

ABUSE OF MARKET DOMINANCE BY STATE MONOPOLIES IN VIETNAM

*Tran Thang Long**, *Gordon Walker***

I.	INTRODUCTION.....	188
II.	STATE MONOPOLIES IN VIETNAM: AN OVERVIEW	190
III.	ABUSE OF MARKET DOMINANCE	193
	A. <i>The concept of abuse of market dominance</i>	193
	B. <i>Abusive behaviour by market dominance</i>	194
IV.	ABUSE OF MARKET DOMINANCE BY STATE MONOPOLIES: SELECTED CASES.....	199
	A. <i>Case-study One: Interconnection dispute between VNPT and Viettel</i>	200
	B. <i>Case-study Two: Connection dispute between VNPT and EVN Telecom</i>	203
	C. <i>Case-study Three: Dispute regarding ground service provision by Vietnam Airlines</i>	206

* Dr Tran Thang Long is a Lecturer in Law at the Faculty of International Law, Ho Chi Minh City Law University, Vietnam. He received his LL.B and LL.M degrees from Ho Chi Minh City Law University, Vietnam in 1997 and 2002 and his PhD degree from La Trobe University, Australia in 2011. He taught courses on international law at the Faculty of International Law from 1997 to 2006 before moving to Australia to pursue his PhD. His PhD thesis was on the application of competition law to anti-competitive behavior by Vietnam's state monopolies.

** Professor Dr. Gordon R Walker, SJD (Duke) is Professor of Commercial Law at La Trobe Law School in Melbourne, Australia. He has held visiting or adjunct professor appointments at Hong Kong University; Hong Kong University of Science & Technology; University of Muenster, Germany; Texas Tech University; University of Hawaii; and University of Houston. He is a consultant to the Asian Development Bank and the European Bank for Reconstruction and Development.

188	<i>HOUSTON JOURNAL OF INTERNATIONAL LAW</i>	[Vol. 34:2
	<i>D. Case-study Four: Aviation fuel supply dispute between VINAPCO and Pacific Airlines</i>	209
	<i>E. Observations on the case studies</i>	211
V.	THE APPLICATION OF <i>COMPETITION LAW</i> TO STATE MONOPOLIES ABUSIVE BEHAVIOUR	213
	<i>A. Criteria to determine dominant or monopoly position</i>	213
VI.	ENFORCEMENT ISSUES IN ABUSE OF MARKET DOMINANCE	222
	<i>A. Vietnam's competition authorities</i>	222
	<i>B. The enforcement of competition rules</i>	224
	<i>C. Enforcement by competition authorities</i>	227
VII.	SUGGESTIONS FOR REMEDIES AND REFORM	228

I. INTRODUCTION

The term “state monopoly” refers to a market situation where there is exclusive control of the supply of certain goods and services by a few state firms.¹ A “state monopoly” can be widely defined as a “monopoly firm” or a “monopolist.” In Vietnam, a “state monopoly” is an economic entity controlled or influenced by the state which is able to conduct monopolistic behaviour potentially subject to competition law.²

Abuse of market dominance by state monopolies is more pernicious than similar conduct committed by private firms. State monopolies can make use of their dominance in the market to pursue exploitative and exclusive abuses. In Vietnam, the abuse of dominance by state monopolies typically involves access to essential facilities because these sectors are in the

1. *Monopoly* *Definition*, DICTIONARY.COM, <http://dictionary.reference.com/browse/monopoly> (last visited Oct. 25, 2011).

2. LE PHU CUONG, MINISTRY OF TRADE OF VIETNAM, MONOPOLY SITUATION IN VIETNAM 1-3 (2003), *available at* <http://www.competitionlaw.cn/upload/05070113295626.pdf>.

hands of newly formed or restructured state firms, known as state economic groups. Activities aimed at preventing the market entry of competing firms by state monopolies are of special concern because of their adverse influence on the legislative process, such as lobbying for the imposition of market barriers. There are obvious implications for international firms seeking to enter the Vietnamese market in areas such as telecommunications and aviation where such monopolies dominate.³

There is a history of sub-optimal application of anti-monopoly provisions in Vietnamese law with respect to state monopolies. The enforcement of competition law as regards state monopolies is further complicated due to the characteristics of Vietnam's state monopolies. Vietnam's state monopolies are complicit in the implementation of the economic policies of the state and reciprocal relationships exist between the state and sectoral regulators. Part II of this article presents an overview of state monopolies in Vietnam. Part III analyses the abuse of market dominance by reference to the concept of "abuse" and abusive behaviour stipulated under the *Competition Law 2004* (hereafter "Competition Law" or "Law"). Part IV provides case studies of abuse of market dominance by state monopolies in the telecommunications and aviation industries. Part V discusses how the Law applies to the abusive behaviour of state monopolies. Part VI is concerned with how the Law is implemented, focusing on the competition authority and enforcement mechanisms. Part VII prescribes remedies to address these problems.

3. NGUYEN THANH HA ET. AL., U.S. AGENCY FOR INT'L DEVELOPMENT, COMPETITION REVIEW OF THE VIETNAMESE TELECOMMUNICATIONS SECTOR (2005); LE PHU CUONG, *supra* note 2, at 3. Gillespie states: "[I]n industries where SOEs retain monopolies or compete with foreign investors, they have vigorously opposed neoliberal legalism. For example, after years of intensive pressure, foreign banks have been unable to remove the SOEs' monopoly power over lending for land. Foreign investors also ascribe the weak anti-monopoly rules adopted in the Competition Law 2004 to pressure exerted by SOEs and their supervising agencies." JOHN STANLEY GILLESPIE, TRANSPLANTING COMMERCIAL LAW REFORM: DEVELOPING A RULE OF LAW IN VIETNAM 250 (2006).

II. STATE MONOPOLIES IN VIETNAM: AN OVERVIEW

In the centrally planned economy before *Doi Moi* (Renewal) commenced in the mid-1980s, the state was a monopoly.⁴ Thus, the term “state monopoly” initially referred to a situation where there was absolute control by the state over the entire economy as implemented through state-owned enterprises. “State monopolies” as firms or monopolists did not exist because there was only one “monopoly”—the state.

The rationale for the existence of current state monopolies is the “leading role” of the state sector laid down in the *Constitution 1992* and other key documents of the Communist Party of Vietnam (CPV).⁵ The subsequent development of state monopolies in Vietnam is closely linked with the course of state owned enterprise reform in Vietnam. This process was marked by a series of key events. The first was the equitisation process, which began in 1993.⁶ The second was the establishment of General Corporations under *Decrees No.90* and *No.91*,⁷ and the

4. Dennis A. Rodinelli & Jennie I. Litvack, *Economic Reform, Social Progress, and Institutional Development: A Framework for Assessing Vietnam's Transition*, in MARKET REFORM IN VIETNAM 2 (1999); SUJIAN GUO, THE POLITICAL ECONOMY OF ASIAN TRANSITION FROM COMMUNISM 31–32 (2006).

5. The 1992 Constitution of Vietnam declares that “[T]he State sector shall be consolidated and developed, especially in key branches and areas and play the leading role in the national economy.” 1992 CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM, ch. 1, art. 19. The Vietnamese Communist Party’s strategy for socio-economic development over the past ten years has been that “[t]he State economic sector is an important material force and the instrument for the State’s orientation and macro-regulation toward the economy; it is to focus investments on socio-economic infrastructures and a number of important industrial establishments.” Communist Party of Vietnam, *Strategy for Socio-Economic Development 2001-2010* (2001), available at http://www.unaids.org.vn/sitee/images/stories/socio_economic_dev.pdf.

6. Truong Dong Loc, *Equitisation and Stock-Market Development: The Case of Vietnam* 41 (2006) (unpublished Ph.D. thesis, University of Groningen) (the process consisted of the transformation of SOEs into joint-stock companies and the sale of part of the shares in such companies to private investors).

7. Re-establishment of the Corporation of Machinery and Accessories, Dec. No. 225-TTg, Apr. 17, 1995 (Viet.) (enacting Dec. No. 90-TTg, Mar. 7, 1994 (Viet.)); Establishment of the Vietnam National Chemical Corporation, Dec. No. 835-TTg, Dec. 20, 1995 (Viet.) (enacting Dec. No. 91-TTg, Mar. 7, 1994 (Viet.)). Both Decisions established General Corporations, paving the way for SOEs to focus on key sectors in the economy.

third was the formation of so-called “state economic groups.”⁸ Changes in the definition of “state-owned enterprise” (SOE) throughout the development of the regulatory framework concerning SOEs are an important factor in understanding the “state monopoly” concept in Vietnam.⁹ SOEs now exist in many forms, including sole investment limited liability companies, limited liability companies with two or more members, and shareholding companies,¹⁰ in which the state owns over fifty percent of the registered capital.¹¹

In Vietnam, monopolies were formed from SOEs which formerly operated in monopolised sectors.¹² The term “monopoly” in Vietnam is usually glossed as “state monopoly” and enterprises holding monopoly positions are regarded as state monopoly enterprises. With the transformation of SOEs, the term “monopoly enterprise” is no longer regarded as applying to a 100 percent state owned enterprise; rather, it includes those enterprises in which the state holds controlling shares such as joint stock enterprises.¹³ Since all natural monopoly industries are in the hands of the state, there are few

8. *Vietnam needs powerful economic groups*, ENGLISH.VOV.VN, <http://english.vov.vn/Home/Vietnam-needs-powerful-economic-groups/20062/37456.vov> (last visited Oct. 25, 2011).

9. *Compare* Law on State Enterprises, Law No. 39 L/CTN, Apr. 20, 1995 (Viet.) (clarifying a ‘state owned enterprise’ is limited to any enterprise that ‘. . . [i]s capitalized, set up, organized and managed by the State and carries out business or public utility operations’), *with* Law on State Owned Enterprises, Law No. 14-2003-QH11, Nov. 26, 2003 (Viet.), *and* Law on Enterprises, Law No. 60/2005/QH11, Nov. 29, 2005, art. 4 ¶ 22 (Viet.) [hereinafter the Enterprise Law] (broadly defining ‘state-owned enterprise’ on the basis of state ownership or the percentage that the state invests in that enterprise).

10. CUTS INT’L, PROMOTING COMPETITION POLICY AND LAW IN VIETNAM: A CIVIL SOCIETY PERSPECTIVE 8–10 (2006); *see also* Donald C. Clarke, Corporate Governance in China: An Overview 3–4 (July 15, 2003), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=424885.

11. The Enterprise Law, *supra* note 11, art. 4 ¶ 22.

12. According to Article 2(1) of the Competition Law, “enterprises” falling within the scope of the law are those belonging to non-state economic sectors as well as those belonging to the state sector. Within the scope of the second category, state enterprises operating in the “state monopolized domains” can be understood as “state monopolies” and Article 15 conforms to that approach. Law on Competition, Law No. 27/2004/QH11, Dec. 3, 2004, art. 2 ¶ 1 (Viet.) [hereinafter The Competition Law].

13. The Enterprise Law, *supra* note 11, art. 4(15)(a).

differences between a natural monopoly and a state monopoly.¹⁴

The 2004 Competition Law does not explain the term “monopoly” nor does it have a specific chapter titled “anti-monopoly.” Rather, Article 12 of the Law introduces the term “firm holding a monopoly position.”¹⁵ Hence, one can be deemed to be a monopoly firm holding a monopoly position by this criterion—when no other firms are competing with that firm in a specific domain. A “monopoly position” is a particular case of “dominant position,” where no competitors exist.¹⁶ There can be one or a group of enterprises with a dominant position on the market if the total market share is over the threshold set forth in Article 11(2).¹⁷

A “state monopoly” is an enterprise falling within the definition of “enterprise” in the *Enterprises Law 2005*.¹⁸ Such an entity has the status of a SOE and is distinguishable from a state management body. It is characterised by a close link with the state due to state ownership and is created by means of administrative orders.¹⁹ It is a “monopolist,” meaning that it meets the criteria of a monopoly. In addition, state monopolies exist in strategic domains and possess large amounts of capital and assets, operating businesses in key sectors of the economy.²⁰ These state monopolies have the characteristics of “natural monopoly” and “profit-seeking” enterprises.²¹

14. LE PHU CUONG, *supra* note 2, at 1.

15. The Competition Law, *supra* note 12, art. 12.

16. The Competition Law, *supra* note 12, art. 12.

17. The Competition Law, *supra* note 12, art. 11(1)–(2).

18. The Enterprise Law, *supra* note 11 (defining an enterprise as an economic institution that has its own name, assets, stable office and is duly constituted for the purpose of conducting business).

19. Truong Dong Loc, *supra* note 6, at 17.

20. Rodinelli & Litvack, *supra* note 4, at 2–3.

21. NGUYEN THANH HA ET AL., *supra* note 3, at 1–2 (Showing that each state conglomerate is involved in a specific area. For example, there are corporations in areas such as telecommunications, mineral exploitation, ship building, energy, petroleum, etc.).

III. ABUSE OF MARKET DOMINANCE²²A. *The concept of abuse of market dominance*

Generally, abuse of dominant position is the “abusive or improper exploitation” practice of a dominant firm²³ aimed at gaining or enlarging a position in the market and restricting competition.²⁴ The Law stipulates two types of abusive behaviour: the abuse of dominant position and abuse of a monopoly position in the market.²⁵ It does not give any definition of these different concepts; rather, it provides criteria to define a firm or a group of firms that are considered to be holding such a position.²⁶

Because of definitional uncertainty, the concept of abuse of dominant or monopoly position in Vietnam can be viewed either from the purpose of or from the consequence of behaviour. From the “purpose” viewpoint, Dang Vu Huan regards “abusive” behaviour as behaviour by which a dominant firm attempts to maintain or enhance its current position in the market.²⁷ From the “consequence” viewpoint, the consequence of the abuse to competition is the key feature and such behaviour is prohibited by the Law. For example, Nguyen Ngoc Son defines the abuse of dominant and monopoly positions as “behaviour stipulated in the Competition Law conducted by a firm or a group of firms

22. Although The Competition Law uses two separate concepts concerning the position of a firm on the market—dominant and monopoly positions, “market dominance” is used collectively to encompass both concepts. The Competition Law, *supra* note 12, art. 3(3).

23. United Nations Conference on Trade and Development, Geneva, Switz., 2000, *Model Law on Competition*, U.N. Doc. TD/RBP/CONF.5/1 (June 9, 2000) [hereinafter UNTACD].

24. CUTS INT’L, A CIVIL SOCIETY PERSPECTIVE, *supra* note 10, at 19.

25. The Competition Law, *supra* note 12, art. 3(3).

26. The Competition Law, *supra* note 12, art. 11.

27. Dang Vu Huan, *Phap luat Ve Kiem soat Doc quyen va Chong Canh tranh Khong Lanh manh o Vietnam* [Law concerning Monopoly Control and Anti-Unfair Competition in Vietnam] 86 (2002) (unpublished Ph.D. thesis, Hanoi Law University). The purpose of a dominant firm in conducting “abuse of dominant position” is to maintain or increase its position in the market. See CUTS INT’L, A CIVIL SOCIETY PERSPECTIVE, *supra* note 10, at 24; UNTACD, *supra* note 23 (the relevant abuse aims to maintain and reinforce the position of the violating firm by preventing other firms from participating in the market or restraining competition).

with dominant or monopoly positions in the relevant market, which reduces, deviates and obstructs competition on the market.”²⁸

The definition of abuse of dominant/monopoly positions inferred from Article 3(3) of the Law appears more abstract than the *UNCTAD Model Law*, thus making it difficult to determine whether there is such abuse.²⁹ It is not easy to determine what is meant by such concepts as deviating, reducing or obstructing competition. As competition is a concept reflecting a rival relationship in the market, there are no objective measures to determine accurately the level of a competitive relationship. By contrast, determining the capability of a firm in maintaining and reinforcing its position is simpler. It is possible to achieve a fairly accurate conclusion based on economic and technical parameters in the related market, such as the number of firms, market share and the gap in the market share among firms.³⁰

B. Abusive behaviour by market dominance

The Law does not classify abusive behaviour, but rather supplies a list of prohibited behaviour.³¹ This includes both unilateral and collective groups of abusive behaviour, i.e. (i) taking advantage of a position to exploit customers to maximize profits and, (ii) abuse of a dominant/monopoly position to reinforce and maintain the current position through activities aimed at obstructing and eliminating competitors.³² In both cases, the final goal of the firm conducting the abuse is to take advantage of its market power to maximize profits. The prevention and elimination of competitors is mainly designed to reinforce market power which enables the exploitation of consumers.

28. NGUYEN NHU PHAT & NGUYEN NGOC SON, *PHAN TICH VA LUAN GIAI CAC QUY DINH CUA LUAT CANH TRANH VE HANH VI LAM DUNG VI TRI THONG LINH THI TRUONG, VI TRI DOC QUYEN DE HAN CHE CANH TRANH* [ANALYSING AND INTERPRETING PROVISIONS OF THE COMPETITION LAW CONCERNING ABUSE OF DOMINANT/MONOPOLY POSITIONS TO RESTRICT COMPETITION] 10–21 (2006).

29. The Competition Law, *supra* note 12, art. 3(3).

30. NGUYEN NHU PHAT & NGUYEN NGOC SON, *supra* note 28, at 21.

31. The Competition Law, *supra* note 12, art. 13–14.

32. *Id.* art. 13(4), (6) & 14(2)–(3).

While the list of prohibited behaviour in Article 13 appears similar to that contained in Article 82 in the *EC Treaty*,³³ there is no provision in the Law stating whether this list is exhaustive or not.³⁴ Hence, it is unclear whether any behaviour which does not appear on the list is regarded as an abuse of dominant/monopoly position or how the Law can apply. The determination of anti-competitive effects of such behaviour is in the hands of the competition authority. However, according to the Constitution, laws and sub-laws and the determination of validity as law are matters reserved for the Standing Committee of the National Assembly.³⁵ This leaves the question of whether or not the determination of the competition authority is considered enforceable as problematic.³⁶

1. *Exploitative abuses*

An exploitative abuse occurs when a firm takes advantage of its dominant/monopoly position in its relationship with customers.³⁷ Profits achieved by such firms are extracted from the exploitation of customers through unreasonable or unfair obligations in contracts.³⁸ Some examples are provided below.

*a. Imposing unreasonable buying or selling prices of goods or services or fixing minimum re-selling prices causing damage to customers.*³⁹

The imposition of unreasonable buying or selling prices thereby causing losses to consumers is deemed unreasonable if the purchase price set in the same relevant market is less than the prime cost of producing products stipulated by Article 27 of

33. Compare *id.* art. 13(4), (6), with Consolidated Versions of the Treaty of the European Union and the Treaty Establishing the European Community art. 31, 2006 O.J. (C 321 E) 1 [hereinafter EC Treaty].

34. See EC Treaty, *supra* note 33, art. 31.

35. 1992 CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM, art. 83–84, 91.

36. *Id.* art. 91.

37. CUTS INT'L, COMPETITION LAW IN VIETNAM: A TOOLKIT 36 (2007).

38. See *id.* (noting that typical practices include price discrimination, predatory pricing, price squeezing by integrated firms, refusal to sell/deal, tied selling or product bundling, and pre-emption of facilities).

39. The Competition Law, *supra* note 12, art. 13(2).

Decree No. 116/2005/ND-CP.⁴⁰ This practice commonly occurs in the purchase of agricultural products or raw materials.⁴¹ Fixing minimum re-sale prices makes it impossible for distributors or retail sellers to re-sell their goods at a price lower than the pre-determined price.

*b. Restricting production, distribution of goods, services, limiting markets, preventing technical and technological development, causing damage to customers.*⁴²

This is described by *Decree No. 116/2005/ND-CP* in three respective cases: (i) the restraint of production or distribution of goods or services; (ii) the limitation of the market and (iii) the impediment of technical or technological development.⁴³

*c. Imposing dissimilar commercial conditions in similar transactions in order to create inequality in competition.*⁴⁴

According to *Decree No. 116/2005/ND-CP*, the application of different commercial conditions to the same transactions creates inequality in competition by placing one or more firms in a better competitive position than other firms.⁴⁵ State monopolies make use of such conditions to make profits or favor other state firms belonging to or having a close relationship with them.⁴⁶ Market power enables the imposition of different conditions for purchase and sale, price, time for payment, volumes of transactions of purchase and sale of goods and services of similar value or nature.⁴⁷

40. Detailing the Implementation of a Number of Articles of the Competition Law, Dec. No. 116/2005/ND-CP, Sept. 15, 2005, ch. II, art. 27 (Viet.) [hereinafter Implementation of the Competition Law].

41. LE HOANG OANH, BINH LUAN KHOA HOC LUAT CANH TRANH 68 (Nha Xuat Ban Chinh Tri Quoc Gia, 2005).

42. The Competition Law *supra* note 12, art. 13(3).

43. Implementation of the Competition Law, *supra* note 40, ch. II, art. 28.

44. The Competition Law, *supra* note 12, art. 13(4).

45. Implementation of the Competition Law, *supra* note 40, ch. II, art. 29.

46. *Id.*

47. *Id.*

*d. Imposing conditions on other firms for the purchase or sale of goods or services or forcing other firms to accept obligations that have no direct connection with the subject of such contracts.*⁴⁸

Sometimes, certain conditions are sought prior to the signing of a contract. These conditions are a compulsory precedent for the contract but are not related directly to objects of the contract.⁴⁹ Firms seeking to conclude contracts may have to accept a number of disadvantageous conditions.⁵⁰

2. *Exclusive abuses*

A second group of abuses concerns attempts by a firm holding a dominant/monopoly position in the relevant market to maintain and reinforce their market power by eliminating or obstructing rivals from participating in the market.⁵¹ Unlike the first group of abuses described above, this group directly targets the firm's competitors. Eliminating and preventing competitors facilitates market dominance.

This group of abusive practices consists of two sets of exclusive behavior: (i) selling goods or providing services at prices lower than the aggregate costs in order to eliminate competitors,⁵² and (ii) preventing new competitors from entering the market.⁵³

a. Selling goods or providing services below total prime cost aimed at excluding competitors.

This behavior involves selling goods or providing services at a price that is less than the total of either the costs comprising the prime cost of producing the products and services, the

48. The Competition Law, *supra* note 12, § 13(5).

49. *See id.* art. 8(5).

50. Implementation of the Competition Law, *supra* note 40, ch. II, art. 30 (2005).

51. *See* CUTS INT'L, COMPETITION LAW IN VIETNAM, *supra* note 37, at 42 (discussing the practice of price fixing).

52. The Competition Law, *supra* note 11, art. 13(1).

53. *Id.* art. 13(6).

purchase price of goods for re-sale⁵⁴ or the costs of circulating goods or services.⁵⁵ When conducting such behavior, state monopolies aim at excluding their competitors from the market in order to maintain their current position. Behavior consisting of both the two above acts will be regarded as anti-competitive without considering consequences, i.e. whether competitors have actually been excluded from the market or losses have occurred.⁵⁶ Certain exemptions are provided in *Decree No. 119/2005/ND-CP*.⁵⁷

b. Preventing new competitors from entering the market.

To maintain market power, state monopolies may set up barriers that restrict the establishment of a firm providing goods or services in the related market or its penetration of the state's dominated market.⁵⁸ Unlike an anti-competitive agreement such barriers target future potential competitors. This is prohibited in *Decree No. 116/2005/ND-CP*.⁵⁹

3. Abuses of monopoly position

The abuse of monopoly position is also prohibited under the Law in the same way as the abuse of dominant position. At the same time, the Law also prohibits two other types of behavior: (i) imposing unfavorable conditions on customers, or forcing customers to accept unfavorable terms unconditionally; and (ii) unilaterally modifying or cancelling without plausible reasons contracts already signed.⁶⁰

54. Implementation of the Competition Law, *supra* note 40, ch. II, art. 23(1)(a).

55. *Id.* art. 23(1)(b).

56. LE HOANG OANH, *supra* note 41, at 66.

57. Implementation of the Competition Law, *supra* note 40, ch. II, art. 23(2).

58. LE HOANG OANH, *supra* note 41, at 75.

59. Implementation of the Competition Law, *supra* note 40, ch. II, art. 23(1).

60. The Competition Law, *supra* note 12, art. 13(2), 14(2), 14(3). For example: (i) unilaterally changing or cancelling signed contracts without informing customers in advance and not suffering any punitive sanctions; (ii) unilaterally changing or cancelling a signed contract based on one or more reasons which are not directly related to necessary conditions for continuing to perform the contract fully and not suffering any punitive sanctions.

IV. ABUSE OF MARKET DOMINANCE BY STATE MONOPOLIES: SELECTED CASES

Monopoly in telecommunications is illustrated by two cases involving Vietnam's state monopolies in this sector—Vietnam National Posts and Telecommunications (VNPT) and two other state firms, Viettel and EVN Telecom. We then consider two cases in the aviation sector involving Vietnam Airlines (VNA) and its subsidiaries. One concerns the dispute regarding the provision of ground services by Vietnam Airlines; the second is the aviation fuel supply case between a VNA subsidiary (VINAPCO) and Pacific Airlines (PA), later known as Jetstar Pacific Airlines (JPA).

The Vietnam Post and Telecommunications Group (VNPT) was established on January 9, 2006, as a result of the restructuring of the Vietnam Posts and Telecommunications Corporation.⁶¹ “Until 1997, the Vietnam Post and Telecommunications Corporation was both regulator and service provider in the telecom sector.”⁶² In 2006, VNPT was nominated by *Decision 06/2006/QD-TTg* of the Prime Minister as one of the eight pilot state economic groups in Vietnam.⁶³ Because VNPT is the network infrastructure provider, telecommunications service providers must interconnect with the VNPT network in order to provide their own telecommunications service.⁶⁴ Despite the separation of

61. *About VNPT*, VIETNAM POSTS AND TELECOMMUNICATIONS GROUP (Oct. 4, 2011), <http://www.vnpt.com.vn/Default.aspx?tabid=212&IntroId=269>. (Vietnam Posts and Telecommunications Corporation (VNPT) was established on April 24, 1995, by Decree No.249/TTg of the Prime Minister).

62. CUTS INT'L, A CIVIL SOCIETY PERSPECTIVE, *supra* note 10, at 27.

63. On Forming the Parent Company — Vietnam Post and Telecommunications Group, Dec. No. 06/2006/QD-TTg, Jan. 9, 2006 (Viet.). VNPT is the incumbent operator providing both telecom networks and services in Vietnam. CUTS INT'L, A CIVIL SOCIETY PERSPECTIVE, *supra* note 10, at 28.

64. CUTS INT'L, A CIVIL SOCIETY PERSPECTIVE, *supra* note 10, at 28; NGUYEN THANH HA ET AL., *supra* note 3, at 17. Article 38 (1) of the *Ordinance on Post and Telecommunication 2002* defines two kinds of enterprise providing telecommunication services: network infrastructure providers and telecommunications service providers. Network infrastructure providers are State owned enterprises or enterprises in which the State holds controlling shares or special shares, established in accordance with law

regulatory functions and business activities, the representative role of state capital in VNPT performed by the Ministry of Posts and Telecommunications (MPT) allows MPT to remain involved in the management of VNPT, especially through senior personnel appointments.⁶⁵

VNPT has often been accused of abusing its dominant position. Allegations regarding anti-competitive behavior by VNPT include: unfair allocation of network facilities; imposition of high prices for use of network facilities; cross-subsidization; refusal of services; forced use of VNPT services and abuse of technical measures to block competitors' services.⁶⁶

A. Case-study One: Interconnection dispute between VNPT and Viettel

Viettel Corporation (Viettel) is a military-run enterprise owned by the Ministry of Defence.⁶⁷ Together with Saigon Postel and Telecommunications Services Corporation (SPT), its emergence marked a turning point in breaking up the monopoly position of VNPT.⁶⁸ After entering into the telecommunications market, Viettel launched a series of promotional programs to attract clients to its mobile service at a considerably lower

to set up network infrastructure and to provide telecommunications services. Telecommunications service providers are Vietnamese enterprises from any economic sector, established in accordance with law to provide telecommunications services. This provision created a monopoly position prescribed in the *Competition Law 2004*. Article 12 states that an enterprise shall be considered to hold a monopolistic position if there is no enterprise competing for the goods and services dealt in by such enterprise on the relevant market. Ordinance on Posts and Telecommunications, Law No. 43/2002/PL/UBTVQH10, May 25, 2002, art. 38 ¶ 1(a) (Viet.); see *The Competition Law*, *supra* note 12, art. 12.

65. CUTS INT'L, A CIVIL SOCIETY PERSPECTIVE, *supra* note 10, at 28.

66. NGUYEN THANH HA ET AL., *supra* note 3, at 31.

67. *Viettel Becomes Military's First Economic Group*, VIETTEL, <http://www.viettel.com.vn/61-0-2-908-Viettel-becomes-military's-first-economic-group.html> (last visited Nov. 19, 2011).

68. When it first participated in the telecommunications market, Viettel initiated competition with the monopoly VNPT by the introduction of a VoIP service at a lower price. "Cuoc Cach Mang" Viettel [Viettel Presence Brings About a Revolution], VIETTEL (Feb. 12, 2009), <http://www.viettel.com.vn/3-0-1-377-Cuoc-Cach-Mang--Viettel.html>. In 2004, Viettel joined the mobile market by offering a mobile service and became the fourth mobile provider after two VNPT subsidiaries and S-Fone. See *id.*

price.⁶⁹ However, as with any other telecommunications service provider, it had to interconnect with the VNPT system to provide services such as mobile phones, data transmission and internet.⁷⁰ In addition, it had to connect to six transmitting stations before getting access to VNPT local stations.⁷¹

Under an agreement signed between Viettel and VNPT in 2004, Viettel committed to pay a leasing fee for use of the national back-bone system and VNPT contracted to ensure connection to the network.⁷² While Viettel's mobile phone subscription rate increased remarkably, less than half of the required connections were provided by VNPT.⁷³ Viettel stated that connection jams only occurred when connecting from Viettel to VNPT networks and that 80 per cent of its total calls were

69. Soon after it was established, Viettel became a rival in the market that had been shared between Vinaphone and Mobiphone—two companies in the VNPT group. Phi Hung, *Telecom Industry's Hostile Competition*, VIETNAM NEWS (Sept. 27, 2005), <http://vietnamnews.vnagency.com.vn/Economy/Business-Beat/146858/Telecom-industrys-hostile-competition.html>. Within a short period, Viettel rapidly expanded its market share from 0 to 13 percent, and had a large number of mobile clients, including those who shifted from Vinaphone and Mobiphone to Viettel. Nguyen Viet Hung, *Presentation on Abuse of Dominant Position (2005)*, available at http://www.jftc.go.jp/eacpf/05/APECTrainingCourseAugust2005/Group1/Nguyan_adp.pdf. To fulfill its ambition to gain more market share, Viettel invested millions of USD to develop its infrastructure—with regard to its mobile network, it was reported that Viettel spent around VND 2 trillion (USD \$125 million). *See id.*

70. *See* Nguyen Viet Hung, *Presentation on Abuse of Dominant Position (2005)*, available at http://www.jftc.go.jp/eacpf/05/APECTrainingCourseAugust2005/Group1/Nguyan_adp.pdf.

71. Jie Hung, *Ong Doc quyen VNPT Bi To cao* [The Monopolist, VNPT Has Been Denounced], VIETBAO (June 28, 2005), <http://vietbao.vn/Vi-tinh-Vien-thong/Ong-doc-quyen-VNPT-bi-to-cao/40085719/217/>.

72. *See Viettel Seeks End to VNPT Connection Dispute*, VIETNAM NEWS (June 29, 2005), <http://vietnamnews.vnagency.com.vn/showarticle.php?num=05ECO290605>. According to this agreement, in case of any congestion problems arising between the two networks, Viettel was required to make a request to VNPT two weeks in advance if it wanted to increase connection capacity. *Id.*

73. *Id.* Indeed, from 2002 VNPT had never met its own demands for connection capacity. In 2002, it met 38 per cent of demand; in 2003, 25 per cent, in 2005, only 17 per cent of demand. Hai Ha, *Viettel — VNPT: Khau chien Nay Lua* [Viettel – VNPT: Intense Dispute], VIETBAO (June 29, 2005), <http://vietbao.vn/Kinh-te/Viettel-VNPT-Khau-chien-nay-lua/70015728/87/>.

from Viettel to VNPT.⁷⁴ As a result, it received a wave of complaints about quality of service from clients.⁷⁵ Viettel argued this resulted from the limited interconnection with the VNPT network and the unwillingness of VNPT to improve connections.⁷⁶ Viettel claimed that eight requests were made to VNPT seeking an increase in connection capacity, but VNPT rejected them each time on the ground of lack of available ports to the central switchboards along with a lack of funding for new circuit switchboards.⁷⁷ Viettel also blamed VNPT for causing difficulties in developing its client base in the provinces.⁷⁸

VNPT blamed the problem on unavailability of VNPT ports, claiming there were barely enough for the maintenance of its own network and its current subscribers.⁷⁹ However, Viettel proved that VNPT could provide more connection ports for them.⁸⁰ While it was only agreed to use a total of 100 E1 ports, of which only 20 ports were used for its mobile service, other companies were permitted to use more than needed.⁸¹ For example FPT, another telecommunication provider, could use 200 ports in peak time (which were used for providing internet service only) and this company had returned 100 E1 ports to VNPT.⁸² It was claimed there was discrimination against Viettel, which faced difficulties in developing their services so as

74. *Id.*

75. *See Ministry Tells VNPT, Viettel to Make Up*, VIETNAM NEWS (July 5, 2005), [http:// vietnamnews.vnagency.com.vn/showarticle.php?num=05ECO050705](http://vietnamnews.vnagency.com.vn/showarticle.php?num=05ECO050705). This also caused a decrease in new clients signing up for Viettel, due to the instability with the connections. As of July 2005, there were 700,000 subscribers to Viettel, while new sign-ups dropped to between 2,000–3,000 a day, well below the 6,000 a day in June 2005. *Id.*

76. *Id.*

77. *Id.*

78. Hong Anh, *Cuoc Doi dau Viettel – VNPT Chua Co Hoi ket* [Confrontation between Viettel and VNPT: Still No End], VIETBAO (June 30, 2005), <http://vietbao.vn/Kinh-te/Cuoc-dau-Viettel-VNPT-chua-co-hoi-ket/10916147/87/>.

79. Hoang Ly, *Mang 098 nghen mach: VNPT can ly, dong y mo cua cho Viettel* [Network 098 Congested: Running Out of Arguments, VNPT Agrees to Open More Connections], VIETBAO (June 29, 2005), <http://vietbao.vn/Kinh-te/Mang-098-nghen-mach-VNPT-can-ly-dong-y-mo-cua-cho-Viettel/45160021/87/>.

80. *Id.*

81. *Id.*

82. *Id.*

to compete with VNPT.⁸³

The owner of Viettel, the Ministry of Defence, finally filed an official letter to the Prime Minister on June 25 2005, accusing VNPT of discrimination against Viettel.⁸⁴ This letter stated that demand for Viettel's connections had not been fulfilled for five consecutive years and the "situation [was becoming] worse."⁸⁵ The letter noted that Viettel would go bankrupt if this problem remained⁸⁶ and requested emergency intervention to stop the situation in order to ensure the interests of about 700,000 Viettel clients.⁸⁷

B. Case-study Two: Connection dispute between VNPT and EVN Telecom

EVN Telecom, established in 1995, is a subsidiary of Vietnam Electricity Group (EVN).⁸⁸ EVN Telecom joined the telecommunications market offering a number of services.⁸⁹ The services offered by EVN are E-Com (wireless fixed telephone), E-Phone (inner-province mobile calls) and E-Mobile (CDMA-based technology mobile).⁹⁰ Since the mobile service (E-Mobile) was unable to compete with current mobile providers, E-Com became

83. See *Ministry Tells VNPT, Viettel to Make Up*, VIETNAM NEWS (July 5, 2005), [http:// vietnamnews.vnagency.com.vn/showarticle.php?num=05ECO050705](http://vietnamnews.vnagency.com.vn/showarticle.php?num=05ECO050705).

84. Hoang Ly, *Viettel Co Nguy co Pha san Neu VNPT Khong Thao Nut Co chai* [Viettel on the Verge of Bankruptcy if VNPT Does not Resolve the Bottle-neck Issue], VIETBAO (June 27, 2005), <http://vietbao.vn/Kinh-te/Viettel-co-nguy-co-pha-san-neu-VNPT-khong-thao-nut-co-chai/45159811/87/>.

85. See *Ministry Tells VNPT, Viettel to Make Up*, VIETNAM NEWS (July 5, 2005), <http:// vietnamnews.vnagency.com.vn/showarticle.php?num=05ECO050705>.

86. *Id.*

87. Hoang Ly, *Viettel Co Nguy co Pha san Neu VNPT Khong Thao Nut Co chai* [Viettel on the Verge of Bankruptcy if VNPT Does not Resolve the Bottle-neck Issue], VIETBAO (June 27, 2005), <http://vietbao.vn/Kinh-te/Viettel-co-nguy-co-pha-san-neu-VNPT-khong-thao-nut-co-chai/45159811/87/>.

88. *Continued Development Road of Vietnam's EVN Telecom*, ZTE (Mar. 24, 2008), http://www.zte.com.cn/endata/magazine/ztetechnologies/2008year/no3/articles/200803/t20080324_161996.html.

89. *About EVN Telecom*, EVNTELECOM, <http://www.evntelecom.com.vn/main.aspx?MNU=1097&Style=1> (last visited Nov. 19, 2011).

90. *Id.*

the prominent service for wireless fixed telephones. This service allowed EVN Telecom to attract around 100,000 clients within one year of joining the telecom market in 2005.⁹¹ However, as in the Viettel case, EVN was faced with interconnection conflicts with the network infrastructure provider, VNPT.⁹²

In 2005, EVN introduced a SMS text service and advertised that this would be applicable to both E-Com and E-Mobile services, thus allowing its clients to send SMS texts to other mobile subscribers such as Vinaphone and Mobiphone.⁹³ However, while this service worked for E-Mobile clients, it was unavailable for subscribers to E-Com service.⁹⁴ As a result, EVN Telecom received complaints from its clients for being unable to send SMS texts from wireless fixed-telephone services (E-Com) to subscribers of two mobile VNPT service providers, as advertised.⁹⁵ EVN Telecom complained that the situation was due to VNPT's failure to open connection ports for the E-Com SMS text service network and blamed VNPT's failure for retarding the development of its service.⁹⁶ The case was remarkably similar to a conflict between S-Fone and VNPT regarding SMS interconnection to the VNPT system in 2004.⁹⁷

After asking the Ministry of Posts and Telecommunications (MPT) to request VNPT to open ports for the EVN SMS service, and receiving no response from VNPT, EVN Telecom submitted an official letter to MPT asking for a resolution of the dispute

91. *EVN Telecom – Nan nhan moi cua VNPT* [EVN Telecom - New Victim of VNPT], VN EXPRESS (July 6, 2006) <http://www.vnexpress.net/GL/Kinh-doanh/2006/07/3B9EBA01/>.

92. *Id.*

93. *Id.*

94. *Id.*

95. *VNPT Gives More Access to EVN Telecom*, VIETNAM NEWS (July 12, 2006), <http://vietnamnews.vnagency.com.vn/showarticle.php?num=03BUS120706>.

96. *Id.*

97. In 2003, S-Fone, a joint venture between Saigon Postel Corporation and Korea SK telecom, wanted to connect to the VNPT system to launch its messaging service. NGUYEN THANH HA ET AL., *supra* note 3, at 16. Its proposal to interconnect was delayed many times by VNPT. *Id.* VNPT cited technical problems to explain its delay, while S-Fone complained that the situation had arisen because VNPT did not want it to be connected. *Id.*

over connection ports.⁹⁸ It also complained that VNPT clients could not use the toll free service (1800 prefix) for any calls to the customer care service of EVN Telecom.⁹⁹ This was because VNPT would not connect its subscribers to the EVN Telecom service and asked EVN Telecom to pay 600 VND per minute for such calls.¹⁰⁰ Even after EVN Telecom finally agreed to this requirement, VNPT still delayed opening the connection for EVN Telecom.¹⁰¹ In response to these accusations, VNPT pleaded a number of technical problems to explain its behavior.¹⁰² It claimed that its hesitance was due to taking care to avoid offering a low quality service.¹⁰³

EVN claimed they faced contrived difficulties by VNPT when negotiating a connection to the VNPT system.¹⁰⁴ As with Viettel, EVN Telecom had to undertake negotiations with VNPT

98. *VNPT Gives More Access to EVN Telecom*, VIETNAM NEWS (July 12, 2006), [http:// vietnamnews.vnagency.com.vn/showarticle.php?num=03BUS120706](http://vietnamnews.vnagency.com.vn/showarticle.php?num=03BUS120706).

99. *Id.*

100. *EVN Telecom – Nan nhan moi cua VNPT* [EVN Telecom - New Victim of VNPT], VN EXPRESS (July 6, 2006) <http://www.vnexpress.net/GL/Kinh-doanh/2006/07/3B9EBA01/>. VNPT also argued that a toll free 1800 service would be free of charges for customers, but the company that provided that service would have to pay VNPT according to the agreement concluded between the two sides. *Id.* The charge applied to EVN Telecom would be reasonable if EVN Telecom offered this service to its customers, including those who were VNPT subscribers. *Id.*

101. Jie Hung, *EVN Telecom: Nan nhan Ket noi Moi* [EVN Telecom - New Connection Victim], DANTRI (June 6, 2006), <http://dantri.com.vn/c76/s76-127856/evn-telecom-nan-nhan-ket-noi-moi.htm>.

102. For example, in terms of SMS connection between two operators, VNPT argued there were no specific articles regarding SMS connection from EVN Telecom fixed line telephone to VNPT mobile phone subscribers mentioned in the agreement for connection signed by VNPT and EVN Telecom. *Vietnam: VNPT Gives More Access to EVN Telecom*, TECHZONE 360 (July 13, 2006), <http://www.techzone360.com/news/2006/07/13/1714374.htm>. VNPT also stated it had tried to launch its own similar service, but the result was not as successful as expected. *Id.*

103. *Id.* (discussing how the network testing had not been as successful as expected).

104. See Hoang Ly, *Dam phan EVN Telecom – VNPT: Moi Ngay Chi Sua Mot Chu* [EVN Telecom - VNPT Negotiation: One Word Corrected per Day], VIETBAO (July 15, 2006) <http://vietbao.vn/Kinh-te/Dam-phan-EVN-Telecom-VNPT-Moi-ngay-chi-sua-1-chu/45201381/87/>. While similar negotiations were undertaken quickly with other providers such as Viettel and Saigon Postel (SPT), it took EVN nearly 3 years to deal with VNPT and even then EVN Telecom's demands were not satisfied. *Id.*

provincial branches.¹⁰⁵ It took EVN Telecom several months to negotiate with each VNPT provincial branch where they wanted to connect two networks.¹⁰⁶ VNPT declared they would only open a connection for EVN Telecom if a connection jam existed and EVN Telecom could show evidence for the jam.¹⁰⁷ After the direction of MPT regarding the opening of connection ports, the jam still existed because VNPT only opened more ports to EVN Telecom when a connection jam occurred.¹⁰⁸ This caused difficulties for EVN Telecom in developing their services as a newcomer in the telecommunication market.¹⁰⁹

C. Case-study Three: Dispute regarding ground service provision by Vietnam Airlines

Because of its sensitive nature, aviation had been an absolute monopoly area before Vietnam started to open its market for civil aviation in the early 1990s.¹¹⁰ Established in the 1950s, Vietnam Airlines (VNA) is currently the national flag airline and holds a dominant position in the aviation industry,

105. See Pham Anh & Le Minh, *Mau thuan Ket noi Giua EVN Telecom va VNPT: Mot Lan nua Lai "Nong" [Connection Conflict Between EVN and VNPT: "Hot" Again]*, LAO DONG (July 17, 2006), [http://www1.laodong.com.vn/pls/bld/display\\$.htnoidung\(337,161436\)](http://www1.laodong.com.vn/pls/bld/display$.htnoidung(337,161436)).

106. See *id.* (In the case of the Bac Giang VNPT branch in 2005, the negotiation was unsuccessful as the EVN Telecom negotiation offer was delayed many times. As a result, EVN Telecom could not launch its service. By mid-2006, there were still nearly 20 provinces where EVN could not connect to the VNPT system).

107. See *id.* (In fact, when jams occurred, instead of opening 200 ports as requested by EVN Telecom, VNPT opened eight, causing continuing connection jams for EVN Telecom in some provinces. For example, in Thanh Hoa province, after submitting their report with statistical data about the connection jams, there was only one port opened for EVN Telecom by July 2006, while the number of needed ports as requested was 11).

108. Tien Phong, *Network Jams in 17 Provinces, EVN Telecom Cries*, VIETNAM NET (Sep. 20, 2006), <http://english.vietnamnet.vn/biz/2006/09/613901/> (According to the EVN claim, VNPT cited many reasons to explain the delay in connecting the EVN Telecom system to that of VNPT. Most of them were technical issues such as the limitation of ports and the incapacity of the current systems).

109. *Vietnam's Telecommunication Update*, VIETNAM FINANCIAL REVIEW (Oct. 22, 2009), http://www.vfr.vn/index.php?option=com_content&task=view&id=944&Itemid=4.

110. John Bailey, *Vietnam Plans to Westernise Fleet*, FLIGHT INTERNATIONAL, Apr. 20-26, 1994, at 3, available at <http://www.flightglobal.com/pdfarchive/view/1994/1994%20-%201023.html?search=Vietnam>.

accounting for 42 per cent of Vietnam's international passenger traffic and 85 per cent of its domestic passenger traffic.¹¹¹ VNA subsidiaries also provide ground services at the largest airports,¹¹² including counter check-in services, transport of passengers within airport and VIP lounge service in terminals.¹¹³

In early 2008, VNA ground service providers (namely the Northern and Central Regional Airport Complexes) imposed a new, considerably higher, service fee on all airlines in airports.¹¹⁴ Some service fees were raised many times higher than previously while each airport had its own price list.¹¹⁵ The change in fees was imposed without prior consultation with the airlines.¹¹⁶ The previous fees in fact were higher than those of regional rates.¹¹⁷ The rocketing increase in service fees caused difficulties to both local and foreign airlines.¹¹⁸

111. See The U.S. Commercial Service and ITA Trade Development, *Aerospace Exports: Market Research Identifies Solid Prospects*, EXPORT AMERICA, Oct. 2002, at 22, 24, available at http://www.trade.gov/exportamerica/NewOpportunities/no_aerospaceExports.pdf.

112. See *Tan Son Nhat International Airport Ground Service (TIAGS) General Introduction*, VIETNAM AIRLINES, <http://www.tiags.com.vn/who-we-are/general-introduction.html> (last visited Nov. 19, 2011).

113. *Id.*

114. See Le Minh, *Dich vu Doc quyen San Bay Tang gia 5-10 Lan* [Airport Ground Services Fees to Increase from 5 up to 10 Times], VTC NEWS (Apr. 13, 2008), <http://vtc.vn/1-177753/kinh-te/dich-vu-doc-quyen-san-bay-tang-gia-5-10-lan.htm>.

115. *Id.* In particular, at the Noi Bai International Airport the fee for hiring the check-in counter service soared by 6.6 times, from VND 980,000 to VND 6,512,000/flight and at Central Airports, this fee climbed to VND 5,800,000/flight (5.92 times higher). *Id.* The fee for carrying passengers in airports was increased by 10.6 times from VND 450,000 to VND 4,800,000/flight while at Central Airports, it was up to VND 4,300,000/flight. *Id.* The carrying fee for passengers from aircraft to terminal went up to VND 30,000 per person for a distance of about 100 metres; see TBKTVN, *Monopoly Exists, Airport Service Fees Gallop*, VIETNAM NET (Apr. 16, 2008) <http://english.vietnamnet.vn/travel/2008/04/779832/> (In the South, after the new terminal at Tan Son Nhat airport became operational, the Southern Airport Complex raised the service fee for using VIP rooms from \$15 USD to \$32 USD (up by 113 per cent)).

116. See Le Minh, *supra* note 114 (the President of the Association of Airlines operation in Vietnam noted that the increase in price of these services was not subject to the normal price route, but rather “[all of] a sudden, the self-service provider announced a new price more than 5-10 times higher than the old”).

117. See *id.*

118. *Id.*

In April 2008, ten airlines operating in Vietnam collectively submitted a petition to the Ministry of Finance (MoF), Ministry of Transport (MoT) and Vietnam Civil Aviation Administration (VCAA) regarding the unilateral raising of service fees.¹¹⁹ The MoF later sent *Dispatch No 4049/BTC-QLG* to the Northern, Central and Southern Regional Airport Complexes and VNA.¹²⁰ The dispatch stated that unilateral increase of the ground service fees without negotiating with clients (airlines) was contrary to current laws on price control.¹²¹ Despite having the right to define the fee levels of other types of services,¹²² airport service providers had to negotiate with clients before introducing any changes.¹²³

In fact, the agreements between ground service providers and airlines were contractual.¹²⁴ Under no circumstances could the providers unilaterally raise services fees without having an agreement with their clients and even a mere communication was not acceptable.¹²⁵ The situation was criticized as being the

119. See Vu Spring, *Doc quyên Dich vu San bay, Hang khong Keu Cuu* [Airport Ground Services Monopoly: Airlines Ask for Help], VNECONOMY (Apr. 15, 2008), <http://vneconomy.vn/60536P0C19/doc-quyen-dich-vu-san-bay-hang-khong-keu-cuu.htm>.

120. *Id.*

121. *Id.*

122. See TBKTVN, *supra* note 115 (according to a Vietnam Civil Administration officer, there are only five types of service for which the ministry needs to build up frame prices and four types of service for which the ministry needs to set fixed prices); see also Case T-128/98, *Aéroports de Paris v. Comm'n.*, 2000 E.C.R. II-3929 (In EU competition law, the ECJ in *Aéroports de Paris* held that different prices and fees could be justified based on objective criteria such as the existence of objectively different situations or circumstances capable of justifying any disparity in treatment.).

123. See Le Minh, *supra* note 114.

124. *Id.*

125. See Case C-27/76, *United Brands v. Comm'n.*, 1978 E.C.R. 207, at 219. In the EU, there is an issue as to whether a dominant firm can decide to terminate supplying products unilaterally or not and whether such action it would always be considered a breach of Article 82(b). *Id.* It was held by the ECJ that a dominant firm can freely choose competition policies for its customers based on certain objective criteria such as technical skills and the independent level of customers. *Id.* Firms can freely renew or terminate contracts or review their entire distribution system and stop cooperating with their customers, provided that such decisions are reasonably notified in advance. *Id.* Thus, a refusal to supply is only considered an anti-competitive abuse if it is given without appropriate reasons or pre-notification). *Id.*; see also LENNART RITTER ET AL., *EUROPEAN COMPETITION LAW: A PRACTITIONER'S GUIDE* 438 (2005).

consequence of the monopoly situation in aviation services.¹²⁶ As clients had no other choice of service providers, they had to accept all terms for conditions and fees as released by the providers.¹²⁷

D. Case-study Four: Aviation fuel supply dispute between VINAPCO and Pacific Airlines

Vietnam Air Petrol Company (VINAPCO), a VNA subsidiary, functions as a distributor of aviation fuel to all airliners operating in Vietnam.¹²⁸ VINAPCO holds a monopoly position in the provision of aviation fuel because it is the only company authorized to import and provide JET A1 oil for aircraft.¹²⁹

In March 2008, a proposal for raising its pumping fee was released by VINAPCO.¹³⁰ This proposal was not accepted by PA on the ground that VNA, its major competitor, continued to be charged at the old rate.¹³¹ PA argued this proposal should apply equally to both carriers and the fact that PA had to pay a higher fee than VNA was unacceptable.¹³² It also argued that this

126. See Le Minh, *supra* note 114.

127. *Id.*

128. See VINAPCO, *Jet Fuel*, http://www.vinapco.com.vn/en/index.php?option=com_content&task=view&id=31&Itemid=44 (last visited Nov 5, 2011).

129. See The Competition Law, *supra* note 12, art. 12. (stating that an enterprise will be deemed to be in a monopoly market position if there are no other enterprises competing in the relevant market for the goods that it trades or the services it provides).

130. See SGT, *Vinapco, Pacific Airlines to start talks on fuel fee*, VIETNAM NET (Apr. 12, 2008), <http://english.vietnamnet.vn/biz/2008/04/778019/>. The proposal stated that the price would change from VND 593,000 (US \$37) to VND 750,000 (US \$47) per ton. *Id.* The reason given for the price change was rising costs in the world oil market. *Id.* As explained by VINAPCO, the latest contract between Vinapco and Pacific Airlines dated December 31 2007 stated that the previously agreed price was VND593.000/tonne. *Id.* However, when this contract was concluded, the world's oil price was only \$76.2/barrel and it had soared to \$110–130/barrel.

131. See Tien Phong, *Vinapco Must Apply Single Air Petrol Sale Price*, VIETNAM NET (Apr. 11, 2008), <http://english.vietnamnet.vn/biz/2008/04/777964/>. In response, VINAPCO stated that the reason why Vietnam Airlines could enjoy lower fees was because it purchased more fuel than Pacific Airlines. Vietnam Airlines purchased 500,000 tonnes of fuel, while the volume was 10–11 times lower for Pacific Airlines. *Id.*

132. See *Aviation Sector Firms' Complaints Gain Wings*, VIETNAM INVESTMENT REVIEW (Apr. 14, 2008), <http://www.vir.com.vn/news/business/aviation-sector-firms->

unfair treatment would force PA to raise airfares, thus reducing its competitiveness while it was undergoing a restructuring process.¹³³

In early April 2008, VINAPCO unilaterally disrupted fuel supply to PA, causing damage to its finances and reputation.¹³⁴ After an urgent official letter by PA was submitted to the MoT, the Ministry sent a dispatch ordering VNA to instruct VINAPCO to resume supplying fuel to PA and apply the same price to both airlines.¹³⁵ The case was then submitted to the Competition Administration Department (VCAD).¹³⁶

The dispute between VINAPCO and Jetstar Pacific Airlines (JPA), the successor of PA, was finally handled by the Vietnam Competition Council (VCC) on 14 April 2009.¹³⁷ VCC considered VINAPCO had abused its monopoly position when it unilaterally stopped pumping aviation oil for PA in April 2008, which caused the delay of flights run by this airline.¹³⁸ The VCC held that

complaints-gain-wings. html (PA claimed that all domestic airlines had to be treated in the same way, as cited in a government stipulation. Other than Vietnam Airlines, VASCO, the other domestic airline, did not receive a notification of a fee rise from VINAPCO); *see also* Le Nam, *May bay Pacific Airlines : Chet dung Vi Khong Duoc Bom Xang* [Pacific Airlines' Aircraft "Standing Dead" Due to No Fuel Supply], TUOI TRE ONLINE (Apr. 2, 2008), <http://www.tuoi-tre.com.vn/Tiayon/Index.aspx?ArticleID=250471& ChannelID=3>; Case C-27/76, *United Brands v. Comm'n.*, 1978 E.C.R. 207, at 227 (In the EU, the ECJ also argued that the application of pricing differences would only be considered as an abuse of a dominant position if a certain tolerance level was exceeded and it became disproportionate and unjustifiable); Case T-229/94, *Deutsche Bahn v. Comm'n.*, 1997 E.C.R. II-1689, at 86; *P&I Clubs*, 125 O.J.L. 12 (1999), 134–136.

133. Tran Duy, *30 Flights Delayed Because of No Fuel?*, VIETNAM NET (Apr. 3, 2008) <http://english.vietnamnet.vn/travel/2008/04/776572/>.

134. *Id.* (The unprecedented disruption on April 1 2008 resulted in the delays of 30 domestic flights affecting 5,000 passengers of Pacific Airlines).

135. *Id.*; *see also* Car Ha, *Doc quyen Niu Canh Hang khong* [Aviation Sector Hampered due to Monopoly], NGUOI LAO DONG (Apr. 10, 2008), <http://www.nld.com.vn/220922P0C1014/doc-quyen-niu-can-hang-khong.htm>.

136. *See* Tien Phong, [Vietnam] *Competition Administration Department Asks VINAPCO to Explain Fuel Supply Interruption*, VIETNAM NET (Apr. 4, 2008), <http://english.vietnamnet.vn/biz/2008/04/776801/> (VCAD considered there was a prima facie case of making use of a monopoly position as prohibited by the Competition Law and requested that VINAPCO explain its behavior in not providing fuel).

137. Ann Minh, *Vinapco to Cough up*, VIETNAM INVESTMENT REVIEW (Jan. 18, 2011), <http://www.vir.com.vn/news/top-news/vinapco-to-cough-up.html>.

138. *See* SGT, *VINAPCO Told to Abide by Rule to Ask Airlines to Pay Fuel-Bills*,

VINAPCO's behavior constituted a breach of Article 14(2) and (3) of the *Competition Law 2004*—abusing dominant and monopoly position.¹³⁹ A fine of 3.37 billion VND (168,000 USD) was imposed on VINAPCO, together with a recommendation to separate VINAPCO from its parent company (VNA).¹⁴⁰

E. Observations on the case studies

First, these case studies illustrate characteristics of state monopolies in Vietnam. State monopolies were formed to conduct business activities and assigned tasks in the economy.¹⁴¹ The monopoly position of state monopolies is still consolidated by regulatory frameworks.¹⁴² This results from the leading role of the state sector in the economy notwithstanding the opening-up of the market.¹⁴³

Second, these cases demonstrate that the following practices contravene competition law: pricing monopoly; the hindrance of market access to new competitors and the abuse of dominant positions.¹⁴⁴ They also demonstrate the *Competition Law 2004* and enforcement agencies have had little effect. In these cases, parties sought a resolution by submitting to the relevant sector-specific regulators for opinions and judgments. Those disputes were finally settled by administrative intervention, rather than by competition law procedures.

Third, the linking of administrative bodies (sectoral regulators) and state enterprises is a concern. It is reflected in the assignment of staff from those bodies to enterprises, the

VIETNAM NET (Apr. 23, 2009), <http://english.vietnamnet.vn/biz/2009/04/843697/>.

139. *Id.*

140. *OECD Newsletter*, (Competition Programme OECD/Korea Policy Center) Nov. 19, 2010, at 13 (available at <http://www.oecd.org/dataoecd/8/40/48197005.pdf>)

141. See INST. OF SE. ASIAN STUDIES, STATE-OWNED ENTERPRISE REFORM IN VIETNAM: LESSONS FROM ASIA 3 (Ng Chee Yuen, et al., eds., 1996).

142. *Id.*

143. See *id.* at 4.

144. Monopolistic behavior and abuse of dominant position such as arbitrary power cuts, unilateral rejection of fuel supply and increasing of services fees are anti-competitive practices stipulated in articles 13.2 to 13.5 and 14.3 of the Competition Law. The obstruction of market participation in the cases of VNPT and Viettel and EVN Telecom and that of Vietnam Airlines and Pacific Airlines are prohibited under article 13.6 of the Competition Law. The Competition Law, *supra note* 12, art. 13.2, 13.5, 14.3.

intervention of regulatory bodies in the settlement process whenever a conflict has arisen and favorable treatment of SOEs.¹⁴⁵

Fourth, the interrelation between parent and subsidiary companies is a further concern. The reform of SOEs has brought about significant changes in terms of corporate governance and structure where the status and legal relationship between parent and subsidiary companies are governed by corporate law.¹⁴⁶ However, the interrelation among member companies and between them and the holding company may negatively affect competition.

Fifth, these cases show that whenever state monopolies exist in an industry where they control key features causing the dependence of others, the removal of their monopoly position is hard to implement. For example, in the case of VNPT, even though telecommunications service providers were given the opportunity to compete with the monopoly, dependence on interconnection to the back-bone system that VNPT monitors placed these providers in potential conflict with VNPT. The interconnection problem also successively occurred with S-Fone, Viettel and EVN. In the case of EVN, the power grid line is controlled by EVN and independent power generators that want to operate in transmission and distribution must depend on EVN cooperation. The settlement of cases will not prevent future disputes. In this regard, the elimination of a monopoly position through the participation of the private sector or the replacement of monopoly companies by non-profit entities should be considered.

Sixth, the first case to go to trial marked a significant development in anti-monopoly practice in Vietnam. It shows some determination on the part of the Government to protect a healthy environment for competition and development.¹⁴⁷ The

145. See INST. OF SE. ASIAN STUDIES, *supra* note 141, at 33–34.

146. TRAN KIM HAO, CHINA INSTITUTE FOR REFORM AND DEVELOPMENT, DEVELOPMENT OF ENTERPRISES WITH DIVERSIFIED OWNERSHIP (Apr. 16, 2005), available at http://www.chinareform.org/publications/reports/200504/t20050416_111327.htm.

147. Dan Tri, *Vu Kien Nhien lieu: Vietnam Airlines va Jetstar Pacific Lien tuc 'Ra Don* [The Fuel Case: Vietnam Airlines and Jetstar Pacific Continuingly Attack Each Other], MUAHCHUNG.VN (Mar. 28, 2009), <http://dantri.com.vn/c76/s82-321839/vietnam->

trial also highlighted the best way of settling disputes concerning monopoly cases. It would have been more difficult for JPA if it had brought the case to a traditional tribunal (i.e. the economic court) as with other contract cases.¹⁴⁸ More importantly, even if JPA had succeeded in a contract case, the monopoly situation in providing aviation fuel by VINAPCO would have continued to exist as it would still continue to be the sole provider in the aviation fuel market.¹⁴⁹ Finally, this case will encourage firms to bring monopoly cases to VCC as a means to ensure fair competition.¹⁵⁰

V. THE APPLICATION OF *COMPETITION LAW* TO STATE MONOPOLIES ABUSIVE BEHAVIOUR

There are various issues that arise when trying to apply the Law, especially when dealing with state monopolies. In particular, there is concern with market dominance and the determination of whether an abuse of dominant/monopoly position can be constituted. Recall that the *Competition Law 2004* applies without discrimination to the behavior of firms doing business in Vietnam, thus including state monopolies.¹⁵¹

A. *Criteria to determine dominant or monopoly position*

Under the Law, in order to determine whether there is an abuse, the first question is to determine whether the firm in question possesses a level of dominance (dominant or monopoly position) in a relevant market.¹⁵² If there is insufficient evidence to show market dominance of the investigated firm, investigating agencies dealing with competition cases cannot conclude a breach of competition law is constituted.¹⁵³

According to Article 11(1), firms are considered to have

airlines-va-etstar-pacific-lien-tuc-ra-don.htm.

148. Tran Thanh Tung, *Vu Kien Mo duong Cho Luat Choi ve Canh Tranh* [The Case Paved the Way for Competition Rules to be Applicable], SAIGON TIMES (Mar. 24, 2009), <http://www.thesaigontimes.vn/Home/kinhdoanh/thuongmai/17945>.

149. *Id.*

150. *Id.*

151. The Competition Law, *supra* note 12, art. 2.

152. *Id.* art. 11.

153. *Id.*

market dominance if they have a market share of 30 per cent or more in the relevant market, or are able to cause a significant anti-competitive effect.¹⁵⁴ Thus, the determination of a dominant position is based on the market share firms have in the relevant market (30 per cent) and the capability of causing a significant anti-competitive effect.¹⁵⁵ Article 11(2) separates market dominance by groups of firms into different categories based on the criterion of market share,¹⁵⁶ stipulating that groups of firms may act together to cause a significant anti-competitive effect.¹⁵⁷ In both cases, the first criterion is “market share,” the level of market dominance of firms (or a group of firms) will be determined principally on the basis of the “market share” criterion.¹⁵⁸

1. *Market share criterion*

Market share is the first criterion used to determine whether a firm possesses market dominance.¹⁵⁹ Most countries consider market share as the basic foundation for determining dominant position.¹⁶⁰ The main difference between jurisdictions is the determination of market share held by a firm (group of firms) in attributing market power (threshold).¹⁶¹ Depending on

154. *Id.* art. 11(1).

155. *Id.*

156. *Id.* art. 11(2). Article 11(2) defines groups of firms having market dominance as below:

1. Two firms that have a total market share of 50 per cent or more in the related market;
2. Three firms that have a total market share of 65 per cent or more in the related market;
3. Four firms that have a total market share of 75 per cent or more in the related market.

157. *Id.* art. 11.

158. *See id.* art. 3(5).

159. *Id.* art. 11(1).

160. INTERNATIONAL COMPETITION NETWORK, REPORT ON THE OBJECTIVES OF UNILATERAL CONDUCT LAWS, ASSESSMENT OF DOMINANCE/SUBSTANTIAL MARKET POWER, AND STATE-CREATED MONOPOLIES (2007). In EU Law, several factors can be used to define the existence of a dominant position. Among these, the existence of a very large market share is important. *See* Case C-85/76, *Hoffmann-La Roche v. Comm'n*, 1979 E.C.R. 461, 520.

161. *See* The Competition Law, *supra* note 12, art. 11.

the situation of each country, the market share threshold will be applied differently to one firm or a group of firms.¹⁶²

When there is no other firm competing in a relevant market, concluding the firm in question maintains a monopoly position is straightforward.¹⁶³ On the other hand, when there are competitors, a presumption of market power is based on market share and an analysis of other economic factors.¹⁶⁴ The determination of market dominance based mainly or merely on market share can lead to inaccurate results.¹⁶⁵ This is because factors other than market share indicators have an effect on the conclusion of market dominance.¹⁶⁶ These factors include whether market participation barriers exist, current market structure, and collaboration among firms.¹⁶⁷ Thus, in many countries, market share is not always the only factor to determine a firm's dominant position.¹⁶⁸ A conclusion based on the consideration of market share indicators and factors mentioned above will more accurately reflect a firm's power in the relevant market.¹⁶⁹ In the EU, the US, Australia and many OECD countries, the conclusion is based on not only law and

162. *See id.*

163. Most competition jurisdictions regard "monopoly position" of a firm (firms) as a situation where there is no other firm (firms) competing with the firm (firms) in question. *See* Act Against Restraints of Competition art. 19(2)(Bundesgesetzblatt Jahrgang 2005) (Ger.).

164. Stephen H. Harris, *The Making of an Antitrust Law: the Pending Anti-Monopoly Law of the People's Republic of China*, 7 *CHI. J. INT'L L.* 169, 196 (2006).

165. ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, SUBSTANTIAL MARKET POWER AND COMPETITION 3-4 (Sept. 2008), *available at* <http://www.oecd.org/dataoecd/58/28/41257462.pdf>.

166. *Id.* at 3.

167. *Id.* at 2-3.

168. Harris, *supra* note 164, at 196. For example, in *AKZO*, the ECJ held that "market share, while important, is only one of the indicators from which the existence of a dominant position may be inferred. Its significance in a particular case may vary from market to market according to the structure and characteristics of the market in question." *See* Case C-53/85, *Akzo Chem. BV v. European Comm'n.* 1986 E.C.R. 1965.

169. Another example can be found in the *United Brands* case, where the Court held that the share of United Brands was around 40-45 percent in the relevant market, so that it was not sufficient to conclude that United Brands would automatically control the market. *See* Case C-27/76, *United Brands v. European Comm'n.*, 1978 E.C.R. 207. Hence, it was necessary to refer to other criteria, such as the strength and number of competitors, in order to determine the market power of the company in question. *Id.*

sub-laws, but also on the judgments of courts and tribunals in previous cases.¹⁷⁰ The most important issue is the “market dominance” concept and its interpretation.¹⁷¹

In Vietnam, the determination of market dominance depending on a market share threshold entails some difficulties.¹⁷² State firms currently participate in most parts of the economy and there are certain fields which are considered state monopolized domains.¹⁷³ However, it is possible that in one such domain there is participation of many state firms but the

170. IOANNIS KOKKORIS, *THE REFORM OF EC COMPETITION LAW: NEW CHALLENGES* 9 (2010).

171. For example, the concept of “dominant position” is not specifically defined in Article 82 of the *EC Treaty*. However, this notion was observed as “a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of the consumers.” See Case C-322/81, *N V Netherlands Banden Industrie Michelin v. Comm’n* 1983 E.C.R. 3451; See also Case C-27/76, *United Brands v. Commission* 1978 E.C.R. 207; Case C-85/76, *Hoffmann-La Roche* 1979 E.C.R. 461. In the United States, monopoly power is considered by assessing a number of criteria regarding the firm’s market share in conjunction with market structure factors, i.e. the relative size and strength of competitors, fluctuations in market share, ease of entry and evidence of monopoly profit. See ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *ABUSE OF DOMINANCE AND MONOPOLISATION* 227 (1996), available at <http://www.oecd.org/dataoecd/0/61/2379408.pdf>. In the Australian *Trade Practice Act of 1974* (currently the *Competition and Consumer Act 2010*) the concept “market power” can be defined as “the ability of a firm to raise prices above the supply cost without rivals taking away customers in due time, supply cost being the minimum cost an efficient firm would incur in producing the product.” See *Queensland Wire Industries Pty Ltd v. Broken Hill Proprietary Co. Ltd.*, 178 ALR 253 (Melways); 168 CLR 6 (Dec. 6, 1989); 167 CLR 177 (1989). Similarly, “market power” is glossed as the power which “enables a corporation to behave independently of competition and of the competitive forces in a relevant market” See *Melway Publishing Pty Ltd v. Robert Hicks Pty Ltd*, (2001) 205 CLR 1 (Austl.); *Eastern Express Pty Ltd. v. General Newspapers Pty Ltd.*, (1992) 35 FCR 43 (Austl.).

172. See Rafael Alves de Almeida, *Market Dominance in a New Economy*, *REVISTA DIREITOGV*, July 2006, at 67, 76–77, available at http://www.direitogv.com.br/subportais/publicaçõe/RDGV_04_pp067-098.pdf.

173. On Criteria for Classification of and List of Enterprises with 100 Per Cent State Owned Capital, Dec. No. 37/2007/QD-TTG, Mar. 3, 2007 (Viet.) (there are 19 industries and sectors in which the state will hold 100 per cent of registered capital and another 27 industries and sectors in which the state will possess more than 50 per cent of total shares of state equitized firms).

market share of each is less than 30 per cent.¹⁷⁴ These firms will not be covered by the competition law, although they are state monopolies.¹⁷⁵

2. *Causing ‘significant anti-competitive effect’ as an additional criterion*

After considering the relevant market and market share as the main criterion, the second criterion is the “capability of causing a significant anti-competitive effects.”¹⁷⁶ According to Article 11, “the capability to cause significant anti-competitive effects” is used to determine market dominance when a firm does not accumulate the minimum market share required by the law to be considered as having a dominant position.¹⁷⁷ The important issue the competition authority has to determine is whether this kind of firm can limit competition significantly.¹⁷⁸ The basis for determining capability to cause such effects is given by *Decree No. 116/2005/ND-CP*,¹⁷⁹ providing guidance for the implementation of the competition law which consists of criteria similar to those in EU competition case law.¹⁸⁰

The introduction of criteria regarding the capability of causing restraint of competition substantively aims to eliminate attempts by a firm to abuse financial strength and technology to corner the market from other firms and domestic and international investors.¹⁸¹ The stipulation expands the scope for

174. A threshold of market share at 30 percent is used to consider whether a firm has a dominant position. The Competition Law, *supra* note 12, art. 11(1).

175. Nguyen Van Nam, ‘*Ban hanh Luat ve Doc quyen Nha nuoc la Cap bach*’ [It is Urgent to Adopt a Law Governing State Monopolies], SAIGON TIMES (Aug. 22, 2008), <http://www.thesaigontimes.vn/Home/diendan/ykien/22517/>.

176. The Competition Law, *supra* note 12, art. 11.

177. In other words, this exemption is applied to firms with a market share of below 30 per cent. In terms of determining the dominant position of groups of firms, this exemption is applied to groups of firms with a total market share of 50, 65 and 75 per cent respectively in the related market. The Competition Law, *supra* note 12, art. 11.

178. *Id.* art. 11.

179. Implementation of the Competition Law, *supra* note 40, ch. II, art. 22.

180. FRESHFIELDS BRUCKHAUS DERINGER, AN OVERVIEW OF VIETNAM’S COMPETITION LAW (Nov. 2010), available at <http://www.freshfields.com/publications/pdfs/2010/nov10/29097.pdf>.

181. United Nations Conference on Trade and Development, *Capacity-building on*

determining market dominance of firms in situations where they do not achieve sufficient accumulation of required market share but are able to manipulate the market by virtue of their external strength or internal potentiality. It enables the competition authority to fight against actions which aim to limit competition at the early stages of a plan for achieving market power.

However, conducting a comprehensive analysis efficiently requires transparency in the market, trustworthy information and sufficient capability of the competition authority in charge, especially as regards the professional skills of staff.¹⁸² The central issue is how to analyze and draw an exact conclusion about the possibility of causing a significant anti-competitive effect. In other countries, this issue is dealt with through case law and economic analysis.¹⁸³ Assessing the necessary financial and accounting documents of state monopolies is not easy because this depends on an autonomous accounting system and willingness to disclose relevant information.¹⁸⁴ These requirements lead to difficulties in determining subsequent key issues such as market share, dominance or abuse of dominance.¹⁸⁵ For Vietnam's competition authority, this is a major concern as the body faces limitations such as funds for operation and human resources.¹⁸⁶

Explanation of the concept "dominant position" in other countries is made simpler by use of the doctrine of precedent. In

competition law and policy for development: A Consolidated report, at 5, UNCTAD/DITC/CLP/2007/7 (2008).

182. See United Nations Conference on Trade and Development, Geneva, Switz. July 7–9, 2009, *The Use of Economic Analysis in Competition Cases*, U.N. Doc. TD/B/C.I/CLP/4 (Apr. 28, 2008).

183. *Id.* The experience of countries such as Australia and the US shows that a number of assessments (tests) are used as well as reliance on arguments given by judges and experts to reach a final conclusion about effects on competition. *Id.* at 17.

184. See Implementation of the Competition Law, *supra* note 40, art. 3 (discussing the responsibility of state agencies and financial institutions for supplying information).

185. Le Chau, *Luat Canh tranh Khoanh tay Nhin Doc quyen* [Competition Law Stands Idly Seeing Monopoly], VNECONOMY (June 3, 2006), <http://vneconomy.vn/20090306095723894P0C5/luat-canh-tranh-khoanh-tay-nhin-doc-quyen.htm>.

186. CUTS INT'L, REPORT: SEMINAR ON THE DRAFT IMPLEMENTATION REGULATIONS FOR THE VIETNAM COMPETITION LAW (Apr. 25–26, 2005), available at <http://www.cuts-international.org/ReportVietnam-Competition.htm>.

Vietnam, this raises significant difficulty because decided cases are not a source of law and, in any event, few monopoly cases have been settled since the Law came into effect.¹⁸⁷

3. *The determination of abuse of dominant / monopoly positions*

The next issue is the determination of whether the behavior performed by a firm constitutes an abuse.¹⁸⁸ As in Article 82 of the *EC Treaty*, the Law does not give a detailed explanation of “abuse of dominant/monopoly position.”¹⁸⁹ The categories of abusive behavior listed in Article 82 are the most typical. When determining if certain behavior falls into this list, the ECJ must also prove anti-competitive effects.¹⁹⁰ The concept of anti-competitive effects is then used as a further criterion to ascertain whether the behavior of the firm(s) is prohibited according to Article 82, although the behavior may not belong to the prohibited behavior listed.¹⁹¹ In the same way, the *Australian Competition and Consumer Act 2010* regards abuse of dominance as an activity intended to take advantage of the “substantial degree of market power” that a firm has in the relevant market.¹⁹²

187. In 2009, Vietnam’s competition agencies (VCAD and VCC) settled the first case involving anti-competitive behavior, *VINAPCO v. Pacific Airlines*, 5 years after the Law came into effect. See ALLENS ARTHUR ROBINSON, VIETNAM LEGAL UPDATE (May 2009), available at <http://www.mekongresearch.com/doc/May%2009%20VLU.PDF> (discussing the VINAPCO decision, Case No. 11/QD-HDXL). It is currently undertaking investigations into agreements in fixing fees concluded by the Association of Insurance companies. *Id.*

188. See The Competition Law, *supra* note 12, art. 11–14. (discussing the consideration of what constitutes an abuse of a dominant market position).

189. EC Treaty, *supra* note 33.

190. *Id.*; see also *Parallel trade in the pharmaceutical sector: the ECJ judgment in the GlaxoSmithKline case*, LIFE SCIENCES AND REGULATORY NEWSLETTER (Nov. 2009), http://www.ashurst.com/publication-item.aspx?id_Content=4844 (discussing the application of Article 81 of the EC Treaty where the ECJ was not required to prove the “anti-competitive ‘effect’” of an agreement).

191. See Case 85/76, *Hoffmann-Law Roche v. Comm’n of the European Communities*, 1979 E.C.R. 461, 519–523 (discussing the factors considered in establishing the existence of a position of dominance and the anti-competitive effects it had in the market).

192. This concept, “taking advantage of a substantial degree of market power,” was

In determining the abuse of dominant position of firms, the competition authority should focus on whether certain behavior is listed in the law and rely on settled cases. As with the conclusion of “anti-competitive effects,” such determination includes a series of considerations with regard to economic theories and legal principles. During the handling process, members of settling panels may express their own views about the case.¹⁹³ It is important to weigh up the positive and negative effects on competition and economic efficiency and prove the anti-competitive effects of an abuse causing loss to competitors and consumers.¹⁹⁴ As noted above, “the capability of causing significant anti-competition” criterion is only used when a firm (or group of firms) does not reach the minimum market share threshold set forth by the law.¹⁹⁵ In this case, the question is to clarify what “capability of causing significant anti-competition” is and how it can affect the interests of customers and society as a whole.¹⁹⁶ Here, once again, the problem is the limited

explained in *Queensland Wire Industries Pty Ltd v. Broken Hill Proprietary Co Ltd* as follows “. . . an infringement may be found only where the market power is taken advantage of for a purpose proscribed in par (a), (b) or (c) (of Section 46 (i)).” These provisions define what uses of market power constitute misuse. *Queensland Wire Industries Pty Ltd v. Broken Hill Proprietary Co. Ltd.* (1989) 167 CLR 177 (Austl.). *Competition and Consumer Act 2010* s 46(1) (Austl.) states that:

A corporation that has a substantial degree of power in a market shall not take advantage of that power for the purpose of:

- (a) eliminating or substantially damaging a competitor of the corporation or of a body corporate that is related to the corporation in that or any other market;
- (b) preventing the entry of a person into that or any other market; or
- (c) deterring or preventing a person from engaging in competitive conduct in that or any other market.

193. Nguyen Ngoc Son, *Mot so Binh luan tu Thuc tien Giai quyet Vu viec ve Han che Canh Tranh* [Some comments from the Practices of Handling of Competition Cases] NGHIEN CUU LAP PHAP [LEGISLATIVE STUDIES] (2009), http://www.nclp.org.vn/thuc_tien_phap_luat/mot-so-binh-luan-tu-thuc-tien-giai-quyet-vu-viec-ve-hanh-vi-han-che-canhtranh/?searchterm=%22lu%E1%BA%ADt%20c%E1%BA%A1nh%20tranh%22.

194. *Id.*

195. See The Competition Law, *supra* note 12, art. 11.

196. For example, in the first case involving anti-competitive behavior (VINAPCO case), the Panel held that the unilateral termination of supply of aviation oil by VINAPCO would destroy competition in the civil aviation market. As of April 2008, there

capability of Vietnam's competition authority.

Another issue arising is when competition law and a specific law(s) such as contract law apply concurrently.¹⁹⁷ In such case, there is a possibility that firms can use matters relating to contract as a ground for taking abusive actions and thereby escape the reach of the Law.¹⁹⁸ For example, when a state monopoly commits an abuse such as unilaterally terminating or imposing new conditions on a contract, it may be argued that this is simply a matter of contract. The firm in question can allege breach of terms and conditions (i.e. violation of terms on payment) to justify an abusive action (i.e. a refusal to sell/supply). A question arises as to whether contract or competition law applies.¹⁹⁹ The position is more complicated when infringed firms do not bring a case to the competition authority. In that case, the competition authority must be competent to declare that the case can be settled under the *Competition Law*.²⁰⁰

existed a direct competition between Vietnam Airlines (VINAPCO parent company) and Pacific Airlines. This observation shows that the anti-competitive effect of the unilateral termination of supply would not be limited to the competition between the supplier (VINAPCO) and the buyer (Pacific Airlines). This behavior would affect competition in the aviation market because the termination would place Pacific Airlines in a disadvantageous position in competition with Vietnam Airlines, to which VINAPCO is a subsidiary company. See ALLENS ARTHUR ROBINSON, VIETNAM LEGAL UPDATE: CASE NO. 11/QD-HDXL RE. THE SUSPENSION BY VINAPCO OF FUEL SUPPLY TO JETSTAR PACIFIC (May 2009), available at <http://www.mekongresearch.com/doc/May%2009%20VLU.PDF> (discussing the VINAPCO decision, Case No. 11/QD-HDXL).

197. *Id.*

198. An example is the dispute between VINAPCO (a monopoly supplier of aviation oil) and its client, Pacific Airlines. VINAPCO argued that it was simply a dispute regarding a commercial contract and that unilateral termination of supply was a reaction against the delay of payment by Pacific Airlines. However, this argument was rejected by the Panel on the ground that such action had been committed in the context of an abuse of monopoly position and this was not considered as a dispute concerning a commercial contract. *Id.*

199. This matter is stipulated in Article 5(1) "[w]here there is any disparity between the provisions of this Law and those of other laws on competition restriction acts or unfair competition acts, the provisions of this Law shall apply." The Competition Law, *supra* note 12.

200. In the VINAPCO case, the Panel held that the dispute between VINAPCO and Pacific Airlines had the nature of a dispute regarding a commercial contract. THE SUSPENSION BY VINAPCO OF FUEL SUPPLY TO JETSTAR PACIFIC, *supra* note 196. However, this dispute entailed an anti-competitive effect, as VINAPCO imposed on its

VI. ENFORCEMENT ISSUES IN ABUSE OF MARKET DOMINANCE

A. *Vietnam's competition authorities*

Vietnam's competition authorities as provided in Chapter IV of the Law are the Vietnam Competition Administration Department (VCAD)²⁰¹ and the Vietnam Competition Council (VCC).²⁰² Competition law procedure for abusive behavior of market dominance is divided into two levels: the VCAD is responsible for conducting investigations of abusive behavior.²⁰³ As a quasi-judicial body, the VCC handles anti-competitive cases based on the VCAD's investigation results via a Panel (Competition Case-Handling Council) and a majority vote basis.²⁰⁴

The VCAD is in charge of competition enforcement while sectoral regulators are responsible for providing technical regulation via economic regulation.²⁰⁵ However, the possibility

client unfavorable conditions and committed an abuse of its monopoly position to unilaterally modify or cancel the contracts already signed, without plausible reasons. *Id.* Not only does this show that relevant competition rules have been applied to deal with an abuse of monopoly position, it also expresses a strong intention of the competition agency to take action against anti-competitive behavior. *See id.*

201. VCAD is currently a department belonging to the Ministry of Trade and the Head of VCAD is appointed by the Prime Minister upon the recommendation of the Trade Minister according to Article 50. *See* The Competition Law, *supra* note 12, art. 44–53.

202. The Competition Law, *supra* note 12, art. 53.

203. *Id.* art. 49(1)(c); Decree on Functions, Duties, Powers and Organizational Structure of Vietnam Competition Administration Department, Dec. No. 06/2006/ND-CP, Jan. 9, 2006, art. 2(4)(d), (Viet.) [hereinafter Decree on Functions, Duties, and Powers].

204. The Competition Law, *supra* note 12, ch. V.

205. *See* ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, GLOBAL FORUM ON COMPETITION: THE RELATIONSHIP BETWEEN COMPETITION AUTHORITIES AND SECTORAL REGULATORS: CONTRIBUTION FROM VIETNAM 5–6 (Jan. 14, 2005), available at <http://www.oecd.org/dataoecd/49/29/34285298.pdf>. Currently, there are some major regulatory bodies in charge of conducting state management in specific sectors where their functions and powers are related to competition. *Id.* Such bodies include the Ministry of Industry and Trade (MoIT), Ministry of Planning and Investment (MPI), Ministry of Finance (MoF), Ministry of Information and Communication (MoIC) and Ministry of Transport (MT). *Id.* at 2–4.

of a duplication of tasks is a concern.²⁰⁶ The VCAD has competence to detect provisions that may contravene competition law and suggest modifications.²⁰⁷ Because such competence is only applicable to regulations that have been enacted, this limits the contribution of the VCAD in the legislative process in suggesting the removal of provisions that potentially cause or facilitate the commitment of abusive behavior before they are adopted.

During the draft of *Competition Law 2004*, this issue was thought to handicap its specialization, fairness, transparency and accountability.²⁰⁸ The fact that MoIT held ownership and control of many SOEs was a reason leading to public skepticism about VCAD's attitudes towards SOE behavior because MoIT might act at the same time as both "a player on the ground and the referee."²⁰⁹ It was thought this fact would restrict the VCAD's power in disciplining conduct in restraint of competition by SOEs owned and managed by line ministries with close relationships with the government.²¹⁰

The power of the VCAD and VCC may be constrained by the MoIT Minister. First, when a decision for the settling of a case of abuse of market dominance is disputed by the firms concerned, the Minister of MoIT, responsible for the review of appeal, has the power to dismiss or request a re-settlement of cases.²¹¹

206. See *Id.* at 5–6. For example, the competition authority may need to seek sectoral knowledge when dealing with a specific case or to request additional information before commencing its investigation regarding a competition case. This was given at the conference co-organized by the VCC and EU-Vietnam Multilateral Trade Assistance Project (MUTRAP) "Five Years of the Implementation of Competition Law regarding Anti-competitive Behaviour" in December 2010. See *Workshop "5-Year Implementation of Competition Law in Controlling Anti-Competitive Behaviors in Viet Nam,"* CAPACITY BUILDING IN TRADE POLICY ANALYSIS: STRENGTHENING OF STATE MANAGEMENT WITH REGARD TO RETAILING SECTOR (MUTRAP Newsletter Quarter IV) (2010), available at <http://www.mutrap.org.vn/en/Newsletter/Newsletter%20Q4%202010.pdf>.

207. Decree on Functions, Duties, and Powers, *supra* note 203, art. 2(3).

208. Alice Pham, *The Development of Competition Law in Vietnam in the Face of Economic Reforms and Global Integration*, 26 NW. J. INT'L L. & BUS. 547, 559 (2006).

209. Kinh Doanh, *Co quan Quan ly Canh tranh Phai Dung Doc Lap*, [The Competition Authority Must Stand Independently], VNEXPRESS (Jun. 2, 2004), <http://vnexpress.net/gl/kinh-doanh/2004/06/3b9d32d2>.

210. Pham, *supra* note 208, at 560.

211. Pham, *supra* note 208, at 558.

Second, the chief personnel of the VCAD and VCC are appointed by the Prime Minister upon recommendation of the MoIT Minister²¹² and VCAD's investigators are also appointed by the MoIT Minister.²¹³ Third, activities of the VCAD and VCC are financed directly by the state budget through MoIT.²¹⁴ Finally, the VCC consists of representatives from ministries who are meant to reconcile conflicts of interest of industries. This gives rise to concern about interference by ministries during the settlement of abuse cases, as they may lobby for their industries.

B. *The enforcement of competition rules*

The commencement of an investigation as to abuse of market dominance is usually initiated by the infringed firms.²¹⁵ The firm may lodge a complaint with VCAD to request commencement of the investigation and settlement process within two years from the date when the abuse was implemented or where there has been a sign of abuse of market dominance.²¹⁶ This has been a difficult issue in Vietnam. First, Vietnam's firms,²¹⁷ especially small and medium firms, lack law professionals²¹⁸ and have little awareness of their rights and

212. The Competition Law, *supra* note 12, art. 50, 25(1); Decree on Functions, Duties, and Powers, *supra* note 203, art. 4, 5.

213. The Competition Law, *supra* note 12, art. 51.

214. Decree on Functions, Duties, and Powers, *supra* note 203, art. 1(2).

215. The Competition Law, *supra* note 12, art. 58(1).

216. The Competition Law, *supra* note 12, art. 58(1). Contents of a complaint file are stipulated in Article 45 of the Implementation of the Competition Law, and must provide appropriate reasons for the complaint. Implementation of the Competition Law, *supra* note 40, art. 45. A complaint file is required to include evidence showing that complaint application is well-founded and legitimate and other information that the complainant considers necessary for the resolution of the competition case. *Id.*

217. Truong Hong Quang, *Co quan ly Canh tranh o Vietnam: Nhung Bat cap va Phuong huong Hoan thien*, [Competition Authority in Vietnam: Limitations and Proposals for Its Improvement], NGHIEN CUU LAP PHAP [Legislative Studies] (May 10, 2011), http://www.nclp.org.vn/thuc_tien_phap_luat/co-quan-quan-ly-canhh-tranh-o-vietnam-nhung-bat-cap-va-phuong-huong-hoan-thien/?searchterm=T%C6%B0%20duy%20ph%C3%A1t%20tri%E1%BB%83n.

218. One year after the Law on Competition came into effect, only 30 per cent of firms knew about the Law; the remaining 70 per cent had no idea at all about the Law. The figure has changed recently, but the number of firms aware of the Law and the benefits of using it to protect their interests is still limited. See Thanh Van, *Luat Canh*

responsibilities.²¹⁹

A recent survey conducted by the VCAD shows that many firms still do not know which court they should go to if they are not satisfied with the decisions of the handling committee and that they are not fully aware of the maximum penalty for violations of the competition law.²²⁰ Second, as state monopolies are currently major suppliers, firms may choose not to bring cases to the competition authority because they are afraid of a “collision” with these partners²²¹ and of becoming involved in legal disputes.²²² Third, the requirement of taking responsibility for assembling relevant materials and evidence in a competition case is problematic because the collection of information from relevant state agencies is not easy.²²³ Fourth, there is little confidence among firms about their chances of winning cases when they face state firms.²²⁴ As a result, there is a hesitation among Vietnam’s firms (most of which are small and medium entities)²²⁵ to become involved in competition cases.²²⁶

The confidence of Vietnam’s firms in the activities of the competition authority also appears limited due to the ambiguous

tranh: 4 Nam Van Qua Moi [Vietnam’s Competition Law: 4 Years but Still New], VOV ONLINE (Apr. 10, 2009), <http://vov.vn/Home/Luat-Canh-tranh-Bon-nam-van-quamoi/200910/123401.vov>.

219. *Id.*

220. VCAD, REPORT ON THE RESEARCH AND SURVEY ON COMMUNITY’S AWARENESS LEVEL ABOUT COMPETITION LAW 29–30 (2009).

221. For example, many firms suffer from the monopoly of the Vietnam Electricity Corporation (EVN) involving the unannounced cut off of electricity supplies or increase of electricity prices. However, they do not want to take any action against EVN or sue EVN via the competition agency. See *Thuc thi Luat Canh tranh de Tang Tinh Ran de* [Enforcing Competition Law to Increase Deterrence], QUAN DOI NHAN DAN [People’s Army] (Oct. 8, 2009), <http://www.qdnd.vn/QDNDSite/vi-VN/61/43/2/98/98/91427/Default.aspx>.

They want to avoid conflict with the monopoly firm and are concerned that if such a remedy is pursued, they cannot continue to buy electricity from EVN, as the monopoly supplier. *Id.*

222. *Thuc te Viec Ap dung Luat Canh tranh o Vietnam* [Practice of the Application of Competition Law in Vietnam], SAGA (Nov. 6, 2009), <http://www.saga.vn/view.aspx?id=17752>.

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

relationship with state agencies that may affect the independence of the competition authorities.²²⁷ Firms may incorrectly believe that such ministries are responsible for the handling of competition cases in the first place, instead of the VCAD.²²⁸ Understandably, when a competition case arises, firms tend to seek guidance from particular laws governing specific areas for their reference.²²⁹ The firms rely on agencies involved in competition matters within ministries, i.e. a department in charge of supervision of competition within the ministry, without being aware that competition procedure must first be followed.²³⁰ The case in which Viettel sued VNPT for connection in 2005-2006 provides a good example.²³¹ Instead of logging complaints with the VCAD, Viettel did so with the Ministry of Posts and Telecommunications.²³² When the issue seemed to be insoluble, the Ministry handed it over to the Prime Minister to solve, while the VCAD, founded by the government to act as a referee to settle competition cases, was not involved.²³³

227. *Id.*

228. Firms involved in the dispute often seek advice or decisions from the ministries in charge of the industry in question (sectoral regulators), instead of dealing with the competition agency or commencing litigation procedures according to the Competition Law 2004. See Dien dan Doanh nghiep, *Thuc thi Luat Canh tranh: Doanh nghiep Khong the Tho o* [Enforcing Competition Law: Businesses Cannot be Indifferent], DIEN DAN DOANH NGHIEP (Nov. 13, 2009), <http://dddn.com.vn/20091112084331671cat103/thuc-thi-luat-can-h-tranh-dn-khong-the-tho-o-!.htm>.

229. *Id.*

230. *Id.*

231. *Providers Urge State to Untangle Industry*, VIETNAMNET (July 16, 2005), <http://english/vietnamnet.vn/tech/2005/07/469163/>.

232. Bui Thi Duyen, *Vietnam Mobile Market Rapid But Unstable Growth*, TELECOM-IT (Aug. 8, 2008), <http://telecom-it.net/index.php?ns=News&dialoose=View&id=35&cat=3&name=rapid-but-unstable-growth>.

233. See Tam Vu, *Thuc thi Luat Canh tranh: Doanh nghiep Khong the Tho o* [Enforcing Competition Law: Businesses Cannot be Indifferent] DIEN DAN DOANH NGHIEP (Nov. 13, 2009), <http://dddn.com.vn/20091112084331671cat103/thuc-thi-luat-can-h-tranh-dn-khong-the-tho-o-!.htm>.

C. Enforcement by competition authorities

Apart from initiatives taken by firms, VCAD conducts investigations if it detects signs of abusive behavior within two years from the date such acts were committed.²³⁴ As the targets of investigation are activities in restraint of competition in the market, many state monopolies and state firms are officially within the reach of the VCAD.²³⁵ However, the initiation of investigations by VCAD has been slow.²³⁶ Consequently, there have been delays in dealing with abusive behavior. This problem is explained by a number of factors. First, it results from inadequacies in VCAD's personnel, specialization and working experience.²³⁷ Second, VCAD's independence in relation to other state organs is limited, which causes another obstacle in the investigation process, especially when the subject behavior is conducted by state firms operating under the management of sectoral ministries.²³⁸ In the four years since the Law came into effect, the VCAD has only conducted one investigation as a result of complain that led to a violation.²³⁹ Third, as mentioned above, while complaints brought to the VCAD as a basis for commencing an investigation are uncommon, the proactive initiation of investigation by VCAD is still important.²⁴⁰ Fourth,

234. The Competition Law, *supra* note 12, art. 65.

235. Truong Hong Quang, *supra* note 217.

236. ASIA-PACIFIC ECONOMIC COOPERATION, 2011 ECONOMIC POLICY REPORT 130–134 (2011), *available at* http://publications.apec.org/publication-detail.php?pub_id=1153.

237. *Id.*

238. A question arises as to how the VCAD will behave if it detects infringement signs of state monopolies which are under the management of the Ministry of Trade to which VCAD also belongs. Similarly, in the case of agreements made by decisions of industrial associations led by state firms operating under state management Ministries, another question is how the VCAD implements investigations and makes judgments against such infringements.

239. ALLENS ARTHUR ROBINSON, VIETNAM LEGAL UPDATE: CASE NO. 11/QD-HDXL RE. THE SUSPENSION BY VINAPCO OF FUEL SUPPLY TO JETSTAR PACIFIC (May 2009), *available at* <http://www.mekongresearch.com/doc/May%2009%20VLU.PDF> (discussing the VINAPCO decision, Case No. 11/QD-HDXL).

240. This was raised at a conference co-organized by the VCC and the EU-Vietnam Multilateral Trade Assistance Project (MUTRAP) “Five Years of the Implementation of Competition Law regarding Anti-competitive Behaviour” in December 2010. *See also*

the reliance of the VCC on investigations initiated by the VCAD could delay application of the competition law. While the Law stipulates VCC as the body in charge of settlement of anti-competitive cases, in fact its activities depend largely on the work of the VCAD.²⁴¹ Hence, if the investigation process is prolonged and is not conducted properly, the VCC cannot handle the case in a timely fashion. In fact, if VCAD found there was insufficient evidence to declare an abuse of market dominance, it could not itself terminate that case once the case was pending for the VCC to decide.²⁴²

VII. SUGGESTIONS FOR REMEDIES AND REFORM

Vietnam's competition authorities should be reformed to become more independent and accountable. While the determination to maintain a "decisive" role for state monopolies in the market remains unchanged, reform of Vietnam's current competition authorities becomes more urgent. The competition authority must be capable of conducting the task of investigating and determining infringements. The independence and accountability of the competition authority, *inter alia*, is the central point. In particular:

1. The two existing competition institutions should be re-organized as a single ministerial body and the current competition authorities must be separated from the MoIT. This would bring about a powerful and capable enforcement body dealing with anti-competitive behavior, especially that conducted by state monopolies. In addition, this would help the Vietnamese competition authority keep up with the continuing development and greater involvement of state monopolies in the market.
2. Reform should entail a clarification of the competition authority's position in the executive branch. This is

Thuc thi Luat Canh tranh: Phat de Canh bao, Khong de Thu tien [Implementating Competition Law: Penalties Aim to Warn, not to Collect Money], SOTT MEDIA (Oct. 8, 2009), <http://www.baomoi.com/Home/KinhTe/sgtt.vn/Thuc-thi-luat-Canh-tranh-Phat-de-can-h-bao-khong-de-thu-tien/5459996.epi>.

241. Truong Hong Quang, *supra* note 217.

242. The Competition Law, *supra* note 12, art. 101.

because the enforcement of competition law is linked closely to a wide range of laws regulating civil, administrative and criminal activities. The major objective of competition law is not to restrict or punish monopoly practices; rather it is related to the maintenance of competition.²⁴³

243. Bertelsmann Stiftung, *BTI 2010 — Vietnam Country Report*, BERTELSMANN SIFTUNG (2009), <http://www.bertelsmann-transformation-index.de/124.0.html?L=1>.