matters.

2. Integration of the framework to promote competition assessment in Viet Nam

Previous studies on market competition also recommend the following principles to promote competition assessment for improved market efficiency: (i) Establishing an effective regulatory management system; (ii) Integrating competition assessment into policy-making process; and (iii) Implementing competition assessment of regulations enforcement.

2.1 Establishing an effective regulatory management system

Building an effective regulatory management system is the first step to promote competition assessment. This requires an adoption of competition assessment policy at the highest political levels of the economy. The competition authorities should establishing explicit standards for regulatory quality and principles of regulatory decision-making within government. It is important to allocate responsibilities for competition assessment program elements carefully. In addition, the authorities should introduce effective training schemes in assessment theory and practice. It is important to build capacity for regulators and relevant staffs the skills required to undertake high quality competition assessment. Information quality is essential and the authorities should clarify information needs, quality standards for acceptable information and suggest strategies for collecting data at minimum cost and within the required time limits (Kirkpatrick, 2003).

2.2 Integrating competition assessment into policy-making process

Competition assessment should be integrated within the policy-making process, beginning as early as possible, so as to assist capacity building and the roll-out of assessments across

government. It should become an automatic part of the rulemaking process rather than as an “add-on” requirement for external consumption or to meet donor requirements. Systematic public consultation procedures with affected parties should be introduced to ensure the widest possible input into regulatory decision making. Interest groups should be consulted widely and in a timely fashion and treated even-handedly. Resources should be concentrated on those regulations where the impacts are likely to be the most significant and where the prospects are best for altering regulatory outcomes. The method adopted should include facilities for peer review within government, perhaps by a dedicated impact assessment bureau.

In addition, competition assessment should be applied to reviews of existing as well as new regulations. The results of the assessment must be communicated clearly with concrete implications and options explicitly identified to ensure transparency on the need for change. The use of a common format for competition assessments within government will aid effective communication. The benefit/cost principle should be adopted for all regulations, although analytical methods can vary as long as competition assessment identifies all significant positive and negative effects and integrates qualitative and quantitative analyses. Mandatory guidelines should be issued within government to maximize consistency of approach.

2.3. Implementing competition assessment of regulations enforcement

Economic theory supposes that competition benefits the economy. However, there is not a strong consensus on the benefits of the adoption of competition regulations to the economy, especially in developing economies which may not have the adequately supporting legal, judicial, or infrastructure systems. Competition agencies around the world are increasingly finding themselves accountable to assess the benefits of their activities relative to their costs. For example, the Office of Fair Trading in the UK estimates the relationship between its activities and direct benefits to consumers and compares these numbers to the budget of the Competition Authority. The Dutch Competition Authority calculates its enforcement and its effect on the economy’s macroeconomic variables, such as growth and employment. In Asia, the Korea Fair Trade Commission monitors and evaluates the effect of their enforcement activities against cartels through surveys and comparisons of market prices before and after the law violations. The Competition Commission of Singapore measures the monetized value of consumer benefits and markets opened following specific interventions¹⁴¹.

Such assessments could be helpful for advocacy purpose as they assist to make the case for competition regulations with policy-makers if their motivations are aligned with the motivations of competition authorities, and to introduce a more convincing case with the public about the benefits that effective competition regulation enforcement could bring about. Therefore, Viet Nam competition authorities are recommended to implement competition assessments of regulations enforcement and to strengthen the advocacy work on competition principles which are introduced in the Competition Law.

¹⁴¹ASEAN Self-Assessment Toolkit on Competition Enforcement and Advocacy

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