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*FREE TRANSLATION*

DRAFT 2

COMPETITION LAW

 Pursuant to the Constitution of the Socialist Republic of Vietnam;

 The National Assembly promulgates the Competition Law.

Chapter I

GENERAL PROVISIONS

Article 1. Governing scope

This Law provides for:

1. Anti-competitive acts, abuse of dominant and monopoly position, economic concentration acts taking place in Vietnam or outside Vietnam’s territory that have impact or likely cause competition restraint on the market of Vietnam;

2. Unfair competition acts;

3. 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. Domestic and foreign organizations and individuals including State agencies, public service institutions and industry associations (operating in Vietnam) conducting anti-competitive acts, unfair competition acts, order and procedures for settling competition cases, measures to handle violations of competition legislation.

Article 3. Interpretation of terms

In this Law, the following terms are construed as follows:

1. *Industry association* includes business association and professional association

2. *Relevant market* means market of goods, services which are interchangeable in terms of characteristics, use purposes and prices in a specific geographical area with similar conditions of competition, and which is considerably differentiated from neighboring areas.

3. *Substantial market power* is the ability of enterprise on a specific product market to raise and maintain price above the level that would prevail under competition or reduce product quality and output below the level that would prevail under competition but still make profit.

4. *Anti-competitive effect* is the effect of eliminating, reducing, distorting or deterring competition on the market.

5. *Anti-competitive acts* mean acts that cause or can cause anti-competitive effects, including acts of anti-competitive agreement, abusing the dominant position on the market, abusing the monopoly position and economic concentration.

6. *Unfair competition acts* mean competition acts performed by enterprises, which run counter to common standards of business ethics and cause damage or can cause damage to the legitimate rights and interests of other enterprises or consumers.

7. *Anti-competitive agreement* is commitment or constraint among parties in any form, which causes or can cause anti-competitive effects on the market.

8. *Economic concentration acts* mean acts performed by enterprises to acquire a part of or the whole assets of other enterprises directly or indirectly, which is enough to control those enterprises or acts of combining partial or whole assets, rights, obligations and legitimate interests among enterprises to co-control the combined enterprises.

9. *Competition case* means a case showing signs of violation of the provisions of this Law, which is investigated and handled in accordance with this Law including anti-competitive cases and unfair competition cases.

10. *Competition procedures* mean order and procedures of receiving, investigating and handling competition cases prescribed by this Law.

Article 4. Right to business competition

1. Enterprises of all economic sectors 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. State competition policy

1. Create, maintain and ensure fair and healthy business environment and competition environment.

2. Encourage competition, ensure right to free business competition by law.

3. Encourage, enhance the accessibility to market; improve economic efficiency and protect consumers.

4. Combine competition policy, trade policy, industry policy and sector regulating policy in a consistent and effective manner.

5. State regulates the economy on the basis of respecting market rules and not causing or probably causing anti-competitive effects.

6. State controls and handle anti-competitive acts or likely anti-competitive acts.

Article 6. Acts that State agencies and public service agencies are prohibited from performing

State agencies and public service agencies are prohibited from performing the following acts to prevent competition on the market:

1. To assign selling or buying goods, services directly or prevent competition on the market indirectly or 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 industry associations or enterprises to align with one another with a view to precluding, restricting or preventing other enterprises from competing on the market;

4. Support, grant preference or release supporting policy, grant unreasonable preference to one enterprise or a group of enterprises, which causes negative impact on competition in the market;

5. Release discriminatory policy or impose conditions on technical standard, origin or other conditions discriminating goods, services of the same type to create competition advantage for one enterprise or a group of specific enterprises;

6. 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 National Competition Commission 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 National Competition Commission in performing the State management over competition.

Article 8. Obligation of providing information, data

Enterprises, agencies, organizations and individuals are obliged to provide adequate and correct information and data under their management and storage in a timely manner upon request of the National Competition Commission, Competition Investigating Agency, Competition Case Handling Commission, competition investigators and shall bear the full responsibility before the law for providing such information and data.

# CHAPTER II

# DEFINE RELEVANT MARKET AND MARKET POWER

Article 9. Define relevant market

1. Relevant market is defined on the basis of relevant market of products and relevant geographical market.

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

 b) Relevant geographical market is 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.

1. The Government shall prescribe details of this Article.

Article 10. Factors to determine market power of enterprise(s)

1. Factors to determine market power of enterprise(s) include:

a) Market share of enterprise(s) on the relevant market;

b) Market structure and market share ratio among enterprises in the market;

c) Ability to access, control product consumption market or supply market;

d) Finance capability of enterprise, of parent enterprise or organization, individual who established the enterprise, organization or individual that has the controlling or ruling right to enterprise’s operations;

đ) Technology capability;

e) Technical and material facilities, essential infrastructure of enterprise or ability to keep, access technical and material facilities, essential infrastructure;

g) Market entry, expansion barriers;

h) Scale of distribution and consumption network;

i) Ownership rights, use rights to objects of industrial property ownership;

k) Cost and time of customers when turning to buy other relevant goods;

l) Special factors of sectors or areas where enterprises are doing their business.

2. Substantial market power of enterprises is determined on the basis of one or several factors provided at Clause 1 of this Article.

3. The Government shall prescribe details of this Article.

Article 11. Determine market share of enterprises on the relevant market

1. Market share of enterprises on the relevant market is determined as:

a) 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 on a monthly, quarterly or yearly basis;

b) 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.

2*.* Combined market share means aggregate market share on the relevant market of enterprises participating in the anti-competitive acts or economic concentration acts.

3. Sale turnover and purchase turnover used to determine market share provided at Clause 1 of this Article shall be defined by law on tax and Vietnam’s accounting standard and by other related laws.

4. Sale turnover to define market share of insurance enterprises equals to aggregate insurance premium plus reinsurance premium collected in the fiscal year.

5. Sale turnover to define market share of credit organizations equals to aggregate interest income; fee income from service operations; foreign exchange trading income; income from contribution interest and share purchase of shares; income from other business activities and other income.

6. As for other specific sectors and areas, sale turnover to determine market share of enterprises can be calculated on the basis of such sector and area regulations (if any).

7. If a group of enterprises are related directly in terms of organization and finance via a joint executive body and capital is invested by this body, sale turnover and purchase turnover to define market power of this group in accordance with clause 1 of this Article equal to the aggregate sale turnover and purchase turnover of each member enterprise and professional entity operating in accordance with the powers delegated by the joint executive body. Sale turnover and purchase turnover of the related enterprise group shall not include the turnover generated from direct transactions between the joint executive body and member enterprises, professional entity operating in accordance with the powers delegated by the joint executive body.

8. Where enterprise has been newly established and it has been conducting business operations for less than one financial year, the turnover in order to determine market share of such enterprise shall be calculated from the date of commencement of operations till the date of determining market share in accordance with clause 1 of this Article.

# CHAPTER III

## ANTI-COMPETITIVE AGREEMENTS

Article 12. Anti-competitive agreements

1. Agreements on directly or indirectly fixing goods or service prices.

2. Agreements on distributing customers, 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 preventing, restraining, disallowing other enterprises to enter the market or develop business.

5. Agreements on abolishing from the market enterprises other than the parties of the agreements.

6. Agreements on bid rigging to enable one or all of the parties of the agreement to win bids for supply of goods or provision of services.

7. Agreements on restricting technical and technological development, restricting investments.

8. 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.

9. Agreements on fixing resale prices of goods, services.

10. Agreements on not trading with other individuals, organizations.

11. Agreements on restricting outlets, sources of supply of goods, provision of services by other individuals, enterprises.

12. Other agreements in accordance with clause 7, Article 3 of this Law.

Article 13. Prohibited anti-competitive agreements

1. Enterprises who are competitors are prohibited from entering anti-competitive agreements provided at clause 1, 2, 3, 4, 5 and 6 of Article 12 of this Law.

2. Enterprises are prohibited from implementing anti-competitive agreements that cause or can cause substantial anti-competitive effects in the market specified at clause 7, 8, 9, 10, 11 and 12 of Article 12 of this Law

Article 14. Assess substantial anti-competitive effects

1. Assessment of anti-competitive effects or substantial anti-competitive effects of anti-competitive acts provided at clause 2, Article 13 of this Law includes following elements:

a) Degree of anti-competitive effects;

b) Degree of pro-competitiveness;

2. The Government shall prescribe details of this Article.

Article 15. Other acts related to anti-competitive agreements

Individuals, organizations are prohibited from conducting acts as below:

1. Mobilizing, appealing, enticing, forcing or arranging enterprises to enter prohibited agreements as provided at Article 13 of this Law.

2. Provide information to form anti-competitive agreements prohibited as provided at Article 13 of this Law.

Article 16. Exemption of anti-competitive agreements

1. Anti-competitive agreements provided in Clause 1, 2, 3, 4 and 5 of Article 13 of this Law shall be granted exemption for a definite term if they serve the socio-economic development in the contemporary period or help reduce costs to benefit consumers.

2. To be granted exemption, before conducting the anti-competitive agreements, the intending enterprises must follow the procedure and apply for exemption at the National Competition Commission.

3. The National Competition Commission shall be responsible for accepting, receiving and verifying exemption application dossier and submitting to the Prime Minister for decision.

4. The Prime Minister shall consider and decide on granting exemption for the anti-competitive agreements provided at clause 1 of this Article in written documents on the basis of the National Competition Commission’s recommendation.

5. Dossier submitters must pay for verification fee. This fee is nonrefundable in case the applicants withdraw the dossiers.

6. Parties are just permitted to implement the anti-competitive agreements as provided at clause 1 of this Article after the exemption application dossiers are submitted and the Prime Minister decides to grant exemption in written documents.

7. The National Competition Commission shall not receive and verify the dossiers applying for exemption where anti-competitive agreements provided at clause 1 of this Article shall have been implemented by the agreements’ parties.

8. National Competition Commission shall be responsible for oversighting anti-competitive agreements granted with exemption and recommend the Prime Minister to cancel the decision on grant of exemption in 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.

9. The Government shall prescribe details of conditions, dossiers, procedure and verification fee of exemption application dossiers in accordance with regulations of this Article.

Article 17. Leniency program

1. Enterprises that voluntarily inform to help the National Competition Commission detect and handle anti-competitive agreements prohibited at Article 14 of this Law shall be granted immunity or reduction of sanction level in accordance with leniency policy.

2. The National Competition Commission shall consider to decide on granting immunity or reduction of sanction level if enterprises that submit application for leniency shall meet the following conditions:

a) Participated or participating as a party in an anti-competitive agreement as provided at Article 13 of this Law;

b) Admit that their participation in the anti-competitive agreements violates regulations at Article 14 of this Law;

c) Voluntarily inform the violation act before the National Competition Commission issues the investigation decision;

d) Honestly inform and provide all information, evidence that they have on the violation act, such information and evidence considerably help the National Competition Commission detect, investigate and handle the violation acts.

đ) Is one of the first enterprises submitting leniency application to the National Competition Commission;

e) Not be the enterprise that played the role of forcing or arranging other enterprises to participate in the agreements;

g) Stopped or committed to immediately stop participation in the agreements after submitting leniency application to the National Competition Commission;

h) Continue fully and effectively cooperating with the National Competition Commission during the course of investigating and handling the violation acts.

3. Criteria to determine immunity or reduction of sanction level granted for enterprises include:

a) Order of submitting application for leniency;

b) Time of submitting application for leniency;

c) Fidelity and value of provided information, evidence.

5. The Government shall prescribe details of this Article.

# CHAPTER IV

## ABUSE OF DOMINANT POSITION ON THE MARKET, ABUSE OF MONOPOLY POSITION

Article 18. 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 have substantial market power as provided at clause 2 of Article 10 of this Law.

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 19. 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 20. Prohibited acts of abusing the dominant position, monopoly position on the market

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

1. Selling goods, providing services at prices lower than the aggregate costs without plausible reasons;

2. Imposing irrational buying or selling prices of goods or services or fixing minimum re-selling prices;

3. Restricting production, distribution of goods, services, limiting markets, preventing technical and technological development;

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 market entry or expansion of other enterprises;

7. Requiring other enterprises just to deal with itself or with enterprises appointed by it;

8. Tying or imposing unfavorable conditions on customers;

9. Unilaterally modify or cancel the contracts already signed without plausible reasons;

 10. Refusing to deal without plausible reasons;

 11. Other acts of abusing dominant position, monopoly position that cause or can cause substantial anti-competitive effects on the market.

 Article 21. 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.

CHAPTER V

ECONOMIC CONCENTRATION

Article 22. Economic concentration

1. Merger of enterprises;

2. Consolidation of enterprises;

3. Acquisition of enterprises;

4. Joint venture between enterprises;

5. Other acts of economic concentration as provided in Clause 7 Article 3 of this Law.

Article 23. Merger, consolidation, acquisition of enterprises, 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. Acquisition of enterprises means an act whereby an enterprise acquires the whole or part of property or shares of another enterprise sufficient to control or dominate all or one of the trades of the acquired enterprise.

3. 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.

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 24. Prohibited cases of economic concentration

Economic concentration shall be prohibited if it has or can have an anti-competitive effect in Vietnam market.

Article 25. Notification of economic concentration

1. The enterprises participating in economic concentration in one of the following circumstances must notify to the National Competition Commission before implementing economic concentration, except the case where enterprises after implementing economic concentration are still of small or medium size as prescribed by law:

a) One of the enterprises has a market share of 20% or more on the relevant market;

b) The transaction value of economic concentration is from 300 billion VND or above;

c) One of the enterprises has revenue of 1000 billion VND or above in the fiscal year preceding the year of implementing economic concentration.

2. The Government shall review and adjust the notification threshold referred to point b and c Clause 1 of this Article in accordance with the social and economic development.

Article 26. Economic concentration notification dossiers

1. An economic concentration notification dossier shall comprise:

a) A written notification form of economic concentration prescribed by the National Competition Commission;

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;

g) Proposals of economic concentration remedies (if any).

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

Article 27. Acceptance of economic­ concentration notification dossiers

1. Within seven working days after receiving the economic concentration notification dossiers, the National Competition Authority must notify in a written document to the dossier-submitting enterprises of the validity and completeness of their dossiers. In cases where a dossier is incomplete, the National Competition Authority must clearly point out the contents that have to be supplemented by parties within 15 days after the National Competition Commission issuing the notification.

2. The National Competition Commission shall return the economic concentration notification dossier to the enterprise in cases where the enterprise fails to amend or supplement the dossier as prescribed in Clause 1 of this Article.

Article 28. Time limit to assess an economic concentration

1. The National Competition Authority shall conduct preliminary assessment of the economic concentration notification dossier within forty five days after the acceptance of dossier.

2. Where the economic concentration cases may have a substantial anti-competitive effect in the market, the National Competition Commission shall continue to conduct an official assessment of the economic concentration case within ninety days. The National Competition Commission shall inform to enterprises about the official assessment of economic concentration prior to the expiry of preliminary assessment, clearly stating the reasons for official assessment.

3. In cases where economic concentration involves many complicated circumstances, the official assessment time limit prescribed in Clause 2 of this Article may be extended by the National Competition Commission but not exceed two times, each time for no more than sixty days and must notify such in writing to the dossier submitting enterprises before the extension date, clearly stating the reason for extension.

Article 29. Assess an economic concentration case

1. The National Competition Commission shall assess an economic concentration case based on one of the following criteria:

a) Market structure and level of market concentration;

b) Ability to cause an effect of substantially restricting competition in the market;

c) Positive effects of economic concentration case to the economy.

3. The Government shall prescribe details of this Article.

Article 30. Request for additional information on economic concentration

The National Competition Commission has the right to request the economic concentration parties to clarify and submit necessary information, documents for the purpose of evaluating an economic concentration case.

Article 31. Reply of economic concentration notification

1. Within the time limit specified in Clause 1, Article 28 of this Law, the National Competition Commission shall have to notify in writing to the enterprise submitting the dossier:

a) Economic concentration does not fall into the prohibited category;

b) Economic concentration continues to be under official assessment as prescribed in Clause 2 Article 28 of this Law.

2. Within the time limits specified in Clauses 2 and 3, Article 28 of this Law, the National Competition Commission shall notify in writing to the enterprises submitting the dossiers:

a) Economic concentration does not fall into the prohibited category;

b) Economic concentration is allowed to proceed with the condition or one or several remedies provided in Article 32 of this Law;

c) Economic concentration is prohibited.

Article 32. Conditions and remedies for economic concentration

1. Restructure of enterprises involved in economic concentration.

2. Division, separation and resale of part of the assets of the merged, acquired or consolidated enterprise.

3. Control the content related to the purchase price of goods, services or other trading conditions in the contracts of enterprises formed after the economic concentration.

4. Other conditions to overcome the possibility of causing or likely to cause adverse effects on competition in the market.

Article 33. Implementation of economic concentration

1. Enterprises participating in economic concentration specified in Point a, Clause 1 and Point a, Clause 2, Article 31 of this Law shall be allowed to carry out economic concentration procedures at the competent State agencies prescribed by relevant legislation.

2. Enterprises participating in economic concentration subjected to condition as prescribed at Point b, Clause 2, Article 31 of this Law shall have to commit in writing the implementation of conditions and remedy measures of economic concentration with the National Competition Commission before carrying out procedures at competent State agencies in accordance with the relevant laws.

Article 34. Violations of economic concentration

1. Enterprises under the cases prescribed in Article 25 of this Law do not notify before conducting economic concentration.

2. Enterprises under the cases specified at Point b, Clause 2, Article 31, fail to meet the conditions and obligations within the time limit specified in the written notification of economic concentration of the National Competition Commission.

3. Enterprises falling into cases specified at Point c, Clause 2, Article 31 of this Law still carry out economic concentration after receiving written replies of the National Competition Commission.

# CHAPTER VI

# UNFAIR COMPETITION ACTS

Article 35. Prohibited unfair competition acts

Enterprises are prohibited to conduct the following unfair competition practices:

1. Infringement on business secrets;

2. Coercion in business;

3. Discrediting other competitors;

4. Disturbing business activities of other enterprises;

5. Illegally inducing customers;

6. Other competition acts in accordance with the provisions of other laws or criteria specified in Clause 5, Article 3 of this Law.

Article 36. Infringement on business secrets

The violation of a business secret includes 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. Illegally using knowledge or information obtained from investment activities in finance or wisdom of other enterprises.

Article 37. Coercion in business

Constraint in business is the act of forcing customers or business partners of other enterprises not to enter in transaction or to stop transaction with such enterprises.

Article 38. Discrediting other competitors

Discrediting other competitors is the act of directly or indirectly providing untruthful information about their competitors.

Article 39. Disturbing business activities of other enterprises

 Disturbing a competitor’s business is a direct or indirect act that interrupts or disrupts a competitor's legitimate business.

Article 40. Illegally inducing customers

Illegally inducing customers is to provide false or misleading information to the customers about the business or product, services, transaction conditions related to the product or service that the business provide to attract other enterprises’ customers.

# CHAPTER VII

# NATIONAL COMPETITION COMMISSION

Article 41. National Competition Commission

1. The National Competition Commission is a governmental agency and established by the Government, which is responsible for State administration of competition; monitoring of competition activities in the market; conducting investigations and dealing with breaches of the law on competition; to control economic concentration and to perform other duties in accordance with this Law.

2. The National Competition Commission, when performing the functions and tasks provided by this Law, shall have the following powers:

a) Requesting enterprises, agencies, organizations and individuals to supply information, documents and explanations;

b) To evaluate dossiers of request for exemption of competition restriction agreements and submit them to the Prime Minister for decision;

c) To consider the application of leniency policy;

d) To conducting the search;

e) To take testimony;

f) To conduct the solicitation of expertise;

g) To conduct sanctioning decisions and decisions according to the provisions of this Law;

h To conduct market research, surveys and evaluations;

i) Other powers as provided by law.

3. The Government shall provide for the structure and organization of the apparatus of the National Competition Commission.

Article 42. The Chairman and Vice Chairmen of the National Competition Commission

1. The chairman of the National Competition Commission is the head, responsible for organizing the operation of the National Competition Commission to implement the provisions of this Law.

2. The Vice Chairmen of the National Competition Commission shall be responsible for assisting the Chairman in organizing the activities of the National Competition Commission.

3. The Chairman and Vice Chairmen of the National Competition Commission shall be appointed and dismissed by the Prime Minister.

Article 43. The Competition Case Handling Council

1. The Competition case handling Council shall be established by the decision of the Chairman of the National Competition Commission to consider and propose to Chairman for issuing a decision on a particular competition restriction case.

2. The Competition case handling Council comprises three or more members selected by the chairman of the National Competition Commission in a specific case according to the criteria specified in Article 44 of this Law, at least one of them is the Vice Chairman of the National Competition Commission who is appointed as a chairman of the Competition Case Handling Council.

3. The Competition case handling Council shall operate according to specific case, terminate its operation and automatically dissolve upon the completion of the task of handling a specific competition restriction case.

4. In the period of handling specific competition restriction cases due to the decisions of the National Competition Commission Chairman, members of the Competition case handling Council shall be entitled to remuneration as the expert regime.

5. The Government shall prescribe the remuneration levels for members of the Competition case handling Council members.

Article 44. Criteria of Competition case handling Council

1. The Chairman of the National Competition Commission shall decide on the selection of persons who meet the following criteria and conditions to participate in the Competition Case-Handling Council:

a) Being a Vietnamese citizen;

b) Having good moral qualities, being honest and objective and having the spirit of protecting the socialist legislation;

c) Having bachelor's or higher degrees in law, economics, finance or disciplines suitable to the requirements of handling competition cases;

d) Having work experience for at least 5 years in one of the field specified at Point c, Clause 1 of this Article;

e) Having good health and capable of performing the assigned tasks.

2. Priority shall be given to reputable and experienced persons in investigating, inspecting, supervising, adjudicating or other policy-making and enforcement activities.

Article 45. Competition Investigation Agency

1. The Competition Investigation Agency is an organization under the National Competition Commission, which has the function of collecting and verifying information about the violation, detecting signs of violation and conducting the investigation of competition cases in accordance with the provisions of this Law.

2. The Competition Investigation Agency shall perform other tasks at the request of the chairman of the National Competition Commission.

3. During the competition case investigation, the Competition Investigation Agency may carry out the following activities:

a) Searching for suspicious places to store information, documents and objects related to the acts with signs of violations of this Law;

b) Requesting the complainant, the investigated party, concerned agencies, organizations and individuals to supply information, documents, objects and explain the contents related to the competition case under investigation;

c) Taking testimonies of the complainants, the investigated parties and the concerned agencies, organizations and individuals;

d) Inspecting, copying or collecting information, documents and objects related to acts with signs of violations of this Law.

Article 46. Head of Competition Investigation Agency

1. The Head of Competition Investigation Agency shall be appointed or dismissed by the Chairman of the National Competition Commission.

2. The Head of Competition Investigation Agency shall be responsible for organizing the operation of the Competition Investigation Agency to implement the provisions of Article 45 of this Law and under the assignment of the Chairman of the National Competition Committee.

Article 47. Investigators of competition cases

1. Investigators of competition cases (hereinafter referred to as investigators) shall be appointed by the Chairman of the National Competition Commission.

2. Investigators performing the task of investigating specific competition cases under decisions of Head of Competition Investigations Agency.

3. Investigators may carry out activities of gathering and verifying signs, information and evidences on acts of violating the provisions of this Law and conducting investigation activities under the competence of Competition Investigation Agency.

4. In the process of performing the task of investigating specific competition cases, investigators shall have to directly report to the Head of the Competition Investigation Agency.

5. Investigators shall receive the responsibility allowance regime prescribed by the Government.

Article 48. Criteria of investigators

1. Being a Vietnamese citizen;

2. Having good moral qualities, being incorruptible, honest, objective and spiritually protective of the socialist legislation;

3. Having a bachelor's or higher degree in law, economics, finance or other fields appropriate to the requirements of the competition case investigation;

4. Having been trained and fostered in professional investigation skills;

5. Having worked at least 3 years in one of the sectors specified in Clause 3 of this Article;

6. Having health and ability to fulfill assigned tasks.

# CHAPTER VIII

# COMPETITION PROCEDURE

## Section 1

## GENERAL PROVISIONS

Article 49. Principles for competition procedure

1. The settlement of competition cases shall comply with the provisions of this Law.

2. In the process of carrying out competition procedures, the competition procedure-conducting agencies and competition procedure-conducting individuals 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 50. Language and script used in competition procedures

1. The language and script used in competition procedures is Vietnamese.

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

Article 51. Statute of investigation

The statute of investigation is five years from the date the acts involving signs of violation of competition legislation are conducted.

Article 52. Evidences

1. Evidences are facts used by the Competition Investigation Agency, 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;

e) Other sources prescribed by law are identified as evidences.

Article 53. Responsibility for coordinating and supporting the investigation process

Local authorities, public security agencies, competent State agencies and other organizations and individuals shall, within the scope of their respective functions, duties and powers, be responsible for coordinating and supporting the investigation and settlement process of competition cases at the request of the Chairman of the National Competition Commission, the Head of the Competition Investigation Agency and investigators.

## Section 2

## COMPETITION PROCEDURE PARTICIPANTS

Article 54. 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;

8. Specialists invited by competition procedure conducting agencies;

9. Other related parties.

Article 55. Complainant, investigated party

1. The complainant of a competition case (hereinafter referred to as the complainant) is an organization or individual that has a complaint dossier accepted by the National Competition Commission to initiate an investigation under Article 77 of this Law. .

2. Investigated party of a competition case (hereinafter referred to as the investigated party) is an organization and individual investigated by Competition Investigation Agency on the basis of the grounds specified in Article 77 this law.

Article 56. Rights and obligations of involved parties

1 . The investigated party shall have the following rights:

a) To participate in stages of competition procedure;

b) To provide information, documents and objects to protect their legitimate rights and interests;

c) To be informed of information, documents and objects presented by the complainant or Competition Investigation Agency;

d) To research documents in the competition case dossiers and record, copy necessary documents included in the competition case dossiers in order to protect the legitimate rights and interests of such parties; except for documents and evidences which are not publicized in accordance with law;

e) To participate and present opinions at the hearing;

f) Request to invite witnesses;

g) Request for expertise;

h) To propose the change of competition procedure-conducting persons, competition procedure participants according to the provisions of this Law;

i) To authorize lawyers to participate in competition procedures.

2. The complainant shall have the following rights:

a) The rights prescribed in Clause 1 of this Article;

b) To propose the Chairman of the National Competition Commission, Head of Competition Investigation Agency 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 Investigation Agency, the National Competition Commission and Competition Case Handling Council. In cases where the Competition Case Handling Council convenes for the hearing but they are summoned but fail to appear without plausible reasons, or summoned to the second time, the Competition Case-Handling Council shall handle cases according to regulations;

c) Not to disclose the investigation secrets which they know in the process of participating in competition procedures; tot to use recorded or copied materials in competition case dossiers for the purpose of infringing upon the interests of the State and legitimate rights and interests of other organizations or individuals;

d) Execute the decision of the National Competition Commission, the Competition Investigation Agency and the Competition Case Handling Council.

Article 57. 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 National Competition Commission, Competition Investigation Agency and 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;

i) Other rights and obligations as prescribed by law.

Article 58. Witnesses

1. Persons who know about circumstances related to the competition cases may be summoned by the Competition Investigation Agency, 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 Investigation Agency, 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 Investigation 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 receive 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 National Competition Commission, the Competition Investigation 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 National Competition Commission, the Competition Investigation Agency or 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 59. Experts

1. Experts are those who have necessary knowledge about the matters to be expertise at the request of the National Competition Commission or at the request of the involved parties after it is accepted by the National Competition Commission 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 expertise 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 expertise 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 expertise 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 exercising 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.

2. Experts have the following rights and obligations:

a) To read the documents in competition case dossiers related to the expertise objects; To request the assessment solicitors to provide necessary documentation for the assessment;

b) To raise questions for participants in competition procedures on matters related to the assessment objects;

c) To appear in the summonses of the expertise-requesting agency, answer questions related to the expertise and conclude the expertise in a truthful, substantive and objective manner;

d) To notify in writing the assessment-requesting body of the fact that the assessment cannot be conducted due to the need for expertise beyond the professional capability or the supplied documents are not enough or unusable for the expertise;

e) To preserve the received documents and return them to the expertise-requesting agency with the conclusions of unable to conduct expertise;

 f) Not allowed to collect documents themselves or contact in person with other participants in competition procedures if such contact affects the objectivity of assessment results; Not to disclose confidential information which they know when conducting the assessment, nor to notify the results of assessment to other persons, except for the persons signing decisions to solicit expertise;

g) To write their opinions in the general conclusion if they are not consistent with the common conclusion in the case of collective expertise;

h) To receive travel expenses and other regimes as prescribed by law.

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 69 of this Law;

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

Article 60. 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 National Competition Commission, or Competition Investigation Agency or shall be appointed by the these bodies.

2. Interpreters shall have the following rights and obligations:

a)To appear in response to the summonses;

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 receive other regimes according to law provisions;

f) To pledge before the National Competition Commission, the Competition Investigation Agency or 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 National Competition Commission, the Competition Investigation Agency or 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 69 of this Law;

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

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 National Competition Commission, the Competition Investigation Agency or the Competition Case-­Handling Council to act as interpreters for such dumb or deaf persons.

Article 61. 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 56 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 56 of this Law.

Article 62. 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 63. Deciding on change of experts or interpreters

1. Before opening a hearing, the change of experts or interpreters shall be decided by the National Competition Commission 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 59 and Article 60 of this Law.

## Section 3

COMPETITION PROCEDURE­-CONDUCTING AGENCIES,

COMPETITION PROCEDURE-CONDUCTING PERSONS

Article 64. Competition procedure-conducting agencies, competition procedure-conducting persons

1. Competition procedure-conducting agencies include the National Competition Commission and Competition Investigation Agency.

2. Competition procedure-conducting persons include Chairman of the National Competition Commission, Chairman and members of Competition Case-Handling Council, Head of Competition Investigation Agency and investigators.

Article 65. Tasks and powers of the Chairman of the National Competition Commission when conducting competition procedures

When conducting competition procedures, the Chairman of the National Competition Commission shall have the following tasks and powers:

1. Decide to assign Competition Investigation Agency to investigate specific competition cases;

2. Decide to establish the Competition Case-Handling Council;

3. Decide to change Competition Case­-Handling Council members, experts or interpreters before opening a hearing;

4. Decide to conduct searching.

Article 66: Duties and powers of the Competition Case Handling Council’s chairman when following the procedure of competition law

In the course of handling competition-restriction cases, the chairman of the Competition Case-Handling Council shall, on behalf of the Competition Case-Handling Council, recommend the Chairman of the National Competition Commission:

1. To open the hearing as provided in Article 90 of this Law;

2. To summon participants to the hearing;

3. To request assessment;

4. To invite witnesses at the request of relevant parties;

5. To invite opinion from the consultants;

6. To handle competition restriction cases;

7. To handle of other violation acts of competition law prescribed by the Government.

Article 67: Duties and powers of heads of the competition investigation agency when following the procedure of competition law

1. The Head of the Competition Investigation Agency may recommend to the Chairman of the National Competition Commission:

a) To decide the comencement of the competition investigation;

b) To decide the assignment of investigators for the competition case;

c) To request agencies, organizations and / or individuals to provide documents, information, objects related to the cases;

d) To decide on the seach and seizure of suspected places where information, documents and / or objects related to the violations are kept;

dd) To decide the change of investigators of competition cases;

e) To decide on the expertise solicitation during the investigation period;

g) To decide on the invitation of witnesses at the request of relevant parties;

h) To decide on the invitation of expert consultation;

i) To decision to extend the investigation;

k) To decide to stop the investitation of competition case.

2. Upon the conclusion of the investigation process, the head of the Competition Investigation Agency shall sign the final investigation report, transfer the investigation report and the whole competition case dossier to the Chairman of the National Competition Commission for handling as prescribed by the law.

Article 68: The duties and powers of investigators to follow the procedure of competition law

When following the procedure of competition law, investigators shall have the following duties and powers:

1. Conduct the competition investigations as assigned by heads of the competition investigation agency;

2. Request the investigated parties and concerned agencies, organizations and individuals to provide documents, information and evidences and explanation relevant to the case;

3. Produce the investigation report after the conclusion of the investigation.

Article 69. Cases in which the official charged with competition procedure, experts or interpreters must be replaced

Official following the competition procedure, experts or interpreters shall refuse to perform their tasks or be replaced if they fall into one of the following cases:

1. Being relatives of the investigated party or the complainant;

2. Being persons having rights and obligations related to the competition case;

3. There are other obvious grounds to believe that they are biased when implementing their duties.

Article 70: Procedures to reject the competition procedure or to propose changes of personnel following the competition procedure

1. The rejection of competition procedure as well as or the personel change of competition procedure before the opening of hearings must be made in writing, in which clearly states the reasons and grounds for rejection or change of personnel following competition procedure.

2. The refusal to conduct competition proceedings or the request for change of competition procedure-conducting persons at the hearing must be recorded in the minutes of the hearing.

Article 71. Decision on the replacement of personnel following competition procedure

1. The change of personnel following the competition procedure shall be decided by the chairman of the Competition Commission.

2. In case where the official following the competition procedure must be changed at the hearing, the chairman of the competition case-handling council shall issue a decision to postpone the hearing. The appointment of the replacement shall be decided by the Chairman of the National Competition Commission. The chairman of the competition case handling council shall have to report to the chairman of the National Competition Commission regarding the personnel replacement.

Section 4

INVESTIGATION AND HANDLING PROCEDURES FOR COMPETITION CASE

Article 72. Provide information about the violation

1. Organizations and individuals, when detecting or detecting signs of violation of the provisions of this Law shall have to notify and provide information and evidence to the National Competition Commission.

2. Organizations and individuals shall be responsible for the truthfulness of the information and evidence provided to the National Competition Commission.

3. When required, the National Competition Commission may take the necessary measures to ensure the confidentiality of information and identity of the organization or individual providing information or evidence.

Article 73. Receipt, verification and evaluation of information on violations

1. The National Competition Commission shall be responsible for receiving, verifying and evaluating information and evidence on violations committed by organizations and individuals.

2. The National Competition Commission shall have the right to request the organizations and individuals specified in Clause 1, Article 72 of this Law to provide more information, documents and evidence to clarify signs of violations.

3. Where the organization or individual provides written information together with specific evidences, the National Competition Committee shall have to conduct the verification of the case.

4. Where organizations and individuals provide information and evidence according to Clause 3 of this Article, the National Competition Commission shall have to reply in writing to organizations and individuals.

Article 74. Complaints about the competition case

1. Organizations and individuals assume that their rights and interests are violated due to the violations of this Law shall have the right to lodge complaints about competition cases to the National Competition Commission.

2. A complaint dossier submitted to the National Competitive Commission must contain the following principal documents:

a) A complaint form promulgated by the National Competition Commission;

b) Evidence to prove that the content of the complaint has a legal basis.

c) Other relevant information (if any) that the complainant considers the neccessity to solve the case.

3. The complainant shall be responsible for the truthfulness of the information and evidence provided to the National Competition Commission.

Article 75. Receipt and examination of complaint dossiers

1. The National Competition Commission is responsible for the receipt and review of complaints.

2. Within a time-limit of fifteen (15) working days from the date of receipt of the complaint dossier, the National Competition Commission shall be responsible for the consideration of the completeness, validity, legality of the dossier.

3. In case the complaint dossier fails to meet the requirements specified in Clause 2, Article 74 of this Law, the National Competition Commission shall notify the complainant thereof to supplement relevant documents within 30 days. In exceptional cases, the Commission may extend the time limit for the supplementation for only one time for no more than 30 days at the request of the complainant.

4. In case the complainant requests to withdraw the complaint dossier in order to amend all or part of the contents in the complaint dossier, the time limit for consideration as specified in Clauses 2 and 3 of this Article shall be recalculated from the date the complainant to resubmit the dossier.

5. Within the time limits set out in paragraphs 2 and 3 of this Article, the complainant shall have the right to withdraw the complaint and the National Competition Commission may stop the review of the complaint dossier.

Article 76. Return the complaint dossier

The National Competition Commission shall return the competition complaint dossier in the following cases:

1. The investigation period under this Law is already expired;

2. Complained behavior does not fall under the authority of the National Competition Commission;

3. The complainants shall not supplement the complaint dossiers according to the provisions of Clause 3, Article 75 of this Law;

4. The complainant shall withdraw the complaint dossier as prescribed in Clauses 4 and 5, Article 75 of this Law.

 Article 77. Grounds for conducting the investigation of the competition case

The National Competition Commission shall investigate the competition case in the following circumstances:

1. The National Competition Committee finds signs of violation of this Law;

2. Results of verification and evaluation of information and evidence provided by organizations and individuals under Articles 17, 72 and 73 of this Law show signs of violation of this Law;

3. A competition complaint dossier meets the requirements specified in Clause 2, Article 74 of this Law.

Article 78. Responsibility for coordination and obligation to cooperate with the competition investigation agency

1. Local authorities, public security agencies, and competent agencies and other organizations and individuals shall have to coordinate with and assist the competition investigation agency and investigators during the course of investigation, and organize and conduct the search and seizure when requested.

2. Enterprises, agencies, organizations and individuals shall be obliged to cooperate fully with the Competition Investigation Agency and investigators during the course of investigation. Enterprises, organizations and individuals, who are summoned for testimony or search are obliged to comply with and follow the orders of the investigation agency, investigators and competent persons.

3. Enterprises, agencies, organizations and individuals shall have to provide fully, accurately and promptly the information and documents that they own at the request of the competition investigation agency and the investigator.

Article 79. Investigation period for a competition case

1. The investigation period for a competition case is two years from the date of issuance of the investigation decision. In case of necessity, the period may be extended by the head of the competition investigation agency, but must not exceed two times for no more than 90 days each time.

2. The investigation period for an unfair competition case is 60 days from the date of issuance of the investigation decision. In case of necessity, the time limit for investigating an unfair competition case may be extended by the head of the competition investigation agency, but must not exceed two times for no more than 30 days each time.

3. The extension of the investigation period must be notified to the investigated parties and concerned parties within 7 working days before the expiry date of the investigation.

Article 80. Search and seizure during the course of investigation of the competition cases

1. During the course of the investigation of competition cases, the Competition Investigation Agency may conduct the search and seizure in order to collect information, documents and objects related to violation acts of this law upon the approval of the Chairman of the National Competition Commission.

2. The Head of the Competition Investigation Agency shall decide and organize the search and seizure with the approval of the Chairman of the National Competition Commission.

3. In the process of performing the search and seizure, the Competition Investigation Agency shall have the right to inspect and copy electronic data, documents, correspondence, accounting books, contracts and related equipment suspected of being involved in violation acts of this Law. The Competition Investigation Agency has the right to seize the information, documents and objects related to violated acts of this Law.

4. Where detecting or seizing information, documents or objects related to acts showing signs of law violation, the competition investigation agency must notify or transfer them to the competent agencies for handling.

Article 81. Conduct taking testimony

1. Investigators shall take testimonies of the complainants, investigated parties, witnesses, concerned organizations and individuals in order to verify and gather necessary information and evidence for handling a competition case.

2. The taking of testimony provided inn paragraph 1 of this Article shall be conducted at the headquarters of the National Competition Commission. In case of necessity, the taking of testimony may be conducted outside the headquarters of the National Competition Commission.

3. The written record of the testimonies must be read or re-read and be signed or pointed of certification by the proclaimer. Applicants have the right to request amendments and additions to the minutes of the testimonies and sign or point of certification. The minutes must be signed by the testimony taker, the recorder and have stamp of the agency or organization where the testimony is taken; If the minutes are recorded in separate pages, each page must be signed and stamped on each page.

4. The taking of testimonies of the investigated parties, witnesses or related individuals who are minors or persons with restricted civil act capacity, must be conducted in the presence of their legal representatives.

5. Where the person providing testimony refuses to sign the minute, the investigator shall write in the minutes and clearly state the reasons.

Article 82. Request to invite witnesses in the investigation process

1. In the process of investigation, the involved parties may request the Competition Investigation Agency to invite witnesses. The requestors shall be obliged to state the reasons for inviting witnesses to the Competition Investigation Agency for decision.

2. 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 83. Transfer of dossiers of competition cases involving criminal signs

1. During the investigation process, if it is detected that a competition case shows criminal signs, investigators must report and propose to the head of the Competition Investigation Agency to consider and report to the Chairman of the National Competition Commission to transfer the relevant dossier to competent State agencies for handling according to the provisions of law.

2. Where it is determined that there is no ground or criminal proceedings may be instituted against a violation of competition regulations, the competent state agency shall return the dossier to the Competition Investigation Agency to continue the investigations in accordance to the procedures provided in this Law. The time limit for investigation of a competition case provided in Article 79 of this Law shall be counted from the date that the Competition Investigation Agency receives the dossier.

Article 84. Suspension of investigation

The head of the Competition Investigation Agency shall issue a decision to suspend the investigation of a competition case in the following cases:

1. The time limit for investigation has expired without sufficient prove of the violation of this Law.

2. The complaining party withdraws the complaint and the investigated party commits to terminate the investigated act, commit to take remedial measures which are approved by the Competition Investigation Agency on the basis of the acceptance by the Chairman of National Competition Commission.

3. The investigated parties commit to terminate the investigated acts, commit to apply remedial measures which are approved by the Competition Investigation Agency on the basis of the acceptance by the Chairman of National Competition Commission.

 Article 85. Reestablish of investigation

The Head of the Competition Investigation Agency may, either on his own or at the request of the Chairman of the National Competition Commission or at the request of any interested party, reestablish the investigation in the following circumstances:

1. The investigated party fails to comply with the commitments made.

2. The decision to approve the pledger’s engagement is based on inaccurate, insufficient or misleading information provided by the parties.

Article 86. Investigation report

1. Investigators shall make an investigation report after the completion of the investigation which contains the following principal contents:

a) A brief account of the case;

b) Determination of violations;

 c) Verified circumstances and evidences;

d) Proposed handling measures.

2. Investigators shall submit an investigation report to the Head of the Competition Investigation Agency.

 3. The Head of the Competition Investigation Agency shall have to sign the investigation conclusion and transfer the competition case dossier, investigation report and investigation conclusion to the Chairman of the National Competition Commission.

Article 87. Handling an unfair competition case

Within 30 working days from the date of receipt of the competition case dossier, investigation report and conclusion of investigation, the Chairman of the National Competition Commission shall issue a decision on handling an unfair competition case.

Article 88. Handling a competition restriction case

1. Within 15 working days after receiving the competition case dossier, investigation report and investigation conclusions, the Chairman of the National Competition Commission shall issue decisions to establish the Competition Case-Handling Council to consider and propose the settlement of the competition restriction case.

2. Within 60 days from the date of its establishment, the Competition Case Handling Council shall consider and propose to the Chairman of the National Competition Commission to issue one of the following decisions:

a) Additional investigation within 60 days after the signing of the decision;

b) Settlement of the competition restriction case.

3. In the process of handling the competition case provided in clause 1 of this Article, the Competition Case-Handling Council may convene, organize a working session with the complainant, investigated party, related individuals and organizations or conduct hearings as provided in Article 89 of this Law.

4. Within 30 days after receiving the proposal of settling the competition case by the Competition Case-Handling Council, the Chairman of National Competition Commission must issue a decision to handle the competition restriction case.

Article 89. Hearings

1. In case of necessity, the Competition Case-Handling Council may, at its own decision or at the request of the parties, conduct a hearing where the parties present their opinions and provide explanations.

2. 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 in confidentiality.

3. The decision to open the hearing and the summons to participate in the hearing must be sent to the complainant, the investigated party and related organizations and individuals within 5 working days before the opening of the hearing.

Article 90. To hand the investigation decision

 The decision of handling a competition case shall be sent to the investigated parties within 5 working days from the date of signing.

Article 91. Effect of competition case-handling decisions

Competition case-handling decisions shall come into force thirty days after the date of its signing.

Article 92. Initiate lawsuits against competition case-handling decisions

1. In case of disagreement with the competition case-handling decision, the parties may initiate a lawsuit against part or the whole contents of the competition case-handling decision to the Central provincial-level people's courts within 30 days from the date of signing the decision on the handling of the competition case.

2. The parts of the competition case-handling decisions which are not initiated shall still be effective.

CHAPTER IX

HANDLING OF VIOLATIONS OF COMPETITION LEGISLATION

Article 93. Forms of sanctioning violations of competition legislation

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.

Article 94. Fine imposed for acts of violating competition legislation

1. The maximum fine level for acts of violating the provisions on anti-competitive agreements, abuse of dominant position on the market, abuse of monopoly position is 10% of the total turnover of the violating enterprises in the fiscal year preceding the year when they commit violation acts.

2. The maximum fine level for acts of violating the provisions on economic concentration is 5% of the total turnover of the violating enterprises in the fiscal year preceding the year of when they commit violation acts.

3. The maximum fine level for acts of violating the provisions on unfair competition acts is VND 500 million.

4. The maximum fine level for other acts of violating the provisions of this Law is VND 100 million.

5. The Government shall detail this Article.

Article 95. Competence to sanction, handle violations of competition legislation

The Chairman of the National Competition Commission shall have the following powers:

1. To issue caution;

2. To impose fines;

3. To confiscate exhibits and means used for commission of violations of competition legislation;

4. To apply the measures prescribed at points c, d and clause 3 Article 93 of this Law;

5. To request competent state agencies to apply the measures prescribed at points a and b clause 3 Article 93 of this Law.

Article 96. Execution of competition case­-handling decisions

1. After thirty days as from the date the competition case-handling decisions come into force as provided in Article 91 of this Law, 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 Article 91 of this Law, the National Competition Commission shall request 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 National Competition Commission shall request the civil judgment-executing agencies in the provinces or central 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 X

IMPLEMENTATION PROVISIONS

Article 97. Implementation effect

1. This Law shall take effect as from date…month 2019.

2. The Competition Law No. 27/2004/QH11 shall cease to be effective from the effective date of this Law.

Article 98. Transitional provision

The violations under the provisions of this Law must be terminated by the parties within one year from the effective date of this Law.

Article 99. Detailed regulations and implementation guidance

The Government and competent agencies shall detail and guide the implementation of articles and clauses assigned in the Law.

*This Law was passed by the XIVth National Assembly of the Socialist Republic of Vietnam at the…session on date…month…2018.*

CHAIRWOMAN OF NATIONAL ASSEMBLY

 Nguyen Thi Kim Ngan