

# New Decree guiding Competition Law

## At a glance...

The government issued Decree 35/2020/ND-CP dated 24 March guiding the Competition Law 2018. Decree 35 will come into effect on 15 May.

# In detail...

Competition Law 2018 (“CL”) came into effect on 1 July 2019 and prohibits (i) competition-restraining agreements, (ii) abuse of dominant market position/monopoly position, (iii) economic concentration, and (iv) unfair competitive practices.

Please refer to [this link for our previous NewsBrief on the CL](#).

On 24 March, the Government issued Decree 35 guiding certain matters in the CL. Key points include:

## 1. Economic concentration

### 1.1 Definition of “control”

Under the CL, acquisition of an enterprise is one form of economic concentration through which a purchaser may control a target or any of its trading/business lines.

Decree 35 now provides a definition of control, which will be deemed to arise where a purchaser falls into one of the following cases:

- a) The purchaser holds more than 50% of the target's charter capital or voting shares;
- b) The purchaser holds, or has the right to use, more than 50% of the target's assets of either its entire business or one of its business lines;
- c) The purchaser has the right to decide certain matters of the target, e.g. appointment or removal of a majority or all of the members of the board of management/the chairperson of the members' council/the (general) director, amendments of its charter, or material operational matters of the target.

### 1.2 Notification thresholds for economic concentrations

Decree 35 stipulates notification thresholds for various types of corporate entity. For entities other than banks, insurers and securities companies, a notification to the National Competition Committee (“NCC”) is required before entering into a transaction which would result in an economic concentration if:

- Total assets of one of the parties (including its affiliates) in Vietnam is at least VND3tn (approx. USD128m); or
- Total turnover of one of the parties (including its affiliates) in Vietnam is at least VND3tn (approx. USD128m); or
- The value of the transaction is at least VND1tn (approx. USD43m) (This threshold, however, is not applicable for the transactions taking places outside of Vietnam); or
- The combined market share of the parties is at least 20% in the relevant market.

# In detail...

## 1.3 Appraisal process

A proposed economic concentration transaction may undergo two stages of appraisal by NCC: preliminary appraisal and official appraisal. The time limit for a preliminary appraisal is 30 days from receipt of a notification. If necessary (at NCC's discretion), an official appraisal will then be conducted within another 90 days (but may be extended for another 60 days).

After the preliminary appraisal, NCC must respond whether the economic concentration is permitted to be conducted or will be subject to an official appraisal. Decree 35 stipulates that if NCC does not provide its response within 30 days, the economic concentration is deemed permissible.

## 1.4 Assessment of whether the impact of an economic concentration is competition-restraining or enhancing

In Articles 31 and 32 of the CL 2018, seven factors to assess "significant competition-restraining impact" and three factors to assess the "positive impact" of economic concentrations were introduced. Decree 35 now provides further details on these factors to facilitate NCC decision making, e.g. the combined market share of the parties in the relevant market is assessed both before and after the concentration, etc.

## 2. Determination of relevant market, market share, combined market share and significant market power

Decree 35 provides details on the determination of certain terms used in the CL, e.g. relevant market, market share, combined market share and significant market power. Of note, relevant market and market share are the essential criteria for assessing competition-related matters under the CL, and significant market power is one of criteria applied to assess dominant market position.

## 3. Assessment of the competition-restraining impact of an agreement

To assess whether an agreement restrains competition, the CL 2018 introduced the concept of "*significant competition-restraining impact or ability to cause significant competition-restraining impact*" with six assessment factors, including: the market share % of the parties to the agreement; barriers to market access or expansion; restrictions on research/development of technologies; reduction of the ability to access or possess essential infrastructure; increase in the costs and time required for customers purchasing goods or services, etc.

Decree 35 now provides further details on these six factors to facilitate NCC in its assessment of whether an agreement causes or potentially causes a significant competition-restraining impact.

## 4. Legal proceedings related to competition

Decree 35 also provides details on evidence, preventive measures and measures to ensure the resolution of administrative breaches during the investigation/resolution of competition cases.

# Contact us

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