Latest Draft Competition Law of Vietnam

On September 15, 2017, the 5th draft of the new Competition Law (the “5th Draft”) was published on the National Assembly Office Portal for public review and comments. The 5th Draft is being reviewed by the Standing Committee of the National Assembly and is expected to be passed in May 2018.

The 5th Draft, while retaining many notable clauses set forth in the 2nd draft published in April 2017 (the “2nd Draft”) (see our client alert regarding the 2nd Draft here), also presents certain substantial changes as follows:

1. Distinction Between Horizontal and Vertical Anti-competitive Agreements

   Article 12 (regarding the prohibited anti-competitive agreements) now distinguishes between horizontal and vertical anti-competitive agreements. Specifically, businesses in a vertical relationship are prohibited from entering into certain anti-competitive agreements, if "such agreement creates, or can possibly create, a substantial anti-competitive effect to the market." Article 13 provides further details on the criteria for the National Competition Authority ("NCA") to assess whether an agreement can create, or can possibly create, a substantial anti-competitive effect to the market.

2. Merger Control Thresholds

   The 2nd Draft provided that "an economic concentration shall be prohibited if it creates, or can possibly create, a substantial anti-competitive effect to the Vietnam market." The 5th Draft further adds that "economic concentration shall be prohibited if it creates, or may possibly create, a substantial anti-competitive effect to the Vietnam market, and there is no possible remedy to cure such effect." The threshold to notify an economic concentration is also more flexible than in the 2nd Draft – The 5th Draft now tasks the Government to provide and adjust the thresholds with regards to (i) total assets in Vietnam of either of the enterprises participating in the transaction; (ii) total revenues in Vietnam of either of the enterprises participating in the transaction and (iii) total value of the transaction.

   A transaction will be notifiable if any of these thresholds is met.

3. Publication of the National Competition Authority's Decisions

   The main decisions rendered by the NCA in relation to a competition case (e.g., decision on grant of exemption, decision on handling a competition case), after taking effect, will be published on the NCA’s website for a period of ninety (90) days. State secret and business secret information in such decisions will be redacted before publication. However, it is unclear whether

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1 Article 24 of the 2nd Draft.

2 Article 32 of the 5th Draft.

3 Article 33.3 of the 5th Draft.

4 Articles 107 and 109 of the 5th Draft.

5 Article 108 of the 5th Draft.
those prior decisions will have any precedential value on future cases, and whether past decisions issued under the current 2004 Competition Law will also be published.

4. National Competition Authority Remains under the Ministry of Industry and Trade

One of the significant changes introduced in the 2nd Draft was the status of the competition authority as an independent agency under the Government. This idea was not been welcomed by the stakeholders of the Government. Therefore, the 5th Draft reinstated the current position that the NCA remains as a department under the Ministry of Industry and Trade.