

DECREE 35
WITH
DETAILED REGULATIONS FOR IMPLEMENTATION OF
THE LAW ON COMPETITION

Dated 24 March 2020

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**DECREE
WITH
DETAILED REGULATIONS FOR IMPLEMENTATION OF
THE LAW ON COMPETITION**

Pursuant to the *Law on Organization of the Government* dated 19 June 2015;

Pursuant to the *Law on Competition* dated 12 June 2018;

On the proposal of the Minister of Industry and Trade;

The Government hereby issues this Decree with detailed regulations for implementing a number of articles of the *Law on Competition*.

CHAPTER 1

General Provisions

Article 1 *Governing scope*

This Decree provides detailed regulations on the following articles of the *Law on Competition*: articles 9 [*Determination of relevant market*]¹; 10 [*Determination of market share and combined market share*], 13 [*Assessment of significant competition-restraining impact or ability to cause such impact*], 26 [*Determination of significant market force/power*], 31 [*Assessment of significant competition-restraining impact or ability to cause such impact of economic concentration*], 32 [*Assessment of positive impact of economic concentration*], 33 [*Notification of economic concentration*], 36 [*Preliminary appraisal of economic concentration*], 56 [*Evidence*], and 82 [*Application of preventive measures and measures to ensure resolution of administrative breaches during investigation and resolution of competition cases*].

Article 2 *Definitions*

1 *Controlling or governing* an enterprise or a business line of another enterprise means one of the following cases:

- (a) The acquiring enterprise gains ownership of more than 50% of the charter capital of, or above 50% of the voting shares of the acquired enterprise;

¹ Allensfootnote: Square brackets contain translator's comments only.

- (b) The acquiring enterprise gains ownership of or the right to use more than 50% of the assets of the acquired enterprise during all or one business line of the acquired enterprise;
 - (c) The acquiring enterprise has one of the following rights:
 - To directly or indirectly decide the appointment, removal or dismissal of a majority or all of the members of the board of management, chairman of the members' council, director or general director of the acquired enterprise;
 - To decide the amendment of or addition to the charter of the acquired enterprise;
 - To decide important issues during business activities of the acquired enterprise comprising selection of the form of organization of business, selection of business lines and the geographical area and forms of business; selection to adjust the scale and the business lines; selection of the form and method of raising, allocating and utilizing business capital of such enterprise.
- 2 *Group of enterprises affiliated regarding organization and finance (hereinafter abbreviated as group of affiliated enterprises)* means a group of enterprises jointly subject to control and governance by one or more of the enterprises in the group or which have a common operational section.
- 3 *Market share* means the numerical value of the market share of any one enterprise in the relevant market determined in accordance with article 10 of the *Law on Competition*, for example if an enterprise has a market share of 30% in the relevant market, the market share of such enterprise is 30.
- 4 *Total sum of market share squares* of enterprises in the relevant market are calculated by the following formula:
- $$\text{Total sum of market share squares} = S_1^2 + S_2^2 + \dots S_{(n)}^2$$
- In which: $S_1, \dots S_{(n)}$ is the corresponding market share of the enterprise from 1 to n;
- For example: In the same relevant market, there are three (3) enterprises with market shares of 30%, 30% and 40% respectively. The total sum of market share squares of the 3 enterprises in the relevant market is determined as $30^2 + 30^2 + 40^2 = 3400$.
- 5 *Barrier to market entry or market expansion* means factors which hinder market access or market expansion by enterprises.

CHAPTER 2

Determination of Relevant Market and Market Share

Section 1

Determination of Relevant Market

Article 3 *Relevant market*

- 1 Relevant market is determined based on relevant product market and relevant geographical market.
- 2 During the process of determining the relevant market, the National Competition Council [NCC] has the right to consult the opinions of agencies managing industries and sectors, and other expert enterprises, organizations and individuals.

Article 4 *Determination of relevant product market*

- 1 *Relevant product market* means a market of goods and services which are interchangeable in terms of characteristics, use purpose and price.

- 2 Goods and services are deemed to be interchangeable in terms of characteristics if such goods or services have one or more of the following factors which are the same or similar:
- (a) Characteristics of the goods or services;
 - (b) Composition of the goods or services;
 - (c) Physical or chemical properties of the goods;
 - (d) Technical features of the goods or services;
 - (dd) Side effects of the goods or services on users;
 - (e) Absorption capacity of users;
 - (g) Other distinct properties of the goods or services.
- 3 Goods or services are deemed to be interchangeable in terms of their use purpose if such goods or services have the same main use purpose.
- 4 Goods or services are deemed to be interchangeable in terms of their price when their price differs by no more than 5% in similar transaction conditions. When such price difference is more than 5%, the NCC shall determine whether such goods or services are interchangeable in terms of price based on the addition of a number of the factors prescribed in clause 5 below or based on the method prescribed in clause 6 below.
- 5 When a determination of the interchangeable nature of goods or services as prescribed in clauses 2, 3 and 4 above is insufficient to reach a conclusion on the relevant product market, the NCC may additionally consider one or more of the following factors:
- (a) The rate of change in the demand for a type of goods or services when there is a change in the price of another type of goods or services;
 - (b) The costs and time required for customers to switch to buying or using other goods or services;
 - (c) The time/duration of use of the goods or services;
 - (d) Consumer habits;
 - (dd) Legal provisions affecting the ability to substitute the goods or services;
 - (e) The ability to distinguish between buying and selling prices for different customer groups;
 - (g) The possibility of substituting the supply of the type of goods or services in accordance with article 5 of this Decree.
- 6 Where necessary, the NCC may determine the interchangeable nature of goods or services in terms of price by the following methods:

Goods and services are deemed to be interchangeable in terms of price if at least 35% of a quantity of a random sample being 1000 consumers who live in the relevant geographical area switch to buy or intend to buy other goods or services with the same characteristics and use purpose as those which the consumers currently use or intend to use, where the price of such goods or services increases by more than 10% and is maintained for six (6) consecutive months.

Where the number of consumers living in the relevant geographical area as prescribed in this clause is less than 1000, then the volume of the random sample shall be at least 50% of the total number of consumers in such area.

Article 5 *Determination of ability to switch supply*

Ability to switch supply means that enterprises currently producing and/or trading a type of goods or services are able to increase the output or quantity sold or other enterprises commence or transfer to production and/or trading of such product in a period of less than six (6) months without a significant increase in cost if the price of such goods or services increases by 5% up to 10%.

Article 6 *Determination of relevant product market in special cases*

- 1 The relevant product market in a special case may be determined as the market of one particular or one particular group of goods and services based on the characteristics of such goods or services, on consumer habits or on specific trading methods including methods using information technology.
- 2 When determining the relevant product market in the case prescribed in clause 1 above, consideration may also be given to the market of ancillary goods or services for the relevant product.
- 3 *Ancillary product for the relevant product* means goods or services used to enhance the performance or effectiveness or necessity to use the relevant product. Accordingly, when the price of the ancillary product increases or decreases, then the demand for the relevant product will correspondingly increase or decrease.

Article 7 *Determination of relevant geographical market*

- 1 *Relevant geographical market* means a specific geographical area in which interchangeable goods or services are supplied on similar competitive conditions and which area is significantly different from neighbouring geographical areas.
- 2 The boundary of a geographical area prescribed in clause 1 above is determined based on the following factors:
 - (a) The business establishments of enterprises participating in distribution of the relevant goods or services are located within the geographical area;
 - (b) The business establishments of other enterprises located in neighbouring geographical areas are close enough to the geographical area prescribed in sub-clause (a) above to compete with relevant goods or services in such geographical area;
 - (c) Costs of transporting the goods or of providing the services;
 - (d) Time/duration for transporting the goods or providing the services;
 - (dd) Barriers to market entry or market expansion;
 - (e) Consumer habits;
 - (g) Costs and time for customers to purchase the goods or services.
- 3 A geographical area is deemed to have similar competitive conditions and to significantly differ from neighbouring geographical areas if it satisfies either or both of the following criteria:
 - (a) The transportation costs and transportation time cause the price of the goods or services to increase by no more than 10%;
 - (b) One of the barriers to market entry and market expansion prescribed in article 8 is present.

Article 8 *Barriers to market entry and market expansion*

Various types of barriers to market entry and market expansion comprise:

- 1 Legal barriers created by the laws and policies of the State including regulations on import duty and import quotas; technical specifications; conditions and procedures in order to produce or trade the goods or services; regulations on use of the goods or services; professional standards, and other administrative decisions of State administrative agencies.
- 2 Financial barriers comprising costs of investment in production and trading of the goods or services, and access to capital sources, credit and other financial sources by enterprises.
- 3 Initial costs at the time of entering the market which enterprises are unable to recover when they withdraw from the market;
- 4 Barriers to access to and possession of sources of supply and essential infrastructure for production and business; and networks of distribution and sale of goods and services in the market;
- 5 Consumption habits;
- 6 Business practices and habits;
- 7 Barriers relating to the exercise of rights of organizations and individuals to intellectual assets, comprising copyright and copyright related rights, industrial property rights and rights to plant varieties as stipulated by the law on intellectual property rights;
- 8 Other barriers to market entry and market expansion.

Section 2

Determining Market Share

Article 9 *Principles for determining the market share of an enterprise in the relevant market*

- 1 The market share of an enterprise in the relevant market is determined by one of the methods prescribed in article 10 of the *Law on Competition*.
- 2 During the process of determining the market share, the National Competition Council [NCC] has the right to consult the opinions of agencies managing industries and sectors, and other expert enterprises, organizations and individuals.

Article 10 *Determining the market share of a group of affiliated enterprises*

- 1 The sales turnover, input purchase turnover, number of units sold, and input purchased for any one type of goods and services of a group of affiliated enterprises are determined as follows:
 - (a) The sales turnover, input purchase turnover, number of units sold, and input purchased for any one type of goods and services in order to determine the market share of a group of affiliated enterprises is calculated as equal to the total sales turnovers, input purchase turnovers, numbers of units sold, and input purchased for such type of goods and services of all of the enterprises in such group;
 - (b) Sales turnovers, input purchase turnovers, numbers of units sold, and input purchased for any one type of goods and services of a group of affiliated enterprises does not include the sales turnover, input purchase turnover, or number of units sold and input purchased from the sale of goods or supply of services as between the enterprises in such group.
- 2 The market share of an enterprise belonging to a group of affiliated enterprises is the market share of such group.

CHAPTER 3

Assessment of Significant Competition-Restraining Impact or Ability to Cause Such Impact of an Agreement in Restraint of Competition

Article 11 *Contents of an assessment of the significant competition-restraining impact or ability to cause such impact of an agreement in restraint of competition*

- 1 The National Competition Council [NCC] assesses the significant competition-restraining impact or ability to cause same of an agreement in restraint of competition in the cases prescribed in clauses 3 and 4 of article 12 of the *Law on Competition*.
- 2 An assessment of the impact or ability to cause the impact referred to in clause 1 above is based on one or more of the following factors:
 - (a) The change or trend of changes in the market share ratio of enterprises to the agreement as assessed in relation to other enterprises being competitors not participating in such agreement;
 - (b) Barriers to market access or expansion which are assessed to determine any competition-restraining impact or ability to cause same of the agreement, based on factors influencing the decision of an enterprise when accessing or expanding the market as prescribed in article 8 above;
 - (c) Restrictions on research, development and renovation of technologies or on technological capacity is assessed to determine the impact or ability to cause the impact referred to in clause 1 above of the agreement on research, development and renovation of technologies or the upgrading of technological capacity in relevant industries and sectors;
 - (d) Reduction of the ability to access or possess essential infrastructure is assessed based on the level of necessity of such infrastructure for production and business activities and based on the costs and time for enterprises which are competitors and non-participants in the agreement to access and retain such infrastructure or similar infrastructure;
 - (dd) Increase of costs and time of customers to purchase goods or services from enterprises which are parties to the agreement or when changing to purchase other relevant goods or services is determined by comparing the necessary costs and time for customers purchasing goods or services from participants in the agreement or when switching to purchase goods or services of enterprises which are competitors both before and after the agreement;
 - (e) Hindering competition in the market via the control of special factors in industries and sectors relating to the enterprises which are parties to the agreement is determined based on the level of dominance of such factors for competitive activities of enterprises in the market.
- 3 An agreement in restraint of competition is deemed not to have a significant competition-restraining impact or ability to cause same in either of the following cases:
 - (a) Applicable to an agreement between enterprises in the same relevant market, when the combined market share of the participating enterprises is below 5%;
 - (b) Applicable to an agreement between enterprises conducting business at different stages in the same production, distribution and supply chain for a specified type of goods or services, when the market share of each participating enterprise is below 15%.
- 4 When assessing the impact or ability to cause the impact referred to in clause 1 above, the NCC has the right to consult the opinions of agencies, organizations and individuals involved and also to require enterprises participating in the agreement to provide necessary information and data.

CHAPTER 4

Determination of Significant Market Force/Power

Article 12 *Contents of a determination of the significant market force of an enterprise or group of enterprises*

- 1 The NCC shall make a determination of the significant market force of an enterprise or group of enterprises as prescribed in article 26 of the *Law on Competition* based on one or more of the following factors:
 - (a) Correlation of market shares [market share ratio] among enterprises in the relevant market, assessed on the basis of comparison of the market shares of the enterprise or group of enterprises in the relevant market;
 - (b) The financial strength and scale of the enterprise or group of enterprises, assessed on the basis of financial capacity, ability to access capital sources, credit capital and other financial sources, total capital sources, total assets, number of employees, production scale, distribution network, and sale of goods or services by the enterprise or group of enterprises in relation to other enterprises being competitors;
 - (c) Barriers to other enterprises entering or expanding the market, assessed on factors affecting the decision of an enterprise when accessing or expanding the market as prescribed in article 8 above;
 - (d) Ability to possess, access and control the market for distribution and/or sale of goods or services, or supply sources of goods and services, assessed by looking at the advantages of the enterprise or group of enterprises compared to their competitors due to holding and controlling a distribution network or network for the sale of goods or services or the sources of supply of goods or services in the market;
 - (dd) The advantages of technology and technical infrastructure of the enterprise or group of enterprises, assessed by looking at the advantages of the technology and technology infrastructure owned or used by such enterprise or group of enterprises for their production and business as compared with their competitors;
 - (e) Ownership and right to hold and access infrastructure, assessed in order to determine the advantages of the enterprise or group of enterprises over their competitors based on the necessary level and ability to access infrastructure for production and trading of goods or services;
 - (g) Ownership and right to use objects of intellectual property rights, assessed to determine the advantages of the enterprise or group of enterprises compared to their competitors based on the essential level and ability to access objects of intellectual property rights by the enterprise during production and trading of goods or services;
 - (h) Ability to switch to sources of supply and demand of other relevant goods or services, determined on the basis of the necessary costs and time for customers and enterprises to switch to the purchase and sale of goods and services of other enterprises in the same relevant market;
 - (i) Special factors in the industry or sector in which the enterprise or group of enterprises is currently conducting business, assessed to determine the advantages of the enterprise or group of enterprises compared to their competitors regarding specific conditions of such industry or sector.
- 2 During the process of determining significant market force of an enterprise or group of enterprises, the NCC has the right to consult the opinions of relevant agencies, organizations and individuals and to require enterprises to provide necessary information and data.

CHAPTER 5

Economic Concentration

Article 13 *Threshold requiring notification of an economic concentration*

- 1 Enterprises proposing to participate in an economic concentration as prescribed in article 33.1 of the *Law on Competition*, except for the enterprises prescribed in clause 2 below, must notify the NCC prior to carrying out the economic concentration in any of the following cases:
 - (a) Total assets in the market of Vietnam of the enterprise or group of affiliated enterprises of which such enterprise is a member was three (3) trillion VND² or more in the financial year immediately preceding the year of proposed implementation of economic concentration;
 - (b) Total sales turnover or input purchase turnover in the market of Vietnam of the enterprise or group of affiliated enterprises of which the enterprise is a member was three (3) trillion VND or more in the financial year immediately preceding the year of proposed implementation of economic concentration;
 - (c) The transaction value of the economic concentration is one (1) trillion VND or more;
 - (d) The combined market share of the enterprises proposing to participate in the economic concentration was 20% or more in the relevant market in the financial year immediately preceding the year of proposed implementation of economic concentration.
- 2 Enterprises being credit institutions, insurance enterprises [insurers] and securities companies proposing to participate in an economic concentration in accordance with article 33.1 of the *Law on Competition* must notify the NCC before implementing such economic concentration in any one of the following cases:
 - (a) The total assets in the Vietnamese market of the insurer or group of affiliated insurers of which such insurer is a member or of the [securities] company or group of affiliated securities company of which such company is a member was 15,000 billion VND or more in the financial year immediately preceding the year in which it is proposed to implement the economic concentration; or if the total assets in the Vietnamese market of the credit institution or group of affiliated credit institutions of which such credit institution is a member was 20% or of the total assets of the system of credit institutions in the Vietnamese market in the financial year immediately preceding the year in which it is proposed to implement the economic concentration;
 - (b) Total sales turnovers or input purchase turnovers in the Vietnamese market of the insurer or group of affiliated insurers of which such insurer is a member was 10,000 billion VND or more in the financial year immediately preceding the year in which it is proposed to implement the economic concentration; or total sales turnovers or input purchase turnovers in the Vietnamese market of the securities company or group of affiliated securities companies of which such securities company is a member was 3,000 billion VND or more in the financial year immediately preceding the year in which it is proposed to implement the economic concentration; or total turnovers in the Vietnamese market of the credit institution or group of affiliated credit institutions of which such credit institution is a member was 20% or more of the total turnover of the system of credit institutions in the Vietnamese market in the financial year immediately preceding the year in which it is proposed to implement the economic concentration;
 - (c) The transaction value of the economic concentration of insurers [or] securities companies was 3,000 billion VND or more; or the transaction value of the economic concentration of credit institutions was 20% or more of the total chartered capital of the system of credit institutions in the

² Allensfootnote: Approximately US\$86 million.

financial year immediately preceding the year in which it is proposed to implement the economic concentration;

- (d) The combined market share of the enterprises proposing to participate in the economic concentration was 20% or more of the relevant market in the financial year immediately preceding the year in which it is proposed to implement the economic concentration.
- 3 The threshold requiring notification of an economic concentration specified in sub-clause (a), (b) or (d) of clause 1 and in sub-clause (a), (b) or (d) of clause 2 above shall apply to an economic concentration conducted outside the territory of Vietnam.

Article 14 *Preliminary appraisal of an economic concentration*

- 1 Within 30 days after receipt of a complete and valid file notifying an economic concentration, the NCC shall issue a notice of the results of its preliminary appraisal of the economic concentration with either of the following contents:
- (a) The economic concentration is permitted to be conducted;
 - (b) The economic concentration will be subject to an official appraisal.
- 2 An economic concentration is permitted to be conducted in any one of the following cases:
- (a) The combined market share of the enterprises proposing to participate in the economic concentration is less than 20% in the relevant market;
 - (b) The combined market share of the enterprises proposing to participate in the economic concentration is 20% or more in the relevant market and the total market share squares of the enterprises after such economic concentration in the relevant market will be less than 1,800;
 - (c) The combined market share of the enterprises participating in the economic concentration is 20% or more in the relevant market, and the total market share squares of the enterprises after such economic concentration in the relevant market will be above 1,800 and the increase in the total market share squares of the enterprises in the relevant market both before and after the economic concentration is less than 100;
 - (d) The market share of the enterprises participating in the economic concentration which have a relationship with each other in the chain of production, distribution and supply of a specified type of goods or whose business lines provide mutual inputs or provide ancillary support to each other is less than 20% in each relevant market.
- 3 If on expiry of the time-limit prescribed in clause 1 above the NCC has not issued a notice of the results of its preliminary appraisal, then the economic concentration is permitted to be implemented.
- 4 An official appraisal of an economic concentration shall proceed if such economic concentration does not fall within the cases prescribed in clauses 2 and 3 above.

Article 15 *Contents of an assessment of the significant competition-restraining impact or ability to cause such impact of an economic concentration*

- 1 Combined market share of the enterprises participating in the economic concentration in the relevant market, both before and after the economic concentration.
- 2 Extent of concentration in the relevant market both before and after the concentration, which is assessed in order to determine the danger of creating or strengthening the market power of enterprises and the ability to increase coordination or collusion between enterprises in the relevant market.

- 3 Relationship of the enterprises participating in the economic concentration in the chain of production, distribution and supply of a specified type of goods or services or whose business lines provide mutual inputs and assistance, which is assessed to determine the ability of the parties after the economic concentration to create superior competitive advantages as compared to other competitors aimed at preventing or excluding competition in accessing the market.
- 4 There is an overall consideration of the competitive advantage brought about by the economic concentration in the relevant market, based on advantages regarding product characteristics, production and distribution chain, financial capacity, brand name, technology, intellectual property rights and other advantages of the enterprises after the economic concentration compared to competitors in the relevant market, resulting in the risk of creating or strengthening the significant market power of such enterprises formed after the economic concentration.
- 5 The ability of an enterprise to raise prices or increase its profit margin after the economic concentration is assessed on the basis of one or more of the following factors:
 - (a) Expected change in demand in terms of the possibility of an enterprise after the economic concentration raising prices, changing output or changing the trading conditions of goods or services in the relevant market;
 - (b) Expected change in supply by competitors in the relevant market in terms of the possibility of an enterprise after the economic concentration raising prices, changing output or changing the trading conditions of goods or services;
 - (c) Expected change in prices, volume and trading conditions by suppliers of goods or services being input factors for enterprises participating in the economic concentration;
 - (d) Conditions for and risk of competitors in the market increasing coordination or reaching agreement to increase selling prices or profit margins;
 - (dd) Other factors affecting the ability of the enterprise after the economic concentration to increase its prices or profit margin.
- 6 The ability of an enterprise after the economic concentration to exclude or prevent other enterprises from accessing or expanding the market is assessed on the basis of one or more of the following factors:
 - (a) The level of control of input factors for production or business both before and after the economic concentration;
 - (b) Special characteristics of competition in the industry or sector and competitive behaviour of enterprises participating in the economic concentration in the period prior to such economic concentration;
 - (c) Barriers to market entry and market expansion as prescribed in article 8 of this Decree;
 - (d) Other factors resulting in the possibility of the enterprise after the economic concentration eliminating or preventing other enterprises from accessing or expanding the market.
- 7 Particular factors in the industry or sector which the enterprises participating in the economic concentration consider when such factors directly influence or significantly change the results of the assessment of significant competition-restraining impact or ability to cause same of an economic concentration as prescribed in this article.

Article 16 *Contents of an assessment of the positive impact of an economic concentration*

The NCC assesses the positive impact of an economic concentration based on one or more of the following factors or a combination of them:

- 1 The positive impact on development of the industry or sector and on science and technology in accordance with the State's strategy and planning is assessed from the following aspects:
 - (a) Whether or not the economic concentration will promote economic efficiency in terms of size and resources of the locality, industry, sector and society, in coordination with the objectives set out in the Government's or Prime Minister's approved strategy and planning for the development of industries and sectors;
 - (b) The level of application of scientific advances and technological improvements by the enterprise after the economic concentration in order to improve productivity, quality and business efficiency in order to reduce costs, improve the quality of products and services or otherwise serve the interests of consumers and the community.
- 2 The positive impact on the development of small and medium-sized enterprises is considered on the basis of an assessment of the opportunities and favourable conditions brought about by the economic concentration for small and medium-sized enterprises to access and expand the market or to participate in production chains and distribution networks for goods and services.
- 3 Whether or not the enterprise after the economic concentration strengthened the competitiveness of Vietnamese enterprises in the international market is assessed on the basis of the positive consequences of the economic concentration in expanding the scale of production, domestic consumption and export of goods or services.

CHAPTER 6

Competition Legal Proceedings

Section 1

Evidence

Article 17 *Rights and obligations regarding evidence*

- 1 The complainant has the right and obligation to collate and submit data and evidence to prove the complaint is well grounded and lawful.
- 2 People with related interests and obligations who make an independent request/claim have the right and obligation to provide data and evidence to prove that their requests are well grounded and lawful.
- 3 A defendant, an investigated party or a person with related rights and obligations who is opposing the complaint, request or petition of another person against him/her has the right to prove such opposition is well grounded and must provide evidence to prove same.
- 4 A competition investigation agency has the obligation to prove that the act or practice is in breach of the law on competition as prescribed in article 80.2 of the *Law on Competition*.

Article 18 *Circumstances and facts not required to be proven*

It is not necessary to provide evidence of the following circumstances and facts:

- 1 Clear circumstances and facts which everybody knows and which are acknowledged by the Council dealing with the case ["Council"] or by the NCC.

- 2 Circumstances and facts recorded in documents which have been lawfully notarized or authenticated. If there is any doubt about the authenticity of a circumstance or fact in a document, then the NCC may require the entity which provided or submitted same to present the original.
- 3 If the defendant, an investigated party or a person with related rights and obligations acknowledges or does not object to circumstances or facts or any data or document which a party provides, then the latter is not required to provide evidence of same. If the defendant, an investigated party or a person with related rights and obligations has a representative participating in the competition proceedings, then the acknowledgement or failure to object by such representative shall be deemed to be acknowledgement by such former litigant so long as the acknowledgement did not exceed the scope of representation.

Article 19 *Submitting evidence*

- 1 Participants in competition legal proceedings as prescribed in article 66 of the *Law on Competition*, except for interpreters, have the right and obligation to file data and evidence with the competition investigation agency or the Council during the process of such investigation and resolution of the case.
- 2 Minutes must be prepared when evidence is filed as prescribed in clause 1 above, such minutes to record the name, form, contents and characteristics of the evidence, the serial number of the document and number of pages, and the time of its receipt; there must be the signature or fingerprint of the person filing the evidence, the signature of the recipient, and the seal of the competition investigation agency or NCC. Minutes are prepared in two copies, one to be retained in the file of the competition case and one to be handed to the person submitting the evidence.
- 3 Documents and evidence in an ethnic minority language or a foreign language must be accompanied by a lawfully notarized [or] authenticated translation into Vietnamese.
- 4 The time of lodging data and evidence must not exceed the time-limit [for investigating competition cases] set out in articles 81 and 87, or the extended time set out in articles 89, 90 and 91 of the *Law on Competition* or must not exceed the time-limit required by the chairman of the NCC or chairman of the Council.

Article 20 *Arranging for or requesting an expert evaluation*

- 1 The complainant, the defendant, the investigated party or a person with related rights and obligations has the right to request that the chairperson of the competition investigation agency or of the Council arrange for an expert evaluation, or any of the former may request an expert evaluation if such chairperson refuses to arrange same. The right to request an expert evaluation is exercised within the duration of the investigation or within the time for dealing with the competition case.
- 2 On request by any of the parties referred to in clause 1 above or when the chairperson of the competition investigation agency or of the Council considers it necessary, such chairperson may issue a decision arranging for an expert evaluation, specifying the full name and address of the person to provide same, the subject or matters to be evaluated, and specific issues on which an evaluation conclusion must be provided.
- 3 Where the evaluation conclusion is considered unclear, on request by the complainant, the defendant, the investigated party or a person with related rights and obligations or when the chairperson of the competition investigation agency or of the Council considers it necessary, such chairperson requests that the evaluation expert explain the evaluation conclusion or summons the evaluation expert to directly present the relevant contents.
- 4 On request by the complainant, the defendant, the investigated party or a person with related rights and obligations or when the chairperson of the competition investigation agency or of the Council

considers it necessary, such chairperson may issue a decision on an additional expert evaluation if the conclusion reached by the initial evaluation is unclear or incomplete or if new issues have arisen since such first conclusion.

- 5 A re-evaluation may be held if there are grounds showing that the original conclusion was inaccurate or in breach of law.

Article 21 *Arranging for an evaluation if evidence is alleged to be false*

- 1 If evidence is alleged to be false, the person providing same may withdraw it, but if he or she does not do so then the person making the allegation has the right to request the competition investigation agency or the Council to arrange for an expert evaluation.
- 2 If there are indications of a criminal offence regarding evidence, then the competition investigation agency or the Council may transfer the matter to the competent agency to conduct an investigation in accordance with criminal procedures.
- 3 Any person providing false evidence must compensate for loss caused to others and must bear the costs of an expert evaluation if the competition investigation agency or Council arranges for an expert evaluation.

Article 22 *Entrusting others to collate data and evidence*

- 1 The NCC may, during the process of dealing with a competition case, issue a decision entrusting a competent agency prescribed in clause 3 below to take witness statements from people participating in the proceedings or to undertake other measures to collate data and evidence and verify circumstances of the case.
- 2 Any decision as referred to in clause 1 above must specify the name and address of the participant in the proceedings and the specific work entrusted in order to collate data and evidence.
- 3 If it is necessary to collect data and evidence overseas, then the NCC may, at the request of the chairperson of the competition investigation agency or of the Council, conduct entrustment procedures via the competent Vietnamese agency or via a foreign agency if Vietnam and the country concerned are both members of an international treaty with provisions on this issue, or may conduct procedures on the basis of reciprocity but not contrary to the law of Vietnam and in accordance with international law and practice.
- 4 If the task entrusted as prescribed in clause 1 above is not performed, or is performed but no reply is received, then the NCC and the Council shall proceed on the basis of information and evidence already in the case file.

Article 23 *Preserving evidence*

- 1 The competition investigation agency and the Council at which any evidence is filed, are responsible to preserve same.
- 2 If evidence is unable to be filed at the competition investigation agency or the Council, then the person holding same is responsible to preserve it.
- 3 If it is necessary to deliver evidence to a third party for preservation, then the chairperson of the competition investigation agency or the Council shall issue a decision and prepare minutes of handover of the evidence to the third party for preservation. The person required to preserve evidence must sign such minutes, is entitled to remuneration, and shall be liable for preservation of the evidence.
- 4 It is strictly prohibited to destroy documents and evidence.

Article 24 *Evaluation of evidence*

- 1 There must be a complete, objective, comprehensive and accurate evaluation of evidence.
- 2 The competition investigation agency and the Council must assess each item of evidence and the relationship between such item, and confirm the legal validity of each item of evidence.

Article 25 *Announcement and use of evidence*

- 1 All evidence must be publicly announced and used, except in the cases prescribed in clauses 2 and 3 below.
- 2 The chairman of the NCC, of the competition investigation agency or the Council shall not announce or use the following evidence:
 - (a) Evidence in the category of State secret as prescribed by law;
 - (b) Evidence relevant to fine customs and traditions, to trade or business secrets, or to personal secrets pursuant to a legitimate request from a participant in the competition proceedings.
- 3 In necessary cases, the chairman of the NCC, the competition investigation agency or the Council has the right to announce and use some items of evidence, or a section or an entire item of evidence at a time which is appropriate for the investigation or dealing with the case.
- 4 Agencies, people conducting competition proceedings and people participating in same must retain confidentiality of the evidence prescribed in clause 2 above in accordance with law.

Section 2

Preventive Measures and Measures to Ensure Resolution of Administrative Breaches During an Investigation and Resolution of Competitive Cases

Article 26 *Procedures for requesting a competent agency to apply preventive measures and measures to ensure resolution of administrative breaches during investigation and resolution of a competition case*

- 1 The chairman of the NCC may request in writing that a competent agency apply preventive measures and measures to ensure resolution of administrative breaches during the investigation and resolution of a competition case.
- 2 The written request for application of the above-mentioned measures must contain the following:
 - (a) Date;
 - (b) Name and address of the enterprise, industry association or other agency, organization or individual against whom it is proposed to apply such measures;
 - (c) Summary of the breach of the law on competition;
 - (d) The reason for application of such measures during the investigation or dealing with the competition case;
 - (e) The time and scope of application of such measures and any other specific recommendations.
- 3 Within three (3) business days after receipt of a written request to apply measures, the agency so requested must issue a decision applying the above-mentioned measures, and if it refuses to do so, it must provide a written response setting out its reasons.

Article 27 *Responsibility to coordinate in applying preventive measures and measures to ensure resolution of administrative breaches during investigation and resolution of a competition*

case

The NCC is responsible to coordinate with any competent agency which applies the measures referred to in article 27 above during investigation and resolution of a competition case.

Article 28 *Rescission of application of preventive measures and measures to ensure resolution of administrative breaches during investigation and resolution of a competition case*

If there is no longer any reason for application of preventive measures or measures to ensure resolution of an administrative breach during investigation and resolution of the competent case, then the chairman of the NCC requests that the competent agency rescind such measures.

CHAPTER 7

Implementing Provisions

Article 29 *Effectiveness*

This Decree is of full force and effect as from 15 May 2020.

Article 30 *Organization of implementation*

- 1 The Ministry of Finance shall provide guidelines on establishment, management and use of funds to ensure funding for expenses arising during evaluation of any application file for exemption of an agreement in restraint of competition, or of a file notifying an economic concentration, or during the investigation of a competition case and conduct of competition legal proceedings.
- 2 The Minister of Industry and Trade and the chairman of the NCC are responsible to arrange implementation of this Decree.
- 3 Ministers, heads of ministerial equivalent and Government agencies, and chairmen of provincial people's committees are responsible to implement this Decree.

On behalf of the Government
Prime Minister
NGUYEN XUAN PHUC