

**ORDER No. 23/2004/L-CTN OF DECEMBER 14, 2004 ON THE  
PROMULGATION OF LAW**

**THE PRESIDENT OF THE SOCIALIST REPUBLIC OF VIETNAM**

*Pursuant to Articles 103 and 106 of the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001 of the X<sup>th</sup> National Assembly, the 10<sup>th</sup> session;*

*Pursuant to Article 91 of the Law on Organization of the National Assembly;*

*Pursuant to Article 50 of the Law on Promulgation of Legal Documents,*

**PROMULGATES:**

**The Competition Law,**

which was passed on December 3, 2004 by the XI<sup>th</sup> National Assembly of the Socialist Republic of Vietnam at its 6<sup>th</sup> session.

**President of the Socialist Republic of Vietnam**

**TRAN DUC LUONG**

## **COMPETITION LAW**

*(No. 27/2004/QH11)*

*Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001 of the X<sup>th</sup> National Assembly, the 10<sup>th</sup> session;*

*This Law provides for competition.*

### ***Chapter I***

#### **GENERAL PROVISIONS**

##### ***Article 1.*** Scope of regulation

This Law provides for competition-restricting acts, unfair competition acts, order and procedures for settling competition cases, measures to handle violations of competition legislation.

##### ***Article 2.*** Subjects of application

This Law shall apply to:

1. Business organizations and individuals (hereinafter referred collectively to as enterprises), including also enterprises producing, supplying products, providing public-utility services, enterprises operating in the State-monopolized sectors and domains, and foreign enterprises operating in Vietnam.
2. Professional associations operating in Vietnam.

##### ***Article 3.*** Interpretation of terms

In this Law the following terms are construed as follows:

1. Relevant market means relevant market of products and relevant geographical market.

Relevant market of products means a market of goods, services which are interchangeable in terms of characteristics, use purposes and prices.

Relevant geographical market means a specific geographical area in which

exist goods, services which are interchangeable under similar conditions of competition, and which is considerably differentiated from neighboring areas.

2. Professional associations include commodity line associations and trade associations.

3. Competition restriction acts mean acts performed by enterprises to reduce, distort and prevent competition on the market, including acts of competition restriction agreement, abusing the dominant position on the market, abusing the monopoly position and economic concentration.

4. Unfair competition acts mean competition acts performed by enterprises in the process of doing business, which run counter to common standards of business ethics and cause damage or can cause damage to the State's interests, legitimate rights and interests of other enterprises or consumers.

5. An enterprise's market share of a certain kind of goods or service means the percentage between sale turnover of this enterprise and aggregate turnover of all enterprises dealing in such kind of goods or service on the relevant market or the percentage between purchase turnover of this enterprise and aggregate purchase turnover of all enterprises dealing in such kind of goods or service on the relevant market on a monthly, quarterly or yearly basis.

6. Combined market share means aggregate market share on the relevant market of enterprises participating in the competition restriction agreement or economic concentration.

7. Total cost of production of goods or services consists of:

- a. Cost of production of products or services; purchasing price of goods;
- b. Cost of circulation to bring goods, services to consumers.

8. Competition case means a case showing signs of violation of the provisions of this Law, which is investigated and handled by a competent state agency according to law provisions.

9. Competition procedures mean activities carried out by agencies, organizations and individuals according to the order and procedures for settling and handling competition cases prescribed by this Law.

10. Business secret means information that fully meets the following conditions:

- a. Being other than common knowledge;
- b. Being applicable to business and, once used, placing the holder ..)f such information at an advantage over the non-holder or non-user of such information;
- c. Being kept confidential by the owner by applying necessary measures to keep such information from disclosure and easy access.

11. Multi-level sale means an approach of marketing to retail goods, which meets the following conditions:

- a. The marketing to retail goods is conducted through a multi-level and multi-branch network of participants in the multi-level sale;
- b. Goods are marketed by participants in the multi-level sale directly to consumers at the customers' homes, working places or other places other than regular retail places of the enterprises or participants;
- c. Participants in the multi-level sale enjoy commissions, bonuses or other economic benefits from the sale results of their own and of lower-level multi-level sale participants within the network which is organized by themselves and approved by the multi-level sale enterprises.

**Article 4.** Right to business competition

1. Enterprises enjoy freedom to competition within the legal framework. The State protects the lawful right to business competition.
2. Competition must be implemented on the principles of honesty, non-infringement upon the interests of the State, public interests, legitimate rights and interests of enterprises, consumers and compliance with the provisions of this Law.

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

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

2. Where international agreements which the Socialist Republic of Vietnam has signed or acceded to contain provisions different from those of this Law, the provisions of such international agreements shall apply.

**Article 6.** Acts that State management agencies are prohibited from performing

State management agencies are prohibited from performing the following acts to prevent competition on the market:

1. To force enterprises, organizations or individuals to buy, sell goods, provide services to enterprises which are designated by these agencies, except for goods and services in the State-monopolized domains or in emergency cases prescribed by law;

2. To discriminate between enterprises;

3. To force professional associations or enterprises to align with one another with a view to precluding, restricting or preventing other enterprises from competing on the market;

4. Other acts that prevent lawful business activities of enterprises.

**Article 7.** State management responsibilities for competition

1. The Government performs uniform State management over competition.

2. The Trade Ministry shall be responsible to the Government for performing the State management over competition.

3. Ministries, ministerial-level agencies, provincial/municipal People's Committees shall, within the scope of their respective tasks and powers, have to coordinate with the Trade Ministry in performing the State management over competition.

## **Chapter II**

### **CONTROL OF COMPETITION RESTRICTION ACTS**

#### **Section 1. COMPETITION RESTRICTION AGREEMENTS**

**Article 8.** Competition restriction agreements

Competition restriction agreements include:

1. Agreements on directly or indirectly fixing goods or service prices;
2. Agreements on distributing outlets, sources of supply of goods, provision of services;
3. Agreements on restricting or controlling produced, purchased or sold quantities or volumes of goods or services;
4. Agreements on restricting technical and technological development, restricting investments;
5. Agreement on imposing on other enterprises conditions on signing of goods or services purchase or sale contracts or forcing other enterprises to accept obligations which have no direct connection with the subject of such contracts;
6. Agreements on preventing, restraining, disallowing other enterprises to enter the market or develop business;
7. Agreements on abolishing from the market enterprises other than the parties of the agreements;
8. Conniving to enable one or all of the parties of the agreement to win bids for supply of goods or provision of services.

**Article 9.** Prohibited competition restriction agreements

1. Competition restriction agreements prescribed in Clauses 6, 7 and 8 of this Law are prohibited.
2. Competition restriction agreements prescribed in Clauses 1, 2, 3, 4 and 5, Article 8 of this Law the parties of which have combined market share of 30% or more on the relevant market are prohibited.

**Article 10.** Cases of exemption with regard to prohibited competition restriction agreements

1. Competition restriction agreements defined in Clause 2, Article 9 of this Law shall enjoy exemption for a definite term if they meet one of the following conditions in order to reduce costs to benefit consumers:

- a. Rationalizing the organizational structure, business model, raising business efficiency;
  - b. Promoting technical and technological advances, raising goods and service quality;
  - c. Promoting the uniform application of quality standards and technical norms of products of different kinds;
  - d. Harmonizing business, goods delivery and payment conditions, which have no connection with prices and price factors;
  - e. Enhancing the competitiveness of small- and medium-sized enterprises;
  - f. Enhancing the competitiveness of Vietnamese enterprises on the international market.
2. The order, procedures for granting exemptions and exemption terms shall comply with the provisions of Section 4 of this Chapter.

***Section 2. ABUSE OF DOMINANT POSITION ON THE  
MARKET, ABUSE OF MONOPOLY POSITION***

***Article 11.*** Enterprises, groups of enterprises holding the dominant position on the market

1. Enterprises shall be considered to hold the dominant position on the market if they have market shares of 30% or more on the relevant market or are capable of restricting competition considerably.

2. Groups of enterprises shall be considered to hold the dominant position on the market if they take concerted action to restrict competition and fall into one of the following cases:

- a. Two enterprises having total market share of 50% or more on the relevant market;
- b. Three enterprises having total market share of 65% or more on the relevant market;
- c. Four enterprises having total market share of 75% or more on the relevant

market;

**Article 12.** Enterprises holding the monopoly position

An enterprise shall be considered to hold the monopoly position if there is no enterprise competing on the goods or services dealt in by such enterprise on the relevant market.

**Article 13.** Prohibited acts of abusing the dominant position on the market

Enterprises, groups of enterprises holding the dominant position on the market are prohibited from performing the following acts:

1. Selling goods, providing services at prices lower than the aggregate costs in order to eliminate competitors.
2. Imposing irrational buying or selling prices of goods or services or fixing minimum re-selling prices causing damage to customers;
3. Restricting production, distribution of goods, services, limiting markets, preventing technical and technological development, causing damage to customers;
4. Imposing dissimilar commercial conditions in similar transactions in order to create inequality in competition;
5. Imposing conditions on other enterprises to conclude goods or services purchase or sale contracts or forcing other enterprises to accept obligations which have no direct connection with the subject of such contracts;
6. Preventing new competitors from entering the market.

**Article 14.** Prohibited acts of abusing the monopoly position

Enterprises holding the monopoly position are prohibited from performing the following acts:

1. Acts defined in Article 13 of this Law;
2. Imposing unfavorable conditions on customers;
3. Abusing the monopoly position to unilaterally modify or cancel the contracts already signed without plausible reasons.



**Article 15.** Control of enterprises operating in the State monopolized domains, enterprises producing, supplying public-utility products, services

1. The State controls enterprises operating in the State-monopolized domains with the following measures:

a. Deciding on the buying prices, selling prices of goods, services in the State-monopolized domains;

b. Deciding on the quantities, volumes and scope of market of goods, services in the State monopolized domains.

2. The State controls enterprises producing and supplying public-utility products, services with measures of ordering goods, assigning plans or bidding according to prices or charges set by the State.

3. When undertaking other business activities outside the State-monopolized domains and producing, providing public-utility products, services, enterprises shall not be subject to the application of the provisions of Clause 1 and Clause 2 of this Article but still be subject to the application of other provisions of this Law.

### ***Section 3. ECONOMIC CONCENTRATION***

**Article 16.-** Economic concentration

Economic concentration means acts of enterprises, including:

1. Merger of enterprises;
2. Consolidation of enterprises;
3. Acquisition of enterprises;
4. Joint venture between enterprises;
5. Other acts of economic concentration prescribed by law.

**Article 17.** Merger, consolidation, acquisition of enterprises and joint venture between enterprises

1. Merger of enterprises means an act whereby one or several enterprises transfer all of its/their property, rights, obligations and legitimate interests to another enterprise, and at the same time terminate the existence of the merged enterprise (s).

2. Consolidation of enterprises means an act whereby two or more enterprises transfer all of their property, rights, obligations and legitimate interests to form a new enterprise and, at the same time, terminate the existence of the consolidated enterprises.

3. Acquisition of enterprises mean an act whereby an enterprise acquires the whole or part of property of another enterprise sufficient to control or dominate all or one of the trades of the acquired enterprise.

4. Joint venture between enterprises means an act whereby two or more enterprises jointly contribute part of their property, rights, obligations and legitimate interests to the establishment of a new enterprise.

**Article 18.** Prohibited cases of economic concentration

Economic concentration shall be prohibited if the combined market shares of enterprises participating in economic concentration account for over 50% on the relevant market, except for cases specified in Article 19 of this Law or the case where enterprises, after implementing economic concentration, are still of small or medium size as prescribed by law.

**Article 19.** Cases of exemption from prohibited economic concentration

Prohibited economic concentration prescribed in Article 18 of this Law may be considered for exemption in the following cases:

1. One or more of the participants in economic concentration is/are in danger of dissolution or bankruptcy;
2. The economic concentration has an effect of expanding export or contributing to socio-economic development, technical and technological advance.

**Article 20.** Notification of economic concentration

1. If enterprises participating in economic concentration have combined

market shares of between 30 and 50% on the relevant market, their lawful representatives must notify the competition managing agency before implementing economic concentration.

Where combined market shares of enterprises participating in economic concentration are lower than 30% on the relevant market or where enterprises, after implementing economic concentration, are still of small or medium size as prescribed by law, such notification is not required.

2. Enterprises participating in economic concentration eligible for exemption prescribed in Article 19 of this Law shall submit exemption application dossiers under the provisions of Section 4 of this Chapter instead of notification of economic concentration.

**Article 21.** Economic-concentration notification dossiers

1. An economic-concentration notification dossier shall comprise:

a. The written notification of economic concentration, made according to a form set by the competition-managing agency;

b. Valid copies of the business registration certificates of all enterprises participating in economic concentration;

c. Financial statements of the latest two consecutive years of each enterprise participating in economic concentration, with the certification of audit organizations according to law provisions;

d. The list of dependent units of each enterprise participating in economic concentration;

e. The list of kinds of goods, services dealt in by each enterprise participating in economic concentration and by its dependent units;

f. Reports of the latest two consecutive years of each enterprise participating in economic concentration on their market shares on the relevant market.

2. Enterprises submitting the economic concentration notification dossiers shall be accountable for the truthfulness of their dossiers.

**Article 22.** Acceptance of economic concentration notification dossiers

Within seven working days after receiving the economic-concentration notification dossiers, the competition-managing agency shall have to notify in writing the dossier-submitting enterprises of the validity and completeness of their dossiers; where a dossier is incomplete, the competition-managing agency shall have to clearly point out the contents that have to be supplemented.

**Article 23.** Time limit for reply to economic concentration notification

1. Within forty five days after receiving complete economic-concentration notification dossiers, the competition-managing agency shall have to reply in writing to the dossier-submitting enterprises. Written replies of the competition-managing agency must determine whether economic concentration falls into one of the following cases:

a. Economic concentration does not fall into the prohibited cases;

b. Economic concentration is prohibited under the provisions of Article 18 of this Law; the prohibition reason must be clearly stated in the written reply.

2. Where economic concentration involves many complicated circumstances, the head of the competition-managing agency may extend the time limit for reply specified in Clause 1 of this Article no more than twice, each time for no more than thirty days and notify such in writing to the dossier submitting enterprises no later than three working days before the expiration of the time limit for reply, clearly stating the extension reason.

**Article 24.** Implementation of economic concentration

Lawful representatives of the enterprises participating in economic concentration subject to notification as prescribed in Clause 1 , Article 20 of this Law may only carry out economic concentration procedures at the competent State agencies prescribed by legislation on enterprises after the competition-managing agency replies in writing that such economic concentration does not fall into any prohibited cases.

**Section 4. PROCEDURES FOR EXECUTION OF EXEMPTION CASES**

**Article 25.** Competence to decide on exemption

1. The Trade Minister shall consider and decide in writing on the exemption prescribed in Article 10 and Clause 1, Article 19 of this Law.

2. The Prime Minister shall consider and decide in writing on the exemption prescribed in Clause 2, Article 19 of this Law.

**Article 26.** Subjects submitting exemption application dossiers

The subjects submitting exemption application dossiers are the parties intending to participate in competition restriction agreements or economic concentration.

**Article 27.** Lawful representatives of parties of competition restriction agreements or economic concentration

1. The parties of the competition restriction agreements or economic concentration may appoint a representative to carry out the procedures to apply for exemption. The appointment of representatives must be made in writing and certified by the involved parties.

2. Rights and obligations of the representative party shall be determined by the involved parties;

3. The parties shall be responsible for acts of the representative party within the scope of authorization.

**Article 28.** Dossiers of application for exemption for competition restriction agreements

1. A dossier of application for exemption for a competition restriction agreement shall comprise:

a. The application, made according to the form set by the competition-managing agency;

b. The valid copies of the business registration certificates of each enterprise participating in the competition restriction agreement and the charter of the association for cases where the competition restriction agreement is participated by such association;

c. Financial statements of the latest two consecutive years of each enterprise

participating in the competition restriction agreement, with the certification of audit organizations according to law provisions;

d. Reports of the latest two consecutive years of each enterprise participating in the competition restriction agreement on their market shares on the relevant market;

e. A report elaborating the satisfaction of the cases eligible for exemption prescribed in Article 10 of this Law;

f. The written authorization of the representative party by the parties of the competition restriction agreement.

2. The dossier submitters and the parties of the competition restriction agreements shall be accountable for the truthfulness of their dossiers.

**Article 29.** Dossiers of application for exemption for economic concentration

1. A dossier of application for exemption for economic concentration shall comprise:

a. The application, made according to the form set by the competition-managing agency;

b. The valid copies of the business registration certificates of each enterprise participating in economic concentration;

c. Financial statements of the latest two consecutive years of each enterprise joining in economic concentration, with the certification of audit organizations according to law provisions;

d. Reports of the latest two consecutive years of each enterprise participating in economic concentration on their market shares on the relevant market;

e. A report elaborating the satisfaction of the cases eligible for exemption prescribed in Article 19 of this Law;

f. The written authorization of the representative party by the parties of economic concentration.

2. The dossier submitters and the parties of economic concentration shall be accountable for the truthfulness of their dossiers.

**Article 30.** Acceptance of exemption application dossiers

1. The competition-managing agency shall be responsible for accepting exemption application dossiers, putting forward its opinions to the Trade Minister for decision or submission to the Prime Minister for decision.

2. Within seven working days after receiving exemption application dossiers, the competition managing agency shall have to notify in writing the dossier submitters of the completeness of their dossiers. Where a dossier is incomplete, the competition-managing agency must point out the contents that have to be supplemented.

3. The dossier submitters must pay a fee for evaluation of exemption application dossiers according to law provisions.

**Article 31.** Requests for supplementation of exemption application dossiers

The competition-managing agency may request the submitters of exemption application dossiers to supplement necessary documents and information related to their intention to implement the competition restriction agreements or economic concentration and give additional explanation on unclear matters.

**Article 32.** Supply of information by related parties

1. The competition-managing agency may request related organizations and individuals to supply information on competition restriction agreements or economic concentration which it is handling.

2. Within fifteen days after receiving the requests of the competition-managing agency, related organizations and individuals shall have to reply in writing to the requests.

**Article 33.** Withdrawal of exemption applications

1. If wishing to withdraw their exemption applications, the dossier submitters must notify in writing the competition-managing agency thereof.

2. The competition-managing agency shall not refund the fee for evaluation

of exemption application dossiers in the case prescribed in Clause 1 of this Article.

**Article 34.** Time limit for issuance of decisions

1. Within sixty days after receiving complete exemption application dossiers, the Trade Minister shall issue one of the following decisions:

- a. Approving the exemption for the parties;
- b. Disapproving the exemption for the parties.

2. For cases involving many complicated circumstances, the Trade Minister may extend the time limit for issuance of decisions prescribed in Clause 1 of this Article no more than twice, each for thirty days at most.

3. In case of economic concentration falling under the Prime Minister's competence to grant exemption, the time limit for issuance of decisions approving or disapproving exemption shall be ninety days as from the date of receipt of complete exemption application dossiers; for cases involving many complicated circumstances, the time limit for issuance of such decisions shall be one hundred and eighty days.

4. In case of extension of the time limit for issuance of decisions, the competition-managing agency shall notify in writing the dossier submitters not later than three working days before the expiration of such time limit, clearly stating the reason therefor.

**Article 35.** Decisions on grant of exemption

1. A decision on grant of exemption must contain the following principal details:

- a. Names and addresses of the parties approved to perform the act;
- b. The details of the act to be performed;
- c. The time limit for enjoyment of exemption, conditions and obligations of the parties.

2. The competition-managing agency shall have to publicize the decisions on grant of exemption according to the Government's regulations.



**Article 36.** Implementation of competition restriction agreements, economic concentration for cases of enjoyment of exemption

1. The parties of the competition restriction agreements that enjoy exemption may implement their competition restriction agreements only after the decisions on grant of exemption are issued by the Trade Minister.

2. Lawful representatives of enterprises participating in economic concentration eligible for exemption may carry out procedures for economic concentration only at the competent Stage agencies prescribed by enterprise legislation after the decisions on grant of exemption are issued by the Prime Minister or the Trade Minister.

**Article 37.** Cancellation of decisions on grant of exemption

1. The agency competent to issue decisions on grant of exemption shall be entitled to cancel decisions on grant of exemption.

2. Decisions on grant of exemption shall be cancelled in the following cases:

- a. Frauds in the exemption application are detected;
- b. Enterprises enjoying exemption fail to abide by the conditions and obligations within the time limit stated in the decisions on grant of exemption;
- c. The conditions for grant of exemption no longer exist.

**Article 38.** Complaints about decisions related to grant of exemption

Enterprises which disagree with the decisions on grant or non-grant of exemption or decisions canceling the decisions on grant or exemption may lodge complaints according to law provisions on complaints and denunciations.

### ***Chapter III***

## **UNFAIR COMPETITION ACTS**

**Article 39.** Unfair competition acts

Unfair competition acts in this Law include:

1. Misleading indications;
2. Infringement upon business secrets;
3. Constraint in business;
4. Discrediting other enterprises;
5. Disturbing business activities of other enterprises;
6. Advertising for the purpose of unfair competition;
7. Sale promotion for the purpose of unfair competition;
8. Discrimination by associations;
9. Illicit multi-level sale;
10. Other unfair competition acts according to the criteria determined in Clause 4, Article 3 of this Law and prescribed by the Government.

***Article 40.*** Misleading indications

1. Enterprises are forbidden to use instructions containing information causing confusions about trade names, business mottoes, business logos, packings, geographical indications and other elements as prescribed by the Government to mislead customers about goods or services for the purpose of competition.

2. It is forbidden to do business in goods or services using misleading information prescribed in Clause 1 of this Article.

***Article 41.*** Infringement upon business secrets

Enterprises are forbidden to perform the following acts:

1. Accessing and collecting information belonging to business secrets by counteracting the security measures applied by lawful owners of such business secrets;

2. Disclosing, using information belonging to business secrets without the permission of owners of such business secrets;

3. Breaching security contracts or deceiving or taking advantage of the trust

of persons having the security duty in order to access, collect or disclose information belonging to business secrets of owners of such business secrets;

4. Accessing, collecting information belonging to business secrets of other persons when such persons carry out procedures according to law provisions concerning business, carry out procedures for product circulation, or by counteracting the measures applied by State agencies, or using such information for business purposes, application for licenses related to business or product circulation.

***Article 42.*** Constraint in business

Enterprises are forbidden to constrain customers, business partners of other enterprises by performing acts of threatening or forcing them not to enter in transactions or to stop transactions with such enterprises.

***Article 43.*** Discrediting other enterprises

Enterprises are forbidden to discredit other enterprises by performing acts of directly or indirectly issuing untruthful information badly affecting the latter's reputation, financial status and business activities.

***Article 44.*** Disturbing business activities of other enterprises

Enterprises are forbidden to disturb lawful business activities of other enterprises by performing acts of directly or indirectly preventing, disrupting the latter's business activities.

***Article 45.*** Advertising for the purpose of unfair competition

Enterprises are forbidden to carry out the following advertising activities:

1. Comparing their goods, services directly with those of the same kind of other enterprises;
2. Imitating other advertising products to mislead customers;
3. Issuing false or misleading information to customers on one of the following contents:
  - a. Prices, quantities, quality, utilities, designs, categories, packings, date of

manufacture, use duration, goods origin, manufacturers, places of manufacture, processors, places of processing;

b. Usage, mode of servicing, warranty duration;

c. Other false or misleading information.

4. Other advertising activities prohibited by law.

**Article 46.** Sale promotion for the purpose of unfair competition

Enterprises are forbidden to carry out the following sale promotion activities:

1. Organizing sale promotion with prize frauds;

2. Organizing sale promotion which is dishonest or causes confusion about goods, services in order to cheat customers;

3. Discriminating between similar customers at different sale promotion places under the same sale promotion program;

4. Presenting goods free to customers for trial use but requesting customers to use their goods in exchange for similar goods manufactured by other enterprises and currently used by such customers;

5. Other sale promotion activities prohibited by law.

**Article 47.** Discrimination by associations

Professional associations are forbidden to perform the following acts:

1. Refusing to admit enterprises eligible for admission or refusing to allow enterprises to withdraw from the associations in a discriminatory way, placing such enterprises at a competitive disadvantage;

2. Irrationally restricting business activities or other business-related activities of member enterprises.

**Article 48.** Illicit multi-level sale

Enterprises are forbidden to perform the following acts to gain illicit profits

from the recruitment of participants into the multi-level sale networks:

1. Requesting those who wish to participate to pay a deposit, buy an initial volume of goods or pay a sum of money for the right to participate in the multi-level sale network;

2. Not to commit to buy back goods at 90% at least of the price at which the goods were sold to participants for re-sale;

3. To give participants commissions, bonuses or other economic benefits which are gained mostly from the enticement of other people to participate in the multi-level sale network;

4. Supplying false information on the benefits of the participation in the multi-level sale network, false information on the nature and utilities of goods in order to entice the participation of other people.

#### *Chapter IV*

### **COMPETITION-MANAGING AGENCY, COMPETITION COUNCIL**

#### ***Section 1. COMPETITION-MANAGING AGENCY***

##### ***Article 49.*** Competition-managing agency

1. The Government shall decide to establish, and prescribe the organization and apparatus of, the competition-managing agency.

2. The competition-managing agency shall have the following tasks and powers:

a. To control the process of economic concentration according to the provisions of this Law;

b. Accepting exemption application dossiers; put forward opinions to the Trade Minister for decision or submission to the Prime Minister for decision;

c. Investigating competition cases related to competition-restricting acts and unfair competition acts;

d. Handling and sanctioning unfair competition acts;

e. Other tasks prescribed by law.

**Article 50.** Head of the competition-managing agency

1. The head of the competition-managing agency shall be appointed or dismissed by the Prime Minister at the proposal of the Trade Minister.

2. The head of the competition-managing agency shall have to organize and direct the competition-managing agency to perform the tasks and powers defined in Clause 2, Article 49 of this Law.

**Article 51.** Investigators of competition cases

1. Investigators of competition cases (hereinafter called investigators) shall be appointed by the Trade Minister at the proposal of the head of the competition-managing agency.

2. Investigators shall investigate specific competition cases under decisions of the head of the competition-managing agency.

**Article 52.** Criteria of investigators

Persons who fully meet the following criteria may be appointed investigators:

1. Possessing good ethical qualities, being honest, impartial;
2. Having the degree of bachelor of law, economics or finance;
3. Having worked at least five years in one of the domains defined in Clause 2 of this Article;
4. Having been trained in professional investigation skills.

**Section 2. COMPETITION COUNCIL**

**Article 53.** Competition Council

1. The Competition Council is an agency established by the Government. The Competition Council shall be composed of between eleven and fifteen

members appointed or dismissed by the Prime Minister at the proposal of the Trade Minister.

2. The Competition Council shall have to organize the handling and settlement of complaints about competition cases involving competition restricting acts under the provisions of this Law.

**Article 54.** Chairman of the Competition Council

1. The Competition Council chairman shall be appointed or dismissed by the Prime Minister among the Competition Council members at the proposal of the Trade Minister.

2. The Competition Council chairman shall have to organize the operation of the Competition Council.

3. The Competition Council chairman shall decide to set up the Competition Case-Handling Council composed of at least five members of the Competition Council, one of whom shall chair hearings to deal with a specific competition case.

**Article 55.** Criteria of Competition Council members

1. Persons who fully meet the following criteria may be appointed as Competition Council members:

a. Possessing good ethical qualities, being honest, impartial, and having the sense of protecting socialist legality;

b. Having the degree of bachelor of law, economics or finance;

c. Having worked at least nine years in one of the domains defined at Point b, Clause 1 of this Article;

d. Being capable of fulfilling the assigned tasks.

2. Competition Council members shall have a five-year term of office and may be re-appointed.

**Chapter V**

# INVESTIGATION, HANDLING OF COMPETITION CASES

## *Section 1. GENERAL PROVISIONS*

### **Article 56.** Principles for competition procedures

1 . The settlement of competition cases involving competition-restricting acts shall comply with the provisions of this Law.

2. The settlement of competition cases involving unfair competition acts shall comply with the provisions of this Law and legislation on handling of administrative violations.

3. In the process of carrying out competition procedures, investigators, the head of the competition-managing agency and Competition Council members must, within the scope of their respective tasks and powers, keep confidential business secrets of enterprises, respect legitimate rights and interests of the related organizations and individuals.

### **Article 57.** Language and script used in competition procedures

The language and script used in competition procedures is Vietnamese. Participants in competition procedures shall be entitled to use their native language and script; in this case interpretation is required.

### **Article 58.** Complaints about competition cases

1. If organizations and individuals deem that their legitimate rights and interests are infringed upon by acts in violation of the provisions of this Law (hereinafter referred collectively to as complainants), they may lodge complaints with the competition-managing agency.

2. The statute of limitations for lodging complaints is two years, as from the date the acts involving signs of violation of competition legislation are committed.

3. Complaint dossiers must comprise the following principal documents:

a. The written complaint, made according to a form set by the competition-managing agency;

b. Evidences on the violation act.



4. Complainants shall be accountable for the truthfulness of evidences they supply to the competition-managing agency.

**Article 59.** Acceptance of complaint dossiers

1 . The competition-managing agency shall have to accept complaint dossiers.

2. Within seven working days after receiving complaint dossiers, the competition-managing agency shall have to notify in writing the complainants of the acceptance of their dossiers.

3. Complainants must pay an advance for the cost of handling the competition case according to law provisions.

**Article 60.** Evidences

1. Evidences are facts used by investigators and the Competition Case-Handling Council as grounds for determining whether or not exist acts of violating the provisions of this Law.

2. Evidences are determined from the following sources:

a. Exhibits, which are things used as tools or means for commission of violations, money and other things having the effect of proving acts of violating the provisions of this Law;

b. Testimonies of witnesses, explanations of related organizations and individuals;

c. Original documents, copies and translations of original documents which are lawfully notarized or authenticated or supplied and certified by competent agencies or organizations.

d. Expertise conclusions.

**Article 61.** Application of administrative preventive measures

1. The head of the competition-managing agency, the Competition Council chairman may apply some administrative preventive measures prescribed by legislation on handling of administrative violations in the cases specified in Clause

6, Article 76 and Clause 4, Article 79 of this Law.

The Government shall specify administrative preventive measures that the head of the competition-managing agency and the Competition Council chairman may apply.

2. The following persons may propose the application of administrative preventive measures:

a. Complainants may make such a proposal to the head of the competition-managing agency and the Competition Council chairman;

b. Investigators may make such a proposal to the head of the competition-managing agency;

c. Presidents of hearings may make such a proposal to the Competition Council chairman.

3. In case of application of administrative preventive measures at the proposals of complainants, the complainants shall have to pay a guaranty money according to the Government's regulations.

In cases of wrong application of administrative preventive measures, causing damage to the investigated parties, the complainants must pay compensation therefor. The compensation level shall be agreed upon by the complainants and the investigated parties; if the two parties cannot reach agreement thereon, they may initiate lawsuits at court to claim for damages according to the provisions of civil legislation.

4. Where the administrative preventive measures are applied at variance of the requests of investigators or the hearing presidents, thereby causing damage to the investigated parties, the competition-managing agency or the Competition Council must pay compensation therefor. The level of compensation shall be agreed upon by the investigated parties and the competition-managing agency or the Competition Council; if they cannot reach agreement thereon, the investigated parties may initiate lawsuits at courts to claim for damages according to the provisions of civil legislation. If compensation must be paid, the competition - managing agency or the Competition Council must identify the responsibility, also including material responsibility, of the proposers and related persons so as to

impose proper disciplinary forms on such persons and force them to indemnify for the money amounts the competition-managing agency or the Competition Council has compensated to the investigated parties.

5. The parties subject to the application of administrative preventive measures may lodge complaints about the decisions thereon according to the law provisions on complaints and denunciations.

**Article 62.** Competition case-handling charges

Competition case-handling charges shall be used for the handling of competition case. The Government shall prescribe the levels, collection, payment, management and use of such charge in accordance with legislation on charges and fees.

**Article 63.** Liability to competition case-handling charges

1. The party that is concluded to have violated the provisions of this Law must pay competition case-handling charges.

2. Where the invested party does not violate the provisions of this Law, the complainant shall have to pay competition case-handling charges.

3. Where a competition case is conducted under the provisions of Clause 2, Article 65 of this Law, if the investigated party does not violate the provisions of this Law, the competition-managing agency shall have to pay competition case-handling charges.

**Section 2. COMPETITION PROCEDURE PARTICIPANTS**

**Article 64.** Competition procedure participants

Competition procedure participants include:

1. The complainant;
2. The investigated party;
3. Lawyers;

4. Witnesses;
5. Experts;
6. Interpreter;
7. Persons with related interests and obligations.

**Article 65.** Investigated parties in competition cases

The investigated parties in competition cases (hereinafter called investigated parties) are organizations or individuals that are investigated under decisions of the competition-managing agency in the following cases:

1. Being complained against under the provisions of Article 58 of this Law;
2. Being detected by the competition-managing agency to be committing or have committed acts involving signs of violation of competition legislation within two years as from the date such acts were committed.

**Article 66.** Rights and obligations of involved parties

- 1 . The investigated party shall have the following rights:
  - a. To produce documents, things; to know documents and things produced by the complainants or the competition-managing agency;
  - b. To participate in hearings;
  - c. To request the change of investigators, Competition Case-Handling Council members if detecting that they fall into one of the cases prescribed in Article 83 of this Law;
  - d. To authorize lawyers to participate in competition procedures;
  - e. To request witnesses;
  - f. To propose the competition-managing agency to request expertise;
  - g. To propose the change of competition procedure-conducting persons and competition procedure participants under the provisions of this Law.
2. The complainant shall have the following rights:

- a. The rights prescribed in Clause 1 of this Law;
  - b. To propose the head of the competition managing agency or the Competition Council chairman to apply administrative preventive measures related to the competition cases.
3. The investigated party and the complainant shall have the following obligations:
- a. To supply full, truthful, accurate evidences in a timely manner related to their proposals or requests;
  - b. To appear in response to the summonses of the competition-managing agency or the Competition Case-Handling Council. Where they are summoned but fail to appear without plausible reasons, the Competition Case-Handling Council shall proceed with handling the cases based on available information;
  - c. To abide by decisions of the competition managing agency and the Competition Case-Handling Council.

**Article 67.** Lawyers of the complainants, the investigated parties

1. Lawyers who fully meet the procedure-participating conditions prescribed by legislation on lawyers and are authorized by the complainants or investigated parties may participate in competition procedures to protect the legitimate rights and interests of the parties which they represent.
2. When participating in competition procedures, lawyers shall have the following rights and obligations:
  - a. To participate in all stages of the process of competition procedures;
  - b. To verify and collect evidences and supply them in order to protect the legitimate rights and interests of the parties which they represent;
  - c. To study documents in the competition case dossiers and to take notes and copy necessary documents in such dossiers in order to protect the legitimate rights and interests of the parties which they represent;
  - d. To propose on behalf of the parties they represent the change of competition procedure-conducting persons and/or competition procedure

participants under the provisions of this Law;

e. To render legal assistance to the parties they represent in order to protect their legitimate rights and interests;

f. To respect truth and law; not to bribe, force or incite other persons to give false testimonies or supply untruthful documents;

g. To appear in response to the summonses of the Competition Case-Handling Council;

h. Not to disclose investigation secrets they know in the process of participating in competition procedures; not to use their notes and copies of documents in the competition case dossiers for the purpose of infringing upon the State's interests or legitimate rights and interests of organizations and individuals.

**Article 68.** Witnesses

1. Persons who know about circumstances related to the competition cases may be summoned by the Competition Case-Handling Council to participate in competition procedures in the capacity as witnesses or invited by the competition-managing agency in the capacity as witnesses at the requests of the involved parties. Persons who have lost their civil act capacity must not act as witnesses.

2. Witnesses shall have the following rights and obligations:

a. To supply all documents, papers and things they have, which are related to the settlement of competition cases; give testimony verbally or in writing to the competition-managing agency or the Competition Case-Handling Council on all circumstances they know, which are related to the settlement of competition cases;

b. To participate in hearings and give testimony to the Competition Case-Handling Council;

c. To be allowed to take leave when they are summoned by, or give testimony to, the competition-managing agency or the Competition Case-Handling Council if they are working for State agencies, organizations or enterprises;

d. To be paid for travel expenses and enjoy other regimes as prescribed by law;

e. To refuse to give testimony if such testimony is related to State secrets, professional secrets or personal privacy or badly, disadvantageously affects the complainants or investigated parties that are their close relatives;

f. To honestly report on circumstances they know, which are related to the settlement of competition cases;

g. To pay damages and take responsibility before law for their false testimony causing damage to the complainants, investigated parties or other persons;

h. To appear at the hearings in response to the summonses of the Competition Case-Handling Council if they must give testimony publicly at the hearings;

i. To pledge before the competition-managing agency or the Competition Case-Handling Council to exercise their rights and fulfill their obligations, except for minor witnesses.

3. Witnesses who refuse to give testimony, give false testimony, supply false materials or are absent without plausible reasons when being summoned by the Competition Case-Handling Council shall have to bear responsibility according to law provisions, except for the case prescribed at Point e, Clause 2 of this Article.

4. Witnesses shall be protected according to law provisions.

#### ***Article 69.*** Experts

1. Experts are those who have necessary knowledge about the matters to be expertised at the request of the head of the competition-managing agency or the Competition Case-Handling Council at the request of the involved parties after it is accepted by the head of the competition-managing agency or the Competition Case-Handling Council according to law provisions.

2. Experts shall have the following rights and obligations:

a. To read documents in the competition case dossiers which are related to the expertised subject; to request the expertise-requesting agency to supply materials necessary for expertise;

b. To raise questions to the competition procedure participants on matters related to the expertised subject;

c. To appear in response to the summonses of the expertise-requesting agency, give answers on matters related to the expertise as well as expertise conclusions in an honest, grounded and objective manner;

d. To notify in writing the expertise-requesting agency of the impossibility to expertise because the matters requested to be expertised fall beyond their professional capability or the supplied documents are not enough or are of no use for expertise;

e. To preserve the received documents and return them to the expertise-requesting agency together with the expertise conclusions or the notice on the impossibility to expertise;

f. Not to collect by themselves documents for expertise, not to privately contact other competition procedure participants if such contact affects the impartiality of the expertise results; not to disclose information they know in the expertising process, not to notify the expertise results to other persons, except for the signees of the expertise-requesting decisions;

g. To write their opinions on the written general conclusions if disagreeing with the general conclusions in the case of collective expertise;

h. To be paid for travel expenses and enjoy other regimes according to law provisions.

3. Experts who refuse to give expertise conclusions without plausible reasons or give false expertise conclusions or are absent without plausible reasons when summoned by the expertise-requesting agency shall have to bear responsibility according to law provisions.

4. Experts must refuse to participate in competition procedures or be changed in the following cases:

a. They fall into one of the cases prescribed in Article 83 of this Law;

b. They have participated in competition procedures in the capacity as lawyers, witnesses or interpreters in the same competition case;



c. They have conducted procedures in such competition case in the capacity as Competition Case-Handling Council members.

**Article 70.** Interpreters

1. Interpreters are those who are capable of translating a language other than Vietnamese into Vietnamese and vice versa in case where competition procedure participants cannot use Vietnamese. Interpreters shall be selected according to the agreement of the involved parties and accepted by the Competition Case-Handling Council shall be appointed by the Competition Case-Handling Council.

2. Interpreters shall have the following rights and obligations:

a. To appear in response to the summonses of the Competition Case-Handling Council;

b. To interpret in an truthful, objective and accurate manner;

c. To ask competition procedure-conducting persons and competition procedure participants to explain the contents more clearly for interpretation;

d. Not to contact other competition procedure participants if such contact may affect the truthfulness, objectivity and accuracy of the interpretation;

e. To be paid for travel expenses and enjoy other regimes according to law provisions;

f. To pledge before the Competition Case-Handling Council to exercise their rights and fulfill their obligations.

3. Interpreters who deliberately give false interpretation or are absent without plausible reasons when summoned by the Competition Case-Handling Council shall have to bear responsibility according to law provisions.

4. Interpreters must refuse to participate in competition procedures or be changed in the following cases:

a. They fall into one of the cases prescribed in Article 83 of this Law;

b. They have participated in competition procedures in the capacity as lawyers, witnesses or experts in the same competition case;

c. They have conducted procedures in such competition case in the capacity as Competition Case-Handling Council members.

5. The provisions of this Article also apply to those who understand the signs given by dumb or deaf competition procedure participants.

Where only the representatives or relatives of dumb or deaf competition procedure participants can understand the latter's signs, they may be accepted by the Competition Case-Handling Council to act as interpreters for such dumb or deaf persons.

**Article 71.** Persons with interests, obligations related to competition case

1. Persons with related interests, obligations may file independent claims or participate in competition procedures on the side of the complainants or investigated parties.

2. Persons with related interests, obligations who file independent claims or participate in competition procedures on the side of the complainants or persons with interests only shall have the complainant's rights and obligations prescribed in Article 66 of this Law.

3. Persons with related interests, obligations who participate in competition procedures on the side of the investigated parties or persons with obligations only shall have the investigated party's rights and obligations prescribed in Article 66 of this Law.

**Article 72.** Procedures for refusing expertise, interpretation or requesting change of experts or interpreters

1. The refusal of expertise or interpretation or request for change of experts or interpreters before the opening of hearings must be made in writing, clearly stating the reasons therefor.

2. The refusal of expertise or interpretation or request for change of experts or interpreters during a hearing must be written in the hearing's minutes.

**Article 73.** Deciding on change of experts or interpreters

1. Before opening a hearing, the change of experts or interpreters shall be

decided by the Competition Council chairman.

2. During a hearing, the change of experts or interpreters shall be decided by the Competition Case-Handling Council after hearing the opinions of the persons requested to be changed and other competition procedure participants.

If it is necessary to change experts or interpreters, the Competition Case-Handling Council shall issue a decision to postpone the hearing. The request for expertise by other experts or the appointment of other interpreters shall comply with the provisions of Articles 69 and Article 70 of this Law.

***Section 2. COMPETITION PROCEDURE-CONDUCTING AGENCIES,  
COMPETITION PROCEDURE-CONDUCTING PERSONS***

***Article 74.*** Competition procedure-conducting agencies

Competition procedure-conducting agencies include the competition-managing agency and the Competition Council.

***Article 75.*** Competition procedure-conducting persons

Competition procedure-conducting persons include Competition Council members, the head of the competition-managing agency, investigators and the hearing's clerks.

***Article 76.*** Tasks and powers of the head of the competition-managing agency when conducting competition procedures

When conducting competition procedures, the head of the competition-managing agency shall have the following tasks and powers:

1. To decide to assign investigators to investigate specific competition cases;
2. To inspect investigative activities of competition case investigators;
3. To decide to modify or cancel groundless and illegal decisions issued by competition case investigators;
4. To decide to change competition case investigators;

5. To decide to request expertise;
6. To decide to apply, change or cancel administrative preventive measures pending the transfer of competition case dossiers to the Competition Council for handling;
7. To decide to conduct preliminary investigation, stop investigation, conduct official investigation of competition cases falling under the competence of the competition-managing agency;
8. To invite witnesses at the requests of the involved parties at the investigation stage;
9. To sign written conclusions on the investigation of competition cases, submitted by the assigned investigators;
10. To transfer competition case dossiers to the Competition Council in cases where the competition cases involve competition-restricting acts;
11. To settle complaints and denunciations falling under the competence of the competition-managing agency.

**Article 77.** Powers of investigators when conducting competition procedures

When conducting competition procedures, investigators shall have the following powers:

1. To request related organizations and individuals to supply necessary information and documents concerning competition cases;
2. To request the investigated parties to supply documents and give explanations concerning competition cases;
3. To propose the head of the competition-managing agency to request expertise;
4. To propose the head of the competition managing agency to apply administrative preventive measures to competition cases.

**Article 78.** Obligations of investigators when conducting competition procedures:

When conducting competition procedures, investigators shall have the following obligations:

1. To hand the investigation decisions of the head of the competition-managing agency to the investigated parties;
2. To keep confidential business secrets of enterprises;
3. To preserve the supplied documents;
4. To investigate competition cases assigned by the head of the competition-managing agency;
5. To make investigation reports upon termination of preliminary investigation or official investigation of competition cases;
6. To take responsibility to the head of the competition-managing agency and before law for the performance of their tasks and powers.

**Article 79.** Tasks and powers of the Competition Council chairman when conducting competition procedures

1. To set up the Competition Case-Handling Council under the provisions of Clause 3, Article 54 of this Law.
2. To decide to change Competition Case-Handling Council members, the hearing's clerks, experts or interpreters before opening a hearing according to the provisions of Clause 1 of Article 73, Article 83 and Clause 1 of Article 85 of this Law.
3. To decide to appoint Competition Case-Handling Council members, the hearing's clerks to replace those who are changed during the hearing according to the provisions of Clause 2, Article 85 of this Law.
4. To decide to apply, change or cancel administrative preventive measures when receiving competition case dossiers.

**Article 80.** The Competition Case- Handling Council

1. When settling competition cases, the Competition Case- Handling Council shall work independently and only abide by law.

2. Decisions on handling competition cases shall be adopted by the Competition Case- Handling Council by majority vote; where the numbers of votes for and against are equal, decisions shall be made according to the side sharing the opinion of the hearing's president.

**Article 81.** Tasks and powers of the president of a hearing

The president of a hearing shall have the following tasks and powers:

1. To organize the study of competition case dossiers;
2. On the basis of the decision of the Competition Case- Handling Council, to sign the proposal to the Competition Council chairman to apply, change or cancel administrative preventive measures; decide to return the competition case dossier to the competition-managing agency and request additional investigation; decide to stop the settlement of the competition case;
3. On the basis of the decision of the Competition Case- Handling Council, to sign the decision to open the hearing;
4. To decide to summon participants to the hearing;
5. To sign and announce the decision on the handling of the competition case and other decisions of the Competition Case- Handling Council;
6. To carry out other activities under his/her competence prescribed by this Law when handling the competition case.

**Article 82.** Clerks of hearings

1. The clerk of a hearing shall have the following tasks and powers:
  - a. To prepare necessary professional jobs before the opening of a hearing;
  - b. To announce the rules of the hearing;
  - c. To report to the Competition Case- Handling Council on the presence or absence of those summoned to the hearing;
  - d. To write the minutes of the hearing;
  - e. To perform other jobs assigned by the president of the hearing.

2. The clerk of a hearing must refuse to conduct competition procedures or be changed in the cases prescribed in Article 83 of this Law.

**Article 83.** Cases of refusal or change of Competition Case- Handling Council members, investigators, the hearing's clerks, experts, interpreters

Competition Case-Handling Council members, investigators, the hearing's clerks, experts, interpreters must refuse to perform their tasks or shall be changed in one of the following cases:

1. They are relatives of the complainants or investigated parties;
2. They are persons with interests, obligations related to the competition cases;
3. There are other explicit grounds to deem that they shall not be impartial when performing their tasks.

**Article 84.** Procedures for refusal to conduct competition procedures or request for change of Competition Case-Handling Council members, the hearing's clerks

1. The refusal to conduct competition procedures or request for change of Competition Case-Handling Council members, the hearing's clerks before the opening of the hearings must be made in writing, clearly stating the reasons and grounds therefor.

2. The refusal to conduct competition procedures or request for change of Competition Case-Handling Council members, the hearing's clerks during the hearings must be recorded in the hearings' minutes.

**Article 85.** Deciding on change of Competition Case-Handling Council members or the hearing's clerks

1. Before a hearing is opened, the change of Competition Case-Handling Council members, the hearing's clerk shall be decided by the Competition Council chairman.

2. During a hearing, the acceptance of the change of Competition Case-Handling Council members or the hearing's clerk shall be decided by the

Competition Case-Handling Council after hearing the opinions of the refusing persons or the persons requested to be changed. The Competition Case-Handling Council shall discuss behind closed doors and make decision by majority vote.

If it is necessary to change Competition Case-Handling Council members or the hearing's clerk, the Competition Case-Handling Council shall issue a decision to postpone the hearing. The appointment of Competition Case-Handling Council members or a hearing's clerk to replace those who must be changed shall be decided by the Competition Council chairman.

#### ***Section 4. INVESTIGATION OF COMPETITION CASES***

##### ***Article 86. Preliminary investigation***

The preliminary investigation of competition cases shall be conducted under decisions of the head of the competition-managing agency in the following cases:

1. Competition case dossiers have been accepted by the competition-managing agency;
2. The competition-managing agency detects signs of violation of the provisions of this Law.

##### ***Article 87. Time limit for preliminary investigation***

1. The time limit for preliminary investigation is thirty days as from the date of issuance of preliminary investigation decisions.
2. Within the time limit specified in Clause 1 of this Article, investigators assigned to investigate competition cases must complete the preliminary investigation and propose the head of the competition-managing agency to issue a decision to stop investigation or conduct official investigation.

***Article 88.*** Decisions to stop investigation, decisions to conduct official investigation

On the basis of the preliminary investigation results and the proposals of investigators, the head of the competition-managing agency shall issue one of the following decisions:



1. To stop investigation if the preliminary investigation results show that there are no acts of violation of the provisions of this Law;
2. To conduct official investigation if the preliminary investigation results show that there are acts of violation of the provisions of this Law.

**Article 89.** Contents of official investigation

1. For cases of competition restriction agreement, abuse of the dominant position on the market or abuse of the monopoly position, or economic concentration, investigation shall covers:

- a. Identifying the relevant market;
- b. Verifying the investigated party's market share on the relevant market;
- c. Collecting and analyzing evidences on violation acts.

2. For cases of unfair competition, investigators must identify the grounds to deem that the investigated parties have performed or are performing unfair competition acts.

**Article 90.** Time limit for official investigation

The time limit for official investigation is prescribed as follows:

1. For cases of unfair competition, the time limit for official investigation shall be ninety days as from the date of issuance of decisions; in case of necessity, this time limit may be extended by the head of the competition-managing agency for another sixty days at most;

2. For cases of competition restriction agreement, abuse of the dominant position on the market or abuse of the monopoly position, or economic concentration, the time limit for official investigation shall be one hundred and eighty days, as from the date of issuance of decisions; in case of necessity, this time limit may be extended by the head of the competition-managing agency no more than twice, each time for sixty days at most;

3. The extension of the investigation time limit must be notified by investigators to all related parties not later than seven working days before the expiration of the investigation time limit.

**Article 91.** Investigation minutes

1. When conducting investigation, investigators must make investigation minutes, clearly indicating the investigation time and place, investigators, investigated party, investigated contents and complaint and/or claim of the investigated party.

2. Investigation minutes must be read out by investigators to the investigated party before they both sign the minutes.

3. If the investigated party refuses to sign the minutes, investigators must record such in the minutes together with the reason therefor.

**Article 92.** Request to invite witnesses in the investigation process

1. In the process of investigation, the involved parties may request the competition-managing agency to invite witnesses. The requestors shall be obliged to state the reasons for inviting witnesses to the competition-managing agency for decision.

2. The competition-managing agency's invitation to a witness must clearly indicate the full name and address of the invitee, time and place for giving testimony, the parties and subject involved in the case.

3. Testimonies of witnesses must be recorded in minutes by investigators, which shall be read out to the witnesses before they both sign the minutes.

**Article 93.** Investigation reports

1. After the termination of investigation, the head of the competition-managing agency must transfer the investigation reports together with the whole competition case dossiers related to competition-restricting acts to the Competition Council.

2. An investigation report shall contain the following principal contents:

- a. A brief account of the case;
- b. Verified circumstances and evidences;
- c. Proposed handling measures.

**Article 94.** Transfer of dossiers of competition cases involving criminal signs

If, through investigation, it is detected that a competition case shows criminal signs, investigators must promptly propose the head of the competition-managing agency to consider and transfer the relevant dossier to competent State agencies for institution of criminal cases.

**Article 95.** Return of dossiers in case of availability of grounds for non-institution of criminal cases

Where state agencies with competence to institute criminal cases find that there are grounds for non-institution of criminal cases under the provisions of the Criminal Procedure Code, they must return the dossiers to the competition-managing agency for further investigation according to the procedures prescribed in this Law. The investigation time limit prescribed in Article 90 of this Law shall be counted as from the date the dossiers are--received back.

**Article 96.** Additional investigation, time limit for additional investigation

1. Competition case investigators must conduct additional investigation if it is so requested in writing by the Competition Case-Handling Council.

2. The time limit for additional investigation is sixty days, as from the date of issuance of the Competition Case-Handling Council's written requests for additional investigation.

**Article 97.** Responsibilities for coordination and support in the investigation process

Local administrations, police agencies, other agencies and organizations shall have to coordinate and support the investigation process at the request of the head of the competition-managing agency.

## ***Section 5. HEARINGS***

**Article 98.** Competition cases must be considered and handled through hearings

Competition cases falling under the settling competence of the Competition Council must be considered and handled through hearings.

**Article 99.** Preparation for opening a hearing

1. After receiving the investigation report and the complete competition case dossier, the Competition Council chairman shall decide to set up a Competition Case-Handling Council.

2. Within thirty days after receiving the competition case dossier, the Competition Case-Handling Council must issue one of the following decisions:

- a. To open a hearing;
- b. To return the dossier for additional investigation;
- c. To stop settling the competition case.

3. Within fifteen days after the date of issuance of the decision to open a hearing, the Competition Case-Handling Council must open a hearing.

4. In case of returning the dossier for additional investigation, within fifteen days after the date of receiving back the dossier, the Competition Case-Handling Council must issue one of the decisions defined in Clause 2 of this Article.

**Article 100.** Return of dossiers for additional investigation

If finding that the collected evidences are not enough for determining acts of violation of the provisions of this Law, the Competition Case-Handling Council shall decide to return the dossiers for additional investigation.

**Article 101.** Stoppage of settlement of competition cases falling under the settling competence of the Competition Council

1. The Competition Case-Handling Council shall decide to stop settling competition cases falling under the settling competence of the Competition Council in the following cases:

- a. The head of the competition-managing agency proposes to stop settling the competition case if there are not enough evidences of acts of violation of the provisions of this Law and the Competition Case-Handling Council deems such

proposal justified;

b. The investigated party has voluntarily terminated its violation acts, remedied consequences and the complainant has voluntarily withdrawn its written complaint;

c. The investigated party has voluntarily terminated its violation acts, remedied consequences and the head of the competition-managing agency proposes to stop settling the competition case, for cases where investigation has been conducted under the provisions of Clause 2, Article 65 of this Law.

2. Decisions to stop settling competition cases must be sent to the investigated parties and the complainants (if any) as well as the competition--managing agency.

***Article 102.*** Decisions to open hearings

1. A decision to open a hearing must be handed to the parties named therein not later than ten days before the date of opening of the hearing.

2. A decision to open a hearing must contain the following contents:

a. The investigated party;

b. The complainant or the competition-managing agency, for cases where investigation has been conducted under the provisions of Clause 2, Article 65 of this Law;

c. Violated articles and/or clauses of this Law;

d. Time and place of opening of the hearing;

e. The hearing is to be held in public or behind closed doors;

f. Full names of Competition Case-Handling Council members;

g. Full names of investigators who have investigated the competition case, the hearing's clerk;

h. Full names of lawyers;

i. Full name of the interpreter;

- j. Full names of witnesses;
- k. Full names of experts;
- 1. Persons with related interests and obligations.

**Article 103.** Summoning of persons who must appear at the hearings

On the basis of the decisions to open the hearings, the Competition Case-Handling Council shall send summonses to persons who must appear at the hearings not later than ten days before the date of opening of the hearings.

**Article 104.** Hearings

1. Hearings shall be held in public. Where the contents of a hearing are related to national secrets or business secrets, the hearing shall be held behind closed doors.

2. Participants to a hearing include:

- a. Competition Case-Handling Council members, the hearing's clerk;
- b. The investigated party;
- c. The complainant;
- d. Lawyers;
- e. Investigators who have investigated the competition case;
- f. Other persons named in the decision to open the hearing.

3. After hearing the opinions and arguments presented by the participants to the hearings, the Competition Case-Handling Council shall discuss, cast secret votes and make decision by majority vote.

**Section 6. EFFECT OF COMPETITION CASE-HANDLING  
DECISIONS**

**Article 105.** Competition case-handling decisions

1. A competition case-handling decision shall contain the following principal contents:
  - a. A brief account of the case;
  - b. Analysis of the case;
  - c. Conclusion on the handling of the case.
2. The hearing presidents must sign competition case-handling decisions.
3. Competition case-handling decisions must be sent to the related parties within seven working date after the date of its signing.

**Article 106.** Effect of competition case-handling decisions

Competition case-handling decisions shall come into force thirty days after the date of its signing provided that during this period they are not complained about under the provisions of Article 107 of this Law.

**Section 7. SETTLEMENT OF COMPLAINTS ABOUT COMPETITION  
CASE-HANDLING DECISIONS WHICH HAVE NOT YET COME INTO  
FORCE**

**Article 107.** Complaining about competition case-handling decisions

1. If the involved parties disagree with part or the whole of the competition case-handling decisions issued by the Competition Case-Handling Council, they may lodge complaints with the Competition Council.
2. If the involved parties disagree with part or the whole of the competition case-handling decisions issued by the head of the competition-managing agency, they may lodge complaints with the Trade Minister.

**Article 108.** Written complaints about competition case-handling decisions

A written complaint about the competition case-handling decision must contain the following principal contents:

- a. Date of making;

- b. Name and address of the maker;
- c. Serial number and date of the complained competition case-handling decision;
- d. The reason for complaining and the complainant's claim;
- e. The signature and seal (if any) of the complainant.

2. Written complainants must be addressed to the agencies issuing the competition case-handling decisions in question together with supplementary evidences (if any) proving that the complaints are grounded and lawful.

**Article 109.** Acceptance of written complaints about competition case-handling decisions

Within five working days after receiving the written complainants about the competition case-handling decisions, the agencies which have issued such decisions must check the validity of the written complaints according to the provisions of Article 108 of this Law.

**Article 110.** Consequences of complaints about competition case-handling decisions

1. The complained parts of competition case-handling decisions shall not be executed.

2. Within fifteen days after receiving the written complaints about competition case-handling decisions, the agency accepting such written complaints shall have to consider and transfer them together with the whole competition case dossiers as well as their proposals on the written complaints to the Competition Council or the Trade Minister according to the provisions of Article 107 of this Law.

**Article 111.** Time limit for settling complaints about competition case-handling decisions

Within thirty days after receiving the complaint dossiers, the Competition Council or the Trade Minister shall have to settle the complaints according to competence; in specially complicated cases, the time limit for settling complaints



may be extended for another thirteen days at most.

**Article 112.** Powers of the Competition Council when settling complaints about competition case-handling decisions of the Competition Case-Handling Council

When considering and settling complaints about competition case-handling decisions of the Competition Case- Handling Council, the Competition Council shall have the following powers:

1. To hold up the competition case-handling decisions if deeming that the complaints are not sufficiently grounded;
2. To amend part or whole of the competition case-handling decisions if such decisions are illegal;
3. To cancel the competition case-handling decisions and transfer the competition case dossiers to the Competition Case- Handling Council for resettlement in the following cases:
  - a. Evidences have not yet been fully collected and verified;
  - b. The composition of the Competition Case-Handling Council contravenes the provisions of this Law or other serious violations of competition procedures were committed.

**Article 113.** Powers of the Trade Minister when settling complaints about competition case-handling decisions of the competition-managing agency

When considering and settling complaints about competition case-handling decisions of the competition-managing agency, the Trade Minister shall have the powers defined in Clause 1 and Clause 2, Article 112 of this Law, the power to cancel the competition case-handling decisions and request the competition-managing agency to resettle the cases according to the procedures prescribed in this Law in cases where evidences have not yet been fully collected and verified.

**Article 114.** Effect of complaint-settling decisions

Decisions to settle complaints about competition case-handling decisions shall come into force as from the date of signing.

**Article 115.** Initiation of lawsuits against complaint-settling decisions

1. If the involved parties disagree with the decisions to settle complaints about competition case-handling decisions, they may initiate administrative lawsuits against part or the whole of the contents of such decisions at the competent provincial/municipal People's Courts.

2. Where the courts accept the written lawsuits against the decisions to settle complaints about competition case-handling decisions according to the provisions of Clause 1 of this Article, the Trade Minister and the Competition Council chairman shall have to direct the transfer of the competition case dossiers to the courts within ten working days after receiving the court's requests.

**Article 116.** Consequences of lawsuits

Those parts of competition case-handling decisions which are not sued against at court shall continue to be executed.

**Section 8. HANDLING OF VIOLATIONS OF COMPETITION  
LEGISLATION**

**Article 117.** Forms of sanctioning violations of competition legislation and measures to remedy consequences

1. For each act of violation of competition legislation, violating organizations or individuals shall be subject to one of the following principal sanctioning forms:

- a. Warning;
- b. Fine.

2. Depending on the nature and seriousness of their violations, the organizations or individuals violating competition legislation may be subject to one of the following additional sanctioning forms:

- a. Revocation of the business registration certificates, deprivation of licenses and practicing certificates;

b. Confiscation of exhibits and means used for commission of violations of competition legislation.

3. In addition to the sanctioning forms prescribed in Clause 1 and Clause 2 of this Article, organizations or individuals violating competition legislation may be subject to the application of one or more than one of the following consequence remedying measures:

a. To restructure the enterprises having abused their dominant position on the market;

b. To divide or split the merged or consolidated enterprises; to force the resale of the acquired enterprise parts;

c. To make public corrections;

d. To remove illegal provisions from the business contracts or transactions;

e. Other necessary measures to overcome the competition restriction impacts of the violation acts.

If organizations or individuals violating competition legislation cause damage to the interests of the State, legitimate rights and interests of other organizations or individuals, they must pay compensation therefor according to law provisions.

**Article 118.** Levels of fine imposed for acts of violating competition legislation

1. For acts of violating the provisions on competition restriction agreements, abuse of dominant position on the market, abuse of monopoly position or economic concentration, the agencies with sanctioning competence may impose fines of up to 10% of total turnover earned by the violating organizations or individuals in the fiscal year preceding the year when they commit violation acts.

2. For acts of violating the provisions on unfair competition and other acts of violating the provisions of this Law other than those prescribed in Clause 1 of this Article, the agencies with sanctioning competence shall impose fines according to law provisions on handling of administrative violations or relevant law provisions.

3. The Government shall specify the levels of fine imposed for acts of violating the provisions of this Law.

**Article 119.** Competence to sanction, handle violations of competition legislation

1. The Competition Case-Handling Council and the Competition Council shall have the following powers:

- a. To issue caution;
- b. To impose fines according to the provisions of Clause 1, Article 118 of this Law;
- c. To confiscate exhibits and means used for commission of violations of competition legislation;
- d. To apply the measures prescribed at Points c, d and e, Clause 3, Article 117 of this Law;
- e. To request competent state agencies to revoke business registration certificates, deprive of licenses and/or practicing certificates;
- f. To request competent state agencies to apply the measures prescribed at Points a and b, Clause 3, Article 117 of this Law.

2. The competition-managing agency may apply the measures prescribed at Point a of Clause 1, Point b of Clause 2, Point c of Clause 3, Article 117 and Clause 2, Article 118 of this Law.

3. Other agencies with sanctioning competence shall sanction intellectual property-related unfair competition acts according to law provisions on handling of administrative violations.

**Article 120.** Handling of violations committed by state officials and employees

State officials and employees who commit acts of violation of competition legislation shall, depending on the nature and seriousness of their violations, be disciplined or examined for penal liability; if causing any damage, they must pay compensation therefor according to law provisions.

**Article 121.** Execution of competition case-handling decisions

1. After thirty days as from the date the competition case-handling decisions come into force, if the parties obliged to comply with such decisions fail to voluntarily comply with and do not initiate lawsuits at court according to the provisions of Section 7 of this Chapter, the parties in favor of which the competition case-handling decisions are executed may request in writing the competent state agencies to organize the execution of the competition case-handling decisions falling within the scope of their functions, tasks and powers.

2. Where the competition case-handling decisions are related to the property of the parties bound to comply with the decisions, the parties in favor of which the competition case-handling decisions are executed may request the civil judgment-executing agencies in the provinces or centrally run cities where the parties obliged to comply with the decisions are headquartered, reside or their property is located to organize the execution of the competition case-handling decisions.

**Chapter VI**

**IMPLEMENTATION PROVISIONS**

**Article 122.** Implementation effect

This Law shall take effect as from July 1, 2005.

**Article 123.** Implementation guidance

The Government and the Supreme People's Court shall detail and guide the implementation of this Law.

*This Law was passed on December 3, 2004 by the XI<sup>th</sup> National Assembly of the Socialist Republic of Vietnam at its the 6<sup>th</sup> session.*

**Chairman of the National Assembly**

**NGUYEN VAN AN**