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Vietnam

MERGER CONTROL

Contributor

LNT & Partners

Dr Nguyen Anh Tuan

Partner | tuan.nguyen@lntpartners.com

Tran Hai Thinh

Associate | thinh.tran@lntpartners.com

Tran Hoang My

Associate | my.tran@lntpartners.com

This country-specific Q&A provides an overview of merger control laws and regulations applicable in Vietnam.

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VIETNAM
MERGER CONTROL

1. Overview

The principal regulator: The Vietnam Competition Commission (VCC) is Vietnam's principal merger authority. The VCC is under the purview of the Ministry of Industry and Trade, which as its name suggests is the government body responsible for the advancement and regulation of Vietnam's industrial and commercial development.

The VCC was formally established on 1 April 2023 and assumes the functions of overseeing the merger control regime and imposing fines and remedies formerly discharged by the Vietnam Competition and Consumer Authority (VCCA) and the Vietnam Competition Council, respectively.

Main legislation: The primary merger control legislation is the Competition Law 2018 (Chapter V), which came into force on 1 July 2019. The Competition Law 2018 provides for, among others, a definition of concentration, notification thresholds, dossier requirements, the appraisal process, and violations of the merger control regime.

A number of provisions of the Competition Law 2018 are guided by Decree No. 35/2020/ND-CP dated 24 March 2020 (**Guiding Decree**), which sets out, among others, specific thresholds for merger filings and appraisal criteria for the preliminary and official reviews. The Guiding Decree took effect from 15 May 2020.

2. Is notification compulsory or voluntary?

Notification is compulsory for any proposed transaction that (i) qualifies as an economic concentration within the meaning of the law and (ii) crosses any applicable filing threshold (see questions 4 and 6). Since there is no exemption to filing, notification may still be triggered by intra-group restructuring, foreign-to-foreign transactions and transactions involving a target or joint venture with no local nexus (see question 11).

3. Is there a prohibition on completion or closing prior to clearance by the relevant authority? Are there possibilities for derogation or carve out?

Yes, the Competition Law imposes a standstill obligation on merger parties which means they have to put the contemplated transaction on hold until it is cleared, either automatically or after a preliminary/full review.

As for the possibilities for derogation or carve out, there are no explicit legal provisions on this issue. In our experience, the competition authority's current approach suggests that carve-out would be possible provided that global completion does not change the physical structure of the domestic market (i.e., the number of incumbents). For instance, in a horizontal merger, carve-out would arguably be permitted if after global completion the local subsidiaries of the purchaser and the target remain separate and independent until local clearance is granted. However, parties should be cautious as the authority's view is subject to change.

4. What types of transaction are notifiable or reviewable and what is the test for control?

A transaction will be notifiable if it qualifies as an economic concentration for Vietnamese filing purposes and crosses any applicable filing threshold (see question 6). An economic concentration occurs when there is a merger, consolidation, acquisition, or joint venture.

Merger: one or more undertakings transfer all of their lawful assets, rights, obligations and interests to another business and, concurrently, terminate their business activities or cease to exist.

Consolidation: two or more undertakings transfer all of their lawful assets, rights, obligations and interests to establish a new entity and, concurrently, terminate their business activities or cease to exist altogether.

Acquisition: an undertaking directly or indirectly acquires all or part of the capital contribution or assets of another undertaking sufficient to control the acquiree or any of its business lines.

Joint venture: two or more undertakings jointly establish a new entity by contributing a portion of their lawful assets, rights, obligations and interests (see also question 9).

As for the control test, an undertaking (A) is deemed to control another undertaking (B) if A (i) owns more than 50% of B's charter capital or voting rights; (ii) owns or has the right to use more than 50% of B's assets; or (iii) has any of the following rights:

- directly or indirectly appoint or dismiss all or the majority of B's executive management, or the Chairperson of the Members' Council [and] executive-level officers;
- alter B's constitutional documents; or
- make crucial decisions with regard to B's business.

"Control" is broadly defined to also include de facto control. However, the current interpretation of the competition regulator is that the control concept does not encompass veto rights, which means acquisition of minority interest with veto rights or other standard minority shareholders protection rights would not be deemed a concentration for Vietnamese merger filing purposes and therefore not subject to the notification obligation.

5. In which circumstances is an acquisition of a minority interest notifiable or reviewable?

An acquisition of a minority interest will qualify as an economic concentration if the minority purchaser can unilaterally decide on any matter listed in question 4 above, that is, the composition of the target's executive management, the target's constitutional documents or crucial matters relating to the target's business.

6. What are the jurisdictional thresholds (turnover, assets, market share and/or local presence)? Are there different thresholds that apply to particular sectors?

The Guiding Decree provides for two sets of jurisdictional thresholds, one set reserved for transactions involving credit institutions, insurance companies and/or securities companies, and one applicable to transactions in all other sectors.

General thresholds

A contemplated concentration, except for one in the insurance, banking or securities sectors (further discussed below), must be notified to the competition authority if any of the following thresholds are met:

Criteria	Value
Total assets on the Vietnamese market of any transaction party or group of affiliated undertakings to which it belongs	VND 3 trillion
Total sales or purchase revenue on the Vietnamese market of any transaction party or group of affiliated undertakings to which it belongs	
Transaction value	VND 1 trillion
Combined market share on the relevant market of the transaction parties in the fiscal year prior to the year of merger filing	20%

Sector-specific thresholds

A contemplated transaction involving a credit institution, insurance company and/or securities company must be notified if it crosses any of the following thresholds:

Criteria	Value		
	Credit institutions	Insurance companies	Securities companies
Total assets of any transaction party or group of affiliated undertakings to which it belongs	20% of total assets of all CIs on the Vietnamese market	VND 15 trillion	
Total sales or purchase turnover of any transaction party or group of affiliated undertakings to which it belongs	20% of total revenue of all CIs on the Vietnamese market	VND 10 trillion	VND 3 trillion
Transaction value	20% of total charter capital of all CIs on Vietnamese market	VND 3 trillion	
Combined market share on the relevant market of the transaction parties in the fiscal year prior to the year of merger filing	20%		

A so-called "group of affiliated undertakings" refers to a group of undertakings which are under the common control or governance of one or more undertakings

within said group, or which share the same management. For the definition of "control", see question 4.

7. How are turnover, assets and/or market shares valued or determined for the purposes of jurisdictional thresholds?

Asset and turnover tests

The thresholds apply to the assets or turnovers (i.e., sales in and/or into Vietnam) in the domestic market of each relevant party or, where such party belongs to a group of affiliated undertakings, the total local assets/turnovers of the whole group.

The Competition Law 2018 and the Guiding Decree do not define "assets". There has also been no official guidance on turnover calculation. In practice, the regulator would accept asset and turnover values based on the relevant financial statements.

Market share test

In this regard, "market" corresponds to the "relevant market", which is determined based on relevant product market and relevant geographical market.

- Relevant product market refers to the market of goods and services that are interchangeable in terms of characteristics, intended use, and price. All of these factors are relevant to the authority's assessment. Where necessary, the VCC may also consider additional factors, especially where there is no price interchangeability, such as switching costs, consumption habits, and the differentiation between selling and purchasing prices for different customer groups.
- Relevant geographical market refers to a particular geographical area where interchangeable goods and services are supplied on similar competitive conditions and such territory is significantly different from neighbouring areas. The boundary of the geographical area is identified on the basis of, inter alia, costs and time of transporting goods or providing services, market barriers, and consumption habits. In our experience, the regulator only accepts the national market as the widest possible relevant geographical market and accordingly applies the combined market share test on the basis of the parties' national shares. Filing parties are therefore advised to submit national share data for review even if they position the relevant geographical market as regional or global in scope.

Under Article 10.1 of the Guiding Decree, the relevant turnover of the group of affiliated undertakings for market share calculation purposes refers to the group's turnover of the goods or services in question, less intra-group turnover generated from the same. Under Article 10.2, the market share of a member undertaking in a group of affiliated undertakings is that of the whole group.

The VCCA has clarified that the combined market share test only applies to horizontal mergers but does not require a market share increment from below to above 20%. In other words, a Vietnam filing will be triggered if the market share of one undertaking to the horizontal merger is already above 20% before the transaction. The authors understand that the VCC will apply the same interpretation.

Transaction value test

This test does not apply to foreign-to-foreign transactions.

8. Is there a particular exchange rate required to be used to convert turnover and asset values?

The turnover and asset values should be converted based on the exchange rate on the date of submitting the filing. However, there is no other guidance on which particular rate should be used. In our experience, parties may generally refer to the Reference Exchange Rate (https://www.sbv.gov.vn/TyGia/faces/ExchangeRate.jspx?_afrLoop=32264197278612224&_afrWindowMode=0&_adf.ctrl-state=htxqnvlls_4) at the Operations Centre of the State Bank of Vietnam.

9. In which circumstances are joint ventures notifiable or reviewable (both new joint ventures and acquisitions of joint control over an existing business)?

By definition, only newly incorporated joint ventures are caught by the current merger control regime. In addition, since the definition of joint venture places emphasis on the creation of a new legal entity, establishment of a purely contractual joint venture would not qualify as a joint venture for Vietnamese filing purposes.

On the other hand, it is not relevant whether the joint venture will be full-function or not. For example, a joint

venture which will supply goods and/or provide services only to its parents could still qualify as a concentration for Vietnamese filing purposes if it exists as a new legal entity jointly formed by the contribution of assets of its parents.

Likewise, a joint venture which is a newly established start-up not having previously traded and not acquiring an existing business from its parents (or an independent vendor) would also constitute a statutory concentration for the same reason. This is the case irrespective of whether the joint venture in question has commenced business.

10. Are there any circumstances in which different stages of the same, overall transaction are separately notifiable or reviewable?

The Competition Law 2018 and the Guiding Decree do not specify any principles on multi-stage transactions. Therefore, whether a multi-stage merger will be identified as a single transaction or a series of transactions will be decided on a case-by-case basis, taking into account factors such as the structure of the merger and the identities of the parties.

In our experience, the regulator tends to be flexible where a merger takes place in stages. For example, if a buyer contemplates a two-phased acquisition in which it would acquire the target in two tranches of 20% and 80%, respectively, the parties will only be required to notify the anticipated merger before commencing the second tranche. In addition, the regulator has also accepted submission of a single filing where the buyer must conduct several transactions to acquire the target's business.

11. How do the thresholds apply to "foreign-to-foreign" mergers and transactions involving a target /joint venture with no nexus to the jurisdiction?

The Vietnam merger control regime applies equally to any foreign-to-foreign transaction which (i) qualifies as a concentration for Vietnamese filing purposes and (ii) crosses any applicable threshold. Although it may be argued that the Competition Law 2018 only applies to foreign-to-foreign transactions which have an actual or potential restrictive impact on the domestic market (Article 1), in practice the regulator does not consider this factor or the extent of local nexus and only looks at the aforementioned conjunctive test when assessing whether a foreign-to-foreign transaction is notifiable. As a rule of thumb, if any party to the contemplated transaction has revenues and/or assets in Vietnam, they will be required to file if any of the jurisdictional thresholds is met (see question 6).

12. For voluntary filing regimes (only), are there any factors not related to competition that might influence the decision as to whether or not notify?

Vietnam does not adopt a voluntary filing regime.

13. What is the substantive test applied by the relevant authority to assess whether or not to clear the merger, or to clear it subject to remedies? Are there different tests that apply to particular sectors?

The VCC employs the "substantial lessening of competition" test to determine whether to clear a contemplated concentration in any sector.

In Phase I, the VCC primarily relies on the combined market share (on the Vietnamese market), post-merger Herfindahl–Hirschman Index (**HHI**) and Delta. Accordingly, a concentration will be greenlit if:

- For horizontal mergers: the combined market share is less than 20%, or the combined market share is equal to or over 20% and either (i) the post-merger HHI is less than 1,800, or (ii) the post-merger HHI is greater than 1,800 and Delta is lower than 100;
- For non-horizontal mergers, the market share of each transaction party on its respective the relevant market is less than 20%.

In Phase II, the VCC will thoroughly assess the restrictive and positive impact of the transaction, and their correlation. Assessment of the negative impact on competition will consider:

- the combined market share and pre- and post-merger extent of concentration on the relevant market (not applicable to assessment of non-horizontal mergers);
- the relationship in the supply chain of the parties to the anticipated merger;
- the competitive advantages of the post-merger undertaking;
- the ability to considerably increase the price or return on sales (ROS) ratio after the merger;
- the ability to exclude or impede other

undertakings from penetrating or expanding the market; and/or
- other relevant special factors in the sector or industry in question.

When assessing the above factors, the regulator will rely on information and data furnished by not only the filing parties but also relevant stakeholders such as industry regulators, industry associations or competitors through consultation.

Efficiency arguments are also taken into consideration. In particular, the VCC will assess the positive impacts brought about by the merger on:

- the development of the industry in question, science and technology in line with the government's master plans (by assessing, among others, economies of scale and the application of technological advancements and innovation);
- the development of small and medium-sized businesses; and/or
- the competitiveness of domestic businesses (i.e., advancing national champions).

In general, mergers which have a net positive impact will more likely be greenlit than not.

14. Are factors unrelated to competition relevant?

Generally, factors unrelated to competition are relevant when it comes to assessing the positive impact of the transaction, such as promoting national champions. Assessment of the restrictive impact only involves competition issues (see question 13).

15. Are ancillary restraints covered by the authority's clearance decision?

The competition law is silent on this matter. In principle, ancillary restrictions will not be covered in the authority's clearance decision if the authority does not have any particular concern about the restrictions post-merger. Such restrictions may nonetheless be included in the clearance decision as part of the greenlight conditions if the transaction is subject to Phase II review. Accordingly, since in Phase II one of the factors the VCC needs to assess is the post-merger undertaking's ability to prevent or hinder another undertaking from entering or expanding the market, the VCC may request the parties to remove or revise these unlawful restrictive agreements.

If ancillary restrictions are not notified along with the merger but later become known to the VCC, they may be challenged as a prohibited cartel. As such, the parties may consider informing the VCC of these restrictions during the exploration phase, in the notification file or in the rounds of discussion during the appraisal process for the VCC's consideration, thereby potentially avoiding any concerns raised in the future.

16. For mandatory filing regimes, is there a statutory deadline for notification of the transaction?

The Competition Law 2018 (Article 33.1) only states generally that reportable transactions must be filed before implementation without providing further guidance on when a transaction would be deemed implemented. A conservative construction of this provision in the context of other provisions in the legislation (specifically Article 34.1(b), which requires submission of the transactional document in draft form) arguably suggests that the parties must submit a notification prior to signing. In practice, the VCC and its predecessor the VCCA still accept filings submitted after signing provided that closing is subject to regulatory approvals.

17. What is the earliest time or stage in the transaction at which a notification can be made?

The Competition Law 2018 is silent on this issue. Given that in the preliminary appraisal phase the VCC will only focus on the parties' combined market share and the HHI/concentration ratio, notification should be filed once the transaction structure and principal terms are sufficiently clear to identify the relevant parties and market.

The authority accepts filings made on the basis of a draft transactional document or even a memorandum of understanding (**MOU**). As a practical matter, parties are advised to file as soon as the transaction structure and the identity of filing parties are sufficiently clear to avoid any delay in the transaction timetable.

18. Is it usual practice to engage in pre-notification discussions with the authority? If so, how long do these typically take?

In practice, the parties may engage in pre-notification discussions with the authority on a range of issues such as the notifiability of the transaction and, if the

transaction is notifiable, which specific information is relevant and of interest to the authority. As far as the authors are aware, the VCC welcomes pre-notification consultation requests. However, since the consultation is not a regulatory procedure, the timeline for the VCC to respond will vary depending on, for instance, the VCC's workload, the complexity of the merger and the content of the inquiries.

19. What is the basic timetable for the authority's review?

The review process comprises two phases. Upon receipt of a notification file, the VCC has seven business days to inform the notifying parties of whether the submitted file is valid and complete. If the file is not valid and complete, and the VCC issues a request for further documents and/or information, the parties will have 30 calendar days to complete the notification file. In practice, the competition authority usually issues a request for information (RFI) a week after the initial submission if it does not consider the filing to be complete. If the authority has any follow-up question on the parties' RFI responses, it may issue a further RFI which must also be responded to within 30 calendar days from the date of the initial RFI. The VCC's RFI(s) at this stage are usually designed to give the authority a thorough understanding of the parties' respective product portfolios in Vietnam in general and the affected products in particular, as well as the market share estimation methodology and market data.

Phase I: The preliminary review phase starts upon the authority's receipt of a complete and valid file in terms of both formalities and substance, that is, once the authority receives all required formality documents and satisfactory responses to their RFI(s). Within 30 calendar days of the receipt thereof, the VCC will (i) issue a decision either clearing the transaction or stating that the next phase is required, or (ii) not issue any decision at all. In the latter case, the transaction is automatically greenlit, effectively ending the review process.

Phase II: If the review moves to the official review phase, the VCC shall, within 90 calendar days (typical mergers) or 150 calendar days (complex cases) of the announcement date of the Phase I result, decide whether the transaction should be unconditionally cleared, conditionally greenlit, or blocked.

According to the VCCA's Merger Control Report 2022, approximately 131 out of 133 or 98% of the notifications for which the authority completed review in 2022 received unconditional clearance in Phase 1. There were only two notifications subject to a Phase 2 review in 2022, which are Maersk's respective acquisitions of Senator International and LF Logistics.

20. Under what circumstances may the basic timetable be extended, reset or frozen?

In practice, Phase I will generally run without interruption because the authority only officially commences Phase I once the parties have satisfactorily addressed all of their concerns. In other words, once Phase I officially commences without any indication that a Phase II review is necessary, the authority will not issue any further RFI and will use the 30-day clock to consult relevant stakeholders for verification purposes (if necessary) and go through the internal procedure to issue clearance.

As for Phase II, the authority is entitled to issue a maximum of two RFIs. In such case, the review clock is effectively paused until the authority receives a satisfactory RFI response. The actual timeline would thus depend on how responsive the parties are to the RFI. In our experience, during Phase II review, the VCC's RFI(s) is/are significantly more extensive than Phase I RFIs and designed to equip the case team with an in-depth understanding of not only the industry in question but also the parties' business model, supply chain, and clientele in Vietnam. The VCC may also specifically request the parties to submit templates of commercial contracts with key customers to review the commercial terms such as selling price and quantity, as well as to scan for restrictions and exclusivity obligations.

21. Are there any circumstances in which the review timetable can be shortened?

There is no official expedited procedure for any type of mergers. Fundamentally, Phase I can be regarded as a simplified procedure due to the relatively short waiting period and auto clearance mechanism (see question 19).

In our experience, there are a number of measures which the parties may take to expedite the review process.

- Engage in pre-notification consultation with the competition regulator to seek guidance on whether the transaction is notifiable and, if so, which specific information is relevant and of interest to the authority;
- Prepare the filing based on the criteria in the Guiding Decree and relevant Vietnamese regulations (if any), focusing in particular on the characteristics, intended use and manufacturing process of the affected

products as well as the distribution models in Vietnam of the parties;
- Commence the legalisation process as soon as possible to minimise logistical delays;
- Respond to the authority's RFI(s) as promptly and comprehensively as possible to initiate the Phase I review and, where applicable, expedite the Phase II review; and
- Maintain an active communication channel with the authority throughout the review process to promptly address any concerns they may have.

Given the VCC's constantly evolving practice, it is crucial to keep up with the regulator to ensure accurate assessment of the notifiability issue and, if the transaction is indeed reportable, swift obtainment of clearance. Having an experienced local counsel with an established working relationship with the regulator would also help the parties navigate this nascent merger control regime and ensure the global transaction timetable.

22. Which party is responsible for submitting the filing?

If a filing threshold is crossed by any party to the proposed transaction, the VCCA will treat all parties (e.g., the purchaser, seller, and target if the concentration is an acquisition) as notifying parties and require them to sign the filing form irrespective of which party exceeds the threshold. In any case, the VCCA only accepts one submission for each reportable transaction.

23. What information is required in the filing form?

The notification form must follow a prescribed template published on the VCC's website (http://www.vcca.gov.vn/default.aspx?page=news&do=detail&category_id=e0904ba0-4694-4595-9f66-dc2df621842a&id=94e03ded-adcb-49f5-a5b6-1d48e01340bd). The form requires the parties to provide their basic corporate information, the transaction structure, the commercial rationale, the anticipated timetable, and the applicable notification thresholds.

24. Which supporting documents, if any, must be filed with the authority?

In addition to the filing form, the parties must also submit:

- a draft transactional document in its full form (e.g., a Framework Agreement or a Share Purchase/Subscription Agreement; an MOU is also acceptable);
- each merger party's certificate of incorporation (e.g., Enterprise Registration Certificate, Certificate of Incorporation, Bizfile);
- each concentration party's audited financial statements for the two fiscal years preceding the notification;
- a list of each concentration party's parent companies, subsidiaries, member companies, branches, representative offices and other dependent entities (if any) in Vietnam;
- a list of all goods and services currently provided in Vietnam by each concentration party;
- information about each concentration party's market share on the relevant market for the two years preceding the notification;
- remedial plans for potential restrictive impact caused by the concentration (if any); and
- an assessment report on the positive impact of the concentration and measures for enhancing such effect.

The notification file must be submitted in Vietnamese. Certificates of incorporation issued abroad must be (i) legalised by the relevant Vietnamese embassy or consular office, and (ii) translated into Vietnamese; the translation must then be notarised by a licensed notary in Vietnam. Given that the legalisation process can be time-consuming in some jurisdictions, parties should commence legalisation as soon as practicable to avoid delaying the review process (see also question 21).

25. Is there a filing fee?

No.

26. Is there a public announcement that a notification has been filed?

No, unless the transaction is subject to a Phase II review, in which case the regulator may issue a press release to invite public comments.

27. Does the authority seek or invite the views of third parties?

The involvement of third parties in the review process is relatively limited and passive as it is only relevant through consultation which is initiated at the discretion

of the competition regulator. Since the VCC is not obliged to publish the filing at the time of submission, there is no formal mechanism for third parties to proactively give opinion on the contemplated transaction. However, the VCC is entitled to consult relevant third parties (e.g., industry regulators, industry association, the parties' competitors and distributors, and experts) on the filing. In filings we have advised on, the authority has enquired a line ministry and an association about a wide range of matters (e.g., the number of undertakings active on the market in question, their market share estimates and whether the contemplated transaction poses any antitrust or consumer interest concerns). Notably, the regulator is not mandated to follow, consider, or even solicit third-party information or recommendations as it is for reference only. In our experience, the regulator conducts merger review independently from third party's feedback, which means negative third-party feedback does not automatically imply the transaction will be blocked entirely or conditionally greenlit. However, this procedural step may delay the review timeline.

28. What information may be published by the authority or made available to third parties?

The VCC is obliged to keep confidential all information provided during the review process, including the term sheet and draft SPA/SSA/SHA. In practice, if there is any specific information in the filing which the parties wish to keep confidential, they should submit a separate Request for Confidential Treatment, specify therein the information which must be kept confidential, and highlight the same in the filing for the regulator's attention.

On the other hand, the VCC is mandated to publish their final review outcome (which is either a clearance or a blocking decision) save for such parts concerning State or business secrets. In recent practice, the regulator does not issue individual press release for each clearance decision it grants but publishes bi-annual merger control reports where the total number of notified transactions and granted clearance are reported. The reports also provide an overview of the M&A landscape in Vietnam over the reported period, the number of Phase 1 and Phase 2 reviews, as well as close-up on Phase 2 transactions or transactions in sectors of interest to the authority, such as logistics or renewable energy.

29. Does the authority cooperate with antitrust authorities in other jurisdictions?

Interplay with other jurisdictions involves consultation, information exchange and other international cooperation activities as provided by Article 108.2 of the Competition Law 2018. In principle, the regulator conducts merger review independently and rarely liaises with their overseas counterparts when appraising a notified transaction. To the authors' best knowledge, there has been no case where international cooperation has a significant impact on the review process.

To date, the VCCA has engaged in various multilateral and bilateral cooperation programmes with multiple agencies and organisations, such as the Japan Fair Trade Commission (JFTC), German Corporation for International Cooperation GmbH (GIZ), the Australian Embassy, and the Australian Competition and Consumers Commission (ACCC). For the time being, such programmes centre primarily on enhancing antitrust enforcement (such as developing guidelines and handbooks and hosting advocacy workshops) and promoting consumer welfare.

Notwithstanding the above, decisional practice of overseas regulators (such as the European Commission, the JFTC, or the Korean Fair Trade Commission (KFTC)) have proven useful to the Vietnamese regulator in their assessment of the relevant product market, as well as in substantiating that the notified transaction does not raise any significant competition concerns globally, much less in Vietnam. It is expected that the VCC will continue and deepen these cooperative relations in the years to come.

30. What kind of remedies are acceptable to the authority?

Both types of remedies, i.e., structural and behavioural, are available in the forms of restructuring, divestment and price control. The Competition Law also contains blanket provisions covering any other remedies that lessen the restrictive impacts or enhance the positive effects brought about by the merger.

31. What procedure applies in the event that remedies are required in order to secure clearance?

The current regime is silent on remedy application and only stipulates generally whether the remedies must be implemented before or after the implementation of the transaction.

In principle, structural remedies must be fulfilled prior to closing, whereas behavioural remedies, e.g., price

commitments, can usually be observed thereafter. It is possible, however, that the VCC may allow the parties to implement the restructuring and/or divestment schemes after completing the merger if there are reasonable grounds to believe that prior implementation is not viable. As no guideline on this matter is provided, the final decision is at the VCC's discretion. In any event, if the anticipated transaction is conditionally greenlit, the clearance decision will specify whether the merger parties may complete the transaction before or after fulfilling all applicable conditions and remedies.

32. What are the penalties for failure to notify, late notification and breaches of a prohibition on closing?

For failure to file, each concentration party may be fined 1% – 5% of its local revenues on the relevant market in the fiscal year preceding the year of closing. The fine bracket for gun jumping is 0.5% – 1% of the total local turnover of each concentration party.

If the parties have notified the transaction and proceed with closing after the authority blocks the transaction, each will be fined 1% – 3% of their respective local revenues on the relevant market in the financial year prior to the year of closing.

If the violating party has no revenues in Vietnam, the fine will be fixed at VND 100 million – 200 million.

33. What are the penalties for incomplete or misleading information in the notification or in response to the authority's questions?

Parties are statutorily responsible for the truthfulness of all information submitted during the review process, although the law is silent on the legal consequences of violating this obligation. Nonetheless, the regulator may, at its discretion, review the notification again based on the updated information and impose sanctions on the parties if it then found any breach of merger control regulations.

34. Can the authority's decision be appealed to a court?

Whilst there is no formal process for complaints about, or objections to, the merger under the Competition Law 2018, an appeal can be made on the basis of the Law on Complaints 2011 (as amended) and the Law on Administrative Proceedings 2015. Any party (including third parties, e.g., consumers or competitors) dissatisfied with the clearance decision may lodge an appeal to the VCC (first-instance complaint) or the Minister of Industry and Trade (second-instance complaint) or initiate administrative proceedings before the courts (administrative litigation).

35. What are the recent trends in the approach of the relevant authority to enforcement, procedure and substantive assessment

The authors have observed a surge in activity at the competition regulator since the Competition Law 2018 came into force in July 2019, partly due to the extended scope of application of the new law and the lower notification thresholds. According to the VCCA's merger control reports, the authority received a total of 154 notifications in 2022, marking an 18.5% increase compared to 2021 and a 146% increase compared to 2020. Among the 154 notifications received in 2022, 38 (approximately 30%) concerned foreign-to-foreign transactions. The notifications cover various industries including real estate (most popular); services; manufacturing and trading in motor vehicles and spare parts; construction materials; food and beverage; and energy.

Recent enforcement trend suggests that the regulator also monitors M&A activities in the country and has proactively requested information on a number of transactions. In 2019, for instance, the VCCA requested relevant parties to provide information on two high-profile transactions, viz., Masan Group's acquisition of VinCommerce and VinEco, and Taisho's acquisition of a controlling stake in DHG Pharma. More recently, in August 2020, the VCCA initiated an inquiry into Indo Trans Logistics Corporation's acquisition of Ho Chi Minh City Stock Exchange (HoSE)-listed warehousing and transportation services provider Sotrans.

On the other hand, there are no public records of any sanction imposed on parties for failure to file or for conducting unlawful mergers. Public records also suggest that no transaction has been blocked under the current merger control regime.

It is expected that the competition authority will ramp up their enforcement efforts moving forward, especially with respect to monitoring potential failure of file violations. According to their 2021 annual report, the VCCA has compiled a database on Vietnam's Top 500 companies, including information on their revenues, assets and scope of operations. The authority has also produced research reports on a number of markets such

as e-commerce, automobiles, real estate, sugar canes and fertilizers, which should assist with monitoring efforts and expedite the regulator's review process in these sectors in the future. The internal merger control guideline the VCC is working on is also expected to pave way for a more streamlined review process for certain mergers.

36. Are there any future developments or planned reforms of the merger control regime in your jurisdiction?

No further reforms are being formally considered at the time of writing. However, we understand that the VCC is working on several merger review guidelines.

Contributors

Dr Nguyen Anh Tuan
Partner
tuan.nguyen@lntpartners.com

Tran Hai Thinh
Associate
thinh.tran@lntpartners.com

Tran Hoang My
Associate
my.tran@lntpartners.com