

**GOVERNMENT**

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**SOCIALIST REPUBLIC OF VIETNAM**

**Independence - Freedom - Happiness**

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No. 35/2020/ND-CP

*Hanoi, March 24, 2020*

## **DECREE**

### **ELABORATING ON SEVERAL ARTICLES OF COMPETITION LAW**

*Pursuant to the Law on Government Organization dated June 19, 2015;*

*Pursuant to the Competition Law dated June 12, 2018;*

*Upon the request of the Minister of Industry and Trade,*

*The Government hereby promulgates the Decree that elaborates on several Articles of the Competition Law.*

## **Chapter I**

### **GENERAL PROVISIONS**

#### **Article 1. Scope**

This Decree provides details of Articles 9, 10, 13, 26, 31, 32, 33, 36, 56 and 82 in the Competition Law.

#### **Article 2. Interpretation**

1. An enterprise will have control and influence over an enterprise or a business activity or industry of another enterprise if it falls into the following situations:

- a) The acquirer receives the ownership interest that makes up more than 50% of the acquiree's charter capital or more than 50% of the acquiree's total voting shares;
- b) The acquirer holds the right to own or use more than 50% of the acquiree's total assets, out of all or a single business sector or industry of that acquiree;
- c) The acquirer has one of the following rights:
  - Directly or indirectly making decisions on appointment, dismissal or discharge from office of most or all of members of the Governing Board, president of the Board of Directors, director or general director of the acquire;

- Making decisions on revision or modification of the acquiree's corporate charter;
- Making decisions on the acquiree's important business matters, including its form of business organization; its business activities, location, approaches; changes in its business size and activities or industries; its forms and methods of mobilization, distribution and investment of its capital.

2. *Group of enterprises having organizational or financial affiliation (hereinafter referred to as affiliated companies)* means a combination of companies put under the control or influence of another or other enterprises in the same group, or put under the management of a governing unit.

3. *Market share point* means the numerical value of an enterprise's share of a relevant market which is determined under Article 10 in the Competition Law. For example, if an enterprise holds 30 percent (30%) share of a relevant market, its market share point will be 30.

4. *Sum of point squares of shares of a relevant market that all enterprises hold* shall be calculated according to the following formula:

$$\text{Sum of market share point squares} = S_1^2 + S_2^2 + \dots S_{(n)}^2$$

Where:  $S_1, \dots, S_{(n)}$  denotes respective market share points of the first enterprise through the  $n^{\text{th}}$  enterprise.

Example: On the same relevant market, if there are 3 enterprises holding 30%, 30% and 40% share, respectively, then the sum of point squares of shares of that relevant market will be defined as  $30^2 + 30^2 + 40^2 = 3400$ .

5. *Barriers to market entry and expansion* means factors that hinder an enterprise from entering or expanding its market.

## **Chapter II**

### **DETERMINATION OF RELEVANT MARKET AND MARKET SHARE**

#### **Section 1. DETERMINATION OF RELEVANT MARKET**

##### **Article 3. Relevant market**

1. A relevant market is defined as an inclusion of a relevant product market and a relevant geographic market.
2. While identifying the relevant market, National Competition Commission shall be entitled to consult with business sector or industry administrations, specialized entities and persons.

##### **Article 4. Determination of the relevant product market**

1. The relevant product market is the market where products and services that are regarded as interchangeable or substitutable in terms of their characteristics, uses and prices are sold.

2. Products and services will be regarded as interchangeable or substitutable if they are identical or homogeneous in terms of one or several elements as follows:

- a) Their characteristics;
- b) Their composition;
- c) Their physical and chemical properties;
- d) Their technical functions;
- dd) Their side effects on users;
- e) User's absorbability;
- g) Other specific attributes and qualities.

3. Products and services will be regarded as interchangeable or substitutable in terms of their uses if their main uses are identical.

4. Products and services will be regarded as interchangeable or substitutable in terms of their prices if the percent difference in these prices is not over 5% under similar transactional conditions. If the percent difference is more than 5%, National Competition Commission may identify products and services regarded as interchangeable or substitutable in terms of their prices by taking into consideration several additional elements referred to in clause 5, or by employing determination methods specified in clause 6 of this Article.

5. In case where determining whether products and services have properties and attributes that prove their interchangeability or substitutability as provided in clause 2, 3 and 4 of this Article gives insufficient evidence for the conclusion about the relevant product market, National Competition Commission shall additionally take into consideration one or several elements as follows:

- a) Rate of demand-side substitution of a product or service in case of any change in price of another product or service that takes place;
- b) Required costs and time that a consumer spends on buying or using another substitute product or service;
- c) Useful lifespan of products or services;
- d) Consumption habits;

- dd) Law affecting substitutability of products and services;
- e) Distinguishability in terms of buying and selling prices between different consumer groups;
- g) Supply-side substitutability of a product or service prescribed under Article 5 herein.

6. Where necessary, National Competition Commission can determine the price-related substitutability of products or services by using the following methods:

Products or services will be regarded as interchangeable or substitutable in terms of their prices if at least 35% of a random sample of 1,000 consumers living in relevant geographic regions buys or intends to buy other products or services whose qualities, attributes or uses are similar to those that they are using, or intends to use them in the event of the 10 percent increase in their prices in a continuous manner in 6 consecutive months.

If the number of consumers living in the relevant geographic region as mentioned in this paragraph is not 1,000 persons, the acceptable random sample may be at least 50% of total population of consumers living in that geographic region.

#### **Article 5. Determination of supply-side substitutability**

Supply-side substitutability will be defined as the capacity for increase in output volume and sales of enterprises currently manufacturing or trading a product or service, or the commencement or switch of production or trading of that product or service of other enterprises for less than 6 months without any significant increase in product or service costs if increase in its price falls within the range between 5% and 10%.

#### **Article 6. Determination of the relevant product market in special cases**

1. A relevant product market in a special case may be defined as the market of a single particular product or service, or a group of particular products and services identified owing to their particular qualities and characteristics, consumption habits or transactional approaches, including information technology-driven transactions.
2. While determining the relevant product market in the case specified in clause 1 of this Article, an additional attention should be paid to the market of products or services supporting relevant products.
3. Products supporting relevant products are products or services used with the aim of improving functions and effectiveness, or necessary for use, of relevant products. This means that, if the price of a supporting product is increased or decreased, then total demand for other relevant product will be decreased or increased as well.

#### **Article 7. Determination of the relevant geographic market**

1. A relevant geographic market is a specific geographical area where available products or services are interchangeable or substitutable under similar competition conditions which are significantly distinguished from those conditions existing within neighboring geographic areas.

2. Boundaries of geographic areas prescribed in clause 1 of this Article may be defined by the following elements:

a) Geographic areas that accommodate business establishments of enterprises participating in distribution of relevant products and services;

b) Business establishments of other enterprises that are located within neighboring geographic areas close enough to the geographical areas prescribed in point a of this clause to the extent that they are able to take part in competition with relevant products and services available within these areas;

c) Shipping costs of products and services;

d) Shipping time length of products and services;

dd) Barriers to market entry and expansion;

e) Consumption habits;

g) Required costs and time that consumers spend on buying or using these products and services;

3. A geographical region is regarded as having conditions similar to and considerably distinguishable from relevant geographical areas if it meets one of the following criteria:

a) Shipping costs and time constituting the price of a product or service may be increased by 10% at maximum;

b) One of barriers to market entry and expansion stated in Article 8 herein exist.

### **Article 8. Barriers to market entry and expansion**

Barriers to market entry and expansion shall comprise the followings:

1. Legislative barriers that are created by regulatory and policy frameworks, including regulations on import and export duties and quotas; national technical regulations; mandatory requirements and procedures for production and business of products and services; regulations on use of products and services; specialized standards and other administrative decisions of state regulatory authorities.

2. Financial barriers, including input costs of products and services, enterprise's accessibility to funds, loans and other capital, credit facilities and financing sources.

3. Initial costs of entry into a market that an enterprise can recover upon market exit.
4. Barriers to access to or keep hold on sources of supply or essential infrastructure for production and business activities; networks for distribution and sale of products and services.
5. Consumption habits.
6. Business practices and customs.
7. Barriers related to exercise of intellectual property rights of organizations and individuals, including author's rights and other rights pertaining to author's rights, industrial property rights and plant variety rights under laws on intellectual property rights.
8. Other barriers to market entry and expansion.

## **Section 2. DETERMINATION OF MARKET SHARE**

### **Article 9. Principles of determination of an enterprise's share of a relevant market**

1. An enterprise's share of a relevant market shall be determined according to methods specified in Article 10 in the Competition Law.
2. While identifying market share, National Competition Commission may consult with business sector or industry administrations, endorsed enterprises, qualified entities and persons.

### **Article 10. Determination of market share of affiliated companies**

1. Sales and purchase volume, and quantity of units of a particular product and service sold or purchased of affiliated companies, shall be determined as follows:
  - a) Sales and purchase volume, and quantity of units of a particular product and service sold or purchased, which are meant for determination of market share of a group of affiliated companies, shall be calculated by the summation of all of these measurements of all enterprises belonging to this group;
  - b) Sales and purchase volume, and quantity of units of a particular product and service sold or purchased of a group of affiliated companies shall exclude sales and purchase volume, and quantity of units of a particular product and service sold or purchased which arise from sale of products and supply of services amongst this group's member companies.
2. Market share of affiliated companies in the group shall be defined as the market share of the entire group.

## **Chapter III**

## **ASSESSMENT OF ANTI-COMPETITIVE EFFECTS OR LIKELIHOOD OF CAUSING SIGNIFICANT ANTI-COMPETITIVE EFFECTS OF ANTI-COMPETITIVE AGREEMENTS**

### **Article 11. Subject matters of assessment of anti-competitive effects or likelihood of causing significant anti-competitive effects of anti-competitive agreements**

1. National Competition Commission shall conduct assessment of anti-competitive effects or likelihood of causing significant anti-competitive effects of anti-competitive agreements in the cases specified in clause 3 and 4 of Article 12 in the Competition Law.

2. Assessment of anti-competitive effects or likelihood of causing significant anti-competitive effects of anti-competitive agreements shall be based on one or several elements, including:

a) Developments and changes of market share points of enterprises engaging in agreements that are evaluated in comparison with those of their competitors not engaging in agreements;

b) Barriers to market entry or expansion that are evaluated for the purpose of determination of anti-competitive effects or likelihood of causing anti-competitive effects of anti-competitive agreements based on elements affecting an enterprise's decision on entry into or expansion of its market as provided in Article 8 herein;

c) Restrictions on technological research, development and innovation, or technological competencies, which are assessed for the purpose of determination of anti-competitive effects or likelihood of causing anti-competitive effects with respect to objectives of technological research, development and innovation or improvement of technological competencies in relevant sectors and industries;

d) Decreases in accessibility to or keep hold of essential infrastructure that are evaluated based on the significance of infrastructure for production and business activities, costs and time that their competitors not engaged in anti-competitive agreements can spend on accessing and holding such infrastructure or other equivalents;

dd) Increases in costs and time that consumers can spend on purchasing products or services of enterprises engaged in anti-competitive agreements, or switching to other relevant products or services. This element shall be determined by comparing required costs and time that consumers can spend on purchasing products and services of enterprises engaged in anti-competitive agreements or switching to products and services of their competitors before and after these agreements take effect;

e) Impediments to market competition through control of sector or industry-specific factors related to enterprises engaged in anti-competitive agreements. This element shall be defined by taking into consideration the degree of influence that these specific factors have over market competitions of these enterprises.

3. Anti-competitive agreements shall be regarded as not causing, or unlikely to cause, anti-competitive effects in a considerable manner if the following circumstances occur:

a) Anti-competitive agreements between enterprises in the same relevant market shall be as mentioned above if the joint market share of enterprises engaged in these agreements is less than 5%;

b) Anti-competitive agreements between enterprises performing trades and participating in different stages in the same chain of production, distribution and supply with respect to a certain product or service shall be as mentioned above if the market share of each enterprises engaged in these agreements is less than 15%.

4. In the process of assessment of anti-competitive effects and likelihood of causing anti-competitive effects that is agreed upon in an anti-competitive agreement, National Competition Commission shall have the right to consult with relevant authorities, entities and persons, and require enterprises engaged in that agreement to provide necessary information and documents.

## **Chapter IV**

### **DETERMINATION OF SIGNIFICANT MARKET POWER**

#### **Article 12. Subject matters of determination of significant market power of enterprises and groups of enterprises**

1. National Competition Commission shall conduct determination of significant market power of enterprises and groups of enterprises prescribed in Article 26 in the Competition Law, based on one or several elements, including:

a) Market share correlation between enterprises in the relevant market which is assessed based on comparison of market share between enterprises and groups of enterprises in the relevant market;

b) Financial strength and size of enterprises or groups of enterprises. This element is assessed based on such criteria as financial competencies and accessibility to funds, loans and other financial sources, total capital, assets, total personnel, production scale, networks for distribution and consumption of products and services of these enterprises or groups of enterprises which are correlated to those of their competitors;

c) Market entry or expansion barriers to other enterprises. This element is assessed based on factors affecting decisions of enterprises upon market entry or expansion under Article 8 herein;

d) Likelihood of holding, accessing and controlling product or service distribution and consumption markets or sources of product and service supply. This element is assessed based on advantages of enterprises or groups of enterprises in comparison to those of their competitors owing to the holding and controlling of networks for distribution and consumption of products and services, or sources of product or service supply in the market;

dd) Technological and technical infrastructure advantages of enterprises or groups of enterprises. This element is assessed based on technological and technical infrastructure advantages of enterprises or groups of enterprises that are keeping ownership of or using them for production and business purposes in comparison to their competitors;

e) Rights to own, hold and access infrastructure. This element is assessed for the purpose of determination of advantages of enterprises or groups of enterprises in comparison to those of their competitors, based on the degree of significance of and accessibility to infrastructure used for the purposes of production and business of products and services;

g) Rights to own and use subject matters protected by intellectual property rights. This element is assessed for the purpose of determination of advantages of enterprises or groups of enterprises in comparison to those of their competitors, based on the degree of significance of and accessibility to subject matters protected by intellectual property rights during their production and business of products and services;

h) Likelihood of switching to sources or supply or demand with respect to other products and services. This element is assessed based on costs and time that consumers or enterprises require to switching to products and services of other enterprises in the same relevant market;

i) Particular factors in sectors or industries where enterprises or groups of enterprises are performing their business activities. This element is assessed for determination of advantages of enterprises or groups of enterprises in comparison to those of their competitors under sector or industry-specific conditions.

2. In the process of determination of significant market power of an enterprise or a group of enterprises, National Competition Commission shall have the right to consult with relevant authorities, entities and persons, and require enterprises to provide necessary information and documents.

## **Chapter V**

### **ECONOMIC CONCENTRATION**

#### **Article 13. Threshold for issuing notification of economic concentration**

1. Any enterprise intending to participate in the economic concentration program, except for those specified in clause 2 of this Article, according to the provisions of clause 1 of Article 33 of the Competition Law, must notify the National Competition Commission before carrying out the economic concentration regimes if one of the following cases occurs:

a) Total asset available in the Vietnamese market of a company or a group of affiliated companies of which the company is an affiliate must be worth VND 3,000 billion or more in the fiscal year preceding the planned year of economic concentration;

b) Total sales or purchase volume arising in the Vietnamese market of a company or a group of affiliated companies of which the company is an affiliate must be worth VND 3,000 billion or more in the fiscal year preceding the planned year of economic concentration;

c) Value of all economic concentration transactions must be worth at least VND 1,000 billion;

d) The joint market share of enterprises intending to participate in the economic concentration program must account for at least 20% of total share of the relevant market in the fiscal year preceding the planned year of economic concentration.

2. Any enterprise, including credit institutions, insurance companies or securities companies, intending to participate in the economic concentration program as provided in clause 1 of Article 33 in the Competition Law must notify the National Competition Commission before carrying out the economic concentration regimes if one of the following cases occurs:

a) Total asset available in the Vietnamese market of a company or a group of affiliated insurance companies of which the company is an affiliate must be worth VND 15,000 billion or more in the fiscal year preceding the planned year of economic concentration; total asset available in the Vietnamese market of a credit institution or a group of affiliated credit institutions of which the credit institution is an affiliate must account for at least 20% of total asset of the entire system of credit institutions in the Vietnamese market in the fiscal year preceding the planned year of economic concentration;

b) Total sales or purchase volume arising in the Vietnamese market of a company or a group of affiliated insurance companies of which the company is an affiliate must be worth VND 10,000 billion or more in the fiscal year preceding the planned year of economic concentration; Total sales or purchase volume arising in the Vietnamese market of an enterprise or a group of affiliated securities companies of which the enterprise is an affiliate must be worth VND 3,000 billion or more in the fiscal year preceding the planned year of economic concentration; total sales earned in the Vietnamese market of a credit institution or a group of affiliated credit institution of which the credit institution is an affiliate must account for at least 20% of total sales earned in the entire system of credit institutions in the fiscal year preceding the planned year of economic concentration;

c) Value of all economic concentration transactions of insurance companies or securities companies must be at least VND 3,000 billion; value of all economic concentration transactions of credit institutions must account for at least 20% of total charter capital in the entire system of credit institutions calculated in the fiscal year preceding the planned year of economic concentration;

d) The joint market share of enterprises intending to participate in the economic concentration program must account for at least 20% of total share of the relevant market in the fiscal year preceding the planned year of economic concentration.

3. If economic concentration regimes are implemented outside of the Vietnamese territory, the threshold for issuing notification of economic concentration shall conform to provisions laid down in point a, b and d of clause 1; point a and b or d of clause 2 of this Article.

#### **Article 14. Preliminary evaluation of economic concentration**

1. Within 30 days after receiving a complete and valid notification of economic concentration, the National Competition Commission shall issue a notice of one of the following results of preliminary evaluation of economic concentration:

- a) Consent to economic concentration regimes;
- b) Official evaluation of economic concentration regimes.

2. An economic concentration regime will be carried out if one of the following cases occurs:

- a) The joint market share of enterprises intending to participate in the economic concentration program must account for less than 20% of total share of the relevant market;
- b) The joint market share of enterprises intending to participate in the economic concentration program must account for at least 20% of total share of the relevant market while the sum of squares of market share points of enterprises after economic concentration in the relevant market must be less than 1,800;
- c) The joint market share of enterprises participating in the economic concentration program must account for at least 20% the relevant market; the sum of squares of market share points of enterprises after economic concentration in the relevant market must be more than 1,800; the amplitude of increases in the sum of squares of market share points of enterprises in the relevant market before and after economic concentration must be less than 100;
- d) Market shares of enterprises participating in the economic concentration program that have relationships with each other in the same chain of production, distribution and supply of a certain product or service, or business sectors or industries of enterprises engaging in the economic concentration program that are providing input or supporting products or services for each other, must be less than 20% of total share of the relevant market.

3. Upon expiration of the time limit specified in clause 1 of this Article, if the National Competition Commission has not yet issued a notice of preliminary evaluation results, the economic concentration regime shall be implemented.

4. Economic concentration regime will be subject to the official evaluation if it does not fall into the cases specified in clause 2 and 3 of this Article.

#### **Article 15. Subject matters of the assessment of anti-competitive effects or likelihood of causing significant anti-competitive effects of economic concentration regimes**

1. Joint market share of enterprises participating in the economic concentration program in the relevant market before and after economic concentration.
2. Level of concentration in the relevant market before and after the economic concentration which is assessed for the purpose of determining the threat of creating or reinforcing the market power of an enterprise, the ability to increase coordination and collusion among enterprises in the relevant market.
3. d) Relationship between enterprises participating in the economic concentration program in the same chain of production, distribution and supply of a certain product or service, or business sectors or industries of enterprises engaging in the economic concentration program that are providing input or supporting products or services for each other. This shall be assessed for the purpose of proving that, after completion of the economic concentration program, participating enterprises will have capabilities of creating more competitive advantages than their competitors in order to impede or rule out market entry competition.
4. Competitive advantages brought about by enterprises' economic concentration in the relevant market. This shall be overall assessed by considering advantages in terms of their product characteristics, chains of production and distribution, financial capacity, brands, technologies, intellectual property rights and other advantages of these enterprises after economic concentration in the context of relationship with their competitors in the relevant market, which leads to the threat of creating or reinforcing the significant market power of enterprises incorporated after economic concentration.
5. Likelihood of appreciation or increase in the profit margin of an enterprise after economic concentration. This shall be evaluated based on one or some of the following factors:
  - a) Projected changes on the demand side which shall be assessed in anticipation of the fact that, after completion of the economic concentration program, the participating enterprise may appreciate and change their production or conditions for transaction of their products and services in the relevant market;
  - b) Projected changes on the supply side of enterprises which shall be assessed in anticipation of the fact that, after completion of the economic concentration program, their competitors in the relevant market may appreciate and change their production or conditions for transaction of their products and services;
  - c) Projected changes in prices, production output and conditions for transaction of suppliers of products or services that are input factors of enterprises participating in the economic concentration program;
  - d) Competitor's conditions for and threats from increases in cooperation or agreement between them for the purpose of elevating their selling prices or profit margins;
  - dd) Other factors causing effects on likelihood of appreciation or increase in the profit margin of an enterprise after economic concentration.

6. Likelihood of a post-economic concentration enterprise's elimination of or impediment to other enterprises' entry into or expansion of their market. This shall be determined based on one or some of the following factors:

- a) Degree of control of production and business input factors before and after the economic concentration;
- b) Intra-sector or industry competitive characteristics and competitive behaviors of enterprises participating in the economic concentration program during the period before economic concentration;
- c) Barriers to market entry and expansion stated in Article 8 herein;
- d) Other factors that lead to the likelihood of a post-economic concentration enterprise's elimination of or impediment to other enterprises' entry into or expansion of their market.

7. Specific factors in the sectors or industries that enterprises engaging in the economic concentration program may take into consideration if those factors directly affect or significantly change the results of the evaluation of anti-competitive effects of the economic concentration regime prescribed in regulations of this Article.

#### **Article 16. Subject matters of the assessment of positive effects of the economic concentration regime**

The National Competition Commission shall assess positive effects of the economic concentration regime, based on a single factor or a combination of factors as follows:

1. Positive effects on development of industries, sectors, sciences and technologies according to the state strategies or planning schemes. This shall be assessed based on the following aspects:

- a) Capability of promoting the economic efficiency owing to the size and resources of localities, industries, sectors and the entire society which may result from implementation of the economic concentration regime. This must be conformable to objectives defined in strategies and planning schemes for development of sectors and industries which are approved by the Government or the Prime Minister;
- b) Level of application of scientific and technological advances to enterprises after economic concentration to improve productivity, quality and business efficiency in order to reduce costs, improve product or service quality or serve interests of consumers and the community.

2. Positive effects on development of small and medium-sized enterprises. This shall be assessed based on the evaluation of opportunities and favorable conditions of small and medium-sized enterprises for entry or expansion of their market or their participation in the chain of production and network for distribution of goods and services, which are likely to be brought about by implementation of the economic concentration regime.

3. Improvement of competitiveness of Vietnamese enterprises in the international market. This shall be assessed based on the positive consequences of the economic concentration carried out through the expansion of their domestic product or service manufacturing, consumption and export after completion of the economic concentration process.

## **Chapter VI**

### **COMPETITION-RELATED PROCEEDINGS**

#### **Section 1. EVIDENCES**

##### **Article 17. Rights and obligations to provide evidences**

1. The claimant shall have the right and obligation to find and submit documents and evidences that show that they file their complaint on sufficient grounds and in a legitimate manner.
2. Persons with related interests and obligations who file their independent claims shall have the right and obligation to provide documents and evidences proving that their claims are well-grounded and lawful.
3. The defendant, the examinee or the person with related rights and obligations that opposes any complaint or claim of another person against himself/herself shall have the right to prove that such opposition is well-grounded and shall be obliged to provide evidences for such opposition.
4. Authorities conducting investigations into competition-related cases shall be obligated to find evidences for competition-related violations in the cases specified in clause 2 of Article 80 in the Competition Law.

##### **Article 18. Facts and events requiring no evidence**

Facts and events requiring no evidence, including:

1. Clear facts and events that are known to all people and recognized by the Commission for Handling of Competition Restriction Cases or the National Competition Commission.
2. Facts and events that have been documented and notarized or lawfully authenticated. In case of doubting the authenticity of documentary facts and events, the National Competition Commission may request agencies, organizations and individuals that have provided and submitted documents to present main and original ones.
3. If a defendant, examinee or person with relevant interests and obligations admits or does not object to the fact, event, record and document that the other party submits, the latter shall not be required to provide evidence. If a defendant, examinee or person with relevant interests and obligations has their representative involved in the court proceedings, any admission or objection by the representative shall be deemed as the litigant's admission within the representative's delegated authority.

## **Article 19. Submission of evidences**

1. Participants in competition-related legal proceedings specified in Article 66 of the Competition Law, except for interpreters, shall have the right and obligation to hand over documents and evidence to the Competition Investigation Agency and the Commission for Handling of Competition Restriction Cases during the process of investigation into and handling of competition cases.
2. Submission of evidences specified in clause 1 of this Article must be recorded. The record must clearly state the name, form, content and characteristics of the evidence; the number of copies, the number of pages of documentary evidence and time of receipt; signature or fingerprint of the sender and the signature of the recipient and the seal of the Competition Investigation Agency and the National Competition Commission. The record must be made into two copies, including one to be kept in the dossiers of competition cases and the other to be deposited with the party submitting evidence.
3. Documents and evidences written in ethnic minority or other foreign languages must enclose copies of lawfully notarized and authenticated Vietnamese translations.
4. The time limit for submitting and handing over documents and evidences must not exceed the time limit for investigation specified in Articles 81 and 87 of the Competition Law, the time limit for supplementary investigation prescribed in Articles 89, 90 and 91 of the Competition Law or at the request of the President of the National Competition Commission and the Commission for Handling of Competition Restriction Cases.

## **Article 20. Expertise solicitation or request**

1. The claimant, the defendant, the examinee or the person with related rights and obligations shall have the right to request the Head of the Competition Investigation Agency and the Commission for Handling of Competition Restriction Cases to solicit expertise or, of their own accord, request expertise in case the Head of the Competition Investigation Agency or the Commission for Handling of Competition Restriction Cases refuses to solicit expertise. The right to request expertise shall be exercised within the time limit for investigation into and handling of competition cases.
2. At the request of the claimant, the defendant, the examinee or the person with related rights and obligations, or where necessary, the Head of the Competition Investigation Agency and the Commission for Handling of Competition Restriction Cases shall make their decision to solicit expertise. The decision to solicit expertise must specify the name and address of the expertise provider, the expertise receiver, subject matters of expertise, and the specific requirements that require the expertise provider's conclusion.
3. On seeing that expertise conclusions are not clear, at the request of the claimant, the defendant, the examinee or the person with related rights and obligations, or where necessary, the Head of the Competition Investigation Agency and the Commission for Handling of

Competition Restriction Cases shall request the expertise provider to explain expertise conclusions and summon the expertise provider to directly report on related matters.

4. At the request of the claimant, the defendant, the examinee or the person with related rights and obligations, or where necessary, the Head of the Competition Investigation Agency and the Commission for Handling of Competition Restriction Cases shall make the decision on supplementary expertise if expertise conclusions are unclear or insufficient, or if new issues arising relate to facts of competition cases that obtain previous expertise conclusions.

5. Re-expertise shall be permitted if it is established that conclusion of the initial expertise is inaccurate or violates law.

### **Article 21. Solicitation of expertise for allegedly false evidences**

1. If the evidence is alleged to be fake, the person who presented that evidence shall have the right to withdraw it; If not doing so, the claimant may request the Competition Investigation Agency and the Commission for Handling of Competition Restriction Cases to solicit expertise.

2. In case where it is suspected that the falsification of evidence is an offence, the Competition Investigation Agency and the Commission for Handling of Competition Restriction Cases shall be authorized to carry out their review according to the provisions of criminal proceedings law.

3. The person who submits false evidence must compensate for any likely loss or damage if such falsification causes damage to other organizations and individuals, and must bear the costs of expertise if the Competition Investigation Agency or the Commission for Handling of Competition Restriction Cases makes their decision to solicit expertise.

### **Article 22. Fiduciary duties to collect documents and evidences**

1. In the course of handling competition cases, the National Competition Commission may issue their decision to authorize competent agencies defined in Clause 3 of this Article to take testimonies of participants in legal proceedings or perform other measures to collect documents and evidences, verifying all circumstances of competition cases.

2. The decision must specify the name and address of the legal proceedings participant and the specific assigned tasks of collecting documents and evidences.

3. In case where the collection of documents and evidences must be carried out overseas, at the request of the Head of the Competition Investigation Agency, the Commission for Handling of Competition Restriction Cases or the National Competition Commission shall complete entrustment procedures through competent Vietnamese agencies or competent agencies in foreign countries that are also the party, like the Socialist Republic of Vietnam, to relevant treaties, or according to the principle of reciprocity without breach of the law of Vietnam and in accordance with international laws and practices.

4. In case of failure to perform the entrustment as prescribed in Clause 1 of this Article or already perform the entrustment without receiving any response to such entrustment, the National Competition Commission and the Commission for Handling of Competition Restriction Cases shall handle competition-related cases on the basis of information and evidences already existing in the case dossiers.

### **Article 23. Handling and storage of evidences**

1. If the evidence has been filed with the Competition Investigation Agency or the Commission for Handling of Competition Restriction Cases, then they shall be responsible for keeping custody thereof.

2. If the evidence is unlikely to be filed with the Competition Investigation Agency or the Commission for Handling of Competition Restriction Cases, then the keeper of that evidence shall be responsible for storing it.

3. If the evidence needs to be transferred to the third person to be kept in his/her custody, the Head of the Competition Investigation Agency or the Commission for Handling of Competition Restriction Cases shall be responsible for making his/her decision on transfer of such evidence and making the report on such transfer. The custodian of such evidence shall have to sign their name in the report, receiving remuneration and bearing responsibility for custody and preservation of such evidence.

4. All acts of destruction of documents and evidences shall be strictly prohibited.

### **Article 24. Evaluation of evidences**

1. Evidence evaluation must be sufficient, objective, comprehensive and accurate.

2. The Competition Investigation Agency and the Commission for Handling of Competition Restriction Cases must assess each evidence, the relationship between evidences, and confirm the legal validity of each evidence.

### **Article 25. Announcement and use of evidences**

1. All evidences must be announced and used publicly, except in the cases specified in clause 2 and 3 of this Article.

2. The President of the National Competition Commission or the Competition Investigation Agency or the Commission for Handling of Competition Restriction Cases shall not be allowed to publicly announce and use the following evidences:

a) Evidences classified as state secrets prescribed by law;

b) Evidences related to traditional customs, professional secrets, business know-how, personal secrets at the legitimate request of participants in competition legal proceedings.

3. Where necessary, the President of the National Competition Commission or the Competition Investigation Agency or the Commission for Handling of Competition Restriction Cases shall be entitled to announce and use some, part or all of evidences at the time appropriate for investigations and handling of competition cases.

4. Entities or persons conducting legal proceedings and participants in legal proceedings must protect the confidentiality of the evidences falling in cases where non-disclosure and public use thereof as specified in Clause 2 of this Article in accordance with law are prohibited.

## **Section 2. MEASURES FOR PREVENTION AND GUARANTEE OF HANDLING OF ADMINISTRATIVE VIOLATIONS ARISING FROM INVESTIGATION INTO AND HANDLING OF COMPETITION CASES**

### **Article 26. Procedures for requesting competent authorities to apply measures for prevention and guarantee of handling of administrative violations arising from investigation into and handling of competition cases**

1. The President of the National Competition Commission shall be authorized to request competent authorities in writing to apply measures for prevention and guarantee of handling of administrative violations arising from investigation into and handling of competition cases.

2. Written request for application of measures for prevention and guarantee of handling of administrative violations arising from investigation into and handling of competition cases must contain the following main information:

a) Requesting date;

b) Name and address of the enterprise, trade association, entity or person to be subject to measures for prevention and guarantee of handling of administrative violations arising from investigation into and handling of competition cases;

c) Summary of competition law violation;

d) Reasons for application of measures for prevention and guarantee of handling of administrative violations arising from investigation into and handling of competition cases;

dd) Time and scope of application of measures for prevention and guarantee of handling of administrative violations arising from investigation into and handling of competition cases.

3. Within the duration of 3 working days of receipt of the written request, the authority receiving the request must apply measures for prevention and guarantee of handling of administrative violations arising from investigation into and handling of competition cases. If that authority refuses to the request for application of measures for prevention and guarantee of handling of administrative violations, they must respond to such request in writing, clearly stating reasons for such refusal.

**Article 27. Responsibilities for cooperation in implementing measures for prevention and guarantee of handling of administrative violations arising from investigation into and handling of competition cases**

The National Competition Commission shall be responsible for cooperating with competent authorities in applying measures for prevention and guarantee of handling of administrative violations arising from investigation into and handling of competition cases.

**Article 28. Cancellation of application of measures for prevention and guarantee of handling of administrative violations arising from investigation into and handling of competition cases**

In case where reasons for application of measures for prevention and guarantee of handling of administrative violations arising from investigation into and handling of competition cases no longer exist, the President of the National Competition Commission may request a competent authority to remove the applied measures.

**Chapter VII**

**IMPLEMENTATION PROVISIONS**

**Article 29. Entry into force**

This Decree shall take effect on May 15, 2020.

**Article 30. Implementation responsibilities**

1. The Ministry of Finance shall guide the formulation, management and use of funds to ensure expenses incurred during the evaluation of exemption application dossiers for exemption agreed upon in anti-competitive agreements; incurred in the process of evaluating economic concentration notification dossiers; incurred in the course of investigating competition cases and in the course of competition legal proceedings.
2. Minister of Industry and Trade and President of the National Competition Commission shall be responsible for presiding over implementation of this Decree.
3. Ministers, Heads of Ministry-level agencies, Heads of Governmental bodies, and Chairpersons of People's Committees of centrally-affiliated cities and provinces, shall be responsible for implementing this Decree./.

**PP. GOVERNMENT  
PRIME MINISTER**

**Nguyen Xuan Phuc**

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