Journal of Finance and Economics, 2020, Vol. 8, No. 4, 190-200
Available online at http://pubs.sciepub.com/jfe/8/4/5
Published by Science and Education Publishing
DOI:10.12691/jfe-8-4-5

Control of the Agreement on Valuation to Restrict Competition in Vietnam - Viewed from Efficiency Standards of Economics

Tran Thi Nguyet[1], Tran Anh Vu[2,*]

[1]Law Department, National Economics University, Ha Noi, Vietnam
[2]International School, Thai Nguyen University, Thai Nguyen, Vietnam
*Corresponding author: vuta@tnu.edu.vn

Received July 08, 2020; Revised August 10, 2020; Accepted August 19, 2020

Abstract The article presents in detail the basic theoretical contents of price-fixing agreement, provides analysis by drawings, graphs and specific examples, and discusses price-fixing agreement acts, including: direct price-fixing agreement, indirect price-fixing agreement, price-using agreement to consolidate positions in the relevant market. From these theoretical contents and analysis, the author offers a number of assessments and proposes solutions to adjust Vietnam's competition laws in order to control price-fixing agreements to restrict competition, viewed from the efficiency standards of economics. Some of the issues discussed are: (1) Perfectly competitive market and monopoly market; (2) Direct price-fixing agreements to restrict competition from the viewpoint of economic efficiency; (3) Indirect price-fixing agreements to restrict competition; (4) Price-using agreements to consolidate its position in the relevant market. After offering analysis, discussion and research on issues of price fixing agreements, the article has made a number of author's recommendations on effect assessment content or the ability to cause significant anti-competitive effect of price fixing agreement to restraint competition in Vietnam.

Keywords: *Competition Law 2018, Vietnam competition law, price-fixing agreement, price-using agreement, competition restriction*

Cite This Article: Tran Thi Nguyet, "Control of the Agreement on Valuation to Restrict Competition in Vietnam - Viewed from Efficiency Standards of Economics." *Journal of Finance and Economics*, vol. 8, no. 4 (2020): 190-200. doi: 10.12691/jfe-8-4-5.

1. Introduction

A price-fixing agreement is any agreement between competitors to increase, decrease, fix or maintain the prices of products, goods and services on the market. Price-fixing agreement is an agreement aimed at abolishing, eliminating or restricting price competition among enterprises. A price-fixing agreement may include implicit or public agreements to increase, decrease, or contain prices of products, goods and services on the market[1]. Price-fixing agreement is one of the common types of anti-competitive agreements. The general character of these agreements is the eliminated price competition among the parties to the agreement that set by the parties through the setting of a common price or through indirect price fixing forms. The nature of agreements that use prices to restrict competition is to simulate the position of a monopolist and act in the manner of a monopolist. On the other hand, by adding up the market power of enterprises participating in the agreement, anti-competition agreements have limited price competition among the participating enterprises. The agreements thereby distorted the inherent laws of movement of the market. The two objects directly and deeply affected by these agreements are consumers and competing businesses that are not one of the parties to the agreement.

A price-fixing agreement to restrict competition is a serious violation of competition law and on the top of the prohibited list of law in controlling anti-competitive agreements of countries, including Vietnam. In order to control price-using agreements to restraint competition, the scientific solution of this problem is to combine economic thinking and legal thinking closely. We can based on the efficiency standards of economics to assess the risk of the agreement. Only in this way, the objective of enhancing the effectiveness of competition law enforcement can be achieved. The author has studied from the opposing point of view of the perfectly competitive market and the monopoly market by using the methods of analysis, commentary, interpretation, systematization and synthesis, comparative juridical method in order to make a statement: monopolies set prices at the same time as select the quantity to supply in the market. When businesses conduct price-fixing agreements to restraint competition,

[1] Duong Viet Phuong (2019), "Agreement on restraint of competition under Vietnam's Competition Law 2018".

they abolish and eliminate price competition among the negotiated enterprises. The economics view divides the price-fixing agreement into two groups: the direct price-fixing agreement group and the indirect price-fixing group. The article focuses on analyzing direct price-fixing agreements, indirect price fixing agreements and price-using agreements in order to consolidate its position in the relevant market. Thereby the author has commented, evaluated, proposed solutions to adjust the law, control this type of agreement by the relevant and effective competition laws in Vietnam. The issue of evaluation authority and the basis for assessing the anti-competitive effect or the ability to cause anti-competitive effect of price-fixing agreements has also been studied and proposed by the author to complete the research objectives and research tasks of the topic.

2. Research Questions

The article gives the following research questions:

First, what are the definition and characteristics of perfectly competitive markets and monopoly markets?

Second, What ara the definition, classification off direct price-fixing agreements in order to restrain competition from the viewpoint of economic efficiency and the nature of direct price-fixing agreements from a practical situation?

Third, what are the differences between agreement on price reduction and agreement on preventing, stopping, eliminating?

Fourth, the definition, classification and contents related to indirect price-fixing agreement?

Fifth, what are the definition, identification signs and legal content of the price-using agreements aimed at strengthening the position in the relevant market?

Sixth, the Competent Authority assesses the competition restriction effect, the basis of assessing the anti-competitive effect and some proposals related to the price-fixing agreements to restrain competition are considered as not causing or not being able to cause a significant anti-competitive effect?

3. Methodology of Research

The research methods used to study the topic of controlling price-fixing agreements to restrict competition - are viewed from the economic efficiency criteria as follows:

- *Method of interpretation*

This method is applied to study the basic theoretical issues controlling the price-fixing agreements to restrict competition; to study the views of economics when considering price-using agreements.

- *Methods of analysis, comment*

This method is applied to present the specific provisions of the international legal system as well as the Vietnamese legal system on price-fixing agreements to restrict competition.

- *Method of comparing jurisprudence*

This method is also used to study the provisions of international law, to study international case law, the laws of different countries and to compare with the provisions of Vietnam's competition law in order to evaluate compatibility, thereby getting experience and specific solutions in the laws of countries. On that basis, the author proposes a solution to improve Vietnam's competition law in the control of price-fixing agreements to restrict competition.

- *Systematization and synthesis method*

This is the research method used to generalize and draw conclusions and basic proposals about the author's new contributions to the improvement of Vietnamese law on controlling price-using agreements to restrict competition.

4. Research Results

4.1. Perfectly Competitive Market and Exclusive Market

In business, enterprises are always interested in two factors: marginal revenue and marginal cost. But depending on the market model (perfect competition or monopoly), enterprises will have different profit maximizing points. For the State, the State's laws and regulations should ensure competition and restrict monopoly. One of the important principles when developing economic policies is to promote competition, increase opportunities for users to choose services or buy and sell goods and minimize the risk to generate monopoly[2].

4.1.1. Perfectly Competitive Market

Competitive (perfect) market is a market with the following three basic characteristics:

• *There are many buyers and sellers in the market;*

• *Goods sold by these sellers are essentially the same;*

• *Enterprises are free to join and withdraw from the market.*

In the business process, enterprises are always interested in two factors: marginal revenue and marginal cost. However, depending on the market model (perfect competition or monopoly) that businesses will have different profit maximizing points. In a competitive market, one can look at how businesses determine their profit-maximizing points through the following diagram.

Accordingly, the cost curve of an enterprise will have three factors:

The marginal-cost curve (MC) is an upward sloping line. The average-total-cost curve (ATC) is an U-shaped line. The marginal cost curve will cross the average cost curve at the minimum point of ATC. Figure 1 also shows a horizontal line at the market price (MP). MP is a horizontal line because in a competitive market, businesses are price takers. The output price of the business will correspond to the total output that the enterprise decides to supply. Therefore, the price will be equal to the average revenue (AR) and its marginal revenue (MR).

[2] Vietnam Chamber of Commerce and Industry - VCCI (2019), *"Report on the flow of Business Law 2019"*, Hanoi, December 2019.

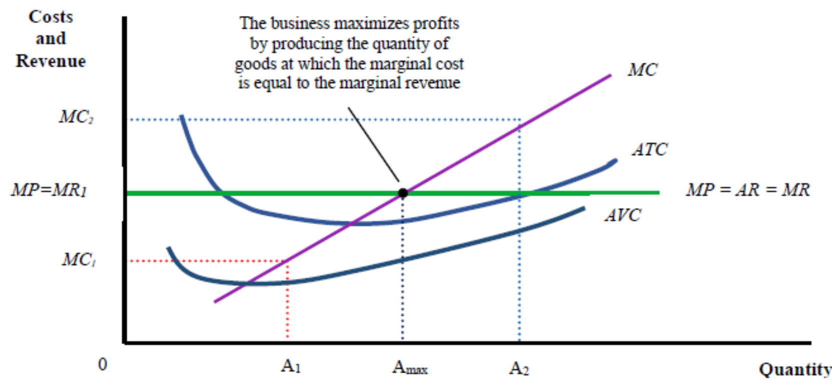


Figure 1.

Look at the image above to find the output to achieve maximum profits. Let's imagine that the business is producing at an output of A1. At this level of output, marginal revenue is greater than marginal cost. That is, if the business increases its output by 1 unit, then the additional revenue (MR1) will exceed the additional cost (MC1). Profits, equal to total revenue minus total costs. Therefore, if the marginal revenue once is greater than the marginal cost, as in point A1, then the enterprise can increase its profits by producing more.

The same principle applies when performing an analysis on point A2. At that time, the marginal cost is greater than the marginal revenue. If an enterprise reduces 1 unit of output, the saved cost (MC2) will be more than the lost revenue (MR2). Accordingly, if the marginal revenue is less than the marginal cost, as in A2, the enterprise can increase its profits by reducing production.

So, when does this production adjustment process end? Let's acknowledge businesses starting with low output (like A1) or high output (like A2), they will adjust output so that total output will reach Amax. This analysis draws three general rules for profit maximization:

• *If the marginal revenue is greater than the marginal cost, the business should increase output*

• *If the marginal cost is greater than the marginal revenue, the business should reduce output*

• *At the maximum profit output level, marginal revenue and marginal cost are equal.*

4.1.2. Monopoly Market

Monopoly market is the market in which businesses do not have competitors. Monopolies will have an impact on the price of the products they produce. While enterprises in the competitive market are price takers, monopolies are price makers.

The main difference between a competing and a monopoly business is its ability to influence the price of goods. A competitive enterprise is too small in relation to the market it is operating in, and therefore does not have the capacity to influence prices. Businesses must accept prices that are determined by market conditions. In contrast, because the monopoly is the only producer in the market, it can change the price of goods by adjusting the quantity it provides to the market.

Imagine that the business is producing at an output of B1. In this case, the marginal cost is less than the marginal revenue. If the business increases an unit of product, the increase in revenue will be more than the additional cost that the business spends and thus the profit will increase. Thus, when the marginal cost is lower than the marginal revenue, the business can increase its profits by producing more.

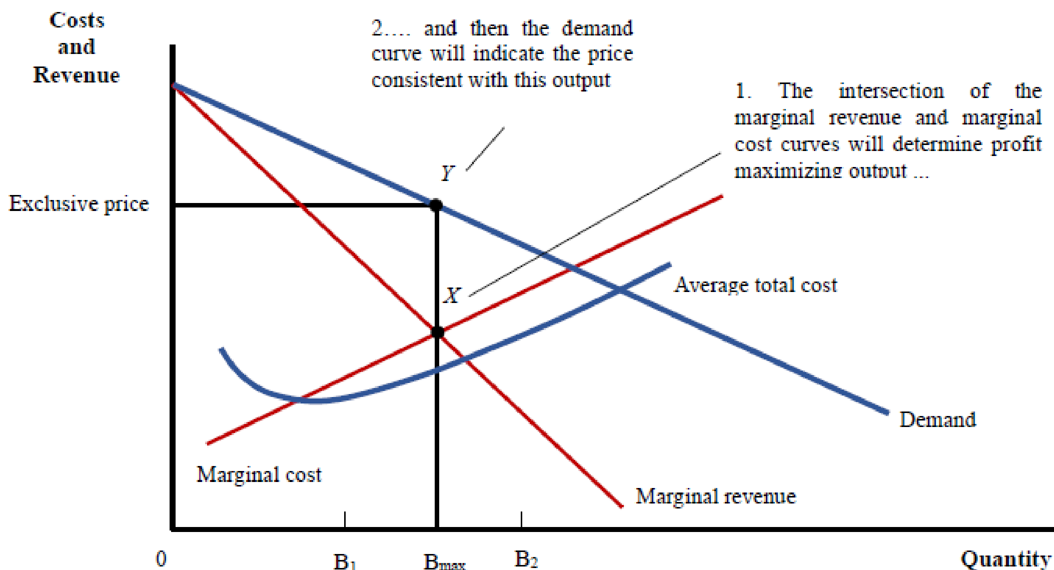


Figure 2.

The approach is similar, but starting from a high-yield place, like B2. In this case, the marginal cost is higher than the marginal revenue. If an enterprise cuts production by one unit, the cost reduction will be more than the lost revenue. So, in case the marginal cost is higher than the marginal revenue, the business can increase profits by reducing output.

Finally, the business can adjust its production scale when the quantity supplied reaches Qmax, where the marginal revenue is equal to the marginal cost. Thus, the level of output at which the monopolist maximizes profit is determined by the intersection of the marginal revenue and marginal cost curves. In Figure 2, the intersection point is X.

As mentioned above, enterprises in the competitive market will also choose the total supply output to the market where the marginal revenue is equal to the marginal cost. To maximize profits, this principle applies to both businesses in competitive markets and monopoly markets. But there is a fundamental difference between two competing and monopoly market models: Marginal revenue in a competitive market is equal to price, while marginal revenue in an exclusive market is smaller than the price.

Competing Business	**P = MR = MC**
Monopoly Business	**P > MR = MC**
In which: *P: Price* *MR: Marginal Revenue* *MC: Marginal Cost*	

The problem is how can monopolies determine the price to maximize profits? The demand curve will answer this question, because the demand curve is related to the total output that consumers are willing to pay to buy the product. Thus, after the monopoly has determined that output is equal to marginal revenue and marginal cost, it will use the demand curve to determine the highest price that it can price for the output just determined. In Figure 2 above, the maximum profit price is Y.

In a monopoly market, the firm has no supply curve because the supply curve shows that the total output that businesses are willing to supply at any given price. In a competitive market, a business is a price taker, but as a monopoly it is a price maker. It makes little sense to ask for the total output produced by a monopolist at any price because the monopoly has set prices at the same time as selecting output to provide in the market. .

4.2. Direct Price-fixing Agreements to Restrict Competition from the Viewpoint of Economic Efficiency

4.2.1. Definition of Direct Price-fixing Agreement

Direct price-fixing agreements are agreements that unify actions among competitors to eliminate price competition among enterprises participating in the agreement. An important feature of these agreements is that the parties have directly established a common price through the agreement, thereby eliminating the ability of customers and consumers to choose the price. The purpose of a direct price-fixing agreement is to increase the selling price of goods and products, in order to quickly and directly increase profits according to the price calculation of the enterprise participating in the agreement.

4.2.2. Classification of Acts of Direct Price-fixing Agreement

Acts of direct price-fixing include:

- Applying uniform prices to some or all customers.
- Increasing or decreasing prices at a specific level.
- Applying the formula of general price calculation.
- Maintaining a constant ratio of prices of related products.
- Using an uniform price at the time the price negotiations start.

In particular, the agreement on *uniform application of prices to some or all customers* is a typical agreement for the direct nature of the price-fixing agreement and clearly disclosing the nature of exploitation of customers. Accordingly, businesses conduct agreements to set uniform prices for customers. The difference between agreement on *uniform price application with some or all customers* and agreement on increasing or decreasing prices at specific level is: If agreement on uniform price application is an agreement aiming to stabilize at a price, an agreement on increaseing or decreasing prices at a specific price direct towards prices change. But this prices change must be consistent, thereby eliminating unnecessary reactions that affect the agreement group's ability to increase profits.

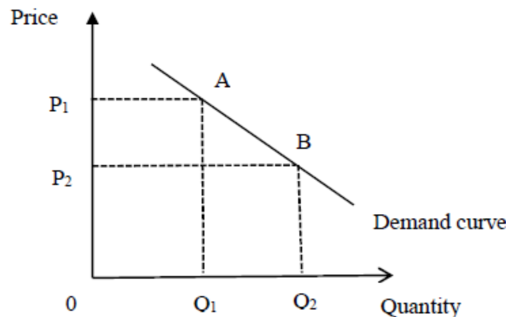
4.2.3. Studying and Analyzing Typical Case Studies

The following case studies and analysis of typical price-fixing agreements in order to limit competition have deeply demonstrated the nature of exploiting customers in direct price-fixing agreements applying uniformly the prices with some or all customers. The nature of exploiting customers in the agreement on uniform application of prices to some or all customers is clearly shown in the situation of price-fixing agreements of 19 Insurance enterprises of Vietnam in 2008. Specifically, On September 15, 2008, the Vietnam Insurance Association organized the 6th Non-life General Directors Conference. At this conference, 15 non-life insurers signed a cooperation agreement between insurers in the field of motor vehicle insurance and the provision of auto insurance premiums for cars (Agreement). On September 18, 2008, four more Insurance enterprises also signed the Agreement, increasing the number of enterprises participating in this agreement to 19.

According to the Agreement, 19 Insurance enterprises agreed to apply a common charging formula with specific insurance premium rates in order to eliminate competition on insurance premiums among insurance enterprises participating the agreement. Specifically, the car physical insurance premium for a year (excluding VAT), according to the standard terms is calculated as follows:

Standard cost	=	1,56% x *Sum Insured*
Insurance cost for freight cars	=	1,83% x *Sum Insured*
Insurance cost for intercity passenger transportation cars	=	2,07% x *Sum Insured*
Insurance cost for cars with refrigerated cargo	=	2,62% x *Sum Insured*
Premiums for tractors	=	2,84% x *Sum Insured*
Premiums for taxi	=	3,95% x *Sum Insured*

Meanwhile, the agreement on increasing prices or decreasing prices at a specific level is considered to be a flexible agreement. This agreement includes two options: either to increase prices or to decrease prices. Especially this agreement not only includes prices increase but also the discount price at a specific level. Choosing to raise prices or reduce prices but still meet the increase of the profit objectives of the parties to the agreement, as analyzed above related to the elasticity of demand. At first glance, the discount deal will not be exploitative. However, when viewed from an economic perspective, it is easy to clearly identify this exploitation nature. Behavior can be visualized through the following diagram:



Suppose the market price of goods is at the price of P1 as shown in the picture. Corresponding to that price level, the total output of the whole market is Q1. At this price, the total revenue of the businesses before joining the agreement will be equal to the price multiplied by the output: P1 x Q1 (is the OP1AQ1 quadrilateral). Given the characteristics of goods with high price elasticity of demand, an increase in selling price will cause a decrease in buying. Therefore, businesses can increase production by reducing prices from P1 to P2. Accordingly, when prices fall, consumers will be stimulated to buy more. As a result, demand increased from Q1 to Q2. At this point, the revenue of the participating businesses will be equal to the new price multiplied by the new output: P2 x Q2 (is the OP2BQ2 quadrilateral). The difference between the quadrilateral OP2BQ2 and the quadrilateral OP1AQ1 is the incremental revenue of businesses.

Therefore, lawmakers should take a reasonable approach when determining the economic nature of the agreement. With the same purpose of changing prices to exploit customers, but depending on the specific characteristics of goods, businesses will proceed to increase or decrease prices. Businesses will increase prices if they are trading goods that have low elasticity but they will not achieve the goal of increasing profits when applying the price increase for goods with high coefficient of elasticity. So, as analyzed, price-fixing agreements and output controlling agreements are closely related. And because of that, that is the exploitative nature of the discount agreement explained in terms of the economics of demand elasticity. This principle is similar to the monopoly business maximizing profits. Because the demand curve is related to the total output that consumers are willing to pay to buy a product. So after the monopoly has determined that output is equal to marginal revenue and marginal cost, it will use the demand curve to determine the highest price that it can price on a given quantity of output.

4.2.4. Studying and Analyzing the Difference between Agreement on Fixing-price Reduction with Agreement on Preventing, Stopping, Eliminating

The agreement on a specific price reduction and agreement to prevent, restrain or prevent other enterprises from participating in the market or developing business (hereinafter referred to as preventive agreement) and the agreement to exclude from the market enterprises which are not parties to the agreement (hereinafter referred to as the removal agreement) are also the same discount agreements, but they are completely different in terms of economic nature. Specifically, the containment agreement is divided into two groups as follows:

a) 1st Group:

* An agreement to prevent, restrain or prevent other enterprises from participating in the market is the unification of not conducting transactions with enterprises not participating in the agreement or acting in one of the following forms:

- Requesting, appealing, inducing their customers not to buy, sell goods or use services of enterprises not participating in the agreement;
- Buying and selling goods and services at a price sufficient for enterprises not participating in the agreement not to participate in the relevant market;
- An agreement to prevent, restrain or prevent another enterprise from developing its business is the unification of not doing business with an enterprise not participating in the agreement or acting in one of the following forms:

+ Requesting, appealing distributors and retailers who are dealing with them to discriminate when buying or selling goods of enterprises not participating in the agreement in a way that makes it difficult to sell goods of this business;

+ Buying and selling goods and services at a price sufficient for enterprises not participating in the agreement not to expand their business.

Logically, the nature of the preventive or eliminating price must be a price that is lower than the market price or even lower than the production cost. The nature of these two types of agreements aims to create a price race, thereby causing harm to rival businesses, so that they can not expand markets, develop business or even more harsh is forced to withdraw from the market.

b) 2nd Group:

The agreement applying the general pricing formula to maintain a fixed price ratio of the product concerned with a different economic aspect from the above two agreements. The economic aspect of the two agreements that apply the formula to calculate the overall price and maintain a fixed price ratio of the product is related to the individuality of the product and the difference in the production costs of enterprise. The individuality of the product is perceived in that although the businesses being considered in this case, are initially defined as being in the same relevant market, which means that the products of the businesses must be able to replace each other in terms of characteristics, purposes and prices.

However, this determination of fungibility is only relative. In order to compete, manufacturers always try to personalize their products. It is these certain differences that help businesses make a difference in prices compared to other businesses that sell similar products in the market.

At the same time production costs of businesses will be different. Production cost is the value of everything a seller has to spend on the production of a good. The average production cost of each manufacturer will depend on the technology that the manufacturer owns and the cost of hiring and buying production factors such as labor and raw materials… For each manufacturer, these factors are different, leading to different production costs of manufacturers. Consequences of different production costs will result in different prices on the relevant market. Therefore, if the agreement sets prices without taking this factor into account, businesses will be in a state of conflict over the benefit sharing aspect. Because of this, many scientists considered the product's homogeneity or uniform standard of products as one of the favorable conditions for anti-competitive agreements.

Therefore, from the perspective of businesses involved in the agreement, they will also make changes so that the pricing agreement becomes easier to implement and brings many benefits to participating businesses. Accordingly, the act of applying the general price formula to maintain a constant price ratio of related products is to solve these differences. Through agreements that do not specify prices but only determine the formula to calculate prices or maintain a fixed ratio, participating enterprises have agreed not to change the correlation of prices that the parties have set in advance in the relevant market, but merely adds a certain percentage to the price of the parties in order to make a higher profit.

4.3. Indirect Price-fixing Agreement to Restrict Competition

4.3.1. Indirect price-fixing agreements are understood as agreements that unify the actions of competing enterprises in the same relevant market, related to supporting factors of goods and services prices, through which impact to the price applied to customers, distributors, in order to increase profits.

4.3.2. Indirect price-fixing agreements include agreements such as no price discount or uniform price discount, credit limit for customers, and no discount if not notify to other members of the agreement.

The nature of the *discount* and *credit limit* factors for customers are considered to be complementary or related to the price of goods and services. Measures to use discounts or credit limits for customers are particularly useful in the context of publicly available commodity price information. It will be difficult for businesses to decrease or increase prices locally without affecting the rest. Therefore, the discount policy is understood as the discount based on the widely announced price.

Typically, discounts occur in the relationship between a manufacturer and a distributor. From the perspective of the production chain, goods are delivered to consumers through the stages: Manufacturing - Distribution - Final consumption. The cost of distribution is calculated as one of the production costs. Therefore, through the application or non-application of discount, businesses have a direct impact on costs. Therefore, although the price of goods is constant (applicable to final users), whether or not to benefit customers through the application or non-discount policy has indirectly affected to the actual price that customers have to pay for the products.

Meanwhile, *giving credit limits to customers* is understood as giving customers a certain amount of money for buying behavior. It can be simply understood that buyers will be deferred for a certain period of time when they buy a certain volume/ value of goods. This deferred payment may apply to the entire shipment or part of the shipment, depending on the policy that the business wants to apply to its customers. Credit is one of the types of production costs. Purchase with deferred payment is a financial incentive for customers. Therefore, even without a discount, the credit line is a benefit that customers enjoy.

In Vietnam, the final agreement in the group of price-fixing agreements is the non-discount agreement without notifying other members of the agreement. Accordingly, businesses negotiated that they will only reduce prices with conditions which they have notified other businesses in the agreement. The nature of this agreement is the price information exchange element.

This comes from the peculiarity of conventional price-fixing agreements that always sell at a higher price than the market price. When an anti-competitive agreement is made, the following two things are true. The first one is because agreements are always geared to cutting production, so businesses always sell less than they sell before the deal and perhaps less than their own production capacity. it. The second is that the selling prices in the deals are always profitable.

Meanwhile, businesses will have the incentive to sell off and sell more, thereby achieving higher profits. The nature of the act in this case is the act of betraying the agreement, the betraying enterprise will benefit from the damages of other businesses when selling at lower prices. To resolve this conflict, the solution is that businesses have the right to reduce prices, but only if the remaining enterprises in the agreement have to know in advance about this discount decision. Thereby, it will avoid damage to the remaining businesses and ensure consistent price action among businesses.

In Vietnam, the introduction of the Competition Law 2018 replacing the Vietnam Competition Law 2004 when the provisions on agreements to fix prices of goods and services directly or indirectly have changed in the approach. Accordingly, the Vietnam Competition Law 2018 has two important changes. The first change is that price-fixing agreements are not only agreements between enterprises in the same relevant market, but also include agreements between businesses operating at different stages in the same chain of production, distribution and supply for a certain type of goods or services (Clause 1, Clause 4, Article 12 of the Vietnam Competition Law 2018)[3]. The second change is that for direct or indirect

[3] "Article 12. Anti-competitive agreement is prohibited
1. Agreements on restraint of competition between enterprises on the same relevant market prescribed in Clauses 1, 2 and 3, Article 11 of this Law.
...
4. Agreement on restraint of competition between enterprises doing business in different stages of the same chain of production, distribution and supply for a certain type of goods or service specified in Clause 1, 2, 3, 7, 8, 9, 10 and 11 of Article 11 of this Law when such agreement exerts a significant impact or is likely to exert significant competitive restraint in the market."

price-fixing agreements of goods and services conducted by enterprises in the same relevant market, lawmakers have determined that this is a serious violation agreement and distorting the market so this agreement will be strictly banned without taking into account market share factors as defined in the Vietnam Competition Law 2004.

4.4. The Agreement about Using Price Aiming to Consolidate Its Position in the Relevant Market

4.4.1. Viewed from the Market Structure of the Price-using Agreement among Businesses

The long-term goal of the business is to increase profits. However, businesses only achieve this goal when there are necessary conditions in terms of market structure. A market with many businesses, the pressure of competition will prevent businesses from achieving high profits as expected. Therefore, in order to serve the purpose of increasing profits in the long term, enterprises in some cases will have to take actions to prevent other enterprises from participating in the market, developing business or removing competitors from the relevant market. Theoretically, there are two options for businesses to prevent market entry, expansion of business, or the elimination of other businesses from the market either individually or in parallel: (i) low-price sales strategy (ii) boycott strategy.

4.4.2. Price-fixing Agreement Aiming to Consolidate Its Position in the Relevant Market

From the perspective of price theory, price-fixing agreements aimed at strengthening the position in the relevant market are understood as agreements in which enterprises use low-price selling methods to prevent other enterprises from expanding business scale, participating the market or removing competitors from the relevant market, thereby consolidating or expanding market share in the relevant market. Thereby, the price-using agreement can be identified for the purpose of strengthening the position in the relevant market through three signs. The first is that the subject of the agreement is enterprises in the same relevant market. The second is the tool used by businesses in low-price agreements in order to make it impossible for other businesses to get profits large enough to scale up, not attractive enough to enter the market or become more dire that are long-term losses and withdrawing from the market. Thirdly, the purpose of the businesses participating in the agreement is to consolidate their current position at the risk of losing market share by competitors in the relevant market or by entering the market of new businesses or increase profits through destroying competitors.

A price-using agreement aiming to prevent the market entry of a new competitor is understood as an agreement to agree on action among competitors, through a price reduction aimed at preventing the market entry of new competitors. In Vietnam, the agreement to prevent, inhibit or not to allow other enterprises from participating in the market is the agreement not to conduct transactions with enterprises not participating in the agreement or act together in one of the following forms: requesting, appealing or inducing their customers not to buy or sell goods or to use services of enterprises not participating in the agreement; purchase and sell goods and services at prices sufficient for enterprises not participating in the agreement not to participate in the relevant market.

The price-using agreement aimed at preventing, restraining or preventing other enterprises from developing their business is understood as the act of agreeing on actions between competitors enterprises in the relevant market, by using low-price sales strategy, making the business that is not a party to the agreement cannot develop or expand business activities.

In Vietnam, the agreement on preventing, restraining or not allowing other enterprises to develop their businesses is an agreement not to conduct transactions with enterprises not participating in the agreement or acting in one of the following forms: requesting, appealing, seducing distributors and retailers dealing with them to discriminate when buying or selling goods of the enterprises not joining the agreement in a way that makes it difficult to sell goods of this enterprise; Buying and selling goods and services at prices sufficient for enterprises not participating in the agreement not to expand their business.

In Vietnam, agreements prevent market entry and agreements prevent other enterprises from developing business have different subjects. If the agreement prevents the entry into the market of a potential competitor enterprise, which has not been established or has been established but has not operated in the relevant market, the object of the agreement preventing the other enterprises from developing business is the competitor businesses operating in the same market. However, from an using strategic perspective, both of these agreements use either of the two types of acts *Boycott* or *Low price sales*.

From the price perspective, the fixed price must be a price that is sufficient for an enterprise that is not a party to the agreement to enter the relevant market or at a price that is sufficient for a non-party entity to expand further business scale.

Price-using agreements aiming to remove from the market those enterprises which are not parties to the agreement are understood as agreements to agree on actions between competitors in the relevant market, by using use low-price sales strategy, aiming to eliminate competitors from the relevant market. The agreement to remove from the market enterprises which are not parties to the agreement is the agreement not to deal with enterprises not participating in the agreement and act in the form of asking, calling, seducing customers not to buy, sell goods, do not use services of enterprises not participating in the agreement.

Agreement to prevent, restrain or prevent other enterprises from developing their business is the agreement not to conduct transactions with enterprises not participating in the agreement or acting in one of the following forms:

- Requesting, appealing and enticing distributors and retailers dealing with them to discriminate when buying and selling goods of enterprises not participating in the agreement in a way that makes it difficult to sell goods of this business.

- Buying and selling goods and services at a price sufficient for an enterprise not being a party to the agreement to not expand its business, or buying and

selling goods or services at a price sufficient for the enterprise not to participate in the agreement have to withdraw from the relevant market. *From this rule, there are a few things to clarify:*

First, the object of the agreement is a competitor enterprise that already exists in the relevant market.

Second, the strategy used in the deal is still a boycott and low-price sales strategy. However, compared with the agreement that prevented the development of business, the agreement to eliminate other enterprises was more fierce. In the agreement to prevent, only one of the two strategies is implemented; in the elimination agreement, enterprises implement simultaneously both boycott strategy and low-price sales strategy.

Third, the selling price in this case is the low price. Selling goods or providing services below the total cost in order to eliminate competitors means the sale of goods or provision of services at prices lower than the total costs constituting the production of goods or services or the purchase prices of goods for resale; cost of circulation of goods and services.

In order to implement a comprehensive framework of neutral competition, Vietnam has made great progress in the transition from a developing country with a centrally planned, socialist economy to the economy. market economy which is rapidly industrializing. In the process of implementing the competitive evaluation mechanism, Viet Nam has made significant progress in significantly improving the quality of its legislative and legislative processes, including the questioning efficiency[4]. In the current economic and social context, the Vietnam Competition Law 2018 has clearly shown the viewpoints to improve the legal framework, create a fair and fair competitive environment for business entities. The great value of this law is that it was built in a way that combines economic thinking and legal thinking, emphasizing the effective growth goal for law enforcement, including laws governing price fixing-agreements to restrict competition[5]. The Vietnam Competition Law 2018 with respect to price-using agreements for the purpose of consolidating the position in the relevant market follows the same approach. The Vietnam Competition Law 2018 with respect to price-using agreements for the purpose of consolidating its position in the relevant market follows the same approach. Accordingly, Article 11 of the Vietnam Competition Law 2018[6] also in turn stipulates two types of agreements: agreements preventing, restricting, not allowing other enterprises to participate in the market or developing business and agreements to remove from the market businesses that are not parties to the agreement. Thus, despite the different names, the price-using agreements aimed at strengthening the position in the relevant market are essentially agreements that sacrifice short-term benefits to prevent the market entry, market expansion or even eliminating competitors from the relevant market. But as mentioned above, from an economic perspective, businesses have no incentive to agree on a unified sale of goods under the average variable cost to destroy their rivals. Instead of that, when they want to consolidate their position in the relevant market (preventing the entry of new competitors' market or preventing the development or elimination of existing competitors), businesses tend to use other tools instead of sacrificing benefits by reducing prices. US practice, as long as there is a price agreement, is considered as an act of price-fixing agreement, regardless of whether the price is high or low. Agreements between competitors are almost always illegal, regardless of whether the price is set to a minimum, maximum or a range of fluctuations. With the provisions of Clauses 5 and 6, Article 11 of the Vietnam Competition Law 2018[7] in terms of language, it does not allow us to conclude whether the provisions on the agreement to prevent and eliminate competitors involve the use of low prices as in the Competition Law 2004 or not, these agreements are boycott agreements, thereby increasing the cost of production of competitors, which is a way that helps businesses to participate in restrictive agreements and compete for market dominance. However, from an economic perspective, the author supports the US approach, which means that price agreements, regardless of whether they are high or low, are included in the group of price-fixing agreements. The implications of agreements that prevent market entry, market expansion, or the agreement to remove other enterprises from the market only include strategies that are not related to price instruments.

4.5. Research, Proposal

The following are the studies and recommendations of the author on the content of effect assessment or the ability to cause significant anti-competitive effects of the price-fixing agreement to restrain competition in Vietnam. After obtaining research results on acts of direct price-fixing agreements, indirect price-fixing agreements, price-

---

[4] OECD (2018), OECD's review of Competition Law and Policy, http://oe.cd/vtn

[5] Tran Thi Nguyet, "Discussing the core values of the Competition Law 2018", *Journal of Human Resources and Social Sciences*, No. 5/2020, 2020.

[6] *"**Article 11. Anti-competitive agreement***
1. Agreement on fixing prices of goods and services directly or indirectly.
2. Agreements on division of customers, division of consumption markets, supply of goods and provision of services.
3. Agreement to limit or control the quantity and volume of production, purchase, sale of goods or provision of services.
4. Agreeing to one or both parties to the agreement win the bid when participating in biddings in the supply of goods or provision of services.
5. Agreement to prevent, restrain or prevent other enterprises from participating in the market or developing business.
6. Agreement to remove from the market enterprises which are not parties to the agreement.
7. Agreement on restriction of technical and technological development, restriction of investment.
8. Agreement to impose or impose conditions on the signing of contracts to buy and sell goods or provide services to other enterprises or to agreements to force other enterprises to accept obligations not directly related to the subjects of contract.
9. Agreement does not deal with parties not party to the agreement.
10. Agreement to restrict the market of products, sources of goods and services provided by the parties not party to the agreement.
11. Other agreements that cause or are likely to cause anti-competitive effects. "

[7] *"**Article 11. Anti-competitive agreement***
5. Agreement to prevent, restrain or prevent other enterprises from participating in the market or developing business.
6. Agreement to remove from the market enterprises which are not parties to the agreement. "

using agreements in order to consolidate the position in the relevant market, the proposals of author on ***the authority to assess and the basis for assessing*** the effect or the ability to cause significant anti-competitive effects of the price-fixing agreement in order to restrict competition focusing on important issues. as follows:

4.5.1. Competent Authority Assesses anti-Competitive Effects

In Vietnam, the authority that assesses the significant effect or likely to exert significant anti-competitive effects on price-fixing agreements to limit competition is the Vietnam National Competition Commission.

The Vietnam National Competition Commission *is an authority competent to assess the effect* or the ability to cause significant anti-competitive effects of anti-competitive agreements in cases where anti-competitive agreements **are prohibited** under the provisions of Clauses 3 and 4, Article 12 of the Vietnam Competition Law 2018 [8], including a price-fixing agreement to restrict competition.

4.5.2. Bases for Evaluating Anti-competitive Effects

In Vietnam, the basis for the Vietnam National Competition Commission to assess the effect or the ability to cause significant anti-competitive effects of the price-fixing agreement in order to restrict competition

The evaluation of the effect or the ability to cause significant anti-competitive effects of the price-fixing agreement in order to restrict competition by the National Competition Commission of Vietnam is based on one or a number of factors as follows:

a) Developments and trends in changing the market share of enterprises participating in the agreement are evaluated in relation to other enterprises that are competitors not participating in the agreement;

b) Barriers to market entry and expansion are assessed to determine the effect or the ability to cause significant anti-competitive effects of the agreement based on factors affecting the decision of the enterprise upon accession., expanding markets, including:

b1) The legal barriers created by the laws and policies of the state include regulations on import duties and import restrictions; technical regulations; conditions and procedures for producing and trading in goods and services; regulations on use of goods and services; professional standards and other administrative decisions of state management agencies.

b2) Financial barriers include costs of investment in production and trading of goods and services, access to capital, credit and other financial sources of the enterprise.

b3) Initial costs of entering the market which enterprises cannot recover when withdrawing from the market.

b4) Barriers to access and hold supplies and essential infrastructure for production and business; distribution network, consumption of goods and services on the market.

b5) Consumer practices.

B6) Business practices.

b7) Barriers related to the exercise of intellectual property rights of individuals and organizations, including copyright and rights related to copyright, industrial property rights and rights to plant varieties as prescribed. of the law on intellectual property rights and other barriers to market entry and expansion.

c) Restricting research, development, technological innovation or limiting technological capacity assessed to determine the impact or potential impact of anti-competitive agreements on research and development objectives. developing, renewing technologies or raising technological capabilities in the relevant branches and domains;

d) Decreasing accessibility and holding of essential infrastructure is assessed based on the critical level of infrastructure for production and business activities and costs and time for enterprises. a competitor who is not a party to the agreement can access, hold that infrastructure or similar infrastructure;

d) Increasing costs and time of customers in purchasing goods and services of enterprises participating in the agreement or when switching to buying other related goods and services determined by comparing expenses and time necessary time of customers when buying goods and services of enterprises participating in the agreement or when switching to buying goods and services of enterprises being competitors before and after such agreement;

e) Interfering with competition in the market through controlling specific factors in the industry or fields related to the enterprises participating in the agreement determined based on the level of dominance of such particular factors. for the competitive activities of enterprises in the market.

4.5.3. The Author's Proposal on Price-fixing Agreements in order to Restrain Competition is Considered not Causing or not Likely to Cause Significant Anti-competitive Effects

According to the study of price-fixing in order to restrain competition in terms of the effect of economics, by thinking of economic efficiency standards, if the price-fixing agreements are in one of the following cases, they will be considered not to cause or is unlikely to have the ability to cause significant anti-competitive effects:

a) For agreements restricting competition between enterprises in the relevant market, when the combined market share of enterprises participating in the agreement is less than 5%;

b) For agreements on restraint of competition between business enterprises and different stages in the same production, distribution and supply chain for a certain type of goods or service, when the market share of Each enterprise participating in the agreement is smaller than 15%.

Therefore, in the process of assessing the anti-competitive effects and the anti-competitive ability of the agreement, the National Competition Commission of Vietnam has the right to consult agencies, organizations, relevant individuals

[8] *"**Article 12. Anti-competitive agreement is prohibited***
3. Agreement on restraint of competition between enterprises on the same relevant market stipulated in clauses 7, 8, 9, 10 and 11 of Article 11 of this Law when such agreement exerts an impact or is likely to cause an impact limit competition significantly in the market.
4. Agreement on restraint of competition between enterprises doing business in different stages of the same production, distribution and supply chain for a certain type of goods or service specified in Clause 1, 2, 3, 7, 8, 9, 10 and 11 of Article 11 of this Law when such agreement exerts a significant impact or is likely to exert significant competitive restraint in the market."

and request businesses to enter into agreements to provide necessary information and documents.

5. Discussion and Conclusion

Regarding the handling plan, Vietnam has quickly regulated the sanctioning of administrative violations in the field of competition by issuing Decree 75/2019/ND-CP of September 26, 2019. Accordingly, for acts of agreement on restraint of competition of enterprises in the relevant market, the measure of a fine of 1% to 10% of the total turnover in the relevant market in the financial year preceding the year. committing acts of violation of each enterprise being the parties to the agreement for acts of agreeing to fix goods or service prices directly or indirectly[9]. The fine level is from 1% to 5% of the total revenue on the relevant market in the financial year preceding the year of committing acts of violation of each enterprise being the parties to the agreement for acts of price-fixing agreements on goods and services directly or indirectly, when such agreements affect or have the ability to cause significant anti-competitive effect in the market[10]. This is a fine for acts of restricting competition from businesses operating in different stages of the same production, distribution and supply chain for a certain type of goods or services. In addition to the policy of sanctioning administrative violations, Vietnam's criminal law also criminalized acts of anti-competitive agreements by fixing prices. The Vietnam Penal Code 2015 has set aside Article 217 to regulate this sanctions.[11] With such a strict treatment, the punitive and deterrent nature, the crime prevention of price-fixing agreements to restrain competition has been guaranteed. But breaking the price-fixing agreements to restrain competition is the advantage of a leniency policy that was first initiated and regulated by the Vietnam Competition Law 2018. This is the policy that the State of Vietnam has granted exemption to members participating in price-fixing agreements in order to restrict competition, which has proactively declared, provided documents and evidence proving the existence of price-fixing agreement and real cooperation with competition management agency. The subjects who are a party to this agreement, when receiving leniency, will be exempted from part or all of the administrative or criminal sanctions that they should have incurred[12]. This is also the conclusion and value and suggestive meaning of the author for future studies.

In summary, like other anti-competitive phenomena, the agreement on fixing prices to restrict competition is a negative phenomenon but it exists as an indispensable part of Viet Nam's economic life. From an economic perspective, the agreement on the use of prices in particular and the agreement on restraint of competition in general is the first step of business people in the process of capital accumulation and concentration - requiring centralization and unifying action in the marketplace. From an economic perspective, agreements that unite actions between businesses eliminate independent action among businesses participating in the agreement. Vietnam's laws governing anti-competitive agreements have made progress when it is clear that the impact of agreements on the use of prices to restrict competition is clear. The Vietnam Competition Law 2018 is a new step in the legislative work in order to effectively adjust and control anti-competitive agreements, including price-fixing agreements. From the perspective of effective standards of economics, indeed, price-fixing agreements to restrict competition are serious violations of competition law, distorting the market and leading the banned list in Competition law of countries in general and Vietnam in particular.

References

[1] National Assembly of Vietnam (2004). Vietnam Competition Law 2004.

---

[9] See Article 6, Clause 1 of Decree No. 75/2019/ND-CP of the Vietnamese Government stipulating sanctions against administrative violations in the field of competition

[10] See Article 7, Clause 1 of Decree No. 75/2019/ND-CP of the Vietnamese Government stipulating sanctions against administrative violations in the field of competition

[11] "***Article 217. Crime of violating competition regulations***

1. Those who commit one of the following acts, causing damage to others from VND 1,000,000,000 to under VND 5,000,000,000 or gaining illicit profits from VND 500,000,000 to under VND 3,000,000,000, shall be sanctioned. a fine of from VND 200,000,000 to VND 1,000,000,000 shall be imposed for non-custodial reform for up to 02 years or imprisoned from 03 months to 02 years:

a) Agreement to prevent or restrain other enterprises from participating in the market or developing business;

b) Agreement to remove from the market of enterprises not the parties to the agreement;

c) Agreement on restraint of competition when the parties to the agreement have a combined market share of 30% or more in one of the following cases: agreements on fixing prices of goods and services directly or indirectly; agreements on dividing consumption markets, sources of supply of goods and services; Agreement to limit or control the quantity and volume of production, purchase and sale of goods and services; agreements restricting technical and technological development, limiting investment; Agreement to impose on other enterprises conditions for signing contracts for the purchase and sale of goods or services or forcing other enterprises to accept obligations not directly related to the subjects of the contract.

2. Committing the crime in one of the following circumstances, the offender shall be liable to a fine of from VND 1,000,000,000 to VND 3,000,000,000 or face a prison term of between 1 and 5 years:

a) Committing the crime 2 times or more;

b) Using sophisticated and cunning tricks;

c) Abuse of market dominance or monopoly position;

d) Gaining an illegal profit of VND 3,000,000,000;

d) Causing damage to another person of VND 5,000,000,000 or more. ";

3. Offenders may also be imposed a fine of between VND 50,000,000 and VND 200,000,000, banned from holding certain posts, practicing certain occupations or doing certain jobs for between 1 and 5 years.

4. Commercial legal entities committing offenses specified in this Article, shall be sanctioned as follows:

a) Committing the crime as prescribed in Clause 1 of this Article, a fine of between VND 1,000,000,000 and 3,000,000,000;

b) Committing the crime as prescribed in Clause 2 of this Article, a fine of between VND 3,000,000 and VND 5,000,000,000 or suspend operation for a period of 06 months to 02 years;

c) Commercial legal entities may also be imposed a fine of from VND 100,000,000 to VND 500,000,000, be banned from operating in certain fields or raising capital for 01 - 03 years. "

[12] "***Article 112. Policies of leniency***

1. Enterprises that voluntarily declare to assist the National Competition Commission in detecting, investigating and handling acts of prohibited competition restriction agreements prescribed in Article 12 of this Law are entitled to exemption or reduction of principal sanctions. books of mercy. "

[2] National Assembly of Vietnam (2018). Vietnam Competition Law 2018.
[3] National Assembly of Vietnam (2015). Vietnam Penal Code 2015.
[4] Government of Vietnam (2019), Decree No. 75/2019/ND-CP of the Vietnamese Government stipulating sanctions against administrative violations in the field of competition.
[5] Duong Viet Phuong (2019). Agreement on restraint of competition under Vietnam's Competition Law 2018. Master thesis of Economic Law.
[6] Vietnam Chamber of Commerce and Industry - VCCI (2019), Report on the flow of Business Law 2019, Hanoi, December 2019.
[7] OECD (2018), OECD's review of Competition Law and Policy, http://oe.cd/vtn.
[8] Tran Thi Nguyet (2020). Discussing the core values of the Competition Law 2018. Journal of Human Resources and Social Sciences, (5).

© The Author(s) 2020. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (http://creativecommons.org/licenses/by/4.0/).