

A close-up, blue-tinted photograph of a silver fountain pen resting on a document. The document features a financial candlestick chart with several black bars and a curved line graph. The pen is positioned diagonally across the lower right portion of the frame.

REPORT

ECONOMIC CONCENTRATION IN VIETNAM

2014

Hanoi, April 2015



MINISTRY OF INDUSTRY AND TRADE
VIETNAM COMPETITION AUTHORITY



Australian Government
Australian Research Council

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ABBREVIATIONS

AEC	ASEAN Economic Community
BTMU	Bank of Tokyo - Mitsubishi UFJ
IFC	International Finance Corporation
HHI	Herfindahl-Hirschman Index
M&A	Merger and Acquisition
MOIT	Ministry of Industry and Trade
RCEP	Regional Comprehensive Economic Partnership
SME	Small and Medium Enterprise
SOE	State Owned Enterprise
TPP	Trans-Pacific Partnership
VCA	Vietnam Competition Authority

FOREWORD

M&A activities have been occurring robustly in Vietnam over the past few years with a dramatic growth and total scale of deals in the period of 2009-2014 worth of about 18 million USD¹. This is to say M&A transactions are still favored by both domestic and foreign enterprises as being an effective channel of investment, saving resources, entering the market, lessening market barriers, increasing market power and resources of enterprises. However, M&A activities have witnessed certain complexity. The entire market has seen a wave of merger and acquisition among enterprises owning strong brands, a number of equitization of big SOEs, missions where the foreign enterprises account for dominating marketshare in Vietnam, and highly valued acquisition cases. Obviously, M&A transactions have the high potential of creating enterprises having the dominant position on the market, which might affect the competition environment. Therefore, it's vital for the Government administration agencies to monitor and control M&A transactions in a strict manner.

In order to fulfill her function of assisting the Minister of Industry and Trade to manage competition field including the duty over controlling economic concentration, the Vietnam Competition Authority (VCA) did conduct two Reports on Economic Concentration in 2008 and 2011. ***"The Report on Economic Concentration in Vietnam"*** was carried out with an aim to provide the community and other relevant parties with an overall and comprehensive picture on the current status of economic concentration in Vietnam as well as the government administration on this type of business transaction.

To enhance the mission of ensuring the competition environment, control over monopoly in accordance with the Resolution No.01/NQ-CP of the Government dated January 3, 2015 providing the tasks and main solutions on implementing the socio-economic development plan and State budget estimate 2015, the VCA, with support from the Restructuring for a more Competitive Vietnam (RCV) Project, conducted the Report on Economic Concentration in Vietnam in 2014. The Report includes the following contents:

- » 1. Status of economic concentration activities in the period of 2012-2014;
- » 2. Control over economic concentration in accordance with the regulations of the Vietnam Competition Law (VCL);

¹ Collected by the VCA

» 3. Striking cases and tendency of economic concentration in the coming time

One striking feature different from the previous reports is that the 2014 Report will focus on reflecting the status quo of economic concentration activities in Vietnam and the practice of implementing regulations on controlling economic concentration so as to come up with predictions on economic concentration tendency in the coming time and directions on controlling economic concentration implemented by the VCA in order to maintain and ensure the fair, healthy competition environment for entities operating their business in Vietnam.

On this occasion, the VCA would like to dedicate special thanks to the Department for Foreign Affairs and Trade (DFAT) and the Restructuring for a more Competitive Vietnam Project for providing valuable supports to preparation of this Report. We would also like to thank the relevant agencies, the State Securities Commission, the General Statistics Office, the Department of Investment and Planning, the Management Units on Industrial and Processing Zones of provinces, cities; the business community and the researchers who cooperated with us and contributed to the drafts of the Report before its compilation.

Hanoi, April 2015
For and On behalf of VCA



BACH VAN MUNG
Director General

CHAPTER I

STATUS QUO OF ECONOMIC CONCENTRATION ACTIVITIES IN VIETNAM, PERIOD OF 2012-2014

1. The socio-economic context

1.1. The world socio-economic context

The world economy tended to recover at the low pace in the period of 2012-2014 with the global economic growth of about 3% in 2014. A number of leading economies like the US, EU, Japan have had positive signals of economic growth post the crisis. However, due to the big aftermath of the financial crisis and global downturn in growth (which had occurred previously), the status of public debt in the Euro zone, the political crisis in Ukraine which led to the effects of trade war with Russia via mutual economic sanction, etc; the global economy underwent unstable periods.

Over the past years, the economic growth of the countries in ASEAN region

including Vietnam as a member has been at low pace and tended to slow down, at 4-5%. The ASEAN Economic Community is about to be established in 2015, which will create a unified market for all the member states. Among that, AEC will aim at fostering economic development a highly competitive economic region, a region of equitable economic development, and a region fully integrated into the global economy and creating the free flow of commodity, service, investment and skilled labor in ASEAN.

Moreover, Vietnam signed the FTAs with a number of partners such as South Korea (VKFTA), Customs Union of Russia-Belarus-Kazakhstan (VCUFTA) in late 2014 and EU (EVFTA), Trans-Pacific Partnership (TPP) and other FTAs in the near future. Participation in bilateral and multilateral FTAs with important partners has marked milestones in the course of international economic integration of Vietnam. When becoming a part of those FTAs, it will bring about a lot of opportunities on investment, trade, comprehensive cooperation with partner states. At the same time, it will also promote domestic institutional reforms, business

environment improvement to create favorable conditions for socio-economic development. Once the macro-economic environment changes in positive manner, it will help attract more and more foreign investors to participate in M&A activities in Vietnam.

1.2. The socio-economic context of Vietnam

Under the above world economy circumstances, the economy of Vietnam itself in the period of 2012-2014 were much impacted, for instance, the domestic manufacture and trading faced difficulties such as low absorption of capital, high pressure from bad debts, slow consumption of domestic products, enterprises' low capacity of management and competitiveness, etc. The Government has made every effort to mobilize economic and social resources to bolster manufacture, improve the business environment, enhance administrative reforms, arrangement on innovating the SOEs, attract FDI and strengthen efficiency of international economic cooperation. That's why the macro economy has been stable, inflation has been under control, economic growth has seen signals of recovery in almost all sectors and areas and there has been positive changes in comparison with the previous period.

Over the past three years in the period of 2012-2014, continuing its efforts to implement the 5 year Socio-Economic

Development Plan (2011-2015), the whole economy of Vietnam has gained following achievements:

- » Stable increase in GDP: GDP saw stable increase from 5.03% to 5.42% and 5.98% in 2012, 2013 and 2014 respectively. In particular, the GDP of 2014 reached nearly 190 million USD. In 2014 only, the average growth was 6.5% in the second half of the year while it was 5.2% in the first half. The increase in GDP was seen from year to year especially a sharp one in 2014 indicates the positive signals of the economy, particularly in the context of numerous obstacles coped by the world economy like now. This also marked the success of the Party and the Government in their endeavors to hit the macro-economic goals, stabilize the economic growth and control inflation.
- » The level of increase in the service area, compared to the other sectors, contributed mostly to the entire growth of the economy in 2012 and 2013 while it turned to the area of industry and construction in 2014. In 2014, those two areas witnessed an increase of 7.14%, of which the processing and manufacturing industries played the important role. In the second rank, the service area had the growth pace at 5.96% thanks to great contribution of the wholesale, retail, finance, banking and insurance sectors; that of the agriculture,

forestry and aquaculture was 3.49%.

- » Regarding the structure of the entire economy over the years, the service area accounted for the highest ratio at 43.38%, the second high area was industry and construction at 38.5% and the last one was 18.4% (the area of agriculture, forestry and aquaculture) in 2014.
- » During the period of 2012-2014, there are more than 221.7 thousand enterprises which were established with the registered capital of 830.9 thousand billion dong. The number of dissolved enterprises in this period was 28.7 thousand enterprises. Only in 2014, 74,8 thousand enterprises were newly established with the total capital of 432.2 thousand billion dong, an increase of 8.4% of capital compared to that of the year 2013. 9.5 thousand enterprises were in difficulty and faced compulsory dissolution or termination of operation, a decrease of 3.1% compared to the previous year, of those, a majority of enterprises were ones with scope of below 10 billion dong.
- » The total capital of entire society investment in 2014 reached 1,220.7 thousand billion dong, witnessing an increase of 11.5% in comparison with the previous year and equal to 31% GDP. Among those, the capital in the public sector was 486.8 thousand billion dong, accounting for 39.9% and equal to an increase of 10.1% in

comparison with the previous year; the capital in the non-public sector was 468.5.5 thousand dong, accounting for 38.4% and equal to an increase of 13.6%; the FDI sector accounted for 21.7% with 365.4 thousand billion dong, equal to an increase of 10.5%. Regarding the investment structure of capital, the non-public and private sector accounted for higher ratio compared to the public one. As for local capital, there were several big cities/provinces like Hanoi (23,931 billion dong), Hochiminh City (18,160 billion dong), Da Nang (4,989 billion dong), Binh Duong (4,439 billion dong), Nghe An (4,245 billion dong), Quang Ninh (4,087 billion dong) and Ba Ria Vung Tau (3,921 billion dong)

- » Vietnam's integration into the world economy become wider and deeper: the turnover of exporting commodities reached a record of 150 billion USD in 2014, the importing turnover was 148 billion USD. It was the first time in 2013 when the import export turnover of Vietnam turned from trade deficit to trade surplus, the trade surplus reached 2 billion USD in 2014. The structure of imports and exports didn't see much change over the years, in particular, the major exports were crude oil, textile, footwear, aqua products, electronics and agricultural products. The major imports were equipments and facilities, materials for domestic manufacture, petroleum and

mechanical products, etc.

- » The process of re-structuring, reforming and re-arranging SOEs has been promoted and carried out in a concentrated manner. Currently, there are more than 4,000 equitized SOEs, most of which are enterprises of large scale, big scope of operation, multi sectoral business, complicated finance. According to the plan on arranging and equitization approved by the Government in the period of 2014-2015, there will be 432 enterprises across the country to be equitized; State owned corporations and groups continues to withdraw capital invested in 5 sensitive sectors (securities, finance and banking, insurance, real estates and investment fund). The process of equitizing SOEs and restructuring the banking sector will avail a lot of opportunities for not only domestic but also foreign investors to take part in the M&A transactions.
- » CPI reached the lowest over the past 13 years, the increase was 4.09% compared to that of 2013

In addition to gained achievements, the economic landscape of Vietnam have faced a lot of challenges and drawbacks. Some of them in the recent times are:

- » Although Vietnam witnessed trade surplus, the foreign enterprises contributed mainly to export values. In contrast, in the domestic area, they

mainly exported raw materials, semi-processed products of low added values. This is a noteworthy issue in terms of import export activities and proportion.

- » The economy's competitiveness has been drastically improved, however, it is still at low pace, growth mostly leans on development in the broad dimension and the labor productivity hasn't been strengthened. In 2013, ICOR reached 5.53, which is higher than the efficiency and economic sustainable development.
- » A number of Government policies such as application of cautious, flexible currency policy in close link with the fiscal policy and other macro economic policies aiming at controlling inflation, credit policy of some sectors/industries haven't been robustly implemented causing difficulties in partial activities of enterprises especially when they have intention to merge or acquire in the market.
- » The real estates, banking, securities markets still face a lot of obstacles, accordingly bad debts of enterprises operating in this sector tend to increase.

2. Common background of economic concentration in the recent time

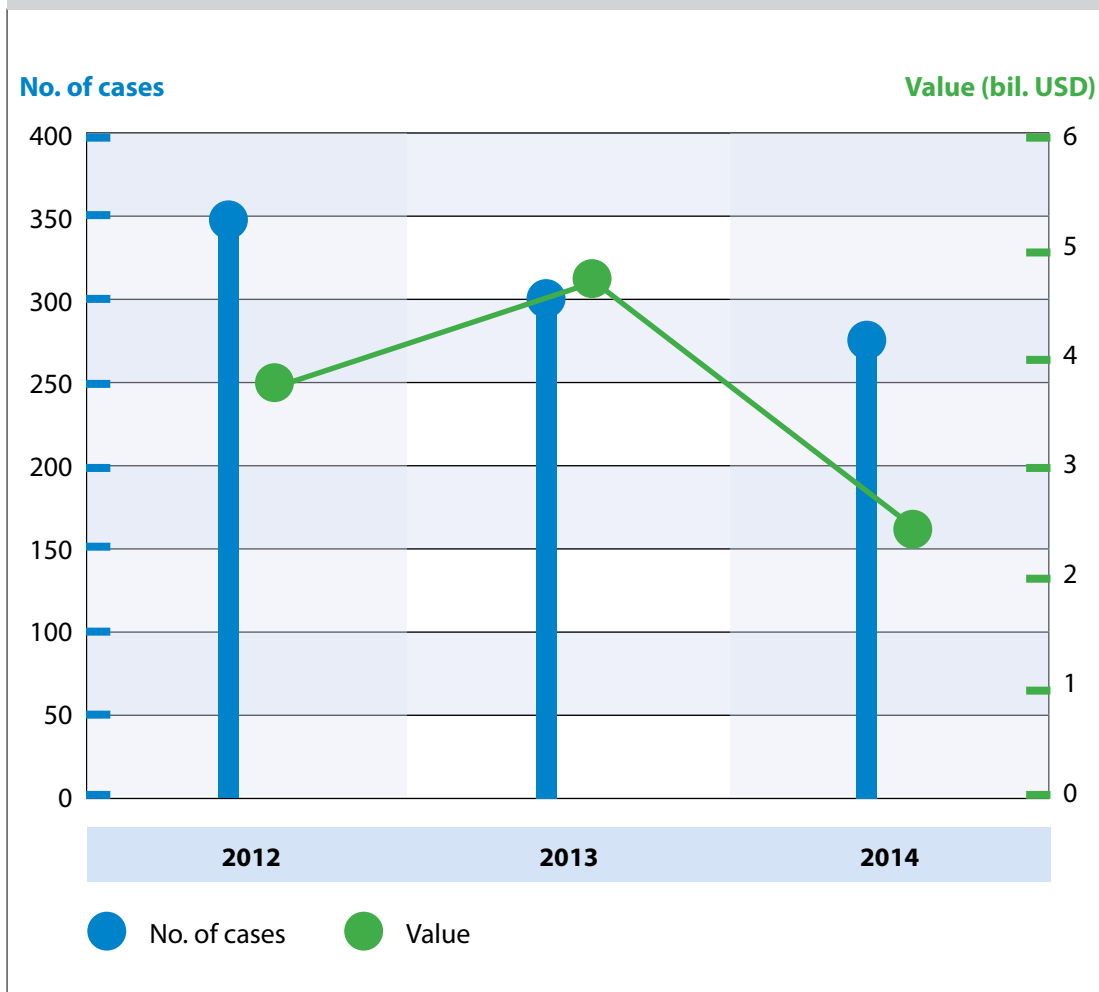
2.1. Overview

Recently, the M&A wave has been increasingly strong in Vietnam. In the period of 2009-2011, there were about 750 M&A missions worth of 6.89 billion USD in total². From 2012 to 2014, the total value of M&A transactions witnessed high increase, reaching 11.13 billion USD. In 2013, the total value was 4.78 billion USD, an increase of 24% in comparison with that of 2012. In 2014, Vietnam had about 285 M&A deals valued 2.5 billion USD.

According to a research done by Thomson Reuters on the M&A market in the South East region in 2014, the scale of regional transactions was 140 billion USD, an increase of 68% compared to that of the previous year and this was a new record since the global financial crisis. Singapore was still the leading country with 880 M&A transactions of more than 82 billion USD. Other big transactions were also carried out in Malaysia, Indonesia, etc. Compared with other countries in the region, the scale of economic concentration in Vietnam in 2014 was quite small.

² The VCA source: *Report on economic concentration in Vietnam 2011*

Figure 1: Quantity and value of M&A in Vietnam (2012-2014)



As for the quantity of M&A missions, the cases having foreign elements accounted for 66% (in terms of value) and 77% (in terms of quantity) in the period prior 2012 while it was 68% and 30% respectively during 2012-2014. This indicates that the missions among domestic enterprises made up 75% of the total quantity as the majority. This reflects great impact of economic restructure which has been pushed up by the State. There are some striking examples like the Scheme on equitizing SOEs in the period of 2011-2015

and the Scheme on restructuring the system of credit organizations in the period of 2011-2015 (Scheme 254).

The average value of a mission was about 10 million USD in 2012, increased to 15 million USD in 2013 and fell down to 8.7 million in 2014. Nevertheless, the average value is just an indicator for reference as it doesn't show the value of large scale mission where targeted enterprises are those one have great market power.

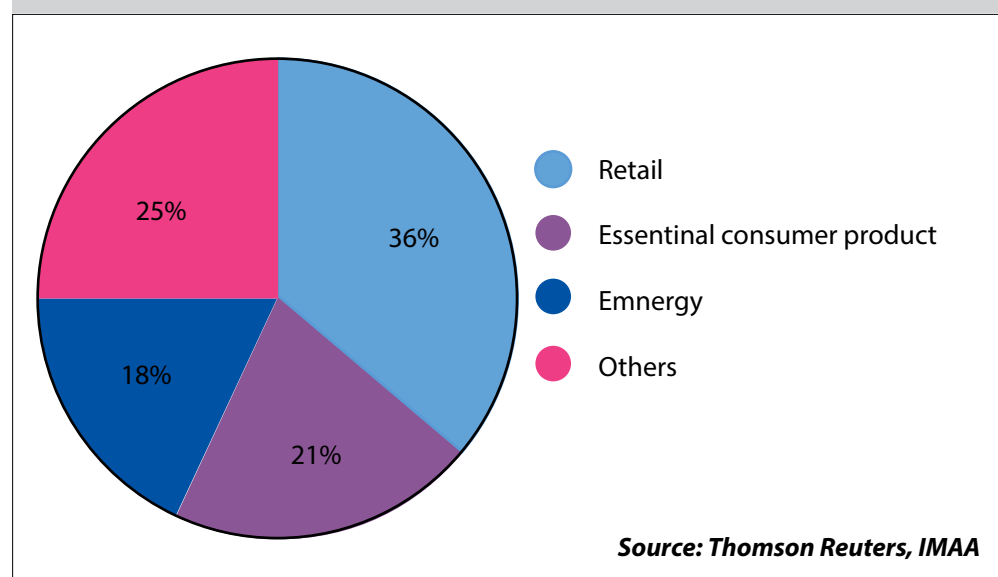
Besides, a number of Vietnamese enterprises started to implement missions abroad (for instance, Vinamilk, Viettel, FPT). However, the key tendency is still the wave of acquiring domestic enterprises done by foreign ones.

In general, the missions on retail, consumption commodities, energy, finance and banking accounted for high proportion in publicized cases. Ranking the first was the retail sector making up 36% of the total value in 2014. In particular, the transaction of highest value in this sector was BJC acquired the whole chain of Metro hypermarkets with the publicized value of 870 million USD. In fact, the tendency of continuing to exploit the market of more than 90 million citizens in Vietnam is still the core strategy followed by domestic and foreign retail enterprises.

Ranking the second was the essential consumer product sector with the proportion of 21%.

The third rank was the energy sector (18%). The demand for energy in daily consumption and manufacture is so big that this sector was really attractive to M&A activities. For example, in the last year, REE was very active in acquiring more market shares of enterprises doing business in the sectors of hydroelectricity, thermoelectricity and this strategy will be followed up in the coming years. Moreover, foreign enterprises will pay more attention to the energy sector in Vietnam and there is promising land for more M&A transactions in the future.

Figure 2: The proportion of sectors in the total value of M&A transactions 2014



2.2. A number of typical economic concentration cases in the period of 2012-2014

2.2.1. Banking and finance sector

During the period of implementing the Scheme on restructuring the system of credit organizations (2011-2015), M&A transactions in the banking and finance sector has been very dynamic. The characteristics of M&A missions in banking sector is restructuring small and individual banks to formulate higher potential banks. There have been some acquisitions of big banks' marketshares conducted in recent time. A striking case was Vietinbank selling 20% of its marketshares to Tokyo Mitsubishi worth of 743 million USD, which makes Vietinbank a commercial bank with biggest chartered capital and strongest shareholders in Vietnam. This was also the biggest M&A transaction in the banking sector ever and it has brought lots of market power to Vietinbank. Following this tendency and in parallel with the equitization of SOEs, acquisitions of State owned banks' shares are predicted to occur more in the coming time. More specifically, plans on strengthening the bank system of the State Bank and the inception of new circulars regulating the ownership structure in accordance with the Circular No. 36 will certainly bring about positive impacts on the banking sector of Vietnam.

The goal set forth by the State Bank is that until 2017, the number of banks in the whole country will fall from 40 down to 15-17. If the schedule is followed, the reform process will be led by merger between smaller and weaker banks into larger scale State banks.

Table 1: List of typical economic concentration cases in the banking and finance sector (2012-2014)

No.	M&A Enterprise	Targeted Enterprise	Type	Transaction value	M&A Proportion
1	Saigon Hanoi Commercial Joint Stock Bank (SHB)	The Hanoi Housing Development	Merger	n.a	100%
2	DOJI Group	TienPhong Bank	Acquisition	n.a	20%
3	Insurance Australia Group	AAA Insurance	Acquisition	n.a	n.a
4		NaviBank TrustBank TienPhong Bank GPBank	Self-restructured		
5	HDBank	DaiABank	Merger	8100 billion dong	100%
6	Tokyo Mitsubishi Bank	VietinBank	Acquisition	743 million USD	20%
7	IFC, Maybank	ABBank	Acquisition	n.a	IFC: 10% Maybank: 20%
8	HDBank	Société Générale Viet Finance Co. Ltd	Acquisition	n.a	100%
9	Investor	NaviBank	Acquisition of shares	n.a	
10	PVFC	WesternBank	Consolidation	9000 billion dong	n.a

No.	M&A Enterprise	Targeted Enterprise	Type	Transaction value	M&A Proportion
11	MBS Securities Joint Stock Company	VIT Securities Joint Stock Company	Consolidation	46 billion dong	100%
12	VP Bank	Coal and Mining Finance Company (CMF)	Acquisition	n.a	100%
13	Vietnam International Securities Company (VI Securities)	Ocean Securities Company (OSC)	Consolidation	60 billion dong	100%
14	Maritime Bank	Mekong Development Bank (MDB)	Merger	3750 billion dong	100%
15	Thien Viet Securities Joint Stock Company	An Phuc Investment	Acquisition	24.8 billion dong	99.20%
16	Maritime Bank	Textile Finance Company (TFC)	Acquisition	n.a	n.a
17	State Bank	Vietnam Development Bank (VNDB)	Acquisition	0 dong	100%
18	Credit Saison Co., Ltd (Japan)	HDFinance (HDBank)	Acquisition	n.a	49%
19	VietinBank	PG Bank	Merger	n.a	100%
20	Ban Viet Securities	Ban Viet Fund Management Company	Acquisition	79.56 billion dong	100%
21	KIS (Korea)	KIS Vietnam	Acquisition of capital	129 billion dong	98%

Source: collected by the VCA

Box 1: PGBank merged into VietinBank

On April 14, 2015, at the annual general meeting of shareholders, Vietinbank officially asked for shareholders' opinions about the option of merging with PGBank to make Vietinbank a modern banking and finance group with region level capacity scope.

Vietinbank prepared a draft on Merger Scheme and Merger Contract between Vietinbank and PGBank. Although the Board of Directors submitted the Shareholder Meeting for approval of the matters relevant to the merger with PGBank, the transaction was just conducted after receiving the agreement of the Prime Minister. Thereby, merger of PGBank into Vietinbank will help the bank grow fast, prove to be the leading bank, exploit the advantages of the strategic partner-Petrolimex who own thousands of petroleum stations in the whole country. At the same time, it will also open the chance of access to big projects of Petrolimex, upgrading to the level of partner in the energy sector.

Post-merger chartered capital applied horizontal plus. Therefore, the chartered capital of Vietinbank is 40 thousand billion dong including Vietinbank's 37,234 billion dong and PGBank's 3,000 thousand billion dong. Big shareholders post the merger are the State, BTMU and IFC.

As scheduled, after Vietinbank and PGBank conduct their shareholder general meeting to get approval on the merger scheme, the State Bank will express its approval in principle by June 2015. In the QIII, Vietinbank will issue share swap, ask the State Securities Commission for listing and by end of the QIII, the State Bank will officially approve the merger.

Vietinbank plans to establish a finance company, PG Finance to focus on the group of Petrolimex's customers with the chartered capital of 1,000 billion dong.

2.2.2. Real estates and building material

Recently, the real estate market has suffered much from the obstacles of an economy in downturn. As a consequence of the frozen real estate market as well as the imbalance between demand and supply on this market, a number of M&A activities in this sector occurred as a way out of real estate enterprises. A series of M&A transactions have been on-going including transfer of projects, office buildings and resorts. Among those, foreign investors have enhanced the chances of entering the Vietnam's real estate market.

The M&A trend in the real estate sector is predicted to going on thanks to the impact of policy reforms in this sector when the Law on real estate trading (amended) and the Law on Housing (amended) have been adopted with a breakthrough of regulating permission granted for the foreign investors to acquire houses in Vietnam within the time limit of 50 years.

Table 2: Typical economic concentration cases in the real estate and building material sectors (2012-2014)

No.	M&A Enterprise	Targeted Enterprise	Type	Transaction value	M&A Proportion
1	Hanoi Electronics Corporation (Hanel)	Daewoo E&C Korea	Acquisition	n.a	70%
2	C.T group	G.S Cu Chi Company	Acquisition	24 million USD	95%
3	Dat Xanh Group	Gia Phu Real Estate Limited Company	Acquisition	250 billion dong	n.a
4	Vina Properties Development Group	Novotel Phan Thiet Ocean Dunes and Golf Resort	Acquisition	n.a	n.a

No.	M&A Enterprise	Targeted Enterprise	Type	Transaction value	M&A Proportion
5	Japan Asia Viet Nam	Maple Tree	Acquisition	54 million USD	n.a
6	Tungshing Group	Vinaland	Acquisition	16 million USD	53%
7	Siam Cement Group	Prime Group	Acquisition	4900 billion dong	85%
8	Viettel	Cam Pha Cement	Acquisition	140 billion dong	70%
9	HimLam Land	Hoang Anh Gia Lai	Acquisition of projects	>1050 billion dong	n.a
10	EXS Capital	Son Kim Land	Acquisition of shares	37 million USD	n.a
11	ReCapital	NinhVan Bay	Separate issuance	n.a	48%
12	Warburg Pincus Investment Fund	Vingroup	Separate issuance	n.a	20%
13	Vietnam Infrastructure and Property Development Group(VIPD)	Vingroup	Project transfer	9823 billion dong	100%
14	Lotte	Tokobuki	Transfer	62 million USD	70%
15	Vingroup	Starbowl	Acquisition	n.a	100%

No.	M&A Enterprise	Targeted Enterprise	Type	Transaction value	M&A Proportion
16	Vingroup	Tan Lien Phat	Acquisition	3325 billion dong	74.38%
17	Vingroup	Hong Ngan Real Estate Company	Acquisition	2316 billion dong	99%
18	Vingroup	Metropolis	Acquisition	1622 billion dong	100%
19	Vingroup	Khanh Gia Company (Vincom Thu Duc)	Acquisition	784 billion dong	94%
20	Vingroup	Riverview Da Nang	Acquisition	182,2 billion dong	90%
21	Vingroup	Vincom Construction Company	Acquisition	120 billion dong	100%
22	Vingroup	Ocean Thang Long Company	Acquisition	152 billion dong	13.10%
23	FLC Group JSC	Project Alaska Garden City	Acquisition	3500 billion dong	n.a
24	FLC Group JSC	Ion Complex Tower	Acquisition	2500 billion dong	n.a
25	FLC Group JSC	The Lavender	Acquisition		n.a
26	DBJ Japan	FECON	Separate issuance	195 billion dong	n.a
27	Lotte	Diamond Plaza	Acquisition	n.a	70%

Source: collected by the VCA

Box 2: Bloom of M&A in the real estate sector in Hochiminh City

In 2014, M&A transactions were mainly among domestic groups and Vietnam-Russia joint ventures investing in the Middle region while foreign investors are waiting the right time.

Effervescent 2014

In the retail sector, there were a lot of transactions in the last year, for example, Berli Jucker (Thailand) completed the acquisition of Metro Cash & Carry Vietnam at the value of nearly 900 million USD; Kepple Land (Singapore) acquired a project of Tien Phuoc Company at the value of 26.7 million USD; Creed Group invested 600 billion dong in the City Gate Towers Project. In addition, Creed Group signed the commitment to acquire 50% shares at the two other projects (NBB Garden II, 11.51ha) and NBB Garden III (8.16ha).

A series of M&A transactions done by enterprises in Hochiminh City have been very effervescent. For instance,

Novaland acquired 8 projects including The Sun Avenue (district 2), Lucky Palace (district 6), Orchard Garden and Garden Gate (Phu Nhuan district), etc. with the total value of transfer equal to 10,000 billion dong.

Phat Dat Real Estate also acquired the golden land area valued 500 billion dong in district 5 from Duc Khai to develop the chain of luxury apartments branded as The EverRich. Hoa Binh Company acquired 3 projects namely Green Park (Binh Tan), Soho River View Xo Viet Nghe Tinh (Binh Thanh) and Ascent (district 2) with the total value of more than 650 billion dong. Hung Thinh Land also acquired 9 projects including Tan Huong Tower,; 8X Dam Sen; 8X Thai An, 8X Plus; 12 View, etc. The total capital used for acquisition of those projects were over 2,000 billion dong, accounting for more than 40% of the total capital for M&A and investment in building of enterprises over the past 12 months (over 5,000 billion dong).

Source: CafeF.vn

2.2.3. Consumer product and retail sector

The sectors of retail and consumer products are those witnessing robust M&A transactions in terms of big quantity and value. In 2014, the consumer product sector accounted for 21% of the total value of M&A missions in Vietnam³.

Table 3: Typical economic concentration cases in the retail and consumer product sectors (2012-2014)

No.	M&A Enterprise	Targeted Enterprise	Type	Transaction value	M&A Proportion
1	Ezaki Glico (Japan)	Kinh Do	Acquisition	34 million USD	10%
2	Vinamilk	Driftwood Dairy (the US)	Acquisition	7 million USD	70%
3	BJC Thailand	Family Mart	Acquisition	n.a	100%
4	KKR Investment Group	Masan Consumer	Acquisition	220 million USD	
5	Masan Consumer	Vinh Hao Mineral Water	Acquisition	550 billion USD	75%
6	Bien Hoa Sugar	Ninh Hoa Sugar	Merger	1238 billion dong	100%
7	Kinh Do	Vocarimex	Acquisition	15 million USD	24%

³ Finance Bulletin No.6, 2nd period, March/2015

No.	M&A Enterprise	Targeted Enterprise	Type	Transaction value	M&A Proportion
8	Masan Group	Masan Agri	Acquisition	2746 billion dong	100%
9	Dai Tan Long (a subsidiary of VinaCapital)	Mivipack	Acquisition	500 billion dong	n.a
10	Masan Food	Cholimex	Acquisition	240 billion dong	32.8%
11	Vingroup	Ocean Mart	Acquisition	560 billion dong	70%
12	Vingroup	Vinatex	Acquisition	552 billion dong	10%
13	Power Buy	Nguyen Kim	Acquisition	n.a	49%
14	Standard Chartered Private Equity (SCPE)	Golden Gate	Acquisition	35 million USD	n.a
15	Vingroup	Vinatexmart	Acquisition	n.a	100%
16	Masan Group	Saigon Nutri Food (SNF)	Acquisition	200 billion dong	100%

Source: collected by the VCA

Box 3: Ocean Mart was sold to Vingroup and changed its brand into VinMart

Entering the retail market of Vietnam since September 2011, Ocean Mart - a chain of supermarkets managed by Ocean Retail affiliated under Ocean Group was one of the leading active entities in terms of developing the network (opened 13 supermarkets and convenience stores within 3 years).

In parallel, the retail part also contributed high to the total revenue of Ocean Group. In 2013, the total revenue of Ocean Retail was more than 1,120 billion dong, up 20 times against 2012 and ranked the second in the business list performed by the Group after the banking section. However, due to huge expense vested in expansion, the profit of this company was only 9.15 billion dong, down 80% against the previous year, ranking the lowest position compared to other sections like real estates, securities and banking.

In that context, Ocean Group decided to restructure and withdraw the retail section to focus its resources on the finance and real estate sections. "The Vietnamese market still offers much room for all sectors including retail, hotel or banking for further development. But time really matters so we had to reach the final decision on restructuring, narrowing down the sectors of doing business. At this stage, moving by "too many feet"

will be out of capacity", shared by Mr. Duong Trong Nghia - CEO of Ocean Group with VnExpress a few days after transferring all shares of Ocean Retail to other partners.

Accordingly, 70% of shares would be sold to Vingroup, an ambitious candidate in the sector of consumer products. Without revealing the value of this mission, Mr. Duong Trong Nghia stated that the mission is beneficial for both sides in the way that Ocean Group still earn profits while Vingroup gets the impetus to realize their ambition in the retail market.

According to the new owner, Ocean Retail would change its name into VinMart Supermarket Company, it means that the OceanMart brand will be improved, upgraded to the VinMart system. Envisioning 2017, VinMart will have about 100 supermarkets and 1,000 convenience stores throughout the country.

Previously, Vingroup entered the retail market in 2013 with a chain of shopping centers for children and currently there is a company specialized in this sector, Vincom Retail. Furthermore, this group also contributed capital to establish a company doing e-commerce, namely VinE-Com and another doing fashion, namely VinFashion.

Source: VnExpress.net

2.2.4. Other industries, sectors

One of striking sectors is the energy sector accounting for about 18% of the total M&A value in 2014. Among those REE (Refrigeration Electrical Engineering Corporation) is one of the most famous brands and currently own controlling shares at a lot of hydroelectricity and thermoelectricity plants. The list of investment by REE includes many big enterprises doing business in coal, thermoelectricity, hydroelectricity sectors such as PPC (Pha Lai), TBC (Thac Ba), TMP (Thac Mo), NBC (Nui Beo), TDN (Deo Nai), TDW (Thu Duc), NBP (Ninh Binh), THT (Ha Tu), TVD (Vang Danh), etc.

Table 4: Typical economic concentration transactions in other sectors (2012-2014)

No.	M&A Enterprise	Targeted Enterprise	Type	Transaction value	M&A Proportion
1	TPG Investment Fund (the US)	Masan Agriculture	Acquisition	50 million USD	49%
2	Vinh Hao Mineral Water	Krongpha	Acquisition	53 billion dong	100%
3	Richard Chandler Group (Singapore)	Hoan My Health Group	Acquisition	2000 billion dong	80%
4	Thien Minh Travel Group	Hai Au Airline	Acquisition	54 billion dong	89%
5	Saigon Paper Company (SGP)	Daio Paper Corporation (Japan)	Acquisition	n.a	48%
6	UPS	VNPost Express)	Acquisition	n.a	100%

No.	M&A Enterprise	Targeted Enterprise	Type	Transaction value	M&A Proportion
7	REE	Thac Ba Hyrdopower	Acquisition	n.a	38.56%
8	Pan Pacific	Long An Food Processing Export JSC (LAF)	Acquisition	34 billion dong	23.03%
9	Investment Company F.I.T	Can Tho Techno-Agricultural Supplying JSC (TSC)	Acquisition	3.5 million USD	49%
10	Pan Pacific	Vinaseed-NSC	Acquisition	>320 billion dong	53.20%
11	VOV	VTC	Merger	n.a	n.a
12	Nhom Mua	Cung Mua	Merger	n.a	100%
13	MOL Access Portal Sdn. Bhd (MOL) (Malaysia)	Peasoft	Acquisition	n.a	50%
14	Navigos	Vietnamworks	Acquisition	512 billion dong	89.80%
15	FPT	RWE IT Slovakia (a member of RWE)	Acquisition	n.a	100%
16	FPT	CTCP VNG	Acquisition	5-10 billion dong	100%

Source: collected by the VCA

Box 4: UPS acquired 49% shares of VNPost Express

On March 19, 2013, UPS Express announced their acquisition of 49% shares of VNPost Express and became the first foreign express company owning 100% foreign capital in Vietnam.

Together with three other post exploiters with global network like DHL (Germany), TNT (the Netherlands) and FedEx (the US), another US express company, UPS entered Vietnamese market in early 1990s in the form of cooperation with the domestic post enterprises to open collection and distribution agencies. In 2010, UPS was in the joint venture with VNPost Express to establish the UPS Vietnam Joint Stock Company, of which 51% of the capital was contributed by UPS and 49% by VNPost Express. The Headquarter is located in Hochiminh City and the company officially operated since May 2010. From then on, UPS Vietnam has become focal point connecting business activities of express activities such as delivery, logistics done by UPS in Vietnam.

According to its commitment in accession to WTO, Vietnam's express market is totally opened up allowing the participation of 100% foreign

capital enterprises since January 11, 2012. In that sense, after acquiring 49% shares of VNPost Express by UPS on March 19, 2013, UPS Vietnam became the first 100% foreign capital express company in Vietnam.

Expressing the pleasure on this new opportunity, Mr. Brendan Canavan, President of UPS Asia Pacific indicated that the ownership of 100% capital of UPS Vietnam, customers of UPS in the Vietnamese market will be better connected to the world via the global network of UPS.

The representative of UPS also revealed that in line with its global development strategy, UPS invested in new facilities and technology in focal commercial and industrial areas in the whole country including Ba Ria Vung Tau, Binh Duong, Hai Duong and Bac Ninh. Those new centers are located in strategic areas in the key business regions where demand for logistics is very high.

Over the past two years, UPS also made other important investment in Vietnam such as the introduction of Preferred LCL Ocean Freight which is 40% quicker than the LCL which used to be a traditional way of transportation

from the ports of Hochiminh City to the US. In 2012, tracking and delivery measures were applied such as Internet Pickup and UPS Quantum View Manage which could be found on the website UPS.com.

According to the CEO of UPS Vietnam, Mr. Jeff McLean, since its presence in Vietnam in 1994, UPS has provides logistics measures to MNCs, SMEs. Once wholly owning UPS Vietnam, this company will be more flexible in expanding its operation and enhancing cooperation with Vietnamese enterprises.

Source: ICT News

In brief, M&A transactions done in recent time occurred mainly in some key sectors/ industries of the economy with following striking features:

- » The transactions occurred mainly at big companies with huge finance potential and strong market power including foreign companies investing in Vietnam and Vietnamese companies merging and acquiring each other;
- » Investment funds and finance companies participated in those transactions with the role of sponsoring capital for the M&A enterprises in Vietnam;
- » A lot of companies or groups established new companies to conduct M&A transactions in the market, which shows that M&A activities have become more professional in the form of combined economic concentration.

2.3. Economic concentration of State owned groups/ enterprises

Re-arranging or restructuring SOEs has been reinforced by the Government over the past 15 years. By now more than 4,000 SOEs have been equitized. The year 2015 will be the last year implementing the “Scheme on restructuring SOEs with the focus on Economic Groups and State owned Corporations in the period of 2011-2015”. During this period, there were 242 SOEs were equitized, 6 enterprises were acquired; 32 enterprises were merged and consolidated. A number of big SOEs were IPO such as Vinatex, PetroVietnam Ca Mau Fertilizer Company Limited, SASCO, Vietcombank, Vietinbank, PV Gas, Petrolimex, Viglacera, REE, Gelex (Vietnam Electrical Equipment Joint Stock Corporation), etc.

As planned equitization process adopted by the Government, 479 enterprises are expected to be equitized in the period of 2014-2015 (not including the number which will be added following new criteria regulated at the Decision No. 37/2014/QĐ-TTg), among those 432 enterprises are equitized; 22 ones are acquired, dissolved, bankrupted; 25 ones are merged or consolidated. State owned enterprises or groups will continue to withdraw their capital investment in 5 sensitive sectors including securities, finance, banking, insurance, real estates and investment funds. In general, most of equitized companies have large scale, big scope of operation, doing business on multi sectors and many of those completed their initial public offering (IPO) on the securities markets.

In the coming time, there will be equitization of big SOEs including Vietnam Airlines, Mobifone, Sabeco, BIDV, etc. in particular, in the transportation sector, beside Vietnam Airlines, there are also other large scaled enterprises under equitization or to be equitized such as Vinalines, companies operating sea ports, air ports, Cienco 1, Cienco 4, etc. Tentatively, there will be just 16 SOEs working in the public sector including maritime guarantee, flight management, railway, etc. A lot of enterprises have plans on issuing more share to attract capital via domestic and foreign investors.

There is tendency which just occurred and might develop further, that is not only foreign companies but also big private domestic companies have paid more attention to purchasing shares or becoming strategic partner when big SOEs are equitized.

2.4. Economic concentration on the securities market

The securities market is where there are transactions of trading, exchanging different types of securities as a part of the finance market. The securities market plays a very important role in mobilizing and utilizing capital of the market economy. According to the regulations specified in the Law on securities, share is a kind of securities defining the legitimate right and interest of the owner to partial share capital of the issuing company. Trading shares among companies, therefore, is considered as a type of economic concentration.

Based on the Item 3 Article 23 of the Decree 58/2012/ND-CP regulating the conditions of issuing more share for swap, it's compulsory to get the approval in writing from the competition management agency indicating that the merger, consolidation or commitment comply with the regulations on controlling economic concentration provided in the VCL. This requirement is appropriate with the regulations on controlling economic concentration of

the VCL and it will help the competition management agency to be informed about the M&A transactions on the securities market for better management in practice.

According to the statistics of the State Securities Commission, there were 18 transactions of share swap on the securities market from 2012 till June 2014.

Table 5: Enterprises conducting share swap on the securities market (2012-June 2014)

No.	Name of enterprise issuing share swap	Name of swapped enterprise	Remark
1	Licogi 166	Licogi 169	Swap by merger contract
2	Song Da 6	Song Da 605	Swap by merger contract
3	Viet Y Steel	Song Da Steel JSC	Swap by merger contract
4	Tien Len Steel	Phuc Tien Production and Trade JSC	Phuc Tien Production and Trade JSC changed to One member Limited Company post the merger
5	Kinh Do	Vinabico	Swap by merger contract
6	Can Tho Hydropower	Rinh River Hydropower	Swap by merger contract
7	Vingroup	PFV Investment and Trade Company	Swap by merger contract
8	Viet Nhat health equipment JSC	KMS JSC	Issue shares for swap share of KMS shareholders
9	Hung Dao Container JSC	Dai Hung Mechanics Transportation and Trade JSC	Swap by merger contract

No.	Name of enterprise issuing share swap	Name of swapped enterprise	Remark
10	Song Da 11 JSC	Song Da 11-Thang Long	Song Da 11-Thang Long JSC changed to One member Limited Company post the merger
11	SOMEKO Song Da JSC	Someco Hoa Binh JSC	Swap by merger contract
12	Song Da 9 JSC	Song Da 9.01 JSC	Swap by merger contract
13	Hanoi Electromechanical manufacturing JSC	Hanoi Electromechanical JSC	Swap by merger contract
14	HD Bank	Dai A Bank	Swap by merger contract
15	Phan Vu Investment JSC	Phan Vu Concrete JSC	Swap by merger contract
		Phan Vu Concrete Can Tho JSC	
16	MSB	VIT Securities JSC	Swap by merger contract
17	International Securities JSC	Dai Tay Duong Securities JSC	Swap by merger contract

Source: collected by the VCA

There were 6 out of 17 above transactions sending the official paper to the VCA for issuing the document provided at Item 3 Article 23 of Decree No.58/2012/ND-CP.

Those aforementioned cases occurred mainly among domestic companies in the form of share swap by merger contracts. The cases which were notified to the VCA were of small scale, for restructuring ownership capital.

However, in reality, there are a lot of public offers selling shares on the securities market which seems quite complicated and effervescent containing the risk of potential acquisition.

Box 5: HVG acquired VTF and AGF

One of the typical economic concentration cases is that HVG successfully offered buying the public shares of two companies including VTF and AGF. Thereby, HVG bought 2.5 million shares of VTF equal to 100% of the offered shares, increasing the number of shares under HVG ownership to 25.76 million units (61.21% of the total shares in circulation). Similarly, HVG also successfully offered buying 6 million shares of AGF, increasing the number of shares under HVG ownership to 19.13 million units, equal to 74.89% of the total shares in circulation. It's noteworthy that HVG did publicly offered buying shares of those two companies at the price higher than the market price at that time. Moreover, the process of HVG buying AGF shares lasted long. In September 2008, HVG announced their ownership of 2.45

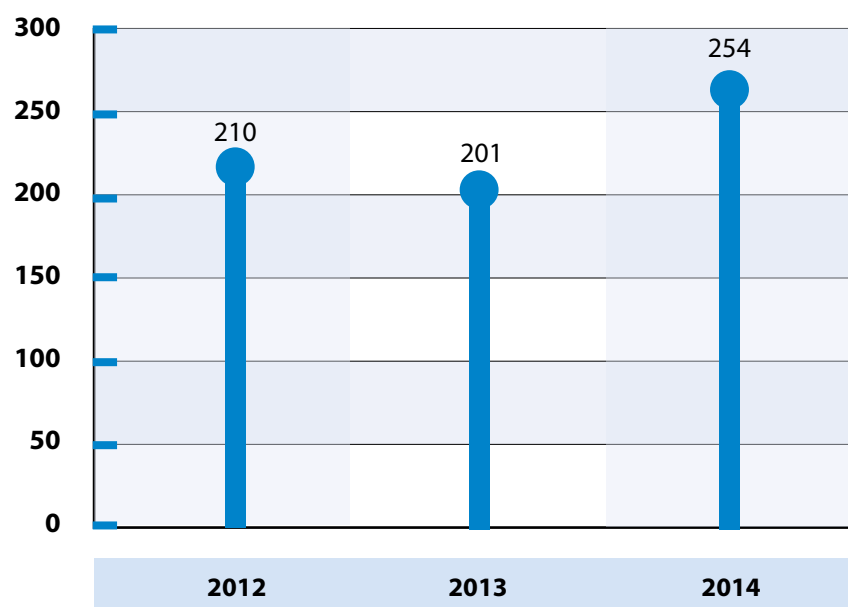
million shares, equal to 19.15% of AVG's chartered capital and became one big shareholder of its. By March 2010, HVG successfully offered buying 6.568 million shares of AVG, equal to 51.08% of AGF's chartered capital and became a subsidiary of HVG. This shows the HVG's intention to acquire the above two companies in a clear manner.

Thanks to holding the prevailing number of shares as mentioned above, HVG "controlled" and "dominated" the whole section of the acquired companies. This falls within the category of economic concentration in the form of merger regulated at Item 3 Article 17, the VCL.

2.5. Economic concentration in the form of changing the business registration/certificate of investment

According to the statistics collected by the VCA from Departments of Investment and Planning and Management Units of Industrial and Processing Zones in cities and provinces throughout the country, there were 665 cases of changing business registration due to the reason for economic concentration and the number of involved enterprises was 1,548 in the period from 2012 to 2014.

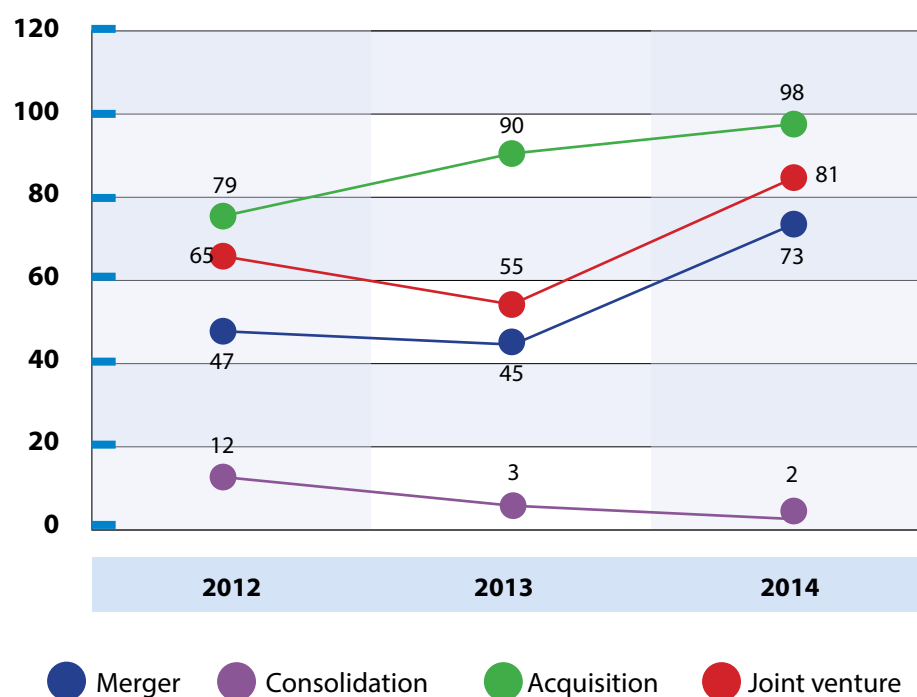
Figure 3: Number of economic concentration via changing the business registration 2012 - 2014



Source: collected by the VCA

Economic concentration cases via changing business registration in the recent period tends to increase against the previous period (2009-2011 when there were 368 cases) and appears to be quite stable over the past three years. Among those, there were three typical forms of economic concentration including acquisition, joint venture and merger while the type of consolidation was less popular.

Figure 4: Types of economic concentration via changing business registration/ certificate of investment

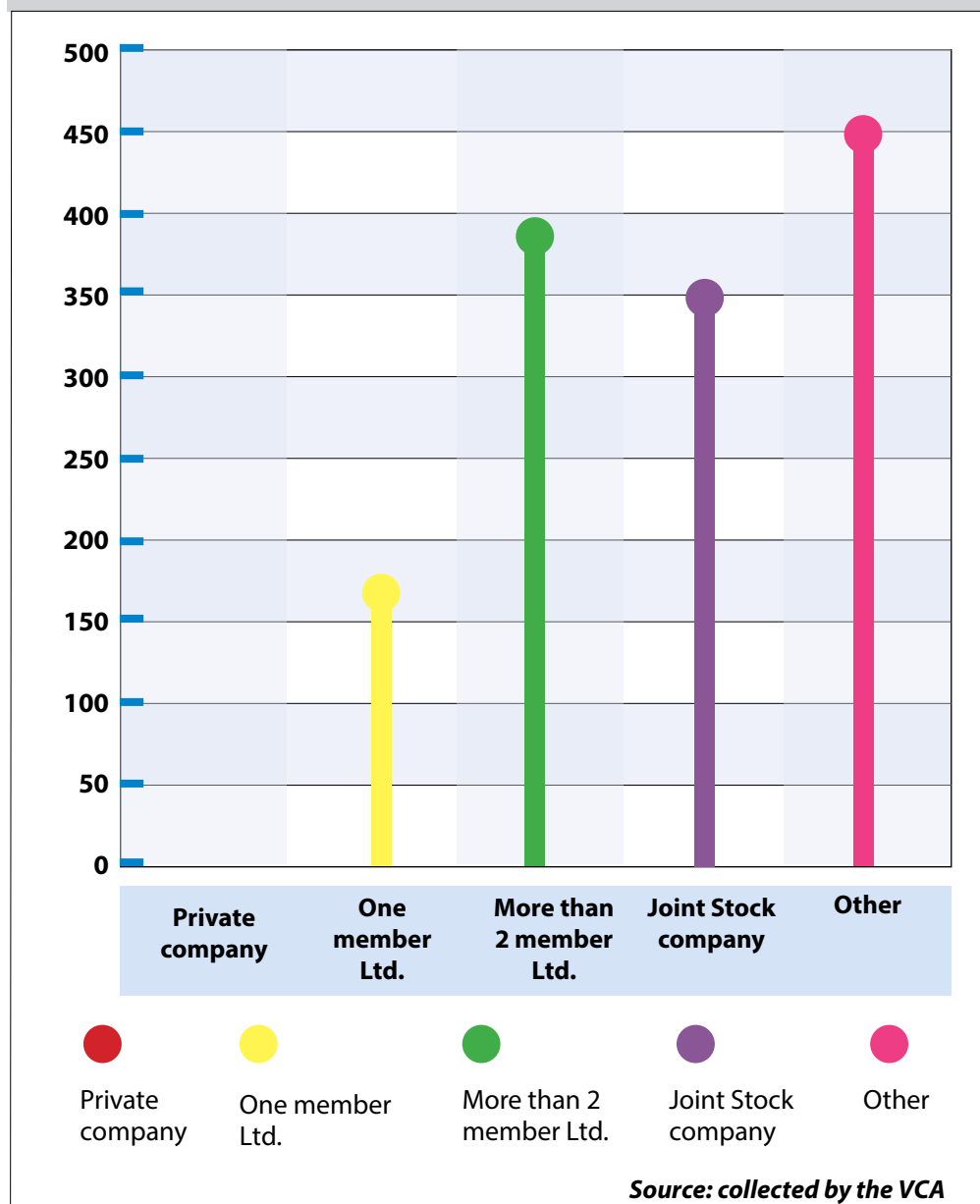


Source: collected by the VCA

In terms of subjects, 1,548 enterprises participating in economic concentration via changing business registration, there were around 460 were FDI ones, most of which joined the economic concentration in the form of joint venture with Vietnamese enterprises.

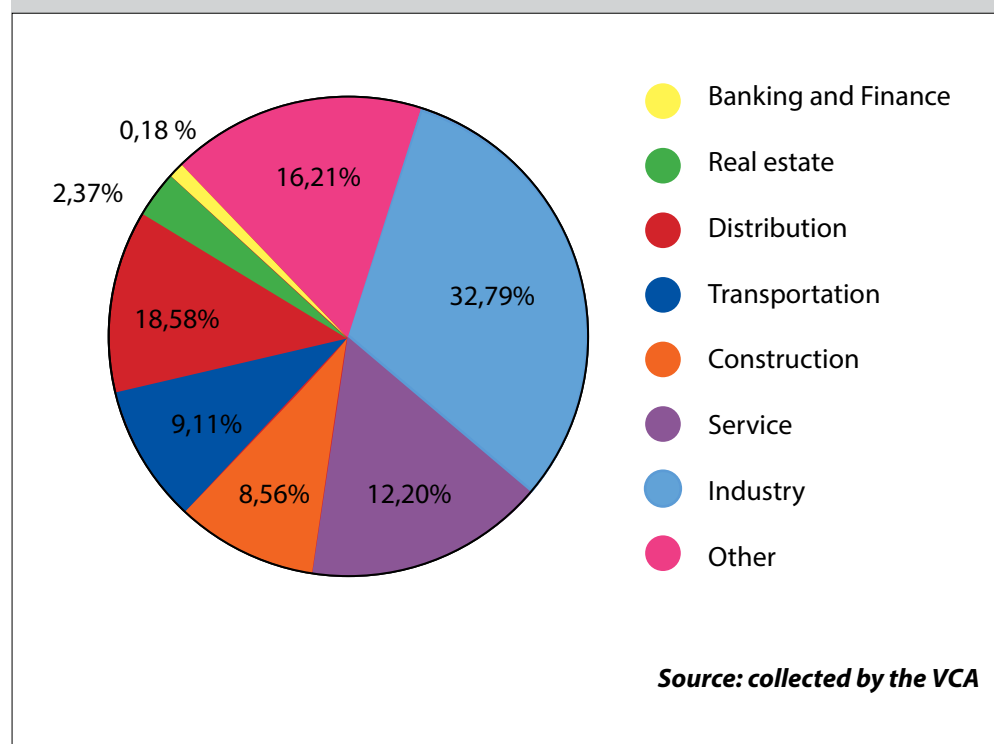
In addition, involved enterprises are of various types as shown in the Figure 5 below:

Figure 5: Types of enterprises participating in economic concentration via changing business registration/certificate of investment (2012-June 2014)



In terms of sectors witnessing more cases of economic concentration via changing business registration, the service sector accounted for the most such as the service of distribution, logistics. After service sector was industry sector including textile, food processing and mining industries.

Figure 6: Statistics of economic concentration via changing business registration by sector/industry (2012-2014)



In terms of locality, Hochiminh City is where more cases of economic concentration via changing business registration occurred, 186 cases were recorded in the period of 2012-2014, far head in comparison with the second location, An Giang where there were 93 cases. This is in conformity with the practice that Hochiminh City always takes the lead in the number of enterprises and attraction of foreign investment and at the same time, a lot of enterprises operating here have the national scope of operation. The Department of Securities transaction of Hochiminh City is also where there were a lot of M&A missions to be conducted.

Figure 7: Top 10 cities/provinces where there were lots of economic concentration in the period of 2012-2014

No.	Provinces/cities	Number of economic concentration cases
1	Hochiminh City	186
2	An Giang	93
3	Vinh Long	28
4	Hanoi	24
5	Hai Phong	22
6	Bac Ninh	19
7	Long An	18
8	Binh Dinh	15
9	Hai Duong	13
10	Dak Lak	11
	Binh Phuoc	11

Source: collected by the VCA

CHAPTER II

CONTROL OVER ECONOMIC CONCENTRATION ACTIVITIES

1. Newly issued regulations on economic concentration in the competition legislation

1.1 Regulations on controlling economic concentration of the competition laws

Since the issuance of the VCL and its guiding decrees in 2005, there were two legal documents on enhancing the effectiveness of the law enforcement, namely Decree No.119/2011/ND-CP dated December 16, 2011 amending and supplementing a number of administrative procedures provided at Decree No. 116/2005/ND-CP dated September 15, 2005 of the Government regulating details of implementing a number of articles in the VCL, and most recently the Decree No.71/2014/ND-CP dated July 21, 2014 replacing the Decree No.120/2005/ND-CP dated September 30, 2005 of the Government providing regulations on administrative sanctions in the competition field.

As for the replacement of Decree No.120 by the Decree No.71, new regulations provides higher sanction level imposed on violations on economic concentration. Since the inception of the VCL till now, there hasn't been any economic concentration case to be sanctioned for not notifying or conducting the prohibited cases. There were many economic concentration cases not complying with the regulation on notifying to the VCA. Hence, from the perspective of competition law, in order to effectively monitoring M&A transactions on the market, it's vital to have strong sanctions in place to deter enterprises from violating.

According the Article 25-29 of Decree No.120, sanctioning measures to be imposed in the area of economic concentration include fines of different levels depending on the violation act and seriousness of the violation act. Thereby, a fine of up to five per cent of the total revenue in the financial year prior to the year in which the breach was committed by the merging enterprises and the merged enterprise shall apply

for a prohibited merger/consolidation/acquisition/joint venture of enterprises; a fine of from five up to ten per cent of the total revenue in the financial year prior to the year in which the breach was committed by the merging/acquiring enterprises and by the merged/acquired enterprise shall apply for a breach if the merged/acquired enterprise coerced directly or indirectly the merging/acquiring enterprises to carry out the merger or to sell a part or all of the assets of such enterprise; a fine of from five up to ten per cent of the total revenue in the financial year prior to the year in which the breach was committed by the consolidating/joint venture enterprises shall apply for a breach if the consolidation/joint venture results in a significant increase in the price of goods and services on the relevant market; a fine of from one to three per cent of the total revenue in the financial year prior to the year in which a breach was committed by an enterprise as stipulated in the VCL. However, according to the new regulations in the Decree No.71/2014/ND-CP, all breach actions against Article 18 and 20 of the VCL might be fined up to 10% of the total revenue of the financial year prior to the year in which the breach was committed⁴. In addition to the above sanctions, enterprises might be imposed some additional sanctions and remedy measures such as: compulsory separation of merged/consolidated enterprise; revocation of business registration; compulsory sale of purchased property.

1.2. Regulations on controlling economic concentration in sectoral laws

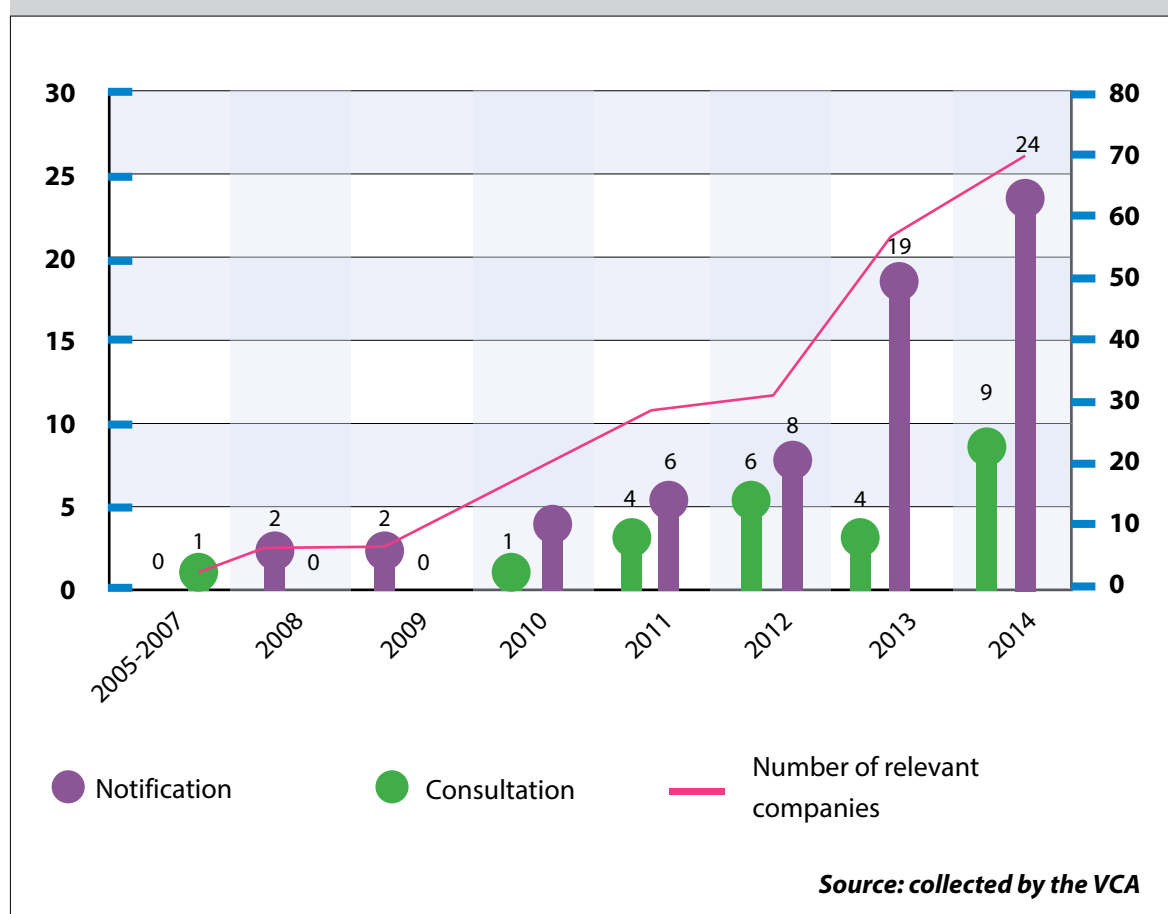
On those days, there have been a lot of legal documents promulgated in different sectors/industries that contain regulations on controlling economic concentration such as the Enterprise Law 2014, the Investment Law 2014, regulations on transferring stock to foreign investors in the aviation sector (as stipulated at the Decree No.30/2013/ND-CP on air transportation and general aviation activities). Details on the compatibility, conflict, overlap between this sectoral law and competition law will be analyzed in the Appendix 1 of this Report

⁴ Article 23-27, Decree No.71/2014/ND-CP

2. Cases that were notified to or advised by the VCA

During the last 5 years, growth pace of economic concentration activities in Vietnam reached the average of 30%. This reflects a fact that Vietnam is an open economy with participation of multi economic sectors and subsequently the increase of economic concentration activities is a matter of fact. However, there still exist potential risks for creating dominant companies and causing negative effects on the competition environment. That's why the VCA has been very active in fulfilling its functions of monitoring, following up and controlling economic concentration activities to prevent and lessen the negative impact of those activities onto the market in due time. During the period from 2012 to 2014, the VCA handled 19 cases and a lot of consultations on domestic and foreign economic concentration in the course of enterprises' doing so.

Figure 8: The quantity of economic concentration cases in the period of 2005-2014

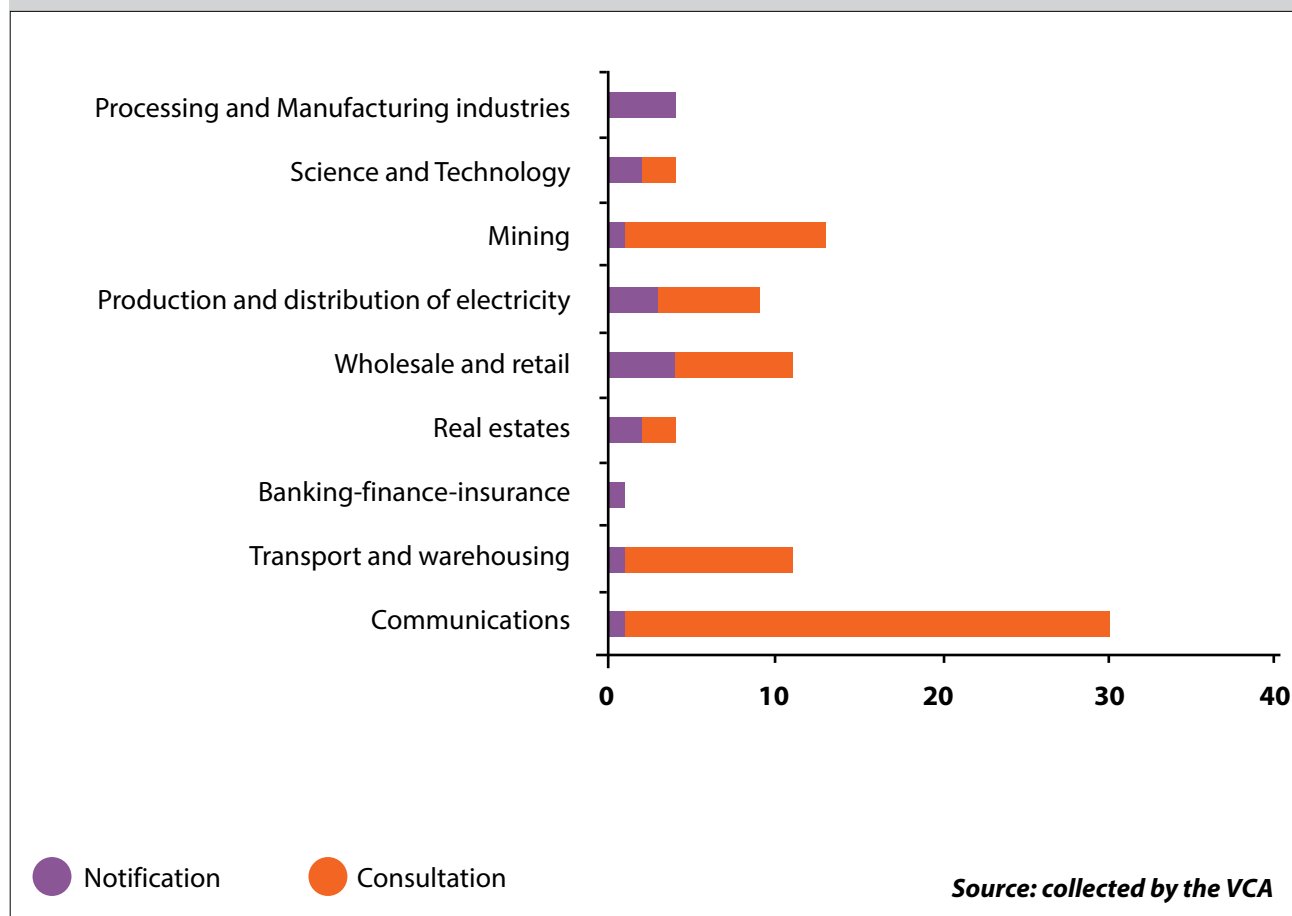


Until now, the VCA has approved all the notified economic concentration cases and there was 1 case falling in the prohibited circumstances but fulfilling the conditions for exemptions in accordance with the VCL.

Among those notifications, most of cases were on mergers and acquisitions.

By sector, recent M&A missions dealt mostly with key sectors like food and beverage processing industries; retail distribution, real estates and public relation.

Figure 9: Classifying economic concentration cases by sector



Economic concentration involved enterprises are of all economic sectors including SOEs, private enterprises, joint venture, FDI but mainly big ones or leading ones doing business in Vietnam and MNCs. Of notifications to and consultations by the VCA, there are many big economic concentration cases occurring overseas but they also do business in Vietnam, such as PepsiCo – Suntory; A.P Moller - Maersk - A/S CMA CGM - S.A MSC Mediterranean Shipping Company SA...

The reasons for increase in the number of notifications and consultations might be attributed to the following factors:

- » Firstly, advocacy and dissemination have been enhanced by the VCA, so enterprises' awareness has been improved especially their compliance with the competition legislations has been better.
- » Secondly, the coordination between the VCA and the competent regulators has been increasingly efficient and tight in controlling economic concentration activities. Those partners might be named as the SSC, Departments of Industry and Trade, Industry Associations, etc.
- » Thirdly, due to the shift of foreign investment in Vietnam, a lot of enterprises selected their investment via M&A channels to save resources, easily enter the market and minimize market barriers. Most of economic concentration cases are involved by foreign enterprise or FDI enterprise as a party who is well aware of competition compliance.

3. Sectors/industries of high concentration

The VCL applies the criteria of marketshare to control economic concentration. In case the combined marketshare is below 30% on the relevant market, it means that the economic concentration activity might not create the dominant position for the involved enterprise post M&A. In that sense, regardless of merger, acquisition, consolidation or joint venture, this is considered as a normal measure of restructuring business or investment without any risk of bad impact on competition in the market. While in case of combined marketshare accounting for 30-50% on the relevant market, parties of the potential economic concentration cases must notify the VCA. As for combined marketshare of over 50%, it's prohibited to ensure that there will no formulation of enterprise/group of enterprises holding dominant position or

monopoly on the market (with exception of exemptions provided in the VCL).

Marketshare is also a criteria to define the degree of concentration on the market. Based on the concentration degree, it's possible to define whether that industry/sector has potential risks and belong to the subjects under control.

3.1. Industries/sectors with high degree of concentration based on CR index

The number of industries/sectors having top 3 enterprises leading the market (CR3) tends to fall down. According the the Report on economic concentration 2011, the number of CR3 sectors/industries went down from 18% in 2008 to 14% in 2010 and it reached 9% in 2013.

On the other hand, the VCA took the function and duty of building up the database on enterprises/groups of enterprises having dominant/monopoly position on the market in line with marketshare criteria. Therefore, the VCA has made it an annual activity of building and updating this database. Below is the data of 2013:

Table 6: Sectors/industries of the leading high CR3 in 2013

No.	Sector/industry	CR3
1	Domestic air transportation	99.53%
2	Broadband internet access service ⁵	96.43% (*)
3	Telecommunications and mobile ⁶	92.71% (*)
4	Hot water tank production	90.54%
5	Process and store vegetable oil	79.70%

⁵ http://ict-industry.gov.vn/WhiteBook/sach_trang_2013.pdf

⁶ http://ict-industry.gov.vn/WhiteBook/sach_trang_2013.pdf

No.	Sector/industry	CR3
6	Scooter production	78.07%
7	Life insurance	76.84%
8	Non-alcoholic beverage production	75.43%
9	Cable, satellite and other subscription programs	73.77%
10	Petroleum distribution	70.56%
11	Accumulator production	66.23%
12	Sea port	65.11%

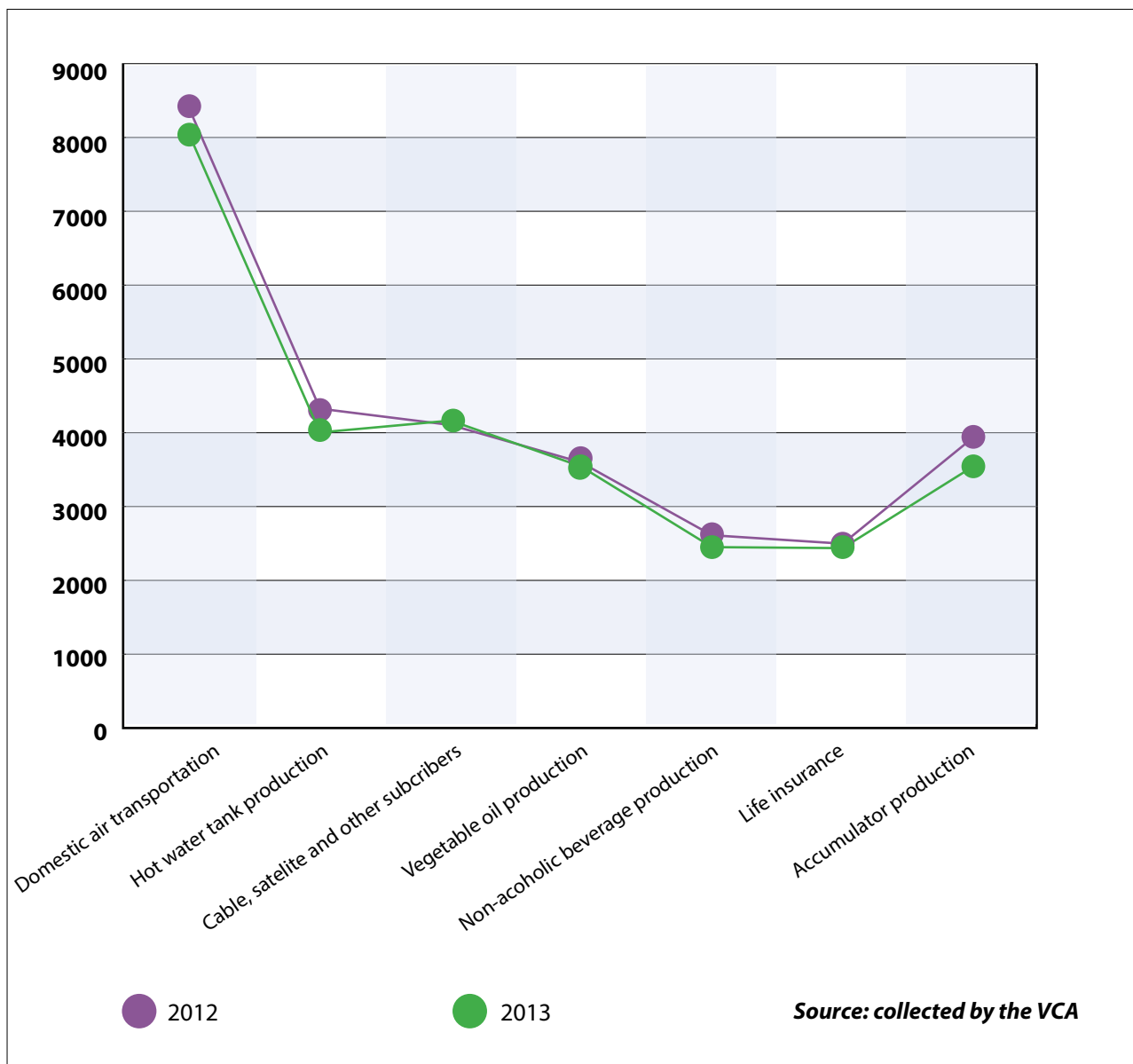
Source: collected by the VCA, (*) by the indicator of subscriber

Beside sectors/industries where the State holds the dominating right such as domestic air transportation, petroleum distribution, sea port, etc., there are many other sectors of the economy have high degree of economic concentration with CR3 of over 65%. In those sectors, the number of enterprises is not many and most of them are big ones. Economic concentration activities occurring in sectors with CR3 of over 65% fall in the threshold of notification or the prohibited list as provided by the VCL.

3.2. HHI Sectors/industries of high concentration based on HHI

In conformity with the concentration degree of top 3 enterprises (CR3), HHI of highest sectors/industries are also the ones with high CR3.

Figure 10: Sectors/industries with high HHI



HHI is also a source of assessing degree of economic concentration but it doesn't only look at CR3 enterprises but it also takes the relative comparison among enterprises operating on the relevant market into account. As stated above, the sectors where CR3 and HHI are high should be noted and controlled (domestic air transportation, telecommunications service, vegetable oil, hot water tank, cable programs, life insurance, etc.).

CHAPTER III

A NUMBER OF TYPICAL CASES AND DIRECTION ON CONTROLLING ECONOMIC CONCENTRATION IN THE COMING TIME

1. Typical cases

As mentioned in Chapter 1 & 2 of this Report, economic concentration activities have been very dynamic and complicated. From the perspective of management on competition, controlling economic concentration aims at:

- » Firstly, implementing regulations of the VCL in terms of verifying economic concentration in need of prior notification or request for exemption in case of prohibited acts.
- » Secondly, detecting violation acts of enterprises against provisions on economic concentration stipulated in the VCL for settlement in due course and so as to ensure a fair and healthy competition environment for the business community.

Over the past years, there have been a lot of economic concentration cases including ones that were verified by the VCA or are being monitored and followed up.

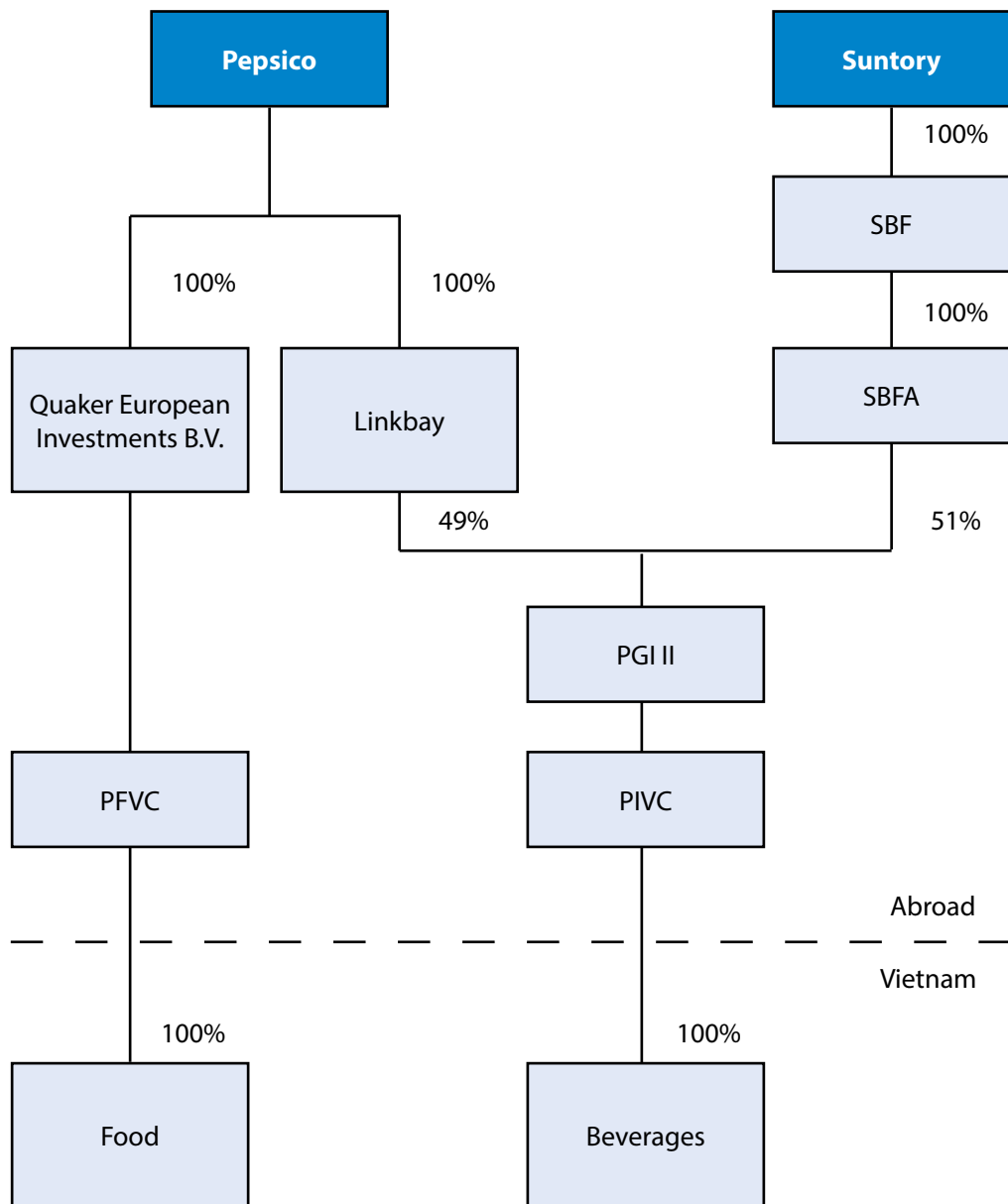
Below are noteworthy cases taking place in the period of 2012-2014:

1.1. PEPSICO case

Summary of the case:

Suntory Beverage (SBF) and Food Asia Pte.Ltd (SBFA) are two enterprises operating overseas (in the Netherlands and Singapore). Those two acquired 51% shares of the PepsiCo Global Investment II B.V (PGI II) – a subsidiary of Linkbay, an affiliate of PepsiCo. Suntory Holdings Limited owned two subsidiaries including SBF and SBFA and it conducted the transaction with PepsiCo abroad to acquired 51% shares of PGI II. This is a transaction taking place outside the territory of Vietnam (refer to the below description chart).

Figure 11: Transaction between PepsiCo and Suntory



However, PGI II holds 100% capital contributed by PepsiCo Vietnam (PIVC) and it operates business activities on food and beverages of PepsiCo in Vietnam. Obviously, PepsiCo has its subsidiary in Vietnam and has business activities in Vietnam (referred to the Law on Trade and Law on Enterprise regarding business activities). After the acquisition was finished, PIVC would not trade food and just work in the field of beverages.

Though Suntory doesn't have trade representative in Vietnam, its beverage products are still present and consumed in Vietnam (imported into and distributed in Vietnamese market).

Acquisition was done abroad but both enterprises were operating in Vietnam so this transaction was under the scope of regulation of the VCL.

The above case is considered as an acquisition as provided by the VCL (Article 16, VCL; Article 34, Decree No.116/ND-CP). The relevant market is the beverage market on national scale. Based on the market share provided by the involved enterprises, the market share of PIVC in 2010 and 2011 was respectively 45.6% and 47.1% (the data of the two consecutive years prior the acquisition), the market share of Suntory was 0.2% and 0.3%. Therefore, the combined market share of the two enterprises was 45.8% and 47.4%. This was within the threshold of being controlled (from 30% to 50%) so the two

enterprises were obliged to notify their economic concentration mission. As it doesn't fall in the prohibited acts, it's necessary for the enterprises to notify the competent agency by laws.

Effect on competition in the market post the transaction: after Suntory acquired 51% shares of PepsiCo, the beverage market structure didn't change. On the market, PIVC still took the lead with the structure of capital ownership: PepsiCo – 49%, Suntory – 51%. On the other hand, the beverage market has quite high degree of competition due to a big number of beverage enterprises on the market (134), so this transaction didn't contain the risk of causing competition restraint on the market. By nature, the acquisition did change the structure of capital ownership of PIVC operating in Vietnam.

Following up the case in 2013-2014 from the dimension of competition (post the acquisition) indicates that PIVC operated its business in a fair manner, complied with the competition legislation and didn't have the signal of conducting anti-competitive acts (though it holds the dominant position on the market but not abusing the position).

Regarding its compliance with the competition legislation: in 2012, the enterprise submitted dossier requesting consultation to the VCA. The dossier contained adequate information and material as required. It might be seen

that foreign enterprises are very well aware of competition compliance and they are quite active in requesting for consultation or notification of their transactions.

1.2. P3 case (three big maritime transportation enterprises)

Summary of the case:

On October 9, 2013, big maritime transportation enterprises including Maersk, MSC and CMA CGM (P3) signed a frame agreement to establish a joint operation venture (Network Centre – NC) with an aim to provide operation service for sea container transportation of 3 parent companies in three main trade areas, namely Asia-Europe, Trans-Atlantic and Trans-Pacific. According to this agreement, NC will be established as a limited responsibility venture born in the UK with offices in London and Singapore. NC was set up as an legal entity and separate from parties. Parties would contribute ownership shares based on the cubic content of each company's ships. In particular, Maersk accounted for 42.4%, MSC accounted for 34.4% and CMA-CGM accounted for 23.2%.

By 2013, parties were international sea transportation companies operating in the field of commodity transportation by maritime and ship operation. All three companies had operational activities in Vietnam and had ships

arriving at Vietnamese ports. Therefore, the formulation of NC was a kind of economic concentration in the form of joint venture and under the regulation scope of the VCL.

Regarding the relevant market: as classification of liner ship, there are two kinds of container shipping: main line and feeder. In international common practice and based on the regulations of the VCL on defining relevant market (consider the market of substitutable service in terms of characteristics, using purpose and price). As for P3, the relevant market is main line in two routines: Asia-Europe and Asia-North America departing from Cai Mep-Thi Vai port.

The formulation of P3 including the above mentioned liner shipping companies would change the maritime market structure and have certain effects on competition in the market. Hence, in order to comply with competition laws and relevant laws in countries where those companies are operating, representatives of those three send the economic concentration notifications to EU, the US, China and Vietnam at the same time. This agreement was adopted by the EU Trade Commission and Maritime agency of the US but MOFCOM (China) disapproved. Although parties submitted their notification dossier to the VCA but they paused the mission to look for other options.

1.3. Abbott acquired CFR

Summary of the case:

On June 5, 2014, the VCA received a notification dossier of Abbott Investments Luxembourg Sarl, CFR Pharmaceuticals SA and Positron Limited Ltd about Abbott Investments Luxembourg Sarl's intention to acquire CFR Pharmaceuticals SA. Parties of the economic concentration case include: Seller - Positron Limited Ltd which doesn't operate in Vietnam; Targeted company: CFR Pharmaceuticals SA which has representative offices in Hochiminh City and Hanoi and subsidiaries (Domesco); Acquirer: Abbott Investments Luxembourg S.A.R.L. which has representative offices in Hochiminh City and Hanoi and subsidiary (3A Nutrition Ltd. Company Vietnam).

Based on Item 3 Article 17 of the VCL, this case is acquisition, Abbott Investments Luxembourg Sarl acquired CFR Pharmaceuticals SA from Positron Ltd Limited.

In that sense, the relevant market was defined as the market of pharmaceuticals classified by active substance (each active substance is a relevant market) across Vietnam. According to the market share report provided by parties, the combined market share of Betaserc and Duphaston fall in the threshold of 30-50%.

The economic concentration in the form of acquisition among parties mentioned in the dossier occurred abroad. The

acquisition didn't change the structure of the Vietnamese pharmaceuticals market.

The combined market share of involved parties on the relevant market accounted for less than 50%. Therefore, based on Article 18 of the VCL, the above acquisition isn't under the prohibited acts provided in the VCL..

1.4. The case of BankNetVN and Smartlink requesting for exemption

Summary of the case:

On August 19, 2014, the MoIT received the adequate dossier requesting for exemption on economic concentration by BankNetVN and Smartlink in accordance with Article 30 of the VCL and Article 57 of Decree No.116/2005/ND-CP providing details of implementing some articles of the VCL.

BankNetVN and Smartlink are the two enterprises operating in the field of intermediary bank payment. The planned economic concentration mission between the two companies is a case of merger provided at Item 1 of Article 16, the VCL. Accordingly, Smartlink will be merged into BankNetVN. The combined market share of parties on the relevant market is 100%. Therefore, this case is prohibited in accordance with Article 18 of the VCL.

However, this case meets the conditions of enjoying exemption as stipulated

in Article 19 of the VCL and it's the authority of the Prime Minister to permit the exemption (Article 25 of the VCL). This merger will contribute to the socio-economic development, technological advancement, details as below:

The merger is an option selected by the State to implement the platform of building an unified financial switching center to promote payment by bank cards, which is in line with the Government's direction to develop a non-cash payment system, increase the efficiency of the economy management done by management agencies via payment channels and to meet with the principles of transparency in the course of wider and deeper economic integration. This option also met the objective of building unified financial switching center, with a unified brand, connecting card payment systems of card issuing organizations, card payment organizations and current unions of card to build a unified system and facilitate small banks with limited financial capacity to join the card market and lessen the burden of investment in technological infrastructure for the big banks.

On the other hand, the merger option was also in conformity with the platform of building a unified card switching center in Vietnam on the basis of volunteer participation of 49 members. Therefore, the company to be established after the merger would ensure that the

members not to abuse of the monopoly position and exert good impact on competition of the intermediary card payment market.

Regarding technological advancement

The post merger company will apply advanced technology and the model of ACH of the US (Automated Clearing House) and will evaluate and standardize units providing foreign IT measures when connecting to the unified card switching center. Moreover, the post merger company would transfer to using the chip card payment of EMV standard in Vietnam.

Meeting all the conditions of granting exemption, the Prime Minister issued the Decision No.2327/QĐ-TTg dated December 22, 2014 to grant exemption to those two enterprises in the form of merger under attached detail conditions (refer to Appendix 3).

1.5. BJC acquired Metro

Summary of the case:

BJC (Berli Jucker Public Company Limited) was set up in Thailand 132 years ago, operating in the field of producing glass bottles, home appliances and instant products, etc. In late 2012, BJC acquired 75% shares of the Thai Corp International Vietnam Co.Ltd (TCI), and is a distributor of consumer products in Vietnam with more than business representatives, 1,800 agents, 220

supermarkets and convenience stores and more than 50,000 retail shops. After that, BJC acquired 75% shares of ICHIBAN, a leading producer and distributor of tofu in Vietnam. In early 2013, BJC continued acquire 65% shares of Thai An JSC, a company specializing in distributing and delivering food in the North. In June 2013, BJC acquired the system of 42 Family Mart in Vietnam. Therefore, BJC entered the distribution and retail market of Vietnam.

On August 7, 2014, Metro Vietnam officially announced that the wholesale section would be transferred to BJC Thailand after the parent Metro group in Germany signed the transfer agreement of wholesale section in Vietnam to BJC. However, the plan of BJC was temporarily paused because shareholders of BJC opposed at the shareholder meeting on January 8, 2015. But TCC Holding which operates in the field of alcohol, real estates, trade, insurance and manufacturing industry is the biggest shareholder of BJC so it will take over this mission and turn Metro Vietnam a part of it. TCC Holding wanted to acquire Metro Vietnam to establish a retail network to distribute products manufactured by TCC and sell Thai products then entering the ASEAN market.

With the information available, it can be seen that if BJC acquires Metro Vietnam, it will be a kind of horizontal economic concentration (on the market of distribution and retail). If TCC Holding

acquires Metro Vietnam, it will be a kind of vertical economic concentration (between the producer and distributor). Both cases will change the structure of the retail and distribution market. The post merger company will gain more market power and will have certain impact on competition in the market. In case the combined market share is ranged between 30-50% on the distribution and retail market, those companies are obliged to notify the case to the VCA.

That's to say the acquisition of Metro Vietnam by BJC or TCC Holding will be under economic concentration of the VCA in the coming time.

2. Trend of economic concentration

2.1. Economic concentration via privatization

The restructuring of SOEs is one of the three main pillars in the Master Plan of Economic Restructuring approved by the Government in 2009, including the Agenda of SOE privatization.

In order to implement this agenda, it is anticipated that there will be big trade deals in the coming time under the form of selling stocks to strategic partners. It is worthy to mention such big companies as Vietnam Airlines, Mobifone, Sabeco, BIDV, Vinatex, PVGAS, Vinamilk etc. These companies have great market power as well as market share of more than 30% in specific relevant markets. As such, while the stock trading is implemented and the strategic partner plays as a big shareholder, this belongs to the acquisition category and possibly falls into the subject list under economic concentration control. This list contains deals in which the sellers and buyers are functioning in the same business sector and their combined market share accounts for 30-50%.

2.2. Restructuring enterprise organization

In order to enhance the business efficiency in the context of the fluctuated economy, a number of corporations restructured their internal organization under the form of M&A during the past few years, for example the acquisition between Holcim and Lafarge, Vicem, Lotte, Lixil Inax Vietnam etc. In the near future, those who already experienced the restructuring will continue to do so via M&A, and more companies will have their organization restructured internally. By nature, though this is a form of organization reform, based on the current Competition Law, Law on Enterprises and Law on Investment; they are mother and children company but still independent legal entities. Therefore, they have to complete the notification procedure of economic concentration according to Competition Law.

In April 2014, there was a merger between Hoa Phat Construction Stone JSC and Vicem Hai Van JSC, which are both member companies of Vietnam Cement Industry Corporation (VICEM). This merger goes in line with the Master Plan of Restructuring VICEM in the period 2013-2015.

2.3. Restructuring in the banking sector

According to the Master Plan “Restructure the Credit Institutions for the 2011 – 2015 period” (one of the three economic restructuring pillars) approved by the Prime Minister in Decision 254/QĐ/TTg dated March 1 2012, M&A among international credit institutions, between foreign credit institutions and Vietnamese financial institutions are implemented on voluntary basis and in line with current regulations. The plan also encourages the foreign organizations to contribute capital, buy stocks via M&A with the domestic companies, which are in poor condition and in need of restructure. During the last 2-3 years, the banking system in Vietnam experienced changes towards decreasing the number of banks via M&A. Based on the State Bank’s objective, the number of banks in Vietnam will reduce in half in comparison with the past through M&A schedule. As such, in the near future, there will be 6-7 banks merging with each other, such

big deals as Eximbank with Sacombank, Maritime Bank with Mekong Bank, Saigon Bank with Vietcombank, MHB with BIDV, PG Bank with VietinBank and so on. By nature, though this is a form of organization reform, those M&A activities in banking sector still have to complete the notification procedure of economic concentration according to the VCL.

2.4. M&A in several major economic sectors

In the coming time, the major and important economic sectors will attract almost investment from enterprises, therefore the M&A scenario is anticipated as below:

Table 7: Expected M&A deals in the coming time

Sector	No.	M&A company	Targeted company	Form	Deal Value	M&A ratio	Notes
Banking & Finance	1	Vietcombank	SaigonBank (SGB)	Merger			
	2	BIDV	MHB)	Merger			
	3	Vietinbank	PGBank	Merger			
	4	GPBank	LienVietPost Bank (LPB)	Merger			
	5	Eximbank	NamA Bank	Merger			
	6	Sacombank	Southern Bank (PNB)	Merger			
	7	ABBank	DongA Bank	Merger			
	8	State Bank	GPBank	Acquisition			Expected that State Bank will acquire 6-8 banks

Sector	No.	M&A company	Targeted company	Form	Deal Value	M&A ratio	Notes
Consumer goods	9	Aeon	Fivimart	Acquisition		30%	
	10	Aeon	Citimart	Acquisition		49%	
	11	Thai Beverage	Sabeco	Acquisition	~1 bil. USD	40%	
Port Services	12	State General Reserve Fund of Oman (SGRF)	Hai Phong Port	Acquisition		100%	
	13	Vingroup	Sai Gon Port	Acquisition		80%	
	14		Hai Phong Port	Acquisition		80%	
Real Estate	15	N.a	Hoang Anh Gia Lai Corporation	Acquisition	n.a	50%	Shares of HAGL Land

Source: collected by the VCA

2.5. M&A in the context of economic integration

When such important free trade agreements as TPP, Vietnam-EU, RCEP take effect etc., there will be an increase of FDI and foreign investment into Vietnam. Together with the market opening and business opportunities brought back by these agreements, M&A is expected to be more dynamic because economic concentration is a potential channel to attract foreign investment effectively. On the other hand, in the context of deeper economic integration, the focus on resources is fundamental for domestic firms in order to enhance their competitiveness; therefore economic concentration is the shortest path to solve this concern. As such, attached with the trend of increasing M&A activities in which one party is a big company, those are under the supervision also growing.

Besides, the establishment of ASEAN Economic Community in 2015 will also be an additive to trigger the increase of M&A deals in Vietnam, which are carried out by big investing countries as Thailand, Malaysia etc. According to a report by HSBC, retails, banking and communications are those that attract big corporations from Thailand to enter Vietnam via M&A. This can be proved by the deals that BJC plans to acquire Metro Vietnam, or a Thailand corporation step by step acquired Cotec – a construction company via buying stocks in the exchange market.

2.6. M&A activities by overseas corporations

Another notable trend nowadays is the waves of M&A among multi-national corporations (MNCs), especially those in the areas of technology, health care, energy, financial services etc. and in Asia-Pacific region (the value mounted to remarkably 716 billion USD in 2014). While the MNCs (mother companies are located in different countries) carried out the M&A, there will be adjustments in their respective countries, which are depend on their post - M&A policy (the children companies implement the M&A accordingly or sell the assets). However, it is the common trend of MNCs that their subsidiaries in the countries that their business exists will merge with each other. The competition authority of each country should consider on case-by-case basis to evaluate accurately the possibility of negative competition effects in the market.

3. Direction of economic concentration control

3.1. Economic concentration cases under control

Via the VCA's control over economic concentration activities in Vietnam in recent years, the following facts are discovered:

In Vietnam, there was an increasing number of big M&A deals, such as Abbott acquired CFR (Chi Le), Suntory acquired part of Pepsico, merger cases of Lotte Mart and Lilix etc. Though the number of M&A cases recorded every year is considerable, those of significant scale (in terms of trading value, position of involved parties in the market) are limited and mainly between the foreign invested companies, FDI and foreign companies. Besides, the foreign companies generally have the high level of competition law compliance; many of them sent their dossier of economic concentration to the VCA for consultation in case their combined market share falls into the controlled threshold (30-50%).

There were many M&A cases implemented outside Vietnam territory, but the involved parties operate their business in Vietnam (an existence of representative office in Vietnam, or non-existence of representative office in Vietnam but their products/ services are sold in Vietnam market). In such cases, these M&A deals are still under the management of the Competition Law.

The criterion to define the threshold of economic concentration is the combined market share. The responsibility of defining this threshold in the relevant market belongs to enterprises participating in the M&A. As such, in order to identify whether the M&A trading is under the VCA control, enterprises should carry out Assessment report on market share in the relevant market (including relevant product market and relevant geography market). This important information is served as the basis for the VCA to assess and respond officially to the involved parties, or for the enterprises to identify whether they have to report their economic concentration cases to relevant agencies according to the law.

The VCA received M&A dossiers from enterprises via the following channels: (i) Enterprises actively built the market share assessment report and submitted the dossiers to the relevant agency according to the economic concentration notification/consultation procedure; (ii) Recommendations from relevant state agencies, such as the Department of Planning and Investment, Management Unit of Industrial and Manufacturing zones (according to the Investment Law and Enterprises Law); (iii) The State Securities Commission of Vietnam in case of stock exchange (according to Securities Law).

However, there were many economic concentration cases under the controlled threshold but involved parties did not comply with the economic concentration procedure. This happened due to the fact that enterprises: (i) do not know well the Competition Law, hence failed to comply with the law; (ii) are not aware of their responsibility to conduct the market share assessment report and decide that their market share is below the threshold based on a rough estimation; (iii) define their market share under the marketing aspects instead of considering the relevant product market and relevant geography market; therefore the statistics used are not accurate and lead to the failure to define whether their case is within the threshold or not.

In light of this, in the coming time, the VCA and relevant state agencies will

enhance their supervision through cooperation and coordination to detect and handle the cases timely and effectively.

3.2. Direction for controlling economic concentration activities

3.2.1. The rationality of controlling economic concentration

According to the current situation of controlling economic concentration activities, it is noted that this control should be enhanced due to the following reasons:

- » Although the M&A activities are dynamic, the number of deals as well as trading value keeps increasing; those under the control of competition law is minimal. However, these deals possibly affect competition in the market because the post M&A enterprises have the dominant position in the market.
- » The control over big M&A deals is imposed with the aims to manage competition activities of post-M&A enterprises, to reduce the possibility of market power abuse, and to maintain fair competition in the market. Big M&A deals will change market structure and build up the enterprise of dominant position. Dominant firm in the market will be able to

replace products in the market as well as own competitive advantages. This company possesses market power; therefore it will be under the economic concentration control. At the same time, the dominant firm will have its effect on technology and the possibility to access the market of new entrants. As such, the activities of enterprises under control (market share of more than 30%) bring back the potential risks of impacts on their competitors as well as consumer via price.

3.2.2. Direction of economic concentration control

During recent years, the VCA has built and kept updated a database of enterprises in many important economic sectors, especially the group of firms that have dominant positions in the market. The control is applied based on the analysis of this database (group of enterprises having dominant position in the market are assessed by such indicators as CR3, HHI). The competition agency will take into consideration the sectors that have high economic concentration level, hence enhancing its control on them on yearly basis.

Subjects under control:

In light of the trends and assessment mentioned in this Report, in the future, the VCA will focus its control over the following targeted groups:

- » Firstly, enterprises and groups of

enterprises having dominant position

- » Secondly, big M&A deals implemented outside Vietnam territory but involved parties operate their business in Vietnam via the representative office or sell/provide products/services in Vietnam.
- » Thirdly, M&A deals in several important sectors of the economy.

Control measure:

- » Cooperate with relevant state agencies to collect information and data: changing the Investment certificate, Business registration certificate, and transaction of stock exchange
- » Cooperate with sectoral regulators to control M&A activities in important sectors of the economy, such as banking, communications, electricity and maritime etc.
- » Enhance cooperation with other competition agencies in the world to manage the cross-border economic concentration activities, in the framework of Competition chapter of FTAs in which Vietnam is one of the participated parties, such as TPP, EVFTA, RCEP, VKFTA, VCU etc.

Enterprises should take into consideration the following guidance:

With the increasing of M&A deals in the

future, in which those of big scale are under control according to competition law, enterprises should:

- » Authorized enterprises/representative offices of the corporations should consult with the VCA to receive information related to regulation/procedure of the competition law if they are going to carry out M&A deals that are possibly within the threshold of notification or prohibition. If they fail to do so, they may have to suffer severe financial sanctions, which can mount up to 10% of their total income of the financial year preceding the year of economic concentration implementation.
- » The basis to consider an economic concentration case under the threshold of notification/prohibition is the combined market share in the relevant market. Enterprises are responsible to conduct the market share assessment report in order to identify their own case. As such, firms need to be active in making this report if they have plan to engage in an M&A deal.
- » The market share assessment report must be conducted in accordance with the competition law, under which market share should be defined by relevant product market and relevant geographical market. Normally the market share in this report is defined based on the whole market of

respective sector, which lead to the inaccuracy and failure to reflect the position of firm in a specific relevant market. Therefore, it is impossible to identify whether the case is within the threshold of notification/prohibition.

- » Enterprises have to inform and send related documents to the VCA at the same time with their submission of dossier to the Department of Planning and Investment with the purpose to change the investment certification as a result of implementing M&A. This will save their time as well as ensure the compliance with competition law.
- » Enterprises need to check regularly with the List of sectors of high economic concentration level updated by the VCA annually on the VCA website. By doing so, firms can identify whether their M&A activities belong to the sector of high economic concentration level, hence conducting the market share assessment report properly.

APPENDIX I

LIST OF NOTIFICATION OF ECONOMIC CONCENTRATION 2012 - 2014

No.	Year	Sector	Participated companies
1	2012	Manufacturing of steel; trading of materials for steel industry; cargo transportation	Vietnam - Italy Steel Joint Stock Company
			Song Da Steel Joint Stock Company
2	2012	Manufacturing of container; transportation services	Hung Dao Container Joint Stock Company
			Dai Hung Mechanical & Transportation Trading Joint Stock Company
3	2012	Manufacturing and Trading of iron, steel; construction, trading of automobile and other services	Tien Len Steel Joint Stock Company
			Phuc Tien Trading and Manufacturing Joint Stock Company
4	2012	Banking	Sai Gon - Ha Noi Joint Stock Bank
			Habubank
5	2013	Confectionaries	Kinh Do Joint Stock Company
			Vinabico Joint Stock Company
6	2013	Manufacturing of steel	Nippon Steel Vietnam
			Sumikin Bussan Vietnam
7	2013	Building electrical substation	Song Da 11 Joint Stock Company
			Song Da - Thang Long Joint Stock Company
			Song Da 11 Construction Joint Stock Company

No.	Year	Sector	Participated companies
8	2013	Manufacturing and trading of commercial power	Can Don Hydroelectricity Joint Stock Company
			Na Loi Hydroelectricity Joint Stock Company
			Ry Ninh II Hydroelectricity Joint Stock Company
7	2014	Manufacturing of yarn, woven fabrics and all kinds of towels; trading of silk, fibers, textiles	Phong Phu Joint Stock Cooperation
			Phong Phu textile fiber Joint Stock Company
			Phong Phu home textile Joint Stock Company
8	2014	Plastic and PVC plastic bead market	Petronas Chemicals Group Berhad (PCGB)
			Phu My Plastics and Chemical Company Ltd. (PMPC)
			Asahi Glass Company, Limited (AGC)
9	2014	Transportation, warehousing	A.p Moller - Maersk A/S
			CMA CGM S.A
			MSC Mediterranean Shipping Company SA
10	2014	Wholesale and retail of Pharmaceutical products	Abbott Investments Luxembourg Sarl
			CFR Pharmaceuticals S.A
			Positron Limited

No.	Year	Sector	Participated companies
11	2014	Logistics	Schenker Viet Nam Company Ltd.
			Schenker - Gemadept Logistics Viet Nam Ltd.
12	2014	Manufacturing and trading of sanitary ware products, bathroom accessories	LIXIL INAX Vietnam Co. Ltd.
			Lixil INAX Saigon Manufacturing Co. Ltd.
			Lixil INAX Danang Manufacturing Co. Ltd.
13	2014	Manufacturing, trading and exporting of cement and clinker; mining, manufacturing and trading all kinds of construction stone	VICEM Hai Van Cement Joint Stock Company
			Hoa Phat Construction Stone Joint Stock Company
14	2014	Manufacturing and trading (wholesale and retail) confectionery, processed foods and meat products	Lotte Vietnam Shopping Co. Ltd.
			Lotte Mart Danang Co.Ltd.
15	2014	Manufacturing and trading of glass and glass products	NSG Vietnam Glass Industries Ltd.
			NSG Vietnam Special Glass Ltd.

APPENDIX II

LEGAL ENVIRONMENT OF CONTROLLING ECONOMIC CONCENTRATION IN COMPETITION LAW AND SECTORAL LAWS

It can be said that the Competition Law, which was promulgated on December 3, 2004 and enforced since July 1, 2005, is the first legal document regulating comprehensively competition issues. The regulations stated in this law also have impacts on other sectors, such as Law on Enterprises, Law on Investment, Law on credit institution, Law on bankruptcy, Law on Communications, Law on Insurance, etc. As such, such matters related to merger, acquisition, joint stock, and joint venture are not only viewed under the sectoral laws but also assessed under the aspect of protecting competition environment. Basically, those stated in competition law and other laws are consistent and agreeable with each other. However, when considering in details and the enforcement situation, conflicts among these law still exist.

1. Economic concentration in the law on Enterprises

According to Article 16, the Competition Law, economic concentration means acts of enterprises, including: 1. Merger of enterprises; 2. Consolidation of enterprises; 3. Acquisition of enterprises; 4. Joint venture between enterprises; 5. Other acts of economic concentration prescribed by law.

Meanwhile, with the mission of establishing and organizing operation model for various types of enterprises, Law on enterprises has regulation on the reorganization of an enterprise, which means the division, separation, consolidation, merger or transformation of an enterprise⁷. Basically, the definition of reorganization of an enterprise covers the merger and acquisition, which is similar to those stated in Competition Law..

Considering the definition, M&A contents in the Law on enterprises and the Competition law are consistent without any conflicts. With the purpose of regulating the behaviour, the Competition law does not have articles on procedure; meanwhile this content can be found in Article 194.2, Law on enterprises 2014⁸

However, in case of M&A deals that need to follow the notification procedure administered by the competition agency, Law on enterprises does not mention the

⁷ Article 4.16, Law on enterprises 2005; Article 4.25, Law on enterprises 2014; pháp của mình để hình thành một doanh nghiệp mới.

⁸ Article 153.2, Law in enterprises 2005.

subject under this group. According to article 20 related to notification of economic concentration: If enterprises participating in economic concentration have combined market shares of between 30 and 50% on the relevant market, their lawful representatives must notify the competition managing agency before implementing economic concentration. Where combined market shares of enterprises participating in economic concentration are lower than 30% on the relevant market or where enterprises, after implementing economic concentration, are still of small or medium size as prescribed by law, such notification is not required. However, Article 152.3 & 153.3 on state that the representatives-at-law of the consolidated companies shall report to the competition management agency before the consolidation. As such, not all involved parties have to comply with the law.

The consistency in using market share in relevant market as basis to define condition in M&A cases

Clause 1, Article 17 of the Competition Law stipulates that merger of enterprises means an act whereby one or several enterprises transfer all of its/their property, rights, obligations and legitimate interests to another enterprise, and at the same time terminate the existence of the merged enterprise(s). Also about the merger

issue, Article 153 of the Enterprise Law regulates that one or more companies of the same type (hereinafter referred to as merging companies) may be merged into another company (hereinafter referred to as the merged company) by way of transfer of all lawful assets, rights, obligations and interests to the merged company and, at the same time, termination of the existence of the merging companies.

Therefore, also the same as consolidation, basically the concept of merger in the Competition Law and the Enterprise Law are in conformity. Besides the concept, the Enterprise Law consists of provisions on merger procedure. And the same as the case of consolidation, relating to the regulation on merger activity, despite provisions of the Competition Law and the Enterprise Law have something in common regarding the legal building approach but there is still difference in the way of regulating it, which leads to the difference in the way of enforcement causing the shortcomings and contradictions in implementation.

Also on this legal concept, the Competition law uses market share as basis to classify the economic concentration group and as the sole criterion to define the sanction. Article 3.5, Competition law states that an enterprise's market share of a certain kind of goods or service means the percentage between sale turnover of

this enterprise and aggregate turnover of all enterprises dealing in such kind of goods or service on the relevant market or the percentage between purchase turnover of this enterprise and aggregate purchase turnover of all enterprises dealing in such kind of goods or service on the relevant market on a monthly, quarterly or yearly basis.

In light of this, Article 18, the competition law provides details of prohibited cases of economic concentration: Economic concentration shall be prohibited if the combined market shares of enterprises participating in economic concentration account for over 50% on the relevant market, except for cases specified in Article 19 of this Law or the case where enterprises, after implementing economic concentration, are still of small or medium size as prescribed by law.

However, there are exceptions that can be considered exemption if one or more than one involved parties are in the danger of bankruptcy (the authorisation to give decision on this case belongs to the Minister of Industry and Trade) or the economic concentration has positive impacts on the development of the socio-economy and technology advance (decided by the Prime Minister).

Regulation on the right to control or dominate the acquired enterprise

Among the forms of re-organization of enterprises as regulated in the Enterprise Law, there do not exist the form of

acquisition of enterprises. However, the Clause 3, Article 13 of the Enterprise Law stipulates the acquisition of shares and enterprise management, thereby organizations and individuals shall have the right to purchase shares of shareholding companies and contribute capital to limited liability companies and partnerships in accordance with this Law.

As regulated in the Competition Law, acquisition of enterprises is one of the forms of economic concentration. The Clause 3, Article 17 of the Competition Law says that acquisition of enterprises means an act whereby an enterprise acquires the whole or part of property of another enterprise sufficient to control or dominate all or one of the trades of the acquired enterprise.

Although there is similarity in terms of legal nature at the narrow angle but purchase of shares as regulated in the Enterprise Law and acquisition of enterprises as stipulated in the Competition Law are two different concepts. The purchase of shares according to the regulation on the Enterprise Law aims at holding a certain percentage of shares of a certain enterprise. In the case the purchasing shares are enough to take control, to dominate, it will later become the acquisition of enterprises regulated in the Competition Law. The acquisition of enterprises under the Competition Law regulates not only the purchase of shares to the extent that being sufficient

for controlling, governing, but also the acquisition of all or part of the assets of other businesses.

By the legal nature, acquisition of enterprises is one of the forms of economic concentration throughout the establishment of the ownership relation between the acquired enterprise and the enterprise being acquired. The acquisition of enterprises is not the process for organizational uniform between the two enterprises said above. After acquiring, enterprise holding the ownership right can implement the merger or not. If implementing the merger, then the organizational uniform is as the result of merger activity and acquisition of enterprises is only as the premise for the merger. In the case of implementing the merger proceedings after acquiring enterprise, the acquisition transaction can be considered as a merger.

According to the Article 35 of the Decree No. 116/2005/ND-CP, acquisition of other enterprises is not regarded as economic concentration in the case where an insurance enterprise or a credit institution acquires another enterprise for the purpose of resale within the maximum period of one year, which shall not be regarded as economic concentration if the acquiring enterprise does not exercise the right to control or dominate the acquired or only exercises this right in a compulsory manner in order to achieve the resale

purpose. And at the same time, the insurance enterprise and the credit institution must send to the competition management agency this acquisition notification dossier. The time limit for resale of enterprises as specified above may be extended at the proposal of the acquiring enterprise if it proves that it cannot resell the acquired enterprise within one year.

Regulations on governing the activity of joint venture according to Competition Law and Enterprise Law

The joint venture is one form of economic concentration prescribed by the Competition Law, accordingly, the joint venture between enterprises means an act whereby two or more enterprises jointly contribute part of property, rights, obligations and legitimate interests to the establishment of a new enterprise. Normally a joint venture enterprise is established on the basis of a business cooperation contract between two or more parties which stipulates the capital contributions to form a new enterprise.

Thus, there is establishment of new enterprise here with the capital contributions from the parties to the joint venture so the establishment of new enterprise should be governed by the Enterprise Law. Looking at the nature of joint venture activity and basically on the regulations of the Enterprise Law, in this case the newly established enterprise is under the form of limited liability Co. However, because the joint

venture is one form of economic concentration so it should be governed by the Competition Law. According to the Article 18 of the Competition Law, joint venture activity is prohibited in case combined market share of the parties to the joint venture accounts for over 50% on the relevant market, except for the case to be give exemption (in Article 19) or the case where enterprises, after implementing the joint venture, are still of small and medium size enterprises. Article 20 of the Competition Law regulates that if enterprises participating in the joint venture have combined market share from 30% to 50% on the relevant market, their lawful representatives of enterprises must notify the competition managing agency prior to the joint venture. In cases where combined market share of enterprises involving in the joint venture less than 30% on the relevant market or where enterprises, after implementing the joint venture, are still of small and medium size enterprises as prescribed by law must not notify.

2. Economic concentration in the Law on telecommunications

Besides the application of the provisions of the Competition Law, telecommunications legislation also contains specific regulations on property of the telecommunications enterprises. As defined in Article 3 of Decree No. 25/2011/ND-CP on trading telecommunications services, an organization or individual which owned over 20% of the charter capital or shares in a telecommunication enterprise are not allowed to own more than 20% of the charter capital or shares of another telecommunications enterprise trading in the same telecommunications services market falling in the list of telecommunications services stipulated by MIC. As mentioned above, the telecommunications market has a high level of concentration and a quite small number of enterprises. Therefore, restriction on corporate ownership is to limit the case of telecommunication enterprises are interlinked by structure thus reducing the possibility of abusing the market dominant position. This content is complementary to the part on controlling economic concentration provided in the Competition Law and is applied in the telecommunications sector.

However, the regulation on notifying economic concentration also has conflict with the Competition Law. Under the provisions of Clause 5, Article 19 of the Law Telecommunications, before conducting the economic concentration mission,

telecommunications enterprises that have combined market share of 30-50% on the relevant service market shall have to notify it to the specialized management agency in charge of telecommunications. In addition, pursuant to Clause 6 of Article 19 of the Telecommunications Law, the enforcement of the provisions of Clause 1, Article 25 of the Competition Law applied for telecommunications activities shall be approved in writing by the Minister of Information and Communications. In that sense, the consideration for exemption of the Minister of Trade and Industry under the provisions of the Competition Law must be accepted in writing by the Ministry of Information and Communications. This provision creates complexity in the procedures on granting exemption and creates conflict and contradiction between the two documents namely the Competition Law and the Decree No 25/2011/ND-CP.

The regulations on the telecommunications sector are relatively updated and to some extent, are complimentary to the Competition Law. However, the three following shortcomings and conflicts might be attributed to the difficulties in telecommunications enforcement:

- » The authority to consider the notification of economic concentration and consider for exemption of economic concentration, authority to

handle competition restriction acts and unfair competition acts in the telecommunications sector.

- » Order and procedures for handling the violation acts against competition legislation in the telecommunications sector.
- » The form and level of sanction for competition restriction acts in the telecommunications sector.

In order to overcome the aforementioned shortcomings, the promulgation of legal documents in the telecommunications sector and competition should have consistency in terms of content, as follows:

- » The provisions on violations in the telecommunications sector can be more specific than the provisions of the Competition Law, but they must comply with the provisions described in the Competition Law.
- » The provisions on the agencies in charge of competition legal proceedings and handling competition restriction acts or unfair competition acts, regulations on economic concentration notification and exemption must comply with the provisions of the Competition Law because these regulations are more specific and handling competition restriction acts in all sectors need the comprehensive knowledge on competition legislation. However, it's necessary

to involve the telecommunications regulatory agencies in handling such acts, the telecommunications legislation should have covered the participation of the telecommunications in the course of handling the violation together with the competition administration agency and the competition council.

- » The provisions on the penalties for competition restriction acts in the telecommunications sector should be applied in accordance with the provisions of the Competition Law. However, the telecommunications legislation may prescribe additional sanctions or specific remedial measures in the telecommunications sector towards higher deterrence.

3. Economic concentration in the Law on Securities

The stock market as part of the financial markets is the place where transaction, purchase or exchange of securities occurs. It has a very important role in mobilizing and using capital of the market economy. To adjust activities in the stock market, the Law on Securities was issued on June 29, 2006 and took effects since January 1, 2007. This law was amended and improved in 2010. The Law on Securities aims at establishing the legal framework in the management and supervision of the market, securing the principle of an open, fair and transparent market and protecting the legitimate interests of the investors.

To enforce the Law on Securities, many decrees and circulars were issued to create the system of legal documents in the securities sector.

Article 17.4, Circular 212/2012/TT-BTC guiding on the establishment of fund management company: General provisions on consolidation or merger of the fund management company The fund management companies participating in the consolidation, merger send written notice or request the competitive management agency to allow exemption for the cases of consolidation, merger not being prohibited

by the provisions of the competition law.

Article 66.4, Circular 210/2012/TT-BTC, Circular 210/2012/TT-BTC guiding on the establishment of securities company: Securities company related to the consolidation or merger must comply with law on competition and other relevant laws.

As such, these regulations are in conformity with Competition Law on economic concentration.

M&A of division, demerger, merger, consolidation or conversion of a securities company or fund management company

Particularly, Article 69, the Law on Securities stipulates such activities related to division, demerger, merger, consolidation or conversion of a securities company or fund management company:

- » 1. The State Securities Commission must provide approval before a securities company or fund management company may divide, demerge, merge, consolidate or convert. The State Securities Commission shall provide approval within a time-limit of thirty (30) days from the date of receipt of a valid application file, and in a case of refusal shall provide a written notice specifying the reasons for the refusal.
- » 2. An application file and the procedures for requesting approval

to division, demerger, merger, consolidation or conversion shall be implemented in accordance with regulations of the Ministry of Finance.

- » 3. A securities company or fund management company shall implement division, demerger, merger, consolidation or conversion in accordance with the Law on Enterprises.
- » 4. A company, which is newly formed from a division, demerger, merger, consolidation or conversion, must conduct procedures for issuance of a license for establishment and operation in accordance with article 63 of this Law.

Besides, Article 2.6 and 2.7, Circular No. 210/2012/TT-BTC⁹ provides the glossary of consolidation and mergers:

- » Consolidation is that two or more securities companies of the same type (hereinafter referred to as the consolidated securities company) are merged into a new securities company (hereinafter referred to as the consolidation securities company) by transfer all assets, rights, obligations and legal interests to the consolidation securities company at the same time terminating the existence of the consolidated securities company
- » Merger is that a company or a number of securities companies of the same type (hereinafter referred to as the

transferor securities company) are merged into another securities company (hereinafter referred to as the transferee company) by transfer all the assets, rights, obligations and legal interests to the merger receiving securities company, at the same time terminating the existence of the transferor securities companies.

M&A of Joint-stock companies issuing swapping securities

Article 23.3, Decree No. 58/2012/ND-CP stipulates the swapping all the outstanding stocks in other public companies under the consolidation and merger contract between the issuer and other public companies:

- » a) There is plan of consolidation and merger, plan of stock swapping and plan of business operation after the consolidation or merger passed by the General Meeting of Shareholders by the General Meeting of shareholders of companies involved in consolidation and merger;
- » b) There is consolidation and merger contract signed between the parties involved in consolidation and merger under the provisions of the Enterprise Law;
- » c) The draft of corporate charter after the consolidation and merger passed by the Board of Director of the parties

involved in consolidation and merger;

- » d) The approval opinion in writing of the competition administration agency about the consolidation and merger or commitment to comply with the provisions of the Competition Law of the Board of Director of the parties involved in consolidation and merger;
- » e) Ensuring the compliance with the regulations on the rate of capital contribution, form of investment in case the stockholder in public company whose stock is swapped is the foreign investor.

M&A of securities investment company

Article 83, Decree No. 58/2012/ND-CP governs the consolidation, merger of public securities investment company but does not mention the compliance with the provisions of the Competition Law on economic concentration. The public securities investment company when receive the approval from the Securities Commission may conduct consolidation or merger. Although mergers and consolidation of public securities company do not cause too much impact on the competition in the market; in many cases, the public securities companies hold large market share, which should be required for consideration regarding the impact of competition in the market.

⁹ Circular No. 210/2012/TT-BTC dated Nov 30, 2012 of the Ministry of Finance guiding establishment and operation of stock companies

Also according to this article, the dossier to request the State Securities Commission to issue or adjust the license of establishment and operation to the consolidated Securities Investment Company or receive the merger include the following documents:

- » a) The written request for issuance of the license of establishment and operation to the consolidated Securities Investment Company or adjustment of the license of establishment and operation to the company receiving the merger;
- » b) The original License of establishment and operation of the consolidated and merged securities investment company;
- » c) The decision of the General Meeting of Shareholders on the consolidation or merger together with meeting minutes, plans for consolidation or merger, the draft contract of consolidation or merger and the analysis report of the consolidation or merger;
- » d) The appraisal report of the custodian banks on the principle to determine the net asset value, the stock swap ratio, the rate of payment in cash (if any) and other relevant contents;
- » dd) The list of shareholders as

stipulated at Point c, Clause 2 of Article 79 and other relevant documents as stipulated at Point c, d, dd, e, and g, Clause 1, Article 78 of this Decree.

4. Economic concentration in the Law on Credit Institutions

M&A activities in the banking sector are quite unique. The way of determining the criteria of market shares and the relevant market is provided as separate terms stipulated in Decree 116/2005/ND-CP that provides detailed implementation of some articles of the Competition Law. However, there has been no decree on acquisitions and mergers of credit institutions, as well as no clear and specific guidelines on the procedure and the process of acquisition and merger.

The Law on Credit Institutions provides for the reorganization of credit institutions in the form of split, consolidation, merger, transformation of legal form after being approved by the State Bank in written text. The State Bank shall specify the conditions, records, the sequence, and procedure of how the reorganization of credit institutions gets accepted. Accordingly, the State Bank issued Circular No. 04/2010/TT-NHNN providing for the merger, consolidation and acquisition of credit institutions.

Circular No 04/2010/TT-NHNN provides for the merger, consolidation and acquisition of credit institutions. This Circular does not refer to joint venture among different business the same as the regulations of economic concentration in the Competition Law.

About the order, procedures for implementing the merger, consolidation among credit institutions shall comply with the Regulations which provide for granting and revoking licenses for the establishment and operation of People's Credit Fund; opening and putting an termination to the transaction bureaus, branches, representative offices and transaction offices, the merchant location of People's Credit Fund; splitting, consolidating, and merging the People's Credit Fund; liquidating the People's Credit Fund under the supervision of the State Bank Decision No.24/2006/QD-NHNN issued in June 6, 2006 by the Governor of the State Bank.

The Circular No.04/2010/TT-NHNN provides for merger, consolidation and acquisition among credit institutions, which is based on negotiating principles which requires the parties engaging in merger, consolidation, acquisition to make an agreement about the rights and obligations among the relevant parties in accordance with the provisions of the current laws. The current laws stated here include the Competition Law.

The Circular 04/2010/TT-NHNN specifically prescribes the conditions and

procedures to implement the practices in economic concentration for each form of merger, consolidation and acquisition of credit institutions. In particular, the first condition to be able to merge and consolidate of credit institutions is not falling into cases of economic concentration which are banned under the Competition Law. Credit institutions involved in a merger shall send a document to the competition administration agency to notify the merger or request entitlement to exemption, for cases in which merger is banned under the Competition Law. This regulation referring to the Competition Law eliminates the provisions about prohibiting concentration under the provision of Competition Law.

To implement procedures for the merger, consolidation and acquisition of credit institutions, the engaging parties have to submit proposals in order that the Governor of the State Bank decide whether or not to approve the merger, consolidation or acquisition of credit institutions . Dossiers of acquisition, consolidation and merger of credit institutions must include comments in written form of the competition authority or exemption from the Prime Minister or the Minister of Industry and Trade in the case of being obliged to perform notification procedure on economic concentration or in the case of receiving exemption under the provisions of the Competition Law. Under the circumstance that these documents are not needed, credit institutions that go through merger, acquisition or consolidation must have a written explanation of the reason and make a commitment to take responsibility for the authenticity of the report about the fact that the credit institution does not violate the provisions of the Competition Law about economic concentration .

In short, the regulations on purchase, merger, consolidation in the banking sector has been specifically referenced to the competition law about forbidden economic concentration cases or exemption cases for forbidden economic concentration. This is in accordance with the provisions of the Competition Law. Besides, the provisions of the order and procedures of purchase, merger, consolidation in the banking sector have specified and supported the process of controlling the practice in economic concentration which are banned under the Competition Law.

5. Economic concentration in the Law on insurance

Article 16 of Decree 45 and Article 18, Circular No. 124/2012/TT-BTC govern the division, separation, merger, consolidation or conversion of an insurance enterprise, in which the division, separation, merger, consolidation or conversion of an insurance enterprise shall comply with provisions of the Law on Enterprises, and Article 16 of Decree No. 45/2007/ND-CP (for division, separation, merger, consolidation), Article 42 of Decree No. 123/2011/ND-CP (for the case of conversion), other laws and relevant regulations in Circular 124/2012/TT - BTC. The division, separation, merger, consolidation, and transferal from 10 % of the charter capital of the insurance enterprises have to ensure the stability of the enterprise, and do not affect the rights and legitimate interests of customers, employers and the Government, comply with the provisions of relevant legal regulations, and receive the written approval of the Ministry of Finance.

Therefore, the division, separation, merger, consolidation or conversion of an insurance enterprise, and insurance brokerage have to comply with the provisions of the relevant legislation, included the provisions of the Competition Act. However, this provision is not sufficient. There should be regulations on compliance with the regulations on announcement of economic concentration and special cases that are prohibited to implement the economic concentration under the provisions of the Law on Competition.

For regulations on M&A activities in the insurance business, which have to be approved by the Ministry of Finance, Article 17 of Decree 123/2011/ND-CP stipulates that branch of foreign non-life insurance enterprises have to announce in writing to the Ministry of Finance concerning changes relating to the enterprises, including the division, separation, merger, consolidation or transferal of 100% shares.

Pursuant to the above regulations, the M&A of the insurance enterprises have to be approved by the Ministry of Finance. The current legal provisions for insurance do not require insurance enterprises to comply with provisions in the competition law on notification procedures of economic concentration or cases of economic concentration.

Due to the huge impact of insurance enterprises activities on the insurance market in particular and the financial market in general, the need to consider the impact on competition in an M&A case is important. The regulations issued by the Ministry of Finance primarily stipulate the technical issues within the business activities of insurance enterprises. Meanwhile, the M&A of insurance enterprises with large market shares will have an impact on the structure of competition in the insurance market. Therefore, to ensure the consistency in the management of M&A, the legal framework of insurance business should refer to the provisions of the competition law in M&A cases obliged to announce for economic concentration or prohibited from economic concentration under the provisions of the Law on Competition.

Regulations on the sanctions for violations of split, separation, merger, acquisition, conversion and dissolution of enterprises

Regarding the sanctions for violations of split, separation, merger, acquisition, conversion and dissolution of enterprises, Article 8, Decree No. 98/2013/ND-CP on the sanctions of administrative violations of insurance business and lottery business state that the penalty from 60 million VND to 70 million VND is applied to one of those acts: split, separation, merger, acquisition, conversion and dissolution of insurance enterprises,

reinsurance enterprises, insurance brokering enterprises, enterprise branch of non-life insurance abroad that fails to comply with the law. Additional sanction of those acts is business suspending from 2 to 3 months, the scope is directly related to administrative violations in the establishment and operation license. The remedies are coercive measures to restore the original state, to payback illegal benefits gained from administrative violations.

Therefore, this regulation is in accordance with the competition law of sanctions on money but conflict with the level of sanctions. The competition law has very strict sanctions, according to which the prohibited economic concentration activity can be fined up to a maximum of 10% of total revenue in the financial year preceding the year of violation. In the case that the enterprise did not notify the economic concentration, they can be fined from 1% to 3% of total revenue in the financial year preceding the year of violation action.

6. Economic concentration in the legislations on electricity

Article 8 of Decree 134/2013/ND-CP provides for violations in electricity transmission activities. A fine from 30 million VND to 40 million VND for an act that the electricity transmission units do not supply the electricity transmission service when using electricity transmission units require. Besides, the power transmission units will be sanctioned from 40 million VND to 50 million VND if they fail to carry out troubleshooting, restore working state of the transmission network as prescribed or have acts causing the intermittent power supplement or overloading of electrical equipment on the electricity transmission network in the time prescribed under the regulations on electricity transmission system without plausible reasons.

7. Economic concentration in the legislations on radio frequency

Similar to the telecommunications sector, some regulations on violations in the field of radio frequency relate to a number of provisions on competition restriction practices in the Competition Law. Article 21 of Decree No.174/2013/ND-CP of the Government on the sanction of administrative violations in the field of post and telecommunications, information technology and radio frequency stipulates that A fine of between 100 million and 140 million VND for one of the following acts (a) perform exemption under the provisions of Competition Law, but not accepted in writing by the Ministry of Information and Communications; (b) not notify to the Ministry of Information and Communications prior conducting the economic concentration in cases of the combined market shares of enterprises is above 30% relevant market.

8. Economic concentration in the legislations on aviation

In the area of transferring and donation of shares to the foreign investors directly, the transfer and donation are only implemented after 02 years from the date of air transport operation and supply of general air services and shall comply with the provisions in Decree No.30/2013/ND-CP¹⁰. Airlines are not allowed to perform the franchise of air transport and general air operation for commercial purposes in Vietnam to other airlines¹¹.

In case of transferring shares to foreign investors, the airlines shall send dossiers directly or via post to the Vietnam Civil Aviation Authority for appraisal. After that, the Vietnam Civil Aviation Authority shall have written opinion of Department of Operations (Ministry of Defense) concerning the transfer of shares to foreign investors. Then, the Vietnam Civil Aviation Authority shall submit it to the Prime Minister for decision or notify the Vietnam Civil Aviation Authority in case of disapproval and specify the reason. The provisions of transferring shares to foreign investors are clearly defined in Decree No. 30/2013/ND-CP¹².

Basically, the regulations in the aviation sector do not cause any restrictions or barriers in the acquisition and transfer of shares. The procedures and processes are clearly defined in the guidelines. However, with the transfer of shares to foreign investors, airlines are only allowed to transfer after two years since the acquiring airlines start its operation of air transport, providing general aviation services.

In addition to the provisions on economic concentration, the transfer of shares in aviation sector are specified in sectorallaws, under the provisions of the Competition Law, if the combined market share of the enterprise on relevant market within

¹⁰ Article 18, Decree No.30/2013/ND-CP

¹¹ Article 27, Decree No.30/2013/ND-CP

the threshold to notify, or have to submit exemption when conducting economic concentration. Therefore, except for the procedures submitting to the State management agency as the Vietnam Civil Aviation Authority, the enterprises must follow the procedure prescribed by the Competition Law.

9. Economic concentration in the legislations on investment

The Law on Investment in 2005 added the new forms of investment such as merger and acquisitions, buying shares or contributing capital to participate in investment. In the recent years, along with the strong development of the stock market, the privatization process of State enterprises has been conducted in an aggressive manner. However, a clear, adequate and transparent legal framework that creates the basis for the implementation of M&A transactions, limitation on economic concentration and unfair competition is still in the process of development and improvement.

Article 21 of the Law on Investment regulates the forms of direct investment including buying shares or contributing capital to participate in investment, investing to implement merger and acquisitions. Article 25 also regulates the condition of merger and acquisition of enterprises and brands under the Law on Investment, the competition legislation and the other provisions of relevant laws. In case of business sectors where investment is conditional, the same investment conditions that are applicable to domestic investors shall be applied to foreign investors where Vietnamese investors hold more than fifty one (51) percent of the charter capital of an enterprise (Clause 4, Article 29, Law on Investment)

¹²Clause 1(b), 5(a), Article 19 Decree No. 30/2013/ND-CP

10. Economic concentration in the legislations on bankruptcy

For the purpose of ensuring the competitive structure of the market, it is necessary to control the economic concentration acts of enterprises. Article 18 of the Competition Law stipulates that economic concentration is prohibited if the combined market shares of enterprises participating in economic concentration account for over 50% on the relevant market.

However, economic concentration transactions are not likely to harm competition at all, some cases have definite benefits. Thus, it is necessary to compare the benefits with the harms of economic concentration transactions in relation with competition policy and socio-economic conditions in each period. In that spirit, the Competition Law regulates that prohibited economic concentration transactions can be exempted if it meets some definite conditions. According to Clause 1, Article 19 of the Competition Law, a case of exemption from prohibited economic concentration is one or more of the participants in economic concentration is/are in danger of dissolution or falling into the state of bankruptcy.

To explain the concept of enterprises is/are in danger of dissolution or falling into the state of bankruptcy, Article 36 of Decree No. 116/2005/ND-CP refers to the Bankruptcy Law as enterprises is/are falling into the state of bankruptcy according to the Bankruptcy Law.

Therefore, to apply this provision we should base on the provisions of the Banking Law. Article 3 of the Banking Law regulates that enterprises, cooperatives which are incapable of repaying their due debts at creditors' requests, shall be regarded as falling into the state of bankruptcy.

Article 4 of the law on bankruptcy provides the interpretation of terms: "An insolvent enterprise or insolvent cooperative (hereinafter referred to as insolvent entity) is an enterprise or a cooperative having failed to meet the debt liability for 03 months from the deadline for repayment"; "Bankruptcy is a legal status of an insolvent entity that is declared bankrupt by the People's Court".

In the case of exemption for economic concentration under Clause 1, Article 19 of the Competition Law, enterprises shall submit exemption application dossiers in accordance with the provisions of Section 4, Chapter II of the Competition Law instead of notification of economic concentration. In particular, enterprises shall file a report elaborating the satisfaction of the cases eligible for exemption. According to Article 40 of Decree 116/2005/ND-CP, a specific explanatory report on satisfaction of the criteria for entitlement to exemption pursuant to Clause 1 Article 19 of VCL must prove that one or more of the parties participating in the economic concentration is/are in danger of dissolution or falling into the state of bankruptcy as stipulated in article 36 of this Decree. Minister of Industry and Trade shall consider and decide in writing on the exemption for enterprises who is/are in danger of dissolution or falling into the state of bankruptcy.

The conformity and duplication among two legislations

Definition of enterprises in danger of bankruptcy

To determine whether enterprise (s) is/are falling into the state of bankruptcy, the Competition Law refers to Article 3 of the Bankruptcy Law to ensure the

consistency in the legal system, in which enterprises, cooperatives, which are incapable of repaying their due debts at creditors' requests, shall be regarded as falling into the state of bankruptcy.

However, in some cases, the concept of falling into the state of bankruptcy in the Banking Law is impractical, thus, it is difficult to apply the concerned provisions of the Competition Law.

In fact, the Competition Law pays attention to the balance between the possibility of the economic concentration cases causing harm or benefit to the structure of the market. Other competition authorities in the world often look at this possibility on the ground of many criteria. In Vietnam, the competition agency shall assess such the possibility of an enterprise to substantially restrain competition in the relevant market as stipulated at the Article 22 of Decree 116/2005/ND-CP. However, this Article does not provide the incapability of repaying the due debts at creditors' requests; in some cases, it may be considered as a small factor to determine the financial capacity of the enterprise. Therefore, the capability of repaying the due debts will not show the whole financial capacity of that enterprise, as well as the possibility of economic concentration cases causing harm to the market. Consequently,

in economic concentration cases, the exemption for enterprises falling into the state of bankruptcy is not inherent and not consistent in the Competition Law itself.

Relating to explaining the concepts falling into the state of bankruptcy at Article 3 of the Bankruptcy Law, this provision is qualitative, loose and does not reflect the financial situation of enterprises comprehensively. If every enterprise who cannot repay their due debts, is considered as falling into the state of bankruptcy, there will be a big number of enterprises as such in practice. However, overdue debt doesn't mean incapability of paying debt. In fact, most of enterprises and cooperatives are both a debtor for a few enterprises but also a creditor for some persons. According to the Supreme People's Court, some cooperatives or enterprises who are even required to declare bankruptcy are still a creditor with an amount of money greater than their overdue debts. In some cases, enterprises cannot repay their debts immediately, but they can restructure, sell part of their properties, cut down on operations, reduce costs, thereby, they can balance funds to repay debts in a period of time. Based on the above provision, all enterprises

that cannot pay the due debts may believe that they are eligible to apply for exemption under Clause 1, Article 19 of the Competition Law, although their economic concentration transaction restricts competition in practice.

To solve this problem, the Draft Law on Amending the Bankruptcy Law provides: enterprises, cooperatives who are incapable of repaying their due debts of 200 million VND or more within 3 months at the creditors' requests shall be regarded as falling into the state of bankruptcy. However, there are some feedbacks that this draft provision is impractical, because of the following reasons: if the business capital is up to tens of trillions VND, they cannot be considered bankruptcy because of their due debts from 200 million in 3 months. Furthermore, the business characteristics and operational scale of different enterprises are different. Enterprises might have capital of tens of million VND, hundreds of million VND while others might have tens of trillion dong, hundreds of trillion dong. So apply a general criterion for all is not reasonable. It is argued that the condition on the due debt from 200 million in 3 months is just right for micro enterprises, small enterprises,

family enterprises for whom 200 million VND is nearly their total capital¹³. However, Article 18 of the Competition Law exempts for small and medium sized enterprises from prohibited economic concentration, so it causes an overlap when Article 19 of the Competition Law also exempts for enterprises falling into the state of bankruptcy. Therefore, for the purpose of ensuring practicality, the concept of enterprise falling into bankruptcy state should be identified based on the total of their due debts (which they cannot repay) in comparison with their business capital.

¹³ Ha Phong, Hanoimoi.com, *The Current Bankruptcy Law: lack of mechanisms on selecting enterprise*, <http://hanoimoi.com.vn/Tin-tuc/Xa-hoi/622058/luat-pha-san-hien-hanh-thieu-co-che-sang-loc-doanh-nghiep> (Vietnamese version)

APPENDIX III

DECISION ON EXEMPTION FOR ECONOMIC CONCENTRATION

PRIME MINISTER

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

No: 2327/QĐ-TTg

Hanoi, December 22, 2014

DECISION

Exemption for economic concentration

PRIME MINISTER

Pursuant to the Law on Government Organization December 25, 2001;

Pursuant to the Law on Competition December 3, 2004;

Pursuant to Decree No. 95/2012 / ND-CP of April 18, 2012 of the Government regulating the functions, tasks, powers and organizational structure of the Ministry of Industry and Trade;

Pursuant to Decree No. 116/2005 / ND-CP of September 15, 2005 of the Government detailing the implementation of some articles of the Law on Competition;

At the request of the Minister of Industry and Trade,

DECISION:

Article 1. Approval of exemption for economic concentration for:

1. BANKNET VIETNAM

Main office address: 5th Floor, Building C3, Giai Phong, Phuong Liet Ward, Thanh Xuan District, Hanoi.

2. Smartlink Card Service

Head office: 8th Floor, Metropolitan Building, 72 Tran Hung Dao Street, Hoan Kiem District, Hanoi.

Article 2. The parties involved in the economic concentration named in Article 1 are approved to consolidation in the form of merger after this Decision takes effect.

Article 3. Exemption term is 5 years. After every 5 years, if the parties involved do not violate the conditions and obligations for exemption specified in Article 4 of this Decision, exemption period will be automatically extended for 5 years.

Article 4. Conditions and obligations for the exemption:

1. Enterprise after the merger (hereinafter referred to as the enterprise) must build and implement roadmap for the application of advanced science and technology to ensure the quality of services connected to the switching infrastructure.
2. The enterprise must guarantee the rights of banks and businesses eligible under the law and access to the system and intermediary services without any discrimination.
3. Enterprises shall register the standard contract providing intermediary payment service, including content of quality assurance of services with the Vietnam Competition Authority - Ministry of Industry and Trade and other responsible state agencies in intermediary areas before applying payments to customers so as to ensure the elimination of the unfavorable terms imposed on customers.
4. The supplement and adjustment of the service charges imposed by the enterprise must comply with regulations and guidance of the State Bank of Vietnam.
5. Enterprises are obliged to report to the Ministry of Industry and Trade (Vietnam Competition Authority) on the implementation of the conditions for exemption and commitments mentioned above after every 5 years.

Article 5. The infringements of competition law and other relevant legislation will be handled in accordance with law.

Article 6. This decision takes effect from the date of signing.

Article 7. The Minister of Industry and Trade, the State Bank of Vietnam and the businesses named in article 1 shall implement this decision. /.

Receivers:

Prime Minister, the Deputy Prime Minister;;

The Ministries of Industry and Trade; Finance,
Planning and Investment;

The State Bank of Vietnam;

Vietnam Competition Authority(MOIT);

BanknetViệt Nam;

Smartlink JSC.;

Government Office: Chairman, Deputy
Chairmen, Assistant of the Prime Minister,

Departments: PL, TKBT, TH, CEO E-portal;

Save: VT, KTTH (3).LT

**On behalf of Prime Minister
Deputy Prime Minister**

(Signed)

Hoang Trung Hai



VIETNAM COMPETITION AUTHORITY - MINISTRY OF INDUSTRY AND TRADE

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