

Studying Vietnam's Competition Law In The Aec Establishment And Development Era

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ABSTRACT

Because of the key role of establishing and implementing a competitive ASEAN Economic Community sector, the competition policy of Member States has become important for relevant researchers including law learners. Studying this policy aims to raise awareness about adjusting competitive practices of other Member States; thereby each Member State can support their national enterprises further with integration by harmonizing their own policy. Accordingly, in the present context, the Competition Law, which is an important part of the national competition policy, needs to be studied carefully not only from an economic perspective. This article gives a personal opinion about conducting research Vietnam's Competition Law in the context of the establishment and development of the AEC.

Keywords : competition policy, studying Vietnam's competition law, AEC

Introduction

Competition is an important factor in the market economy. It is not only the driving force for the development of each individual, each enterprise but also of the economy in general. As such, competition has become more necessary for the establishment of the ASEAN Economic Community (AEC) in general, the development of a common market and unified production base in particular. It is undeniable that, once the AEC is put into operation, the capability that large enterprises of some countries implement anticompetitive practices, which infringe rights and benefits of individuals as well as small businesses of other nations, is very likely to occur. Therefore, the

development of a common competition policy for the ASEAN region has been identified as an urgent target, including the studying and improving competition law of each country towards harmonization with regional law. Accordingly, Vietnam's Competition Law, with the nature of the Member State law, also needs to be approached in a broader perspective in order to ensure a favorable integration process.

In fact, apart from the need for governing competitive practices of the business entities in the market, Vietnam promulgated and enforced Competition Law as a condition of joining the World Trade Organization (WTO).

Thus, after more than 10 years of implementation, the provisions of Competition Law have showed some limitations to the development level of market economy in Vietnam today. This issue raises the research needs to improve this legislation.

Deriving from such content, the study of Vietnam's Competition Law, in order to improve the provisions of law in this context, cannot just stop at overcoming the shortcomings and limitations in the process of governing competitive practices on the national territory, but it also needs to ensure conformity with the general policy of the region. This article gives opinions on studying Competition Law by the presentations of some new purposes, requirements and orientations of research in the context of the AEC formation and development.

1. ASEAN Economic Community

ASEAN Economic Community (AEC) is one of the three key factors of ASEAN Community besides the ASEAN Political-Security Community and the ASEAN Socio-Cultural Community. The establishment of ACE is based on two documents of AEC Blueprint and Strategic Schedule for AEC passed by Member States in 2007. Accordingly, the formation of ACE includes: (1) a single market and production base, (2) a highly competitive economic region, (3) a region of equitable economic development, and (4) a region fully integrated into the global economy. According to the Strategic Schedule for AEC, ASEAN Economic Community will be establi-

shed in the end of 2015. This is a big event of ASEAN Community in general and Vietnam in particular.

2. Vietnam's Competition Law and common research directions

Vietnam's Competition Law was enacted in 2004, with its effect from July 2005. This law governs two types of anti-competitive practices including: practices in restraint of competition and unfair competitive practices. In terms of scope of governance, competition law is a specialized branch of economic law system.

To understand this law, researchers have approached with an aim to improve the law by the following ways:

Firstly, analyzing and dissecting the articles and clauses in the text of the Law, from which pointing out the conformity and restriction in governing competition practices of business entities in the market, for example, pointing out unclear or confusing rules for the entities under the objects of governance.

Secondly, comparing with the provisions of other related legislations to alter the law. Accordingly, a number of provisions of the Competition Law are considered along with the provisions of other legal documents in the same field of governance, from which pointing out the inconsistent rules and how to fix them. For example, both Vietnam's Competition Law and Vietnam's Intellectual Property Law govern the practices of unfair competition in the field of intellectual property, however the provisions on sanctions against violations of these two legal documents are different in fines.

Besides being compared with the provisions of domestic laws, Vietnam's Competition Law is also studied along with the competition laws of several countries in the world. The process of studying aims to find out the limitations or deficiencies, from which to learn experience of the countries with success implementation of competition policy so as to make alterations the law. For example, in comparison with the European Union law or Sherman Act of US, Vietnam's Competition Law only governs the economic concentration horizontally without any regulations on economic concentration vertically. This restriction is because the criterion determining market power under the Vietnam's Competition Law is based solely on market share in the related market

Thirdly, Competition Law is also researched during the assessment of competition cases occurring in reality. Accordingly, the researchers would collect the problems arising in fact. These problems could happen in the process of applying the competition law of management bodies as well as obeying the law of organizations and individuals for their competition in the market. For example, relating to economic concentration, Vietnam's Competition Law prohibits the cases of combined market share in which the participating enterprise has over 50% share in the relevant market; accept the enterprises with a combined market share from 30% to 50% by notifying the administrative agency for competition prior to carrying out the economic concentration. However, this provision has

shown the limitations when administrative body for competition, in the process of receiving notification of economic concentration, realized that although the market share of the enterprise combined does not exceed 50% but market power and ability to influence other enterprises is notable and must be prevented. However, under the provisions of the current law, the body cannot do anything but accept the economic concentration of such enterprises.

3. Studying Competition law for new purposes

3.1. Studying Vietnam's Competition Law to raise the awareness of competition

Competition is motivation of economic development. In fact, after almost 30 years of economic reform transferring into market mechanisms, Vietnam has only emphasized on market liberalization but paid no attention to fair competition. In the minds of some people, moreover, competition is still considered as a bad phenomenon, causing negative impacts, even loss of enterprises' business right (1). Meanwhile, in the context of integration and especially, Vietnam market prepares to become a part of the common market in the ASEAN region, the awareness of competition needs to be enhanced significantly. The reason for such statement is that only when every Vietnam's organizations and individuals understand the role of competition, do they have the proper attitude in recognizing and promoting the development of competition in the business process. For example, for enterprises, when competition is an objective

factor of economy, instead of shirking or being scared of competition, they will adapt and develop high competitive and effective business strategies.

In order for which to be done, therefore, in addition to the study aiming at improving the law, researchers need to actively investigate Vietnam's Competition Law to widespread it to organizations and individuals across the national territory. Assessment of this work, there is now "Question - Answer of the Competition Law" available which is compiled by the Competition Authority; however, the majority of its content is only the record of most provisions of the Law with not many terms and issues being explained in detail and easily understandable. Hence, to achieve that goal, there are numerous work needed to do for researchers.

3.2. Studying Vietnam's Competition Law to boost enterprises' competitiveness

One of the major contents of ACE is to build a single market and production base. Accordingly, production factors (labor, assets, finance) will transfer to anywhere in the member states with lowest cost of production. Therefore, the competition amongst the enterprises will become extremely fierce. Enterprises taking full advantages of the opportunity will develop stronger meanwhile the enterprises have not enough competitiveness will be eliminated. Theoretically, Vietnam enterprises have a long preparation process before the establishment of the AEC. However, with restricted economic thinking, they have not actively taken advantage of new opportunities yet.

Aiming at making healthy the competitive environment, Competition Law is an effective tool to help enterprises indirectly improve their competitiveness in the market. Thanks to the provisions of competition law, enterprises will have the opportunity of open, fair and righteous competition; thereby gradually improve their competitiveness. Therefore, the study of competition law in the current context cannot ignore the purpose of improving competitiveness for Vietnam enterprises.

The question is how to improve the capacity of enterprises through the study of Competition Law. It is hard to deny that, the more transparent and clearer the Competition Law is, the more secure the enterprises' benefits are ensured. Therefore, the study of competition law should be made towards added provisions to protect competition and effective business protection. For example, the content of this legislation should be applied widely and publicly for both State-owned enterprises (SOEs) and private ones. The reason for such statement is that in Vietnam, the majority of SOEs with natural monopoly position (while trading the industries as rail transport, electricity, and water) is highly protected. However, when the AEC is established, in order to ensure fair and healthy competition amongst enterprises of the country, SOEs shall no longer receive subsidies and shall face with competition from the enterprises in the private sector. These corporations, thus, will need more support in competition process

Additionally, studying Competition Law is required to be close to business activities of the enterprises. In other words, researchers should accompany with enterprises in forums, conferences, workshops related to competition. At the same time, by using this method, researchers shall support enterprises respective to information, instructions and consultancy on domestic and foreign competition activities.

Concerning such researching purpose, Vietnam Chamber of Commerce and Industry (VCCI) - the national organization, which gathers and represents for Vietnam business communities and Vietnam business association, has nowadays been acting rather effectively in grouping and studying enterprise's opinions in order to give the State the reflections, recommendations and advices in terms of law issues and Competition Law ⁽²⁾. However, in order to effectively promote and enhance competitiveness of enterprises in the current stage, in addition to VCCI's activities, other supports from researchers of Competition Law should be in need.

4. Requirement of Studying Vietnam's Competition Law in the context of AEC establishment and development

4.1. Requirements for harmonization with national and regional competition policies

The European Union (EU) is the typically economic and political entity with deep linking level ⁽³⁾, and leans on one of the three pillars called the European Community (EC). Despite the differences in both process and integration principles between the international organization and ASEAN, the goals of establishing AEC are

similar with that of the European Community. The goal of establishing these economic communities are to ensure the highest employment rate and the sustainable growth, and to constantly improve the living standard of people in the member countries, through development of the unified and single market. Recognizing that, the author proposes the applications to the process where the member countries adjust their own competition laws to match the EU's common competition policy.

One of the four basic contents given by AEC is to build a highly competitive economic region. Accordingly, in addition to consumer protection; infrastructure development, taxation, e-commerce and intellectual property, competition policy is identified as one of six decisive factors⁴. During its establishment and development, the EU has developed the common competition policy for the region, which acts as an important legal basis for the fair and free competition among enterprises operating in all economic fields, and for completion of the EU's unified market ⁽⁵⁾. Based on the orientations mentioned above, for the purpose of smooth operation of AEC, inevitably a common competition policy shall be established. The common competition policy is only considered to be suitable and effective if the harmony between completion policies and competition laws issued by the member countries is archived during its implementation. Thus, based on the bridging principles, the competition laws of the member countries will play an important role

in the AEC establishment and development.

Competition policy includes rules and regulations to promote competition in the economy. Accordingly, competition policy includes all measures of the State in order to maintain competition, on one hand proactively create preconditions for competition, market opening, and removing barriers hindering market penetration, on the other enforce measures against the anticompetitive strategy of the enterprises. In other words, competition policy includes laws, mechanisms to ensure the implementation, as well as economic measures to stimulate competition in the market⁽⁶⁾.

In that sense, the study of Vietnam's Competition Law cannot be conducted in an independent and single way but with collation to ensure conformity with national and regional competition policies. Specifically, it is required to conduct the study under the following requirements:

Primarily, although the national law is still applied right on the territory of the nation, if the differences among the competition laws of the countries is too large, it is hard to archive the goal of "building the unified market and the common manufacturing premise". Therefore, the study to amend and supplement Vietnam's Competition Law shall always be conducted with comparison with the competition laws of other countries in the region to ensure the certain level of harmony. For example, in relation to the regulation on competition restriction agreement, now Vietnam's competition law has some certain

limitations that are required to be modified and supplemented. On the other hand, the prohibition regulations on the kinds of competition restriction agreements issued by Vietnam and Singapore are not perfectly the same⁽⁷⁾. Once AEC is established, if the laws of the member countries fail to reach a certain consistency, it will become an enormous hindrance to freedom of movement as well as restrict the search for business opportunities of enterprises. Therefore, this issue requires that when giving the recommendations to completing Vietnam's Competition Law, researchers should refer to the laws of Singapore and other countries in the region to minimize the conflict of laws.

Along with that, the study of Vietnam's Competition Law shall give predictions and future-toward orientations on the common competition policies of the region. It is possible to give the statements above, because in recent years, the competition laws and policies of EU has changed significantly by the impacts of intra-EU as well as international factors. In addition to requirements of harmonization with the competition laws applied to the Member countries in event of admission of the new members, the globalization trend also requires the EU's competition policy to be changed more appropriately⁽⁸⁾. Therefore, in order to limit the adjustment of legal provisions, the scientists are required to pay attention to the changes of international and regional trends during studying Vietnam's Competition Law

4.2. Requirements for harmonization with related International Agreements and Organizations

According to the schedule of establishment, at the end of 2015, AEC has been officially established. Meanwhile, Vietnam has signed and became the member of several economic organizations in the region and the world such as APEC and WTO, and most recently, Vietnam has participated in negotiation of Trans-Pacific Partnership TPP and Free Trade Agreements with many countries. It is required to make the certain adjustment on Vietnam's competition law to ensure its conformity with the Agreements above.

4.3. Requirements for consistency with future development

Vietnam's Competition Law adjusts the competitive behaviors of entities now operating in Vietnam. However, after the AEC operates, it is possible for Vietnam's enterprises to merge or consolidate into those in other member countries and to perform business activities in Vietnam. Accordingly, the conducting research this legislation is also required to be altered to regulate effectively multinational and transnational companies, which has not been limited by geographical borders and new trends in future.

Conclusion

Based on the purposes and requirements of the study as presented above, from the author's point of view, the study of Vietnam's Competition Law will become comprehensive and complete in term of the social sciences

and humanities. Accordingly, the results of studying the Competition Law not only contribute to supporting the entities in integrating more sustainably but also ensure the efficiency and stability of the legal provisions during the AEC establishment and development. Finally, the author suggests that these issues requiring to be studied should be not only applied during the study of Vietnam's Competition Law but also consider as an important requirement for scientists during studying the laws in the member countries in the region.

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