

Hanoi, 30 September 2005

# DECREE ON DEALING WITH BREACHES IN THE COMPETITION SECTOR

## The Government

Pursuant to the *Law on the Organization of the Government* dated 25 December 2001;

Pursuant to the *Law on Competition* dated 3 December 2004;

Pursuant to the *Ordinance on Dealing with Administrative Offences* dated 2 July 2002;

On the proposal of the Minister of Trade;

### Decrees:

## CHAPTER I

### General Provisions

#### Article 1 *Governing scope*

1. This Decree provides for dealing with organizations and individuals committing intentional or unintentional breaches of the provisions of the laws on competition.
2. Conduct in breach of the laws on competition as stipulated in this Decree comprises:
  - (a) Conduct in breach of the provisions on control of practices in restraint of competition, including conduct in breach of the provisions on agreements in restraint of competition, on abuse of dominant market position and monopoly position, and on economic concentration;
  - (b) Conduct in breach of the provisions on unfair competitive practices;
  - (c) Conduct in breach of other provisions of the laws on competition.

#### Article 2 *Applicable entities*

This Decree shall apply to the following organizations and individuals:

1. Organizations and individuals conducting business (hereinafter referred to as *enterprises*) and industry associations operating in Vietnam (hereinafter referred to as *associations*) as stipulated in article 2 of the *Law on Competition*.
2. Other organizations and individuals conducting the practices stipulated in Section 5 of Chapter II of this Decree.

**Article 3** *Principles for dealing with breaches of laws on competition*

1. Dealing with conduct in breach of the provisions on control of practices in restraint of competition must comply with the following principles:
  - (a) Any offence must be identified promptly and dealt with expeditiously, justly and thoroughly; and the consequences arising from the offence must be rectified correctly as stipulated by law;
  - (b) Dealing with breaches must comply with the order and procedures for competition legal proceedings stipulated in Chapter III of Decree 116-2005-ND-CP of the Government dated 15 September 2005 providing detailed regulations for implementation of a number of articles of the *Law on Competition*, and with the provisions in this Decree;
  - (c) Only persons authorized to deal with offences may do so and they must deal with offences correctly in accordance with the authority conferred on them by law;
  - (d) Any one breach of the laws on competition shall only be penalized once; an enterprise which commits a number of breaches shall be penalized in respect of each breach;
  - (dd) If a breach contains indications of a criminal offence, it shall not be dealt with pursuant to the provisions in this Decree.
2. Dealing with acts which constitute unfair competitive practices must comply with the principles stipulated in clause 1 of this article and in article 3 of the *Ordinance on Dealing with Administrative Offences*.
3. Dealing with conduct in breach of other provisions of the laws on competition must comply with the principles stipulated in article 3 of the *Ordinance on Dealing with Administrative Offences*.

**Article 4** *Forms of penalty which may be imposed for breaches of laws on competition*

1. The forms of penalty which may be imposed for breaches of the laws on competition shall comprise fines and other measures for remedying consequences.
2. For each breach of the laws on competition, one of the following principal penalties must be imposed on an organization or individual in breach:
  - (a) Warning;
  - (b) Fine.
3. Depending on the nature and seriousness of a breach, one of the following additional forms of penalty may be imposed on an organization or individual in breach of the laws on competition:
  - (a) Withdrawal of business registration certificate, revocation of right to use a licence or practising certificate;
  - (b) Confiscation of material evidence and facilities used to commit the breach of the laws on competition.

4. In addition to the forms of penalty stipulated in clauses 2 and 3 of this article, one or more of the following measures for remedying consequences may also be applied to an organization or individual in breach of the laws on competition:
- (a) Restructure of an enterprise which abused its dominant market position;
  - (b) Division or split of an enterprise which merged or consolidated; compulsory re-sale of that part of an enterprise which was acquired;
  - (c) Public retraction;
  - (d) Removal of illegal terms and conditions from a contract or business transaction;
  - (dd) Compulsory use or re-sale of inventions, utility solutions or industrial designs which were purchased but not used;
  - (e) Compulsory removal of measures which prevent or impede other enterprises from participating in the market or from developing business;
  - (g) Compulsory restoration of conditions for technical or technological development which an enterprise impeded;
  - (h) Compulsory removal of disadvantageous conditions imposed on customers;
  - (i) Compulsory restoration of contractual conditions which were changed without any legitimate reason;
  - (k) Compulsory restoration of a contract which was cancelled without any legitimate reason.

**Article 5** *Levels of fines applicable to breaches of laws on competition*

1. With respect to a breach of the provisions on control of practices in restraint of competition, the body with authority to deal with the breach shall impose a fine at the specific levels stipulated in Sections 1, 2 and 3 of Chapter II of this Decree but the maximum fine shall be ten (10) per cent of the total turnover of the enterprise in breach in the financial year preceding the year in which the breach was committed.

If the enterprise in breach is newly established and has not yet operated for a full financial year, "total turnover for the financial year prior to the year in which the breach was committed" as stipulated in this clause means the total turnover of the enterprise as from the date of establishment until the date of issuance of the decision to hold an official investigation into the practice in breach.

2. With respect to unfair competitive practices and conduct in breach of other provisions of the laws on competition outside the cases stipulated in clause 1 of this article, the body with authority to deal with the breach shall impose a fine at the specific levels stipulated in Sections 4 and 5 of Chapter II of this Decree.

**Article 6** *Compensation for loss caused by breach of laws on competition*

1. Any organization or individual breaching the laws on competition, thereby causing loss to the interests of the State or to the lawful rights and interests of other organizations and individuals, must pay compensation for such loss.
2. Payment of compensation for loss as stipulated in clause 1 of this article shall be implemented in accordance with the civil law.

**Article 7** *Grounds for fixing levels of penalties applicable to breaches of laws on competition*

When fixing the level of a penalty applicable to each breach of the laws on competition, the competent body shall have the right to rely on one or more of the following factors:

1. Level of restraint of competition caused by the practice in breach.
2. Amount of loss caused by the practice in breach caused.
3. Capability of the entity in breach to restrain competition.
4. Period of time during which the practice in breach occurred.
5. Profits gained as a result of the practice in breach.
6. Attenuating or aggravating circumstances as stipulated in article 8 of this Decree.

**Article 8** *Extenuating and aggravating circumstances*

1. With respect to any practice in breach of the provisions on control of practices in restraint of competition and on unfair competitive practices, the body with authority to deal with the breach may apply the extenuating and aggravating circumstances stipulated in Section 6 of Chapter III of Decree 116-2005-ND-CP of the Government dated 15 September 2005 providing detailed regulations for implementation of a number of articles of the *Law on Competition*.
2. With respect to any practice in breach of other provisions of the laws on competition, the body with authority to deal with the breach may apply the extenuating and aggravating circumstances stipulated in articles 8 and 9 of the *Ordinance on Dealing with Administrative Offences*.

**Article 9** *Limitation period for lodging complaint about competition case and limitation period for issuance of decision to investigate when administrative body for competition discovers indications of breach of laws on competition*

1. The limitation period for lodging a complaint about a competition case and the limitation period for issuance of a decision to investigate when the administrative body for competition discovers indications of a breach of the laws on competition stipulated in article 65.2 of the *Law on Competition* is two years from the date on which the breach is committed.
2. If during the period stipulated in clause 1 of this article an organization or individual commits a new breach of the laws on competition, or deliberately evades or prevents the breach being dealt with by the competent body, the limitation period stipulated in clause 1 of this article shall be re-calculated from the date on which the new breach is committed or from the date of termination of the conduct to evade dealing with the breach or to prevent the breach being dealt with.

## CHAPTER II

### Conduct in Breach of the Laws on Competition, Forms and Levels of Penalty

#### SECTION I

##### Breaches Involving Agreements in Restraint of Competition

###### **Article 10** *Agreements either directly or indirectly fixing the price of goods and services*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for one of the following breaches:
  - (a) Agreement fixing the price applicable to some or all customers;
  - (b) Agreement to increase or reduce the price by a fixed amount;
  - (c) Agreement for general application of a formula for calculating price;
  - (d) Agreement to maintain a fixed ratio for the price of related goods;
  - (dd) Agreement not to discount prices or to apply a uniform discounted price;
  - (e) Agreement to restrict credit available for customers;
  - (g) Agreement not to reduce prices without notification to other members of the agreement;
  - (i) Agreement to use a uniform price at the commencement of negotiations.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for a breach stipulated in clause 1 of this article in one of the following cases:
  - (a) The goods and services for which the price was fixed are foodstuffs, food products, medical apparatus, preventive and treatment medicine for humans, veterinary drugs, fertilizer, animal feed, plant protection agents, seeds or domestic animals, medical services or healthcare services;
  - (b) The enterprise in breach organized or induced other entities to participate in the agreement.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the following additional forms of penalty and measures for remedying consequences may also be applied to an enterprise in breach:
  - (a) Confiscation of material evidence and facilities used to commit the breach, including confiscation of all profits earned from the practice in breach;
  - (b) Compulsory removal of illegal terms and conditions from the contract or business transaction.

**Article 11** *Agreements to share consumer markets or sources of supply of goods and services*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for one of the following breaches:
  - (a) Agreement on the quantity or location of purchase and sale of goods and services or on the group of customers for each of the parties participating in the agreement;
  - (b) Agreement that all parties participating in the agreement will only purchase goods and services from one or more specified sources of supply.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 10.2 of this Decree.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 10.3 of this Decree may also be applied to an enterprise in breach.

**Article 12** *Agreements to restrain or control quantity or volume of goods and services produced, purchased or sold*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for one of the following breaches:
  - (a) Agreement to stop or reduce the quantity or volume of goods produced, purchased or sold or of services supplied on the relevant market as compared to previously;
  - (b) Agreement to fix the quantity or volume of goods produced, purchased or sold or of services supplied at a level sufficient to create a shortage in the market;
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 10.2 of this Decree.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 10.3 of this Decree may also be applied to an enterprise in breach.

**Article 13** *Agreements to restrain technical developments or technology or to restrain investment*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for one of the following breaches:
  - (a) Agreement to purchase an invention, utility solution or industrial design in order to destroy it or keep it from being used;
  - (b) Agreement not to provide any more capital for expanding production, for improving the quality of goods and services, or for other development and expansion.

2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 10.2 of this Decree.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 10.3 of this Decree may also be applied to an enterprise in breach.

**Article 14** *Agreements to impose on other enterprises conditions for signing contracts for purchase and sale of goods and services, or to force other enterprises to accept obligations not related in direct way to subject matter of contract*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for one of the following breaches:
  - (a) Agreement to impose on other enterprises the following conditions precedent prior to signing contracts for the purchase and sale of goods and services:
    - Restriction on the production and distribution of other goods; the purchase or supply of other services, not directly related to undertakings of a party accepting to act as an agent in accordance with the law on agency;
    - Restriction on the locations for re-sale of goods, except for goods on the list of goods in which business is conditional and on the list of goods in which business is restricted in accordance with law;
    - Restriction on the customers which may purchase goods for re-sale, except for goods on the list of goods in which business is conditional and on the list of goods in which business is restricted in accordance with law;
    - Restriction on the form and quantity of goods which may be supplied.
  - (b) Agreement to force other enterprises, when they are conducting purchases and sales of goods and services with any of the enterprises which are parties to the agreement, to purchase other goods and services from a pre-nominated supplier or other entity or to discharge one or more obligations outside the essential scope of performance of the contract.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement with a combined market share of thirty (30) per cent or more in the relevant market for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 10.2 of this Decree.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 10.3 of this Decree may also be applied to an enterprise in breach.

**Article 15** *Agreements which prevent, impede, or do not allow other enterprises to participate in the market or to develop business*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being a party to the agreement for one of the following breaches:
  - (a) Agreement not to trade with enterprises not being parties to such agreement;
  - (b) Agreement to act together in requiring, persuading or coercing one's customers not to conduct purchase and sale of goods with or to use services of enterprises not being parties to the agreement;
  - (c) Agreement to act together to conduct purchase and sale of goods and services at prices sufficient to ensure that enterprises not being parties to the agreement will not be able to participate in the relevant market;
  - (d) Agreement to act together in requiring, persuading or coercing one's distributors and retail sellers trading with such enterprise to discriminate when purchasing goods from and selling goods to enterprises not being parties to the agreement by causing difficulty for such latter enterprises to sell their goods;
  - (dd) Agreement to act together to conduct purchase or sale of goods and services at prices sufficient to ensure that enterprises not being parties to the agreement will not be able to expand their business scale.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 10.2 of this Decree.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 10.3 of this Decree may also be applied to an enterprise in breach.

**Article 16** *Agreements which exclude from market other enterprises which are not parties to the agreement*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being a party to the agreement for one of the following breaches:
  - (a) Agreement not to trade with enterprises which are not parties to the agreement and to act together in requiring, persuading or coercing one's customers not to conduct purchases and sales of goods with or to use services of enterprises which are not parties to the agreement;
  - (b) Agreement not to trade with enterprises which are not parties to the agreement and to act together in purchasing and selling goods at a price which is sufficient to force enterprises which are not parties to the agreement to withdraw from the relevant market.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being one of the parties participating in the agreement for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 10.2 of this Decree.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 10.3 of this Decree may also be applied to an enterprise in breach.

**Article 17** *Conduct constituting collusion in order for one or more parties to agreement to win tender for supply of goods and services*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being a party to the agreement for one of the following breaches:
  - (a) Agreement for one or more of the parties to such agreement to withdraw a tender or an application to participate in tendering which was previously lodged, in order for one or more of the other parties to such agreement to win the tender;
  - (b) Agreement for one or more of the parties to such agreement to cause difficulties to others not being parties to the agreement when the latter participate in tendering by refusing to supply the latter with raw materials, by refusing to sign ancillary contracts or by causing difficulties in other ways;
  - (c) Agreement for all parties to such agreement to provide a uniform non-competitive price or a competitive price with conditions attached which the party calling for tenders will not be able to accept, in order for one or more of the parties to the agreement to win the tender;
  - (d) Agreement to set in advance the number of times each party to the agreement will win a tender within a fixed period.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each enterprise being a party participating in the agreement for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 10.2 of this Decree.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 10.3 of this Decree may also be applied to an enterprise in breach.

SECTION 2

**Breaches of Provisions on Abuse of Dominant Market Position and Monopoly Position**

**Article 18** *Selling goods or providing services below total prime cost of goods aimed at excluding competitors*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position or by each enterprise in a group of enterprises in a dominant market position shall apply to an enterprise which sells goods or provides services below total prime cost of the goods aimed at excluding competitors.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the following cases:
  - (a) The relevant goods and services are items stipulated in article 10.2 of this Decree;
  - (b) The enterprise has a market share of fifty (50) per cent or more.

3. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by an enterprise in a group of enterprises in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the following cases:
  - (a) The enterprise has the largest relevant market share in the group of enterprises in a dominant market position;
  - (b) The enterprise took the role of organizing or inducing other enterprises in the group of enterprises in a dominant market position to act together in the practice in breach.
4. In addition to the fines stipulated in clauses 1, 2 and 3 of this article, one or more of the following additional forms of penalty and measures for remedying consequences may also be applied to an enterprise in breach of the provisions on abuse of dominant market position:
  - (a) Confiscation of material evidence and facilities used to commit the breach, including confiscation of all profits earned from the practice in breach;
  - (b) Compulsory removal of illegal terms and conditions from the contract or business transaction;
  - (c) Compulsory restructure of the enterprise in a dominant market position.

**Article 19** *Fixing unreasonable selling or purchase price or fixing minimum reselling price of goods or services, thereby causing loss to customers*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position or by each enterprise in a group of enterprises in a dominant market position shall apply for one of the following breaches:
  - (a) Fixing an unreasonable selling or purchase price of goods or services, thereby causing loss to customers;
  - (b) Fixing a minimum reselling price of goods or services, thereby causing loss to customers.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.2 of this Decree.
3. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by an enterprise in a group of enterprises in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.3 of this Decree.
4. In addition to the fines stipulated in clauses 1, 2 and 3 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 18.4 of this Decree may also be applied to an enterprise in breach of the provisions on abuse of dominant market position.

**Article 20** *Restraining production or distribution of goods or services, limiting the market, or impeding technical or technological development, thereby causing loss to customers*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position or by each enterprise in a group of enterprises in a dominant market position shall apply for one of the following breaches:
  - (a) Ceasing the supply or reducing the quantity supplied of goods and services on the relevant market as compared to previously in conditions where there are not large fluctuations in the supply and demand relationship, there is no economic crisis, natural disaster or destruction by an enemy, and there is no major technical breakdown or emergency situation;
  - (b) Fixing the quantity of goods and services supplied at a level sufficient to create a shortage in the market;
  - (c) Hoarding and not selling goods in order to create instability in the market;
  - (d) Supplying goods and services in only one or a number of specific geographical areas;
  - (dd) Purchasing goods and services only from one or a number of specified sources of supply, except where other sources of supply fail to satisfy the conditions set by the purchaser and such conditions are both reasonable and consistent with normal commercial practice;
  - (e) Purchasing an invention, utility solution or industrial design in order to destroy it or keep it from being used;
  - (g) Threatening or coercing a person engaged in research into technical or technological development to suspend or abandon such research.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.2 of this Decree.
3. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by an enterprise in a group of enterprises in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.3 of this Decree.
4. In addition to the fines stipulated in clauses 1, 2 and 3 of this article, one or more of the following additional forms of penalty and measures for remedying consequences may also be applied to an enterprise in breach of the provisions on abuse of dominant market position:
  - (a) Additional forms of penalty and measures for remedying consequences stipulated in article 18.4 of this Decree;
  - (b) Compulsory use or re-sale of an invention, utility solution or industrial design which was purchased but not used;
  - (c) Compulsory removal of measures which prevent or impede other enterprises from participating in the market or from developing business;
  - (d) Compulsory restoration of conditions for technical or technological development which the enterprise impeded.

**Article 21** *Applying different commercial conditions to the same transactions aimed at creating inequality in competition*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position or by each enterprise in a group of enterprises in a dominant market position shall apply for conduct being discrimination between enterprises regarding conditions for purchase and sale, price, time for payment, or volumes of transactions of purchase and sale of goods and services similar in value and characteristics in order to place one or more enterprises in a better competitive position than other enterprises.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.2 of this Decree.
3. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by an enterprise in a group of enterprises in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.3 of this Decree.
4. In addition to the fines stipulated in clauses 1, 2 and 3 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 18.4 of this Decree may also be applied to an enterprise in breach of the provisions on abuse of dominant market position.

**Article 22** *Imposing conditions on other enterprises signing contracts for purchase and sale of goods and services or forcing other enterprises to agree to obligations which are not related in direct way to subject matter of contract*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position or by each enterprise in a group of enterprises in a dominant market position shall apply for one of the following breaches:
  - (a) Imposing on other enterprises the following conditions precedent prior to signing contracts for the purchase and sale of goods and services:
    - Restriction on the production and distribution of other goods; the purchase or supply of other services, not directly related to undertakings of a party accepting to act as an agent in accordance with the law on agency;
    - Restriction on the locations for re-sale of goods, except for goods on the list of goods in which business is conditional and on the list of goods in which business is restricted in accordance with law;
    - Restriction on the customers which may purchase goods for re-sale, except for goods on the list of goods in which business is conditional and on the list of goods in which business is restricted in accordance with law;
    - Restriction on the form and quantity of goods which may be supplied.
  - (b) Forcing other enterprises, when they are conducting purchases and sales of goods and services with any of the enterprises which are a party to the agreement<sup>1</sup>, to purchase other goods and services from a pre-nominated supplier or other entity or to discharge one or more obligations outside the essential scope of performance of the contract.

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1 Phillips Fox Note: The Competition Administration Department under the Ministry of Trade has informally advised that the phrase "when they are conducting purchases and sales of goods and services with any of the enterprises which are a party to the agreement" should not have been included here (in contrast to in article 14.1(b) above).

2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.2 of this Decree.
3. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by an enterprise in a group of enterprises in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.3 of this Decree.
4. In addition to the fines stipulated in clauses 1, 2 and 3 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 18.4 of this Decree may also be applied to an enterprise in breach of the provisions on abuse of dominant market position.

**Article 23** *Preventing market participation by new competitors*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position or by each enterprise in a group of enterprises in a dominant market position shall apply for one of the following breaches:
  - (a) Requiring one's customers not to trade with a new competitor;
  - (b) Threatening or compelling distributors or retail sales outlets not to agree to distribute the goods of the new competitor;
  - (c) Selling goods at prices at a level which is sufficient to ensure that a new competitor is not able to access the market, other than in the cases stipulated in article 19.1 of this Decree.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.2 of this Decree.
3. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by an enterprise in a group of enterprises in a dominant market position shall apply for a breach stipulated in clause 1 of this article in one of the cases stipulated in article 18.3 of this Decree.
4. In addition to the fines stipulated in clauses 1, 2 and 3 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 18.4 of this Decree may also be applied to an enterprise in breach of the provisions on abuse of dominant market position.

**Article 24** *Conduct constituting abuse of monopoly position*

1. A fine of up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the enterprise in a monopoly position shall apply for one of the following breaches:
  - (a) Breaches stipulated in articles 18.1, 19.1, 20.1, 21.1, 22.1 and 23.1 of this Decree;
  - (b) Imposing disadvantageous conditions on customers;
  - (c) Changing or cancelling unilaterally a signed contract without prior notice to the customer and without having to bear any sanction;

- (d) Changing or cancelling unilaterally a signed contract based on one or more grounds not directly related to conditions essential for continued and complete performance of the contract and without having to bear any sanction.
2. In addition to the fine stipulated in clause 1 of this article, one or more of the following additional forms of penalty and measures for remedying consequences may also be applied to an enterprise in breach of the provisions on abuse of monopoly position:
- (a) Confiscation of material evidence and facilities used to commit the breach, including confiscation of all profits earned from the practice in breach;
  - (b) Compulsory removal of illegal terms and conditions from the relevant contract or business transaction;
  - (c) Compulsory restoration of the conditions on technical or technological development which the enterprise impeded;
  - (d) Compulsory removal of the disadvantageous conditions which were imposed on customers;
  - (dd) Compulsory restoration of the contractual conditions which were changed without legitimate reason;
  - (e) Compulsory restoration of the contract which was cancelled without legitimate reason.

### SECTION 3

#### **Conduct in Breach of Provisions on Economic Concentration**

##### **Article 25** *Prohibited merger of enterprises*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the merging enterprises and the merged enterprise shall apply for a prohibited merger of enterprises as stipulated in article 18 of the *Law on Competition*.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the merging enterprises and by the merged enterprise shall apply for a breach stipulated in clause 1 of this article if the merged enterprise coerced directly or indirectly the merging enterprises to carry out the merger.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, the merging enterprises may be subject to compulsory demerger from the merged enterprise and the merged enterprise may be subject to compulsory split in order to restore the former status quo.

##### **Article 26** *Prohibited consolidation of enterprises*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the consolidating enterprises shall apply for a prohibited consolidation of enterprises as stipulated in article 18 of the *Law on Competition*.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the consolidating enterprises shall apply for a breach stipulated in clause 1 of this article if the consolidation results in a significant increase in the price of goods and services on the relevant market.

3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the following additional forms of penalty and measures for remedying consequences may also be applied to the consolidating enterprises:
  - (a) Withdrawal of the business registration certificate issued to the consolidated enterprise;
  - (b) Compulsory division or demerger of the consolidated enterprise.

**Article 27** *Prohibited acquisition of enterprise*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the acquiring enterprise shall apply to a prohibited acquisition of a part or all of the assets of another enterprise as stipulated in article 18 of the *Law on Competition*.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed by the acquiring enterprise shall apply for a breach stipulated in clause 1 of this article if the acquiring enterprise coerced directly or indirectly the other enterprise to sell a part or all of the assets of such enterprise.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, the acquiring enterprise may be compulsorily required to re-sell the assets it acquired.

**Article 28** *Prohibited joint venture between enterprises*

1. A fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each party to a joint venture which is prohibited by article 18 of the *Law on Competition*.
2. A fine of from five up to ten (10) per cent of the total revenue in the financial year prior to the year in which the breach was committed shall apply to each party to a joint venture in breach as stipulated in clause 1 of this article if the joint venture results in a significant increase in the price of goods and services on the relevant market.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, the business registration certificate of each party to the joint venture and of the joint venture enterprise may be withdrawn.

**Article 29** *Failure to notify an economic concentration*

A fine of from one to three per cent of the total revenue in the financial year prior to the year in which a breach was committed by an enterprise stipulated in articles 25.1, 26.1, 27.1 and 28.1 of this Decree shall apply to an economic concentration which was not notified as required by article 20 of the *Law on Competition*.

## SECTION 4

### **Conduct in Breach of Provisions on Unfair Competitive Practices**

**Article 30** *Conduct constituting breach of provisions on misleading instructions*

1. A fine of from five million (5,000,000) Vietnamese dong up to ten million (10,000,000) Vietnamese dong shall apply for the following breaches:
  - (a) Using instructions which contain misleading information about commercial names, business slogans, business logos, packaging and geographical indications of the enterprise in breach and of other enterprises in order to mislead customers in their understanding of goods and services for competitive purposes;
  - (b) Conducting business in goods and services which use misleading instructions as stipulated in sub-clause (a) above.

2. A fine of from ten million (10,000,000) Vietnamese dong up to twenty million (20,000,000) Vietnamese dong, shall apply for a breach of the provisions on misleading instructions stipulated in clause 1 of this article in one of the following cases:
  - (a) The relevant goods and services are items stipulated in article 10.2(a) of this Decree;
  - (b) The relevant goods and services were circulated or supplied in two or more provinces or cities under central authority.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the following additional forms of penalty and measures for remedying consequences may also be applied:
  - (a) Confiscation of material evidence and facilities used to commit the breach, including confiscation of all profits earned from the practice in breach;
  - (b) Public retraction.

**Article 31** *Conduct constituting infringement of business secrets*

1. A fine of from five million (5,000,000) Vietnamese dong up to ten million (10,000,000) Vietnamese dong shall apply for the following breaches:
  - (a) Accessing or collecting information in the category of business secrets by countering the security measures taken by the lawful owner of such business secret;
  - (b) Disclosing or using information in the category of business secrets without permission from the lawful owner of such business secret;
  - (c) Breaching a confidentiality contract, cheating or abusing the confidence of a person with an obligation to maintain confidentiality, aimed at accessing, collecting and disclosing information in the category of business secrets of the owner of such business secret;
  - (d) Accessing or collecting information in the category of business secrets of another person when such person is conducting business procedures stipulated by law or procedures to circulate products by countering security measures taken by State bodies or by using such information for business objectives or for the objective of applying for the issuance of a business-related permit or a permit to circulate products.
2. A fine of from ten million (10,000,000) Vietnamese dong up to twenty million (20,000,000) Vietnamese dong shall apply for any one breach of the provisions on infringement of business secrets stipulated in clause 1 of this article in one of the following cases:
  - (a) Using a business secret in order to produce and circulate goods or to provide services in two or more provinces or cities under central authority;
  - (b) Disclosing or providing a business secret to a competitor of the lawful owner of such business secret.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, the following measure may also apply to an enterprise in breach, namely confiscation of material evidence and facilities used to commit the breach, including confiscation of all profits earned from the practice in breach.

**Article 32** *Conduct constituting coercion in business*

1. A fine of from five million (5,000,000) Vietnamese dong up to ten million (10,000,000) Vietnamese dong shall apply for a breach being coercing customers or business partners of another enterprise by threatening or coercive conduct in order to compel such entities not to transact or to cease a transaction with such other enterprise.
2. A fine of from ten million (10,000,000) Vietnamese dong up to twenty million (20,000,000) Vietnamese dong shall apply for a breach constituting coercion in business stipulated in clause 1 of this article in the case of coercion of the largest customer or business partner of a competitor.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, the following measure may also apply to an enterprise in breach, namely confiscation of material evidence and facilities used to commit the breach, including confiscation of all profits earned from the practice in breach.

**Article 33** *Defamation of another enterprise*

1. A fine of from five million (5,000,000) Vietnamese dong up to ten million (10,000,000) Vietnamese dong shall apply for a breach being defamation of another enterprise by any indirect act of providing untruthful information which adversely impacts on the reputation, financial position and business activities of such other enterprise.
2. A fine of from ten million (10,000,000) Vietnamese dong up to twenty million (20,000,000) Vietnamese dong shall apply for a breach being defamation of another enterprise by any direct act of providing untruthful information which adversely impacts on the reputation, financial position and business activities of such other enterprise.
4. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 30.3 of this Decree may also be applied to an enterprise in breach.

**Article 34** *Causing disruption to business activities of another enterprise*

1. A fine of from five million (5,000,000) Vietnamese dong up to ten million (10,000,000) Vietnamese dong shall apply for a breach being causing disruption to the lawful business activities of another enterprise by any direct or indirect act which hinders or interrupts the business activities of such other enterprise.
2. A fine of from ten million (10,000,000) Vietnamese dong up to twenty million (20,000,000) Vietnamese dong shall apply for a breach being causing disruption to business activities of another enterprise resulting in the disrupted enterprise being unable to continue to conduct normal business activities.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 30.3 of this Decree may also be applied to an enterprise in breach.

**Article 35** *Advertisements aimed at unfair competition*

1. A fine of from fifteen million (15,000,000) Vietnamese dong up to twenty five million (25,000,000) Vietnamese dong shall apply for the following advertisements:
  - (a) Advertisement comparing directly the goods and services of the enterprise with those of the same type of another enterprise;
  - (b) Advertisement imitating another advertising product in order to mislead customers;

- (c) Advertisement providing false or misleading information to customers about one of the following matters:
- Price, quantity, quality, usage, design, type, packaging, date of manufacture, use expiry, origin of goods, manufacturer, place of manufacture, processor or place of processing;
  - Manner of use, method of service, warranty period;
  - Other false or misleading information.
2. A fine of from 30,000,000 (thirty million) Vietnamese dong up to 50,000,000 (fifty million) Vietnamese dong shall apply for a breach stipulated in clause 1 of this article in one of the following cases:
- (a) The relevant goods and services are items stipulated in article 10.2 of this Decree;
  - (b) The scale of the advertisement encompasses two or more provinces or cities under central authority.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 30.3 of this Decree may also be applied to an enterprise in breach.

**Article 36** *Promotions aimed at unfair competition*

1. A fine of from fifteen million (15,000,000) Vietnamese dong up to twenty five million (25,000,000) Vietnamese dong shall apply for the following breaches:
- (a) Holding a promotion providing false information about prizes;
  - (b) Holding a promotion which is untruthful or misleading about goods and services in order to deceive customers;
  - (c) Discriminating between similar customers in different promotional areas within the same promotional campaign;
  - (d) Offering free goods to customers for trial use but requiring exchange of goods of the same type produced by another enterprise which such customer is currently using in order that the customer will use the goods of the promoting enterprise.
2. A fine of from thirty million (30,000,000) Vietnamese dong up to fifty million (50,000,000) Vietnamese dong shall apply for any one breach stipulated in clause 1 of this article in one of the following cases:
- (a) The promoted goods and services are items stipulated in article 10.2 of this Decree;
  - (b) The scale of the promotion encompasses two or more provinces or cities under central authority.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 30.3 of this Decree may also be applied to an enterprise which holds a promotion aimed at unfair competition.

**Article 37** *Conduct constituting discrimination by association*

1. A fine of from fifteen million (15,000,000) Vietnamese dong up to twenty five million (25,000,000) Vietnamese dong shall apply for the following breaches:
  - (a) Refusing admission to or refusing withdrawal from the association by any organization or individual satisfying the conditions for admission or withdrawal, if such refusal constitutes discriminatory treatment and places such organization or individual at a competitive disadvantage;
  - (b) Unreasonably restricting the business activities or other activities involving a business objective of member enterprises.
2. A fine of from thirty million (30,000,000) Vietnamese dong up to fifty million (50,000,000) Vietnamese dong shall apply for a breach stipulated in clause 1 of this article in one of the following cases:
  - (a) Committing a number of offences in relation to one enterprise;
  - (b) Committing an offence in relation to a number of enterprises at the same time;
  - (c) Unreasonably restricting activities in order that a member enterprise is forced to withdraw from the association.

**Article 38** *Breach being illegal multi-level selling of goods*

1. A fine of from fifty million (50,000,000) Vietnamese dong up to seventy million (70,000,000) Vietnamese dong shall apply for an enterprise engaged in multi-level selling of goods for the following breaches:
  - (a) Requiring persons who wish to participate to pay a deposit in order to have the right to participate in the multi-level sales network;
  - (b) Requiring persons who wish to participate to purchase an initial quantity of goods in order to have the right to participate in the multi-level sales network;
  - (c) Requiring persons who wish to participate to pay an amount of money or any other sum in the form of fees for studying, training, seminars, social or similar activities in order to have the right to participate in the multi-level sales network, except for fees for purchasing data stipulated in article 6.2 of Decree 110-2005-ND-CP of the Government dated 24 August 2005 on supervision of multi-level selling of goods;
  - (d) Failing to undertake to participants to re-acquire goods and pay a refund of any money that participants paid to the enterprise pursuant to article 11 of Decree 110-2005-ND-CP of the Government dated 24 August 2005 on supervision of multi-level selling of goods;
  - (dd) Preventing participants from returning goods by terminating the contract for participation in multi-level selling of goods;
  - (e) Allowing participants to receive commissions, bonuses or other economic benefits essentially only from enticing other persons to participate in the multi-level sales network;
  - (g) Providing untruthful information about the benefits of participation in the multi-level sales network in order to entice persons to participate;
  - (h) Providing untruthful information about the quality and use purpose of goods in order to entice persons to participate.
2. A fine of from seventy million (70,000,000) Vietnamese dong up to one hundred million (100,000,000) Vietnamese dong shall apply for any one of the breaches stipulated in

clause 1 of this article if the scale of the multi-level selling of goods encompasses two or more provinces or cities under central authority.

3. In addition to the fine stipulated in clause 1<sup>2</sup> of this article, one or more of the additional forms of penalty and measures for remedying consequences stipulated in article 30.3 of this Decree may also be applied to an enterprise engaged in illegal multi-level selling of goods.

## SECTION 5

### Conduct in Breach of Other Provisions of Laws on Competition

#### **Article 39** *Breach of provisions on supplying information and data*

1. A warning or a fine of from five hundred thousand (500,000) Vietnamese dong up to one million (1,000,000) Vietnamese dong shall apply for the following breaches:
  - (a) Failure to supply or supplying incomplete information and data known to the enterprise when requested by a competent body;
  - (b) Failure to supply information and data on time as requested by a competent body;
  - (c) Deliberate supply of false or misleading information and data or falsifying information and data;
  - (d) Coercing others to supply false information and data;
  - (dd) Concealing or destroying information and data relevant to a competition case.
2. A fine of from one million (1,000,000) Vietnamese dong up to three million (3,000,000) Vietnamese dong shall apply for any one of the breaches stipulated in clause 1 of this article if the information and data requested was of particular importance for a proper resolution of a competition case.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, an organization or individual in breach may be compelled to supply complete information and data.

#### **Article 40** *Breach of other provisions on investigations and on dealing with competition cases*

1. A warning or a fine of from five hundred thousand (500,000) Vietnamese dong up to one million (1,000,000) Vietnamese dong shall apply for the following breaches:
  - (a) Deliberately or negligently disclosing information and data the subject of a secret investigation;
  - (b) Disrupting an investigative hearing.
2. A fine of from one million (1,000,000) Vietnamese dong up to three million (3,000,000) Vietnamese dong shall apply for any one of the breaches stipulated in clause 1 of this article if the information and data which was disclosed was of particular importance for a proper resolution of the competition case.
3. In addition to the fines stipulated in clauses 1 and 2 of this article, an organization or individual in breach may be subject to confiscation of the material evidence and facilities used to commit the breach.

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<sup>2</sup> Phillips Fox Note: This is presumed to be a typographical error and to be intended to refer to "the fines stipulated in clause 1 and 2 of this article".

**Article 41** *Breaches involving agreement in restraint of competition or economic concentration prior to issuance of decision by competent body granting exemption*

1. A fine of from thirty million (30,000,000) Vietnamese dong up to fifty million (50,000,000) Vietnamese dong shall apply to each party to an agreement in restraint of competition within the exempt category as stipulated in article 10 of the *Law on Competition* when such enterprises have a combined market share of thirty (30) per cent or more in the relevant market and the agreement was made prior to issuance of a decision by the Minister of Trade granting exemption, but the maximum fine shall not exceed three per cent of the total turnover of the enterprise in breach in the financial year preceding the year in which the breach was committed.
2. A fine of from thirty million (30,000,000) Vietnamese dong up to fifty million (50,000,000) Vietnamese dong shall apply to the merging enterprises and to the merged enterprise within the exempt category as stipulated in article 19 of the *Law on Competition* when a merger took place prior to issuance of a decision by the Prime Minister of the Government or by the Minister of Trade granting exemption, but the maximum fine shall not exceed three per cent of the total turnover of the enterprise in breach in the financial year preceding the year in which the breach was committed.
3. A fine of from thirty million (30,000,000) Vietnamese dong up to fifty million (50,000,000) Vietnamese dong shall apply to consolidating enterprises within the exempt category as stipulated in article 19 of the *Law on Competition* when a consolidation took place prior to issuance of a decision by the Prime Minister of the Government or by the Minister of Trade granting exemption, but the maximum fine shall not exceed three per cent of the total turnover of the enterprise in breach in the financial year preceding the year in which the breach was committed.
4. A fine of from thirty million (30,000,000) Vietnamese dong up to fifty million (50,000,000) Vietnamese dong shall apply to an acquiring enterprise within the exempt category as stipulated in article 19 of the *Law on Competition* when an acquisition took place prior to issuance of a decision by the Prime Minister of the Government or by the Minister of Trade granting exemption, but the maximum fine shall not exceed three per cent of the total turnover of the enterprise in breach in the financial year preceding the year in which the breach was committed.
5. A fine of from thirty million (30,000,000) Vietnamese dong up to fifty million (50,000,000) Vietnamese dong shall apply to parties to a joint venture within the exempt category as stipulated in article 19 of the *Law on Competition* when a joint venture was entered into prior to issuance of a decision by the Prime Minister of the Government or by the Minister of Trade granting exemption, but the maximum fine shall not exceed three per cent of the total turnover of the enterprise in breach in the financial year preceding the year in which the breach was committed.

## CHAPTER III

### Authority and Procedures for Dealing with Breaches of Laws on Competition

#### SECTION I

##### Authority for Dealing with Breaches of Laws on Competition

**Article 42** *Authority of administrative body for competition and of head of administrative body for competition*

1. The administrative body for competition shall have the following powers with respect to breaches being unfair competitive practices and other breaches of the laws on competition stipulated in Section 5 of Chapter II of this Decree:
  - (a) To impose a warning;
  - (b) To impose a fine;
  - (c) To confiscate the material evidence and facilities used to commit the breach;
  - (d) To compel the entity in breach to make a public retraction.
2. The head of the administrative body for competition shall have the right to make decisions on application, amendment and revocation of administrative preventive measures prior to the time when a file on a competition case is transferred to the Competition Council to deal with.

**Article 43** *Authority of Competition Council and of councils dealing with competition cases*

The Competition Council and councils dealing with competition cases shall have the following powers to deal with breaches of the provisions on control of practices in restraint of competition:

1. To impose a warning.
2. To impose a fine.
3. To confiscate the material evidence and facilities used to commit the breach.
4. To apply the measures stipulated in sub-clauses (c), (d), (dd), (e), (g), (h), (i) and (k) of article 4.4 of this Decree.
5. To request the competent body to withdraw a business registration certificate or to revoke the right to use a licence or practising certificate.
6. To request the competent body to apply the measures prescribed in sub-clauses (a) and (b) of article 4.4 of this Decree.

**Article 44** *Authority of chairman of Competition Council*

The chairman of the Competition Council shall have the right to make decisions on application, amendment and revocation of administrative preventive measures after receipt of a file on a competition case.

**Article 45** *Authority of other bodies*

Authority by other bodies to impose penalties for breaches of provisions on unfair competitive practices relating to intellectual property rights shall be determined in accordance with the law on dealing with administrative offences.

## SECTION 2

### **Procedures for Dealing with Breaches of Laws on Competition**

#### **Article 46** *Procedures for dealing with breaches of laws on competition*

The procedures for dealing with breaches of the laws on competition shall comprise the following procedures:

1. Procedures for dealing with breaches of the provisions on control of practices in restraint of competition and on unfair competitive practices.
2. Procedures for application, amendment and revocation of administrative preventive measures.
3. Procedures for dealing with breaches of other provisions of the laws on competition.

#### **Article 47** *Procedures for dealing with breaches of provisions on control of practices in restraint of competition and on unfair competitive practices*

Dealing with breaches of the provisions on control of practices in restraint of competition and on unfair competitive practices shall follow the order and procedures for competition legal proceedings stipulated in Chapter V of the *Law on Competition* and in Chapter III of Decree 116-2005-ND-CP of the Government dated 15 September 2005 providing detailed regulations for implementation of a number of articles of the *Law on Competition*.

#### **Article 48** *Procedures for application, amendment and revocation of administrative preventive measures*

The procedures for application, amendment and revocation of administrative preventive measures shall be implemented in accordance with article 61 of the *Law on Competition* and the provisions in Section 7 of Chapter III of Decree 116-2005-ND-CP of the Government dated 15 September 2005 providing detailed regulations for implementation of a number of articles of the *Law on Competition*.

#### **Article 49** *Minutes of breach of other provisions of laws on competition*

1. Upon discovery of a breach of other provisions of the laws on competition stipulated in Section 5 of Chapter II of this Decree, the authorized person shall issue an order suspending immediately the conduct in breach and shall prepare minutes of the breach.
2. The minutes shall contain the following particulars:
  - (a) Date and location of preparation of the minutes;
  - (b) Full name and title of the person who prepared the minutes;
  - (c) Full name, address and occupation of the individual in breach or, in the case of an organization in breach, the name and address of the organization;
  - (d) Date and location of occurrence of the breach;
  - (dd) Description of the conduct in breach;
  - (e) Administrative preventive measures (if any);
  - (g) Status of seized material evidence and facilities (if any);
  - (h) Declaration of the individual in breach or of the representative of the organization in breach;

- (i) Full name, address and declaration of any witness or of any individual suffering loss or of the representative of any organization suffering loss.
3. At least two copies of the minutes shall be prepared. The minutes shall be signed by the person who prepared them and by the individual in breach or by the representative of the organization in breach; and if there was any witness and any entity suffering loss, the minutes shall also be signed by the witness(es) and by the individual suffering loss or by the representative of the organization suffering loss. Where the minutes contain more than one page, all of the entities referred to in this clause must sign each page. If any individual in breach, representative of an organization in breach, witness, person suffering loss or representative of an organization suffering loss refuses to sign the minutes, the person preparing the minutes shall note it in the minutes.
4. After the minutes have been completed, one copy shall be handed to the individual or organization in breach; if the breach exceeds the jurisdiction to deal with the breach of the person preparing the minutes, the minutes must be forwarded to the body competent to deal with the breach.

**Article 50** *Time-limit for issuing decision dealing with breach of other provisions of laws on competition*

1. The time-limit for issuing a decision dealing with a breach of other provisions of the laws on competition shall be ten (10) days from the date of preparation of the minutes of the breach; in complex circumstances, this time-limit shall be thirty (30) days.
2. If an authorized person considers that more time is required to verify or collate evidence, he or she shall provide a written request to extend the time-limit to the person directly in charge of him or her; and any grant of an extension shall be in writing and shall not exceed thirty (30) days. An authorized person shall not issue a decision dealing with a breach after the expiry of the time-limit stipulated above, and if a person is at fault in allowing the time-limit to expire without issuing a decision dealing with a breach, such person shall be dealt with in accordance with law.

**Article 51** *Decision dealing with breach of other provisions of laws on competition*

1. A decision dealing with a breach of other provisions of the laws on competition shall contain the following particulars:
  - (a) Date of issuance of the decision;
  - (b) Full name and title of the person issuing the decision;
  - (c) Full name, address and occupation of the individual in breach or, in the case of an organization in breach, the name and address of the organization;
  - (d) Details of the act, conduct or practice in breach; any circumstances relevant to resolution; clause and articles of applicable legal instruments;
  - (dd) Principal penalty, additional form of penalty (if any) and measures for remedying consequences (if any);
  - (e) Time-limit for enforcement of the decision, place for enforcement of the decision, and signature of the person issuing the decision;
  - (g) Right pursuant to law to lodge a complaint about the decision dealing with a breach of other provisions of the laws on competition.
2. A decision dealing with a breach of other provisions of the laws on competition shall record that, if the individual or organization in breach fails to implement voluntarily the decision, the decision will be enforced compulsorily.

3. A decision dealing with a breach of other provisions of the laws on competition shall become effective as from the date of its signing, unless the decision itself provides for a different effective date.
4. A decision dealing with a breach of other provisions of the laws on competition shall be forwarded to the individual or organization in breach and to the fine-collecting body within three working days from the date of issuance of the decision.

**Article 52** *Transfer of files on competition cases with indications of criminal offences*

If indications of a criminal offence are identified, the competent body shall transfer the file, the material evidence and the facilities used to commit the breach to the body with authority to institute a criminal prosecution in accordance with article 94 of the *Law on Competition*. If a decision dealing with a breach has already been issued, the body which issued such decision must revoke it and transfer the file to the body with authority to institute a criminal prosecution within three working days from the date of revocation of the decision.

SECTION 3

**Procedures for Enforcement of Decisions Dealing with Competition Cases  
and of Decisions Dealing with Breaches of Other Provisions of Laws on Competition**

**Article 53** *Compliance with decision dealing with competition case or decision dealing with breach of other provisions of laws on competition*

1. An enterprise which is subject to a decision dealing with a competition case issued by a council dealing with a competition case or by the administrative body for competition must comply with the decision within a time-limit of thirty (30) days from the date of effectiveness of such decision dealing with the breach.
2. Any organization or individual being in breach of other provisions of the laws on competition and being dealt with pursuant to Section 5 of Chapter II of this Decree must comply with the decision dealing with the breach within ten (10) days from the date on which such decision is delivered.
3. If upon expiry of the time-limit stipulated in either clause 1 or clause 2 of this article the organization or individual fails to comply voluntarily with the decision, such decision shall be enforced pursuant to article 55 or article 56 of this Decree.

**Article 54** *Payment of fines*

Any organization or individual which is fined by a decision dealing with a competition case or a decision dealing with a breach of other provisions of the laws on competition must pay the fine to the State Treasury stipulated in such decision.

**Article 55** *Procedures for enforcement of decisions dealing with competition cases*

1. If upon expiry of the time-limit stipulated in article 53.1 of this Decree the organization or individual having a penalty imposed fails to comply voluntarily with the decision and does not institute court proceedings pursuant to Section 7 of Chapter V of the *Law on Competition*, the judgment creditor shall have the right to request the competent bodies stipulated in clauses 2 and 3 of this article to enforce the decision dealing with the competition case within the scope of the functions, duties and powers of such body.
2. The competent body shall be responsible to withdraw a business registration certificate or to revoke the right to use a licence or practising certificate which such body issued to the enterprise which committed an administrative breach, if so required by the council dealing with the competition case in its decision.
3. Other competent bodies shall be responsible to organize coercive measures, namely, the restructure of an enterprise which abused its dominant market position, the division or split of an enterprise which merged or consolidated, or the compulsory re-sale of that part

of an enterprise which was acquired, if so required by the council dealing with the competition case in its decision.

4. A civil judgment enforcement office of the province or city under central authority where the judgment debtor has its head office or resides or where there are assets of the judgment debtor shall be responsible to organize implementation of that part of the decision dealing with the competition case relating to assets at the request of the judgment creditor as named in the decision dealing with the competition case.

**Article 56** *Procedures for enforcement of decision dealing with breach of other provisions of laws on competition*

If upon expiry of the time-limit stipulated in article 53.2 of this Decree the organization or individual having a penalty imposed fails to comply voluntarily with the decision dealing with a breach of other provisions of the laws on competition, such entity shall be compelled to implement the decision pursuant to articles 66 and 67 of the *Ordinance on Dealing with Administrative Offences* and the provisions of Decree 37-2005-ND-CP of the Government dated 18 March 2005 on procedures applicable to enforcement of decisions imposing penalties for administrative offences.

## CHAPTER IV

### Complaints and Denunciations

**Article 57** *Complaints and denunciations*

1. Any organization or individual being dealt with for a breach of the laws on competition or the legal representative of such organization or individual shall have the right to lodge a complaint with the competent body about a decision dealing with a competition case or a decision dealing with a breach of other provisions of the laws on competition issued by a council dealing with a competition case or by the administrative body for competition where there are grounds for believing such decision is contrary to law or infringes the complainant's lawful rights and interests.
2. Any organization or individual being subject to an administrative preventive measure or the legal representative of such organization or individual shall have the right to lodge a complaint with the competent body about such measure applied by the chairman of the Competition Council or by the head of the administrative body for competition where there are grounds for believing such decision is contrary to law or infringes the complainant's lawful rights and interests.
3. All citizens shall have the right to make a denunciation with the competent body about a breach of the law during the process of dealing with breaches of the laws on competition where the breach causes loss or threatens to cause loss to the interests of the State or to the lawful rights and interests of a body, organization or individual.
4. Any organization or individual making a false complaint or denunciation which harms the reputation of the entity complained about or of the person denounced shall be dealt with in accordance with law.

**Article 58** *Resolution of complaints about decision dealing with competition case of council dealing with case or of administrative body for competition*

Resolution of complaints about decisions dealing with competition cases of councils dealing with competition cases or of the administrative body for competition shall be implemented in accordance with Section 7 of Chapter V of the *Law on Competition* and with the provisions in Section 10 of Chapter III of Decree 116-2005-ND-CP of the Government dated 15 September 2005 providing detailed regulations for implementation of a number of articles of the *Law on Competition*.

**Article 59** *Resolution of complaints about decisions dealing with breaches of other provisions of laws on competition and about decisions imposing administrative preventive measures*

Resolution of complaints about decisions dealing with breaches of other provisions of the laws on competition and about decisions imposing administrative preventive measures shall be implemented in accordance with the law on complaints and denunciations.

**Article 60** *Resolution of denunciations*

Resolution of denunciations by citizens about breaches of law during the process of dealing with breaches of the laws on competition shall be implemented in accordance with the law on complaints and denunciations.

**Article 61** *Institution of administrative court proceedings*

1. If the parties concerned disagree with a decision resolving a complaint by the competent body pursuant to article 58 of this Decree, they shall have the right to institute administrative court proceedings in respect of all or a part of such decision in accordance with article 115 of the *Law on Competition*.
2. If the parties concerned disagree with a decision resolving a complaint by the competent body pursuant to article 59 of this Decree, they shall have the right to institute administrative court proceedings in respect of all or a part of such decision in accordance with the law on complaints and denunciations and the procedures for resolution of administrative court proceedings.

## CHAPTER V

### Implementing Provisions

**Article 62** *Effectiveness*

This Decree shall be of full force and effect after fifteen (15) days from the date of publication in the Official Gazette.

**Article 63** *Responsibility for implementation*

1. The Ministry of Trade shall be responsible to organize implementation of this Decree.
2. Ministers, heads of ministerial equivalent bodies and Government bodies, and chairmen of provinces and cities under central authority shall be responsible for implementation of this Decree.

On behalf of the Government  
Prime Minister

PHAN VAN KHAI