

# Introduction to Regulation of Competition in South East Asia: A Comparative Study of Antimonopoly Laws in Vietnam and Indonesia, and Their Models

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## 1. INTRODUCTION

Competition law is typically a tool to preserve market competition in order to provide an environment that will encourage the efficiency and responsiveness of business and serve the interests of consumers. The competition law and policy developed in the U.S.A., Europe, and Japan to address two separate but related problems. In each country, competition policy also reflected political aims. The Sherman, Clayton, and Federal Trade Commission Acts in the U.S.<sup>1</sup> were also intended to redress imbalances in political influence that were perceived to result from concentrations of economic power in a few individuals. Competition policy was thus viewed as an essential reform to create conditions for democratic governance in both Japan and Germany.<sup>2</sup>

Indeed the histories of antitrust in the U.S., and the development of competition law in Japan and Europe, raise questions whether these models have any applicability to South East Asian countries. Enacted under conditions and circumstances that simply do not apply to Southeast Asian countries, these models were designed to deal with problems in advanced capitalist states. The primary aim of these models was to regulate private giant companies in order to restore and maintain competition.<sup>3</sup> None were concerned with state power or the need of state to create conditions for effective market competition. Yet other nations, particularly developing and re-industrializing nations, have signaled a need or intention to adopt and use competition law not only to advance efficiency and consumer welfare, but also to advance the development of small-medium sized businesses. Two particular nations – Vietnam and Indonesia – have included in their respective competition laws provisions to help bring equity treatment amongst different economic sectors and fair play in economic environment.

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The author would like to express her deep gratitude to Professor Yasuda for his academic advice, to all GSID staffs and all friends in GSID during the Master and PhD years for their help and cheerful student life. Professor Yasuda's teaching/research philosophy and GSID's student life have shaped her teaching/research skill and guided her heart to inspire students at Australian Universities.

The author is grateful to an anonymous referee for her/his very valuable comments that have helped to improve the presentation of the paper.

The Article examines what came out of the process of modeling. Part II describe in some detail Vietnam's law on regulation of competition, examining its provisions and policy, and the function of its enforcement agency. Part III compares the Vietnam's Law on competition law, No. 27-2004-QH11 (hereafter Vietnamese law) with the Indonesia's Law Concerning the Prohibition on Monopolistic Practices and Unfair Competition, No. 5 Year 1999 (hereafter Indonesian law). Part IV assesses the Vietnamese competition law and the Indonesian competition law in terms of their fit with the legal history and culture of the two countries, and their effectiveness for markets in transition central planning (in the case of Vietnam) / crisis recovery (in the case of Indonesia) to competitive conditions.

## **2. REGULATION OF COMPETITION IN VIETNAM**

### **2.1. The background of the competition law**

With the implementation of the opening-up policy and economic reform in Vietnam and globalization of the world economy, Vietnamese government has attached great importance to competition issues. The legacy of the centrally planned economic system is still quite strong, hence the prevalence of many government regulations, or decisions which might have an adverse effect on competition in the market.<sup>4</sup> However, besides the promulgation of laws, regulations and rules on competition in 2004 and 2005, central government of Vietnam as well as the local ones have recently tried to take measures to broaden the fields of anti-monopoly supervision and strengthen anti-monopoly administrative enforcement in order to better protect the lawful interests of businessmen and consumers and keep Vietnam's market economy in good order (Le, Vu & Tran, 2003). The Vietnamese competition law has been drafted 15 times<sup>5</sup> so that it could better fit Vietnam's situation. The Vietnamese competition law has borrowed precious experiences from 9 economies' anti-monopoly laws, and is basically compatible with the model laws promoted by international institutions like UNTACD and World Bank (Kaneko, 2004).

The thrust of Vietnamese anti-monopoly policy is being prepared to establish and foster a fairly complete, indiscriminate environment, rather than policing prices or other monopolist behavior. Indeed, discrimination occurs<sup>6</sup> both in reality, in policies and regulations especially in business registration, bankruptcy, capital, labor and land access, as well as exports and imports. The leading role of the state sector is identified with a monopolistic role; the monopolist companies in Vietnam were established through administrative decisions. Thus there were only state monopolies and no private and foreign invested monopolies. Monopoly of State-owned Enterprises (hereafter SOEs) could help the Government to better manage the economy, and many governmental agencies have been set up with the sole purpose of supporting, monopoly in a number of industries (Tran, 2003). Fostering competition was not, therefore, a primary goal of the Vietnamese government for a long

period of time. Over the past few years, however, at least the perception on competition has changed especially at the executive and administrative level of governance. This was expressed clearly in the speech by Prime Minister of Vietnam: ‘If monopoly exists, business talents cannot be mobilized. Monopoly should be closed out/regulated to improve the business performance, increase the competitiveness of goods and services.’<sup>7</sup>

## **2.2. Vietnamese competition law**

The provisions of competition rely on two concepts including relevant market and market share. Like many other jurisdictions where relevant market based on common logics and the general market situation, the relevant market in Vietnam is defined as a market of goods and services, which are interchangeable in terms of characteristics, prices and use purposes.<sup>8</sup> In addition, market share is the percentage of the sales turnover of an enterprise over the total sales turnover of all enterprises trading the same goods or service in the relevant market.<sup>9</sup> Nevertheless, the Competition Administration Department of Vietnam (hereafter VCAD) chooses not to adopt a mechanical objective standard for defining relevant markets and calculating market shares, allowing some flexibility in this regard. However, the VCAD has not yet stipulated other criteria for defining whether an anticompetitive practice should be forbidden or not, for example impact on the economy or impact on the consumers.

### **2.2.1. Prohibition of Administrative Monopoly**

Administrative monopoly, though an important catalyst behind Vietnam’s antimonopoly law, is absent in other countries’ competition laws. Unlike other competition law systems, where private monopolies are the main target of enforcement agencies, administrative monopoly in Vietnam constitutes a huge barrier to the formation of an orderly market, as it encourages other types of monopolistic activities in Vietnam, such as abuse of dominant position and cartels.

The Law prohibits against anticompetitive activities by governments and their subordinate departments who abuse their administrative power through industry monopoly and regional monopoly.<sup>10</sup> Accordingly, the Law divides prohibited government action into four categories: (1) forcing an enterprise to purchase or sell goods or services with an enterprise appointed by a state administrative body; (2) Discrimination between enterprises; (3) Forcing industry associations or enterprises to associate with each other aimed at excluding, restraining or hindering other enterprises from competing in the market; and (4) other practices which hinder the lawful business activities of enterprises.

Generally speaking, it is common to assert that competitive concerns over other government

departments should be addressed by “deregulation” program (Kovacic, 2000).<sup>11</sup> However, the Law addresses to administrative anticompetitive activities only in terms of the extraordinary circumstances that require measures beyond ordinary legal instruments.<sup>12</sup> In fact, the biggest challenge Vietnam is facing toward realizing effective competitive market is administrative anticompetitive activities. The ambitious goal of prohibiting administrative monopoly, however, is not easily achieved. Since most of the administrative monopoly actions can be considered abuse of administrative power which are already prohibited by other laws,<sup>13</sup> prohibiting those actions in the first-forever competition law does show Vietnam’s repeated desire to stop the problem but not automatically lead to a cessation of anticompetitive activity.

In Vietnam, there are several giant SOEs — GC90 and GC91<sup>14</sup> — were established by the State’s administrative decisions. These GCs more than often have an average market share of above 75%. It is not clear whether GCs should fall under the regulation of the Vietnamese Law or not, though GCs, understood as SOEs, pursuant to the Vietnamese Law, should be subject to the application of the Vietnamese Law.<sup>15</sup> The Vietnamese Law provides state administrative bodies shall not be permitted to force an enterprise to purchase or sell goods or services with an enterprise appointed by such body, except for good and services belonging to State monopoly sectors.<sup>16</sup>

### **2.2.2. Anti-competitive Agreement/Prohibition of Cartels**

#### *General issues*

Boycotts and tender collusions are considered agreements in restraint of competition.<sup>17</sup> The criteria for whether such activities are agreements in restraint of competition are based on the enterprises’ combined market share and not the activities themselves. Therefore, enterprises with less than a 30 percent combined shares of the relevant market may engage in activities that restrain competition.<sup>18</sup>

Trade and industry associations are exerting increasing influence over the economic life of Vietnam. However, associations that do not engage in economic activities directly do not fall under the scope of the Law. In many other jurisdictions, associations are also forbidden to play any role in the formation of anticompetitive agreements.

In Vietnam, anticompetitive practices are normally addressed by competition laws by two approaches: they might be treated as per se illegal or might be considered under rule of reason. This is because these anticompetitive practices have different impacts to the competitive conditions in the market and different impacts on consumers. In the case of per se illegality, there is no question of calculating market share or considering their impact. Other cases are up to the discretion of the competition authorities to treat the practices as anticompetitive or not.

Refusal to deal, for example, is one of those anti-competitive practices, which should have been but indeed were not regulated under the Vietnamese Law. There have been serious cases on refusal to deal in Vietnam, such as the issues of access to seaport facilities in Vietnam, the establishment of a national ATM system, etc.

### *Application*

The Vietnamese Law appears to enunciate that enterprises entering into a “monopoly agreement,” broadly defined as any contract, agreement, or other collective conduct to exclude or limit competition, are acting illegally.<sup>19</sup> Eight types of monopoly agreements are identified according to the Vietnamese Law, including price fixing of products; collusion in a tender; limitation on production quantity; market allocation; limitation of the purchase of new technology or new facilities; imposition on other enterprises conditions to conclude contracts; obstructing or excluding other enterprise from market and joint hindrance of transactions and other agreements with the effect of limiting competition.”<sup>20</sup> In other words, the Vietnamese Law not only lists horizontal anticompetitive practices,<sup>21</sup> but also covers vertical agreements. For example, Article 8, para.6 can cover exclusive dealing agreement between manufacturers and distributors and vertical anticompetitive practices.<sup>22</sup> However, this demarcation is not clear in the Vietnamese Law neither the Decree to Implement the Law on Competition (Decree 116–2005-ND-CP; hereafter the Vietnamese Decree).

The Law seems to adopt the rule of reason principle to all cartel practices,<sup>23</sup> while the U.S. law prohibits only certain horizontal agreement such as price fixing and collusion in a tender in supply products and services. In Vietnam, price fixing may be a necessary measure to protect Vietnamese industry from negative development because of unchecked inflation during the transition phase. Because Vietnam has had controlled prices for decades price fixing does not have the bad imagination it would have in the United States. These cartel regulations in the Vietnamese Law may, therefore, show Vietnam’s position to gradually remove hard-core cartels such as price-fixing and market division.

Furthermore, the Vietnamese Law completely prohibits obstructing or excluding other enterprise from market and collusion in a tender.<sup>24</sup> The rest of mentioned - above agreements are only prohibited when concerning parties of these agreements controls more than 30% of the market share<sup>25</sup> and moreover, they are entitled opportunity of exemption.<sup>26</sup> Vietnam has adopted the rule of reason for horizontal and vertical restraints, although these rules are applied in the opposite way such as per se illegality in the United States (Kovacic, 2000).<sup>27</sup>

### *Exemption*

The way the exemption of cartels is provided in the Vietnamese Law runs the risk of subjecting all cartels or collusive behaviors to flexible requirements to take into account a process to lowering the production cost for the benefit of customer.<sup>28</sup> In other words, a cartel can return into a legal agreement if it can match with one of following requirements: restructure of business organization and process; technological progress and improvement of product/service quality; application of unified quality-standards, business transaction/accountant/payment; strength of the competition of small-medium enterprise as well as of Vietnamese enterprises in the international market. It is to be noted that these exemptions are similar with the UNTACD model,<sup>29</sup> the E.U. law and even the Treaty of Rome.<sup>30</sup> This case-by-case approach is, however, similar to the “rule of reason” application of which is entirely in the hands of the VCAD and the Ministry of the Trade.<sup>31</sup>

### **2.2.3. Abuse of Monopoly Status (Market Dominance and Monopoly)**

#### *Defining “Dominant and Monopoly Position”*

All current monopolistic firms in Vietnam were established through administrative decisions, and no firm has become monopolistic through competition. To alleviate the administrative difficulties of determining market dominance, the Vietnamese Law follows the model of competition laws in countries such as Korea, and Japan and sets up statutory presumptions of market dominance triggered by certain market shares. Vietnam has chosen the U.S. standard for market concentration indicative of monopolist activity, which is thirty percent.<sup>32</sup> Pursuant to the Vietnamese Law, a collective dominant position is the case when the market share of the two firms is over 50%, of the three firms is over 65%, of the four firms is over 75% with the ability to restrict competition.<sup>33</sup> The term monopolist, applied to firms with no effective competitors due to the Vietnamese Law.<sup>34</sup>

However, market share is just one indicator of market dominance. The example of the Zuellig Pharma Co. in the recent pharmaceutical case in Vietnam was cited in this regard. The company has only 11% of the relevant market but managed to manipulate the whole market, at huge cost to the consumers (Lam, 2003).<sup>35</sup> The Vietnamese Decree has, therefore, added the following criteria to define enterprises’ ability to restrict competition: (a) financial ability of the organizations, or individuals who invested in the enterprises; financial ability of the parent companies; (b) technological capability; (c) possession and rights to use industrial properties; (d) extent and size of the distribution network.<sup>36</sup>

#### *Specific Types of Abusive Practices*

The Vietnamese Law specify following forbidden abusive practices by any enterprise or group of enterprises in a dominant market position such as (1) imposition of contractual conditions creating inequality in the competition; (2) sales of products and services under the cost of the production to

eliminate competitors; (3) imposition of unreasonable price, limitation on the production and market causing the loss on customers; (4) obstruct the participation in the market of new competitors.<sup>37</sup> Furthermore, the Vietnamese Law prohibits monopolists to do mentioned-above activities and impose unfavorable conditions on customers and unilaterally change or eliminate concluded contracts without legitimate reasons.<sup>38</sup>

Unlike the drafts, the Vietnamese Law has covered the important issues as follows: firstly, problem of abusing monopolistic power in the distribution system (recently in the steel and pharmaceutical sectors) in order to raise prices to an exorbitant level is provided.<sup>39</sup> Secondly, tied selling behavior in which customers have to buy other products along with the desired product is currently regulated.<sup>40</sup> Thirdly, while price floors and ceilings are still widely used in Vietnam, resale price maintenance in which the price of goods uniform at all points of resale irrespective of the difference in location, character and quality of the services provided is stipulated.<sup>41</sup> In addition, price discrimination can only be effectively exerted by businesses only when they are dominant positions or have considerable market power in the relevant product or geographical markets; thus it is considered a type of abuse of dominance.<sup>42</sup> The dual price system and the discrimination in land-use rights and taxation and in the access to credit between domestic and foreign enterprises can be taken as the examples of price discrimination. This behavior is also provided.<sup>43</sup>

It will also be interesting to see how VCAD will interpret a predatory pricing provision, defined as selling products at prices below cost which includes cost of producing product, purchasing goods, expenses of circulating goods and services to consumers<sup>44</sup> as there is no clear standard for “cost”.<sup>45</sup> Since even “average variable cost” is hard to obtain, how VCAD will conduct investigation into a predatory pricing case remains a question because it has little experience with complicated economic inquiries.

Vietnam appears to allow an enterprise may acquire and maintain a dominant position and use such a position in a nonabusive manner. In Vietnam, nearly all the monopolies or oligopolies now in dominating position are those of large SOEs, most of which are in the process of privatization, mostly in key infrastructure sectors such as public utility enterprises, public transport, and telecommunications (Thai, 2000).<sup>46</sup> Given the current economic situations there, the provisions of abuse of dominant position are essentially expected to be used to regulate anticompetitive acts of the monopolies or oligopolies present in converted SOEs.

In addition, some anticompetitive practices are forbidden only if the undertaker(s) possess(es) dominant market position.<sup>47</sup> Many of the law firm’s clients are business people. Their biggest concern

is whether their current market shares can be categorized as dominant, as per the law, as well as according to the calculation method proposed in the subordinate regulations (the Vietnamese Decree for example).

### *Exemption*

Enterprises in the State monopoly fields are able to use fixing the price of goods and services, restricting the volume of production of products, distributing or limiting consumer markets.<sup>48</sup>

#### **2.2.4. Unfair Competition**

In its preamble, the Law states that it is “aimed at establishing, developing and ensuring fair customs of competition in the course of business activity in the market economy.” The Law’s unfair competition provision deals mainly with advertising practices and the use of certain intellectual property and commercial secrets. Specifically, the Law discussed illegal use of business reputation deals with trademark violations and comparative advertising.<sup>49</sup> The Law<sup>50</sup> prohibits “unfair” examples that are defined as follows: (1) willful distribution of false or inaccurate information which may harm the reputation, goodwill, or other assets of an enterprise; fraudulent use or copying of a trademark, business name, label, or any item used to identify an enterprise or its products;<sup>51</sup> (2) receipt, use, or disclosure of confidential information or a commercial secret, motivated by potential harm to another enterprise;<sup>52</sup> (3) make unreal and unfaithful notice, and information which cause damages and lose prestige, finance and business of competitors;<sup>53</sup> (4) discriminatory treatment in the association.<sup>54</sup>

#### **2.2.5. Enforcement Mechanism**

It should be worthy note that unlike 15 previous drafts, the Law has stipulated 65 provisions on the enforcement regime.

#### *Enforcement Agencies: the Ministry of Trade, the VCAD and the CCS*

The Law itself, however, provides for weak enforcement tools stipulating that the Ministry of Trade is responsible for state management on competition.<sup>55</sup> Due to opinions concerning state management on competition carried on by the Trade Ministry, the Law doesn’t clearly stipulate details of state management on competition. It is still, however, confers on the Ministry of Trade a variety of responsibilities including the ability to issue antimonopoly policies and rules, investigate matters relating to antimonopoly provisions under the antimonopoly law, resolve all matters requiring its approval provisions under this law, investigate market competition conditions, investigate and dispose cases that violate the antimonopoly law, and maintain reports of offenses. The Competition Administration Department of Vietnam (the VCAD), and the Council for Competition Settlement (CCS) which are dependent departments belonging to the Ministry of Trade are established by the



Government on the request of the Minister of the Trade Ministry. Unlike the drafts, the Law provides function and mechanism of VCAD and CCS, the Law, however, fails to regulate working terms for a CCS member. The VCAD is authorized to provide or cease exemptions for prohibited agreements, dominant market positions & monopoly market positions, economic concentration and unfair competitive practices as well as to investigate the following cases: agreements in restriction of competition which is forbidden and unauthorized; activities to abuse of prohibited practices of dominant market position or monopoly market position; prohibited economic concentration and unfair competitive activities.<sup>56</sup> Specifically, the CCS which is a quasi-judicial authority on competition law consists of a chairman and from 11 to 15 other state members who are recommended by the Minister of the Ministry of Trade.<sup>57</sup> Interestingly, the Law provides that a VCAD investigator and a CCS member should hold at least a Master degree in law or economics or finance and 5 year- and 9 year-experiences in these fields respectively.<sup>58</sup>

The VCAD and CCS are normally expected to play a major role in administering the competition law. However, as dependent departments belonging to the Ministry of Trade, the VCAD and CCS seems not to have the potential to exercise significant influence on competition policy matters that affect market structure and business conduct in Vietnam. In other jurisdictions, competition enforcement authorities are afforded different legal safeguards to ensure their independence and authority.

#### *Prosecution Competition Case*

The VCAD may initiate an inquiry towards a business actor suspected of violating the Law.<sup>59</sup> The VCAD may also commence an inquiries based on the facts reported by a complainants.<sup>60</sup> The initial inquiry is VCAD action to study y and/or examine on whether the indications requires further investigation. The VCAD must determine whether to open official investigation or cease the investigation at least 30 working days after the decision to conduct the investigation by the VCAD.<sup>61</sup> The time limit for official investigation is 90 days from the date of the decision to conduct the investigation for unfair competition cases. The maximum extended time is another 60 days.<sup>62</sup> With respect to cases relating to agreements for the restriction of competition, abuse of dominant or monopolistic position, or economic concentration, the time limit for the investigation is six (6) months. The VCAD is permitted to extend 2 times as maximum for the investigation period and 60 days as maximum for each time.<sup>63</sup> The CCS then, must determine whether to open initial trial or return the case to do additional investigation or cease the inquiry process at least 30 working days after the report received by the CCS.<sup>64</sup>

There are a great similarity between the procedures in competition cases as provided in the Decree and the civil litigation procedures. While these procedures are suitable in case of a civil dispute, they

might not be suitable for competition cases where the ultimate goal is to protect the competitive process of the market. In particular, preliminary investigation of competition cases shall be conducted under decisions of the VCAD when the VCAD detects signs of violations of the Law.<sup>65</sup> Such procedures would turn out to be highly unsuitable.

#### *Judicial Review of Decision by the Council for Competition Settlement*

The decision for the competition case is based on the voting of the majority or the decision of the Chairperson of the report session as if the majority voting is not researched.<sup>66</sup> The Law allows private parties to initiate case to the VCAD to recover loss directly upon discovering anticompetitive actions that are harmful to them.

The decision by the CCS on the competition case is similar to an appealing verdict and is enforced by the authorized state organizations.<sup>67</sup> If interested parties disagree with decision by the tribunal and the VCAD head, they may lodge a complaint with the CCS and the Trade Minister respectively.<sup>68</sup> The Law is also authorized interested parties can appeal to the court directly for review of any disagreed with decision to handle this complaint.<sup>69</sup> As the penalty decision involves imposing administrative sanctions, by using this provision the interested party invokes the general judicial review system of administrative actions in Vietnam. Judicial review<sup>70</sup> was built into the Vietnamese legal system in 1998 when administrative litigation was allowed in the Administrative Litigation Law ("ALL"). According to the ALL, any individual or entity whose interests or rights have been deemed infringed by a specific action of an administrative organ or the personnel thereof, can bring a suit before a court according to the law.<sup>71</sup> The ALL set up administrative divisions inside the courts at all levels in order to exercise jurisdiction on administrative suits.<sup>72</sup> The difficulty of enforcing court judgments and orders has been a daunting problem, and is particularly serious in administrative cases. As the courts lack authority and independence, administrative agencies as defendants often defy their judgments and orders.

Overall, the VCAD, as well as the competition procedures would be quasi-judicial, rather than completely administrative or judicial. In details, unlike the draft Decree when the complaint is required to produce all proof and evidence to support their claims and to counter the defendant's arguments, the Decree provides the VCAD and other State agencies are required to investigate, to get proof, not informants, especially in cartel cases.<sup>73</sup> However, the Decree requires collecting competition case-handling charges because these charges might offset bad-intentioned or minor complaints or tips. Vietnam is the first country in the world to have such provisions.<sup>74</sup>

*Private Civil Suit*

Unlike the laws in Korea and Japan,<sup>75</sup> the Law does not require a decision from the competition law enforcement institution as a prerequisite. Private suits can be initiated totally independent of administrative proceedings regulated at Civil Code.<sup>76</sup> In granting a cause of action, Vietnamese legislation hardly ever requires intent, although intent may be considered by the judges in deciding cases. Having no requirement of willfulness or negligence, as in tort actions, undoubtedly makes it easier for the private parties to recover loss. The provisions seem to readily permit damage actions, and thus appear more similar to the U.S. system. The Law permits interested parties to initiate lawsuit against a decision granting an exemption by the Trade Minister and the Prime Minister in accordance with Law on Complaint and Denunciation.<sup>77</sup>

The Law does not permit private suits for injunctive relief (Van Cise, 1994);<sup>78</sup> it only allows damages. Injunctive relief is an alien notion in Vietnam's legal system, which follows the civil law tradition.<sup>79</sup> Although the Law seems to encourage damage actions, the civil suits have to follow the general civil procedural rules and are subject to their constraints.<sup>80</sup> An important uncertainty remains regarding the ability of private antitrust plaintiffs to have standing to obtain relief. The Law requires the plaintiff to be one whose "rights and interests" have been violated.<sup>81</sup> Although Vietnam opted for private suits, it did not adopt any provision for treble damages, only actual damages. Actual damages may prove an insufficient incentive for new firms to engage in litigation.

*Penalties*

For violations of the anti-competitive agreements, of the economic concentration and the abuse of dominant position, the abuse of monopoly position, the maximum penalty is ten percent of total annual sales for the latest reporting year.<sup>82</sup> Besides, the violators of the competition regulations are subject to be withdrawn their business registration, certification and confiscated production.<sup>83</sup> Also, they may be forced to merge, spit or resell the share of other enterprises that they have already purchase and enterprises that abuse of dominant position may be reorganized. Also, interested parties can request the civil court to settle their case if they can't reach agreement for compensation.<sup>84</sup>

### **3. BRIEF OUTLINE OF ANTITRUST LAW OF INDONESIA**

#### **3.1. The Background of the Competition Law**

While giving significant leeway to free enterprise and investment, Suharto controlled the key financial resources, licenses, and facilities needed by business. Cronyism, nepotism, and corruption flourished (Lindsay 2000). Privileges, such as sole import licenses, were bestowed by Suharto on his children and relatives. The crony capitalist base of the economy led to the excesses of the late 1990s: extreme

and unsecured borrowing by the “cronies” beyond their means in an attempt to leverage their wealth, the free fall of the rupiah, the invitation to the IMF (Neilson 1999) to bail out the hemorrhaging banks, the sharp rise in the price of necessities, and the riots of the population ? all of which led to the down fall of Suharto.

### **3.2. Provisions of Indonesian Competition Law**

In general, the substance of the Law Concerning the Prohibition of monopolistic Practices and Unfair Business Competition in 1999 (hereafter the Indonesia Law) consist of 6 sections as follows: prohibited agreements, prohibited actions, dominant positions, commission for the Supervisions of Business Competition; Law enforcement and miscellaneous provisions. This law which has been drawn up based in the principles of Pancasila - State Philosophy (Lev 1972) and the 1945 constitution is expected to protect consumers or the public from unfair business actors, to provide a corridor for business actors to compete in a fair and honest manner in the same arena, and also to increase efficiency. The Indonesian Government through the Supervisory Commission for Business Competition (KPPU) is expected to project high credibility and integrity, with the guarantee that every case related to business competition or activities resulting in market distortion will be duly processed in the interest of the consumers. However, the government plays a significant part in establishing the monopolistic condition and in not promoting fair competition (Lane 1999)

#### **3.2.1. Prohibited Agreements**

Agreements of oligopoly with a market share of 75% held by 2 or 3 business actors,<sup>85</sup> horizontal price fixing,<sup>86</sup> market allocation<sup>87</sup> & cartel<sup>88</sup> if they cause monopolistic practices or unfair business competition; and boycotts<sup>89</sup> which are horizontal agreements between competitors to refrain business transactions with other competitors, suppliers or certain consumers are prohibited. For instance, in the light of per se illegal in Indonesia, horizontal price fixing agreements<sup>90</sup> are disallowed without having to see whether there exists a negative effect on competition. Since such price fixing agreements are per se illegal, no matter on what level prices are being set. Apart from this, in the light of rule of reason, the Indonesian Law<sup>91</sup> also states that: “Business Actors are prohibited from making any contract with other business competitors with the intention to influence the price by determining production and/or marketing of goods and/or services that can cause monopolistic practice and/or unfair business competition”.

#### **3.2.2. Exempted Agreements**

Agreements related to Intellectual Property Rights (IPR) namely patents, trademarks, copyrights, industrial product design, integrated electronic assembly, trade secrets, and franchise related agreements<sup>92</sup> and agreements to establish a certain technical standard, agency agreements, research

agreements with aim of improving living standards, ratified international agreements, and export agreements are exempted from the Indonesian Law.<sup>93</sup>

### **3.2.3. Prohibited Activities**

Prohibitions regarding mergers in Indonesia are rules of reason. Mergers are allowed provided they do not substantially decrease competition.<sup>94</sup> A monopoly is a control over the production and/or marketing of a certain goods and/or service by one businessperson or one group of business actors. Monopsony is a condition in which one business group holds control over a large market share to purchase a certain product. Control over a market by one or more business actors is regulated. The Indonesian Law prohibits the supply of good or services by way of selling below cost or establishing an extremely low price with the aim of eliminating or extinguishing the competition's business and which may lead to monopolistic practice or unfair business competition.<sup>95</sup> The Indonesian Law prohibits business actors from committing dishonest acts in establishing production and other costs which constitute a component of the price of goods and/or services, which action may lead to unfair business competition.<sup>96</sup>

Conspiracy is a form of commercial cooperation among business actors with the intention of controlling the relevant market in the interest of the parties to the conspiracy. The Indonesian Law stipulates prohibitions for business actors to make a conspiracy with other parties to arrange or determine the winner of a tender (big rigging).<sup>97</sup> The Indonesian Law prohibits conspiracies with other parties in order to obtain information regarding the business activity of a competitor, which information is classified as company secret,<sup>98</sup> and the Indonesian Law prohibits conspiracies which may hamper the production or marketing of the goods or products of a competitor, with the intention to cause the goods offered or supplied in the relevant market to decrease in volume or quality or to disrupt the time table.<sup>99</sup>

### **3.2.4. Enforcement mechanism**

The Indonesian Government has also established Supervisory Commission for Business Competition (hereafter KPPU) and it is the first independent regulatory agency in Indonesia's history. The KPPU welcomes for public and/or business actors to make report about the occurrence of monopolistic practices and/or unfair business competition to be investigated. Based on the conclusions resulting from its investigations and examinations, the KPPU may issue orders to and impose sanctions on business actors found to have been conducting business practices that restrict competition. Generally, case-handling process in KPPU is divided into two parts namely, early examination and advance examination. In implementing its functions, KPPU divides itself into two main structures, namely: The Commission Members and the Secretariat. The Commission Members who are fallen under the

category of “the State Officials” as mentioned in the State Apparatus Law are official nominated directly by the President under the Parliament approval. While the commission’s Secretariat is a supporting unit under KPPU which assists the general implementation of the KPPU functions. Importantly, KPPU shall have the authority to regulate its internal organizational structure.<sup>100</sup> However, the law has not provided KPPU with sufficient legal framework for its quasi-judicial function. KPPU’s inquiry is more similar to the unilateral examination conducted by Public Prosecutors and does obviously not provide sufficient opportunity for the respondents to defend themselves. Furthermore, there is much confusion as to whether the decisions of KPPU are ‘administrative or judicial decisions of a government body’ or whether the KPPU is a specialized court which deals with cases involving business competition with the same legal standing as first-tier court (with District Courts and the Supreme Court being second-and third-tier respectively).

#### **4. AN ASSESSEMENT OF VIETNAM AND INDONESIAN COMPETITION LAW**

This assessment of new laws respectively protecting competition in Vietnam and Indonesia scrutinizes why these new laws have certain provisions similar to or different from Western models and why certain enforcement procedures have been selected in light of the economic circumstances and structures of the emerging market economies of Vietnam and Indonesia. The assessment is based on the extent to which the new laws fit with or provide for an appropriate transition from the planned economy of the communist period and from the crises, and the extent to which the new laws fit with Vietnam’s pre-communist/communist and Indonesia’s colonial/independent legal culture.

##### **4.1. The Influence of Legal History and Culture**

However much the new antitrust laws of Vietnam and Indonesia may resemble their Western models, lessons from each country’s own legal history and culture do not seem to have been lost on the drafters. National competition laws in Vietnam and Indonesia had been drafted according to their goals and particular contexts. Their goals of competition laws are conceived broadly, embracing not only concerns about economic efficiency, but also issues of fairness and the relationship between the competitive process and the society in which it is embedded. The enforcement structure in the new Laws is the clearest example of this.

Vietnam’s Competition Law seems to have been modeled more closely on the stricter law requiring the Ministry of Trade to act through a Anti-Monopoly Court,<sup>101</sup> a process that proved burdensome and simply too slow to address the growing cartelization problem.<sup>102</sup> The Vietnam’s Competition Law sets up a specific agency with powers to annul monopolistic practices, restructure enterprises, and impose fines without judicial process. Judicial review by the Anti-Monopoly Tribunal retains some restraint

on overzealous administrative decisions. Indonesia has chosen its own versions of this enforcement office. Indonesia has adopted a better model of competition authority than that of Vietnam. As previously discussed, Indonesia has followed the concept of KPPU with comprehensive quasi-judicial functions. Unfortunately, KPPU has not yet developed accountability mechanism concerning each individual case they decide and complicate the 'checks and balances' mechanism which is substantially required to any process of prosecution and adjudication. In fact, the KPPU examination process does not sufficiently provide protection the interest of the respondent<sup>4103</sup>

Consequently, VCAD which is dependent authority cannot obviously play role in the implementation of the first Vietnamese anti-trust law and Indonesian KPPU which is independent authority in formalism is still far behind its expected role in the enforcement of the Indonesian competition law.

Also, the centralized enforcement structure of Vietnam and Indonesia laws sits well with administrative experience in pre-communist, communist and reform period in Vietnam (Pham 1996) and colonial, pre-crises and after-crisis period in Indonesia. The state-controlled enterprises were centrally created; likewise, their demise into multiple competitive private entities is under central control in Indonesia (McLeod 1999). As noted above, central control of the economy was also a principal feature of Vietnam and Indonesia.

Central control of the economy also fits with Vietnam and Indonesia's legal history and culture. After almost a century of central control by state monopolies in Vietnam and quasi-state sanctioned monopolies and private monopolies in Indonesia, these two countries have little experience with the efficient operation of a market economy. Vietnamese and Indonesian industries are likely accustomed to adhering to central policy edicts, so the direction set by central planners of the privatization process will be greeted with greater tolerance than would excessive central intervention in Western markets.

Some failures of the pre-reform and pre-crisis period in Vietnam and Indonesia respectively also inform present Vietnamese and Indonesian antitrust law. The combination of administratively created monopolies and government price controls during the pre-reform and pre-crisis period in Vietnam and Indonesia respectively were unsuccessful as a remedy to anticompetitive behavior.

Vietnam and Indonesia have extensively transplanted policies and regulations from Western antitrust law respectively. More time is needed to see whether such transplantations will be fruitful in the transition to a market economy in Vietnam and Indonesia. Vietnam adopted the bright line of a thirty percent market share as the definition of market dominance while Indonesia considers a 50% market share as a market dominant position. However, that level of concentration, often adjusted for different

market sectors, has become a determinative factor in American antitrust law only through a continuing process of judicial examination, with harsh results tempered by the rule of reason that guides so much of modern American antitrust enforcement. The economic circumstances of Vietnam and Indonesia, however, may require much different criteria and yardsticks of concentration. The Vietnamese and Indonesian seem to have recognized the importance of analyzing antitrust problems in light of the rule of reason rather than *per se* conclusions.

#### **4.2. The effectiveness of the Law for Market and Development**

The new laws may fit with Vietnamese and Indonesian legal history and culture, but their real value will be in how well they facilitate the transition to and maintenance of a competitive market economy. Here, there are disquieting signs suggesting that further amendment and fine-tuning of the laws will be necessary.

A basic imperfection of the law is that it was drawn up for a market economy. Although the laws have not focus on anti-monopolist practices, the laws identify some outlawed monopolist practices, but there are many more not mentioned that are becoming apparent in Vietnamese and Indonesian conditions. Worse yet, behavior that on its surface would attract the attention of any Western antitrust enforcement official may not be the result of monopolistic behavior in Vietnam's and Indonesia's economic circumstances. Vietnam's and Indonesia's monopolists do not attempt classic monopolist tactics. Their financial calculations always show that they are working only on the verge of profitability, or that they even engage in unpaid work, so that there is a deficit. They raise prices because of increased costs, which go up because the enterprises are inefficient. Furthermore, a recession always means increased costs.

Because Vietnamese and Indonesian economies are in transition to market competition, the orientation of their enforcement agencies must be somewhat different from that of Western antimonopoly agencies, which primarily guard against the emergence of monopolies. The economic and social circumstances of Vietnamese and Indonesian necessitate an overriding concern with termination of monopolies by removing barriers to entry and fostering competition (Tran 2003).

The drafters of Vietnam's and Indonesia's antitrust laws had to keep in mind the larger market into which they hoped to become integrated. One intriguing difference between the Vietnamese/Indonesian law and U.S. law is in the application of rules of *per se* illegality and rules of reason. The United States takes the opposite approach, by analyzing most vertical restraints under the rule of reason and price fixing as illegal *per se*. In such a different climate, American franchises that may be efficient could be discouraged from locating in Vietnam. Price fixing may be a necessary measure to



protect Vietnamese and Indonesian industries from collapse under the weight of unchecked inflation during the transition phase. In any event, in a country that has had centrally controlled prices for decades price fixing does not have the stigma it would have in the United States.

It has yet to be seen whether Vietnam's adoption of the American-style private claimant provision will fit into the privatization process and future market economy of the independent republics. American antitrust specialists noted that private suits outnumbered agency suits ten to one in the United States. Perhaps, the prospect of treble damages for victorious private claimants was an essential incentive. Although Vietnam opted for private suits, it did not adopt any provision for treble damages, only actual damages. Private suits may be useful tools in the regulatory arsenal to prevent attempts to monopolize, but it is uncertain how they will work in a market trying to demonopolize. Actual damages may prove an insufficient incentive for new firms to engage in litigation. On the other hand, paying treble damages might exceed the financial capacity of fledgling private enterprises however big they are, because they are likely operating only just above operating costs. A potential monopolist bankrupted by a treble damages payout may not be a great loss to a reasonably competitive market like that of the United States, but the loss of an essential industrial enterprise in Vietnam's more concentrated market could be disastrous in light of already uncertain economic circumstances (Trang 2001).

It is hoped to amend the law (1) so that professional organizations and associations in Indonesia will come under its price and monopoly controls, (2) so that regulators in both Vietnam and Indonesia can control vertical cartels currently outside the regulatory reach of the law, and (3) to grant the Competition Administration Agency in both Vietnam and Indonesia the authority to break up mergers that provide the amalgamated concern with a monopolistic dominant position in the market, rather than simply granting it the authority to approve such mergers as the current law does.

## 5. CONCLUSION

Vietnam and Indonesia has adopted the application of per se rules and the rule of reason for horizontal and vertical restraints, although these rules are applied in the opposite way in the United States. UNCTAD model law has the rule of reason for all regulations, which means that model law for developing countries prefer to adopt rule of reason but not per se illegal for the anti competition philosophy.<sup>104</sup> It seems natural because "industrial policies" are essential in these countries to some extent although it conflicts competition philosophy (Yasuda 1998). In addition, each of the countries examined has chosen as its enforcement agency an anti-monopoly office similar to DG Competition of the European Commission. The model in the United States is a tripartite one involving the Antitrust

Division of the Department of Justice, the Federal Trade Commission, and private litigants pursuing separate means of enforcement. This choice of UNCTAD and EC rather than American model may be in large part due to the legal and cultural background in Vietnam and Indonesia.

Despite the choice of and EC models for the language of most provisions, various criteria and enforcement methods have been borrowed from the United States. Vietnam studied from and has chosen the U.S. standard for market concentration indicative of monopolist activity, which is thirty percent, while Indonesia uses 50% which is even higher than the number provided in EC as a rule of dominant position. Each country has taken the level of market concentration as a bright line limit, rather than as a factor in the analysis as it is in the United States and the EC. Also, Vietnam originally adopted the U.S. model of private suits to vindicate rights against monopolists, albeit with only actual damages rather than treble damages as the incentive. These provisions of the Vietnamese law are likely to survive partition of the country (Wilkey 2002).

The centralized approach to demonopolization fits with the legal culture of each country because it fits with the centralized approach to the economy dominant during the communist/reform periods in Vietnam and the independent/pre-crisis periods in Indonesia. The extent to which the antitrust laws of the emerging free markets will provide a smooth transition to market competition, however, is not clear. Vietnam and Indonesia are encountering a different set of unfair competition and monopolistic practices in a far different set of economic circumstances from what the West has ever encountered (Loke 2002). The context in which the laws must operate is thus quite different. Vietnam and Indonesia need to eliminate unfair competition monopolies, while the current aim in the West is to prevent unfair competition and monopolies from forming. The countries of Vietnam and Indonesia are discovering the impact of these differences. Although the most recent developments suggest that the antitrust regulators of Vietnam and Indonesia are developing a special role in price control and other activities in the public interest, the question that remains unanswered is whether or not Vietnam and Indonesia will fashion original and effective solutions to their unique problems of protecting and fostering economic competition.

## Notes

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- 1 Throughout the development of the U.S. system, the federal courts have articulated the goals of the system. This process has produced a diverse body of stated goals that refer to economic, social, and political values. At various times, for example, concerns for fairness (particularly for small and medium-sized firms), equality or opportunity, and economic liberty have been deposited in this substrate. The stated goals of the system have changed over time, but until recently they represented an amalgam to which judges could refer in order to justify their antitrust decisions. For leading discussions of the development of U.S. antitrust laws, see Kovacic 2002

- (268–272) and 2000 (372–379).
- 2 On the other side, the European experience in constructing the goals and tools of competition law presents a picture that is both different from U.S. experience. In it, the goals and methods of competition law have evolved gradually over a century, as national and regional (European Union — E.U.) decision-makers have sought to construct and protect market economies and develop and protect democratic political systems. See Gerber 1998 (35–42) and Gerber 1999 (17–20).
  - 3 For a sophisticated treatment of U.S. legal “models” and attitudes regarding them in the United States and in post-communist countries, see generally Jacques de Lisle 1999: 186–193.
  - 4 For example, many of the licenses issued by the Ministry of Culture and Information (MOIC) are related to the cultural political and security aspects of business activities, which sometimes have unexpected effects such as hindering business development, hampering competition. For instance, Decision 27/2002/QĐ – BVHTT dated 10 October 2002 of the Ministry of Culture and Information requires that the creation of websites and uploading information onto the Internet of all organisations and enterprises must be licensed by the MOIC, which shall cause many troubles to SMEs in promoting their business information via the Internet and considerably impede the development of e-commerce in Vietnam.
  - 5 Vietnam has received a strong political influence by various foreign powers, including China, France, the former Soviet Union, and the United State. The Law on Competition, No. 27–2004/QH11 was passed in December 2004 (became enforcement on 1 July 2005) after a laborious drafting process (04 years, 15 times), with references to the statutes of various economies’ anti-monopoly laws and basically compatible with international practice.
  - 6 The deep-rooted command and control system also results in quite a few interventionist regulations imposing ceiling or floor levels of price/expense that businesses can apply/spend, which should have been left to the market to decide, for instance the inappropriate provisions on controlling Internet connection fees, or the ceiling limitations of promotion expenses. In addition, State-imposed cap on advertising/marketing expenses restrict competition
  - 7 This was expressed clearly in the speech by Prime Minister of Vietnam, Phan Van Khai, at the conference on Assessment of Organized and Operational Models of 90 and 91 – General Corporation (GC) in Hanoi on 1–2 March 1999
  - 8 The Vietnam’s Law on Competition art 3 and the Vietnam’s Degree to Implement the Law on Competition art 12 & 13.
  - 9 The Vietnam’s Law on Competition, art 3 (5).
  - 10 The Vietnam’s Law on Competition, art 6.
  - 11 While state or government actions sometimes inflict deleterious distortion on competition, most countries do not address this problem primarily through competition law. See Kovacic 2000 (385–387).
  - 12 The Vietnam’s Law on Competition, art 6.
  - 13 For examples, the issuance of business licenses and registration for Vietnamese-Foreign Joint Venture Enterprises, Vietnamese Limited Liabilities Companies and Share-holding Companies are provided in the 2000 Law on Foreign Direct Investment and the 1999 Enterprise Law respectively.
  - 14 During the 1980s, almost all industries had enterprise associations which associated all enterprises horizontally, and associations of enterprises which associated all enterprises vertically. When more autonomy was given to the enterprises, almost all above associations revealed their weakness and therefore went into divestitures. The establishment of a group of so-called 90 and 91 – General Corporation (GCs) distorted the market structure until 1994–1995. Le, 2003 (146–147)
  - 15 The Vietnam’s Law on Competition, art 2.
  - 16 The Vietnam’s Law on Competition, art 6 (1).
  - 17 The Vietnam’s Law on Competition, art 8–10.
  - 18 The Vietnam’s Law on Competition, art 9 (2).
  - 19 The Vietnam’s Law on Competition, art 8.
  - 20 The Vietnam’s Law on Competition, art 8.

- 21 The Vietnam's Law on Competition, art 8.
- 22 The Vietnam's Law on Competition, art 13.
- 23 The Vietnam's Law on Competition, art 9.
- 24 The Vietnam's Law on Competition, art 9 (1).
- 25 The Vietnam's Law on Competition, art 9 (2).
- 26 The Vietnam's Law on Competition, art 10.
- 27 An approach of per se illegality is rooted in the competition provisions in the US.
- 28 The Vietnam's Law on Competition, art 10.
- 29 The UNTACD competition law model, 2003, chapter 3 (I).
- 30 The Treaty of Rome, art 81 (1 & 2).
- 31 The Vietnam's Law on Competition, art 25 & 30.
- 32 The Vietnam's Law on Competition, art 11 (1).
- 33 The Vietnam's Law on Competition, art 11 (2).
- 34 The Vietnam's Law on Competition, art 12.
- 35 Pharmaceutical market in Vietnam distorted without a proper regulatory framework, leaving domestic consumers at the mercy of monopolistic suppliers charging exorbitantly high prices. Rising drug prices left consumers reeling in a country where 63% of the population lives on less than US\$2 a day and where per capital expenditure on health is \$130 a year, according to figures in the United Nations' Development Programme's Human Development Report 2003. The State could not control the exact price of imported drugs, and foreign pharmaceutical companies in Vietnam, therefore, have pushed prices to their highest levels. To deal with the problem, the Government should determine a maximum profit for wholesalers as well as for retailers, and ask pharmacists to declare their prices. The pharmaceutical industry should quickly adopt a set of regulations that cover drug pricing, imports and the existing sole representation system, to bring order to the sector.
- 36 The Vietnam's Decree to Implement the Law on Competition (Decree 116-2005-ND-CP), art 4.
- 37 The Vietnam's Law on Competition, art 13.
- 38 The Vietnam's Law on Competition, art 14.
- 39 The Vietnam's Law on Competition, art 13 (2).
- 40 The Vietnam's Decree to Implement the Law on Competition, art 30 (2).
- 41 The Vietnam's Law on Competition, art 13 (2).
- 42 The Vietnam's Law on Competition, art 13 (4).
- 43 The Vietnam's Law on Competition, art 6 (2).
- 44 The Vietnam's Law on Competition, art 3 (7).
- 45 The Vietnam's Law on Competition, art 13 (1).
- 46 See Le Viet Thai 2000: 39-47
- 47 The Vietnam's Law on Competition, art 9.
- 48 The Vietnam's Law on Competition, art 15.
- 49 The Vietnam's Law on Competition, art 45 & 46.
- 50 The Vietnam's Law on Competition, chapter III.
- 51 The Vietnam's Law on Competition, art 43.
- 52 The Vietnam's Law on Competition, art 41.
- 53 The Law discusses creating obstacles for entrepreneurs and gaining unfair advantages in competition prohibits a variety of predatory actions by which an enterprise could undermine a rival. The Vietnam's Law on Competition, art 42, 43 & 44.
- 54 The Vietnam's Law on Competition, art 47.
- 55 The Vietnam's Law on Competition, art 7.
- 56 The Vietnam's Law on Competition, art 49 (2).
- 57 The Vietnam's Law on Competition, art 53.
- 58 The Vietnam's Law on Competition, art 52 (1 & 2) & 55 (1).

- 59 The Vietnam's Law on Competition, art 86.
- 60 The Vietnam's Law on Competition, art 88.
- 61 The Vietnam's Law on Competition, art 86 & 87.
- 62 The Vietnam's Law on Competition, art 90 (1).
- 63 The Vietnam's Law on Competition, art 90 (2).
- 64 The Vietnam's Law on Competition, art 87 & 99 (2).
- 65 The Vietnam's Law on Competition, art 86.
- 66 The Vietnam's Law on Competition, art 80.
- 67 The Vietnam's Law on Competition, art 121.
- 68 The Vietnam's Law on Competition, art 107.
- 69 The Vietnam's Law on Competition, art 115.
- 70 The Vietnamese judicial review system is ill-suited to protect individual rights from abuse of administrative power. Despite improvements in recent years, the judiciary lacks independence and has been under increasing criticism for corruption. The courts are especially powerless in administrative litigation because the current structure of Vietnam's court system and the system for the selection and promotion of judges subject the courts to the influence of local governments regarding personnel as well as financial and material resources, making interference with the courts by local governments inevitable. See editorial staff 2003: 8–9.
- 71 Ordinance on Imposing Administrative cases, 1998, art 1.
- 72 Ordinance on Imposing Administrative cases, 1998, art 19–29. With respect to important issues such as the scope of review, jurisdiction, standing of parties and sanctions, the Ordinance on Imposing Administrative provides minimal checks on administrative agencies exercising their power.
- 73 The Vietnam's Decree to Implement the Law on Competition, art 65 & 74.
- 74 The Vietnam's Decree to Implement the Law on Competition, art 47. The idea of collecting competition case-handling charges should be replaced with fine after the case was settled rather than putting on the responsibility for complaints to pay advance charges a priori.
- 75 The Antimonopoly Act of Japan, section 26. However, case law of torts in Japan permits private parties to initiate damage actions even without a prior decision by the Fair Trade Commission, Japan.
- 76 Civil Code, 1996, art 56 (2). It also appears less restrictive than the German system, which requires specific legislative intent: the violated provision must “serve to protect another.” and the violator must have “acted willfully or negligently.” German Act Against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen or “GWB.” 1), 2005, Section 107 (2) and 114 (1 & 3).
- 77 The Vietnam's Law on Competition, art 38.
- 78 In contrast, Section 16 of the U.S. Clayton Act authorizes private parties to sue for injunctions.
- 79 In other civil law jurisdictions such as Japan injunctive relief is also available in private actions (Section 24 and 25), Antimonopoly Act. See Yasuda 2000: 7–9.
- 80 The Vietnam's Law on Competition, art 58.
- 81 The Vietnam's Law on Competition, art 117 (4).
- 82 The Vietnam's Law on Competition, art 118 (1).
- 83 The Vietnam's Law on Competition, art 117 (2) and (3).
- 84 The Vietnam's Law on Competition, art 61 (3).
- 85 The Indonesia's Law on Competition, art 4.
- 86 The Indonesia's Law on Competition, art 5.
- 87 The Indonesia's Law on Competition, art 9.
- 88 The Indonesia's Law on Competition, art 11.
- 89 The Indonesia's Law on Competition, art 10.
- 90 The Indonesia's Law on Competition, art 5 (1).
- 91 The Indonesia's Law on Competition, art 11.
- 92 The Indonesia's Law on Competition, art 50.

- 93 The Indonesia's Law on Competition, art 50.
- 94 The Indonesia's Law on Competition, art 28.
- 95 The Indonesia's Law on Competition, art 20.
- 96 The Indonesia's Law on Competition, art 21.
- 97 The Indonesia's Law on Competition, art 22.
- 98 The Indonesia's Law on Competition, art 23.
- 99 The Indonesia's Law on Competition, art 24.
- 100 The Indonesia's Law on Competition, art 34 (4).
- 101 The Vietnam's Law on Competition, art 49, 50, 53 & 54.
- 103 Freshfields Bruckhaus Deringer 2005 (3).
- 104 Maarif 2001 (44-46).
- 105 The UNTACD competition law model, 2004, chapter IV (III).

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