



Competition law in implementing the united nations general assembly resolution on consumer protection

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Abstract

The article "Competition Law in the Implementation of the United Nations General Assembly Resolution on Consumer Protection" focuses on discussing and analyzing: (i) the necessity of regulating consumer protection within competition law; competition law regulations concerning consumer protection; (ii) the implications and directions for improving consumer protection laws in general and competition law in particular.

Keywords: Competition law, the implementing the United Nations guidelines for consumer, consumer protection

Introduction

Consumer protection is a significant legal issue regulated by both national and international law. Aiming to protect consumer rights globally, the United Nations General Assembly passed Resolution 39/248 on April 16, 1985 (hereinafter referred to as "the Resolution"). Guiding countries on consumer protection ^[1] with the following spirit: "In order to implement the following guidelines, governments need to develop, strengthen, or maintain strong consumer protection policies. To achieve this, each government must prioritize consumer protection, consistent with its economic, social, and environmental conditions, the needs of its people, and must consider the consequences and benefits of the proposed measures ^[2]."

Depending on different regulation approaches, national laws exhibit varying degrees of regulation and legal structures for consumer protection. Therefore, it reflect either a central or distribute focus across various related laws based on criteria such as: the subject matter, major specialization, and state management agencies.

In this article, the author focuses on analyzing the legal regulations concerning competition and consumer protection, thereby highlighting the extent of implementation of the resolution and the Vietnamese Government's efforts in incorporating international treaties into domestic law. It also suggests directions for developing and refining consumer protection laws in general and competition law in particular.

Additionally, this article serves as a message to readers, international law researchers, doctoral students, and legislative researchers about Vietnam's commitment to international legal obligations and ensuring consumer protection and competition law compliance.

1. The Necessity of consumer right protection regulations in competition law of Vietnam

In implementing the UN Resolution on consumer protection guidelines, the Consumer Protection Law was enacted, serving as an important legal basis for recognizing and safeguarding consumer rights. These include:

1. Right to Health and Safety: Consumers have the right to protection from products, services, and processes that may harm their health and safety.

2. Right to Information: Consumers are entitled to accurate and complete information about products and services to make informed purchasing decisions.

3. Right to choice: Consumers have the right to choose from various products and services in a competitive market without being coerced.

4. Right to be Heard: Consumers have the right to have their opinions and complaints addressed fairly.

5. Right to Compensation: Consumers can seek compensation if products or services do not meet the promised standards and commitments.

6. Right to Education: Consumers have the right to be educated about their rights and responsibilities to effectively participate in the market.

7. Right to a Clean and Safe Environment: Consumers have the right to demand that products and services are produced and provided in ways that do not harm the environment.

8. Right to Basic Needs: Consumers have the right to satisfy basic needs.

Based on this foundation, the Consumer Protection Law has been continuously refine:

1. It aligns with the policies and strategies of the Party, such as the 2021-2030 Socio-Economic Development Strategy, the Central Committee's Resolution No. 11, the Politburo's Resolution No. 52 on participating in the Fourth Industrial Revolution and various directives on enhancing consumer protection.

2. It ensures compatibility and consistency with existing legal frameworks, international treaties, and government policies.

3. It references international agreements Vietnam is a party to, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the EU-Vietnam Free Trade Agreement (EVFTA), and the Regional Comprehensive Economic Partnership (RCEP).

However, the Consumer Protection Law alone cannot cover all aspects of consumer protection. Consumers, being the weaker party, suffer from adverse consequences not only when directly participating in transactions but also in the business strategies and partnerships between producers. Some rights of the Resolution are challenging to fulfill solely through the Consumer Protection Law.

Competition law, by directly regulating producer behavior and defining anti-competitive practices, can enhance consumer protection. It integrates consumer interests as a criterion in business planning and legal decision-making.

Competition, recognized in both national and international law, brings certain values to economic development. However, competition that does not benefit consumers is unacceptable.

Protecting consumer rights is essential and extends beyond direct market transactions. While the Consumer Protection Law focuses on consumer rights in contracts, competition law protects these rights from investment, production, and product consumption stages.

2. Consumer protection in Vietnamese competition law

2.1. Consumer protection in anti-Competitive Law

Firstly, consumer protection in laws against anti-competitive agreements: Vietnamese competition law prohibits anti-competitive agreements such as:

1. Direct or indirect price-fixing agreements.
2. Agreements to divide customers, markets, sources of supply, or distribution channels.
3. Agreements to restrict or control production, purchase, sale, or supply volumes.

These prohibitions aim to limit the freedom of businesses in setting prices, expanding markets, and growing their business sectors, impacting the competitive pricing and choices available to consumers. These agreements will often reduce consumer choice, create scarcity, and potentially affect consumer demand.

Consumer protection is also reflected in the exemptions from anti-competitive agreements. The requirement "beneficial to consumers" is a mandatory criterion for these exemptions, representing a progressive legal standard aligning with national and international legal trends, forming business norms and ethical standards.

Additionally, consumer power in determining relevant product markets and examining consumption habits is recognized. For example, in cases where prices vary by 5% or more, price substitutability is determined by consumers. The Competition Law specifies how to determine if products or services are substitutable based on consumer surveys.

We can also observe the role of consumer power in determining the relevant product market for goods and services. Consumer habits can also be considered in this case, particularly when determining price substitution. Specifically, when the price of goods or services varies by 5% or more, the potential for price substitution will be determined by consumers.

In identifying the elements of a prohibited restrictive trade agreement, the Competition Law states: "When necessary, the National Competition Commission may determine the price substitution attributes as follows: Goods or services are considered substitutable in terms of price if at least 35% of a random sample of 1,000 consumers residing in the

relevant geographical area switch to buying or intend to buy another good or service with similar characteristics or intended use as the good or service they are currently using or intend to use, if the price of the good or service increases by more than 10% and is maintained for 6 consecutive months. If the number of consumers residing in the relevant geographical area is less than 1,000, the random sample size must be at least 50% of the total number of consumers in that geographical area^[3]."

Second, protecting consumer rights in the laws regarding abuse of dominant positions and monopoly positions.

Monopoly and dominant market positions are not prohibited under Vietnamese law. However, practices that abuse the ability to limit competition are prohibited. Consumer rights are protected from the following prohibited abusive behaviors: "It is prohibited for businesses or groups of businesses with a dominant market position to engage in the following actions:

1. Selling goods or providing services below the total cost of production, leading to or potentially leading to the elimination of competitors;
2. Imposing unreasonable purchase or sale prices of goods or services, or setting a minimum resale price causing or potentially causing harm to customers;
3. Restricting the production or distribution of goods or services, limiting the market, or obstructing technological and technical development causing or potentially causing harm to customers^[4]."

These regulations not only directly regulate the behavior of business entities but also protect consumer interests, ensuring a higher ability to choose goods and services that are lower in price, diverse, and plentiful. Abusive behaviors by monopolistic entities include actions such as: Imposing unreasonable purchase or sale prices of goods or services, or setting a minimum resale price causing or potentially causing harm to customers; Restricting the production or distribution of goods or services, limiting the market, or obstructing technological and technical development causing or potentially causing harm to customers. Therefore, some prohibited behaviors are similar to those that abuse a dominant position.

However, the Competition Law does not prohibit a monopoly's action of: "Selling goods or providing services below the total cost of production, leading to or potentially leading to the elimination of competitors," because there are no competing businesses in the relevant market, and especially because this practice benefits consumers in this case

2.2. Consumer protection in unfair competition Law

According to competition law, refers to "the actions of a business that are contrary to the principles of goodwill, honesty, commercial customs, and other business standards, which cause or may cause harm to the rights and legitimate interests of other businesses. The prohibited actions are listed in Article 45 of the Competition Law, which includes various practices such as: Forcing customers or business partners of another company through threats or coercion to prevent them from engaging in transactions or to stop transactions with that company; providing false information about another business either directly or indirectly to adversely affect the reputation, financial condition, or business operations of that business; disrupting the business

operations of another company by directly or indirectly obstructing or interrupting their lawful business activities; unfairly attracting customers through the following methods: providing misleading or confusing information about a business or its products, services, promotions, or transaction conditions related to the goods or services offered by the business to lure customers away from the competing business; comparing one's own goods or services with those of another business without proving the content...' It can be seen that through these regulations in the competition law, the spirit of protecting consumer rights is clearly manifested.

2.3. Consumer protection in competition litigation

Competition litigation refers to the activities of investigating and handling competition cases and resolving complaints related to decisions on competition cases. The National Competition Commission not only serves as the specialized agency for competition but also as the agency responsible for protecting consumer rights. According to the Competition Law: "The National Competition Commission is an agency under the Ministry of Industry and Trade with the function of conducting competition litigation, controlling economic concentrations, deciding on exemptions for anti-competitive agreements, and resolving complaints regarding decisions on competition cases according to legal provisions; advising the Minister of Industry and Trade on state management of competition, protecting consumer rights, and regulating multi-level marketing activities." With this provision, Vietnamese law has assigned the National Competition Commission as the unified authority responsible for advising on policy and legal frameworks and addressing violations related to competition and consumer protection. The author highly values these regulations and believes that this consolidation of power in handling competition issues and protecting consumer rights is necessary, scientific, and highly practical.

Conclusion

In summary, with the guidance provided by the United Nations resolutions, Vietnamese law has essentially detailed and fully regulated these provisions. Vietnamese law acknowledges and protects consumer rights almost comprehensively, in line with the content of United Nations declarations on fundamental consumer rights.

With these regulations, it is evident that the spirit of protecting free competition within the framework of the law and safeguarding consumer rights are two interrelated concepts that are difficult to separate.

Provisions for protecting consumer rights are not only concentrated in the Law on Consumer Protection but are also covered in other laws, particularly the Competition Law. Whether directly or indirectly, the provisions of the Competition Law have largely filled the legal gaps concerning consumer protection recognized in the United Nations resolutions that the Law on Consumer Protection has not yet fully addressed

References

1. The Guidelines were first adopted by the General Assembly in resolution 39/248 of 16 April 1985, later expanded by the Economic and Social Council in resolution 1999/7 of 26 July 1999, and revised and

adopted by the General Assembly in resolution 70/186 of 22 December 2015. The United Nations Conference on Trade and Development promotes the Guidelines and encourages interested Member States to create awareness of the many ways in which Member States, businesses and civil society can promote consumer protection in the provision of public and private goods and services.

2. Excerpt from the content of "United Nations Guidelines for Consumer Protection".
3. Clause 6, Article 5, Decree No. 35 2019.
4. Clause 1, Article 27 of the Competition Law 2018