CASE STUDY

The Vietnam Telecommunications Sector

Good Practices in Regulatory Reform in Relation to Competition Policy & Law Issues

CUTS International GENEVA
ILEAP INTERNATIONAL LAWYERS AND ECONOMISTS AGAINST POVERTY
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This study is published as part of the "Support to Enhance Development of Trade in Services Negotiations" initiative jointly undertaken by ILEAP, CUTS International Geneva and the University of Sussex's CARIS. It aims to contribute to the increased and more effective participation of Least Developed, Low and Lower-Middle Income Countries and their Regional Economic Communities in multilateral, regional and bilateral services trade negotiations.

The initiative promotes understanding among policy makers, regulators and negotiators about their services sectors and the role that trade negotiations can play in pursuing their strategic interests therein.

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Funding support

TAF TRADE ADVOCACY FUND UKaid

This publication should be cited as:

PHAM A. (2015). 'The Vietnam Telecommunications Sector: Good Practices in Regulatory Reform in Relation to Competition Policy & Law Issues'. Toronto, Geneva and Brighton: ILEAP, CUTS International Geneva and CARIS.

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Abbreviations

ASEAN	Association of South East Asia Nations
BCC	Business Cooperation Contract
BTA	Bilateral Trade Agreement (between Vietnam and the US)
CDMA	Code-Division Multiple Access
EVN	Electricity Telecommunication Information Company (‘EVN Telecom’)
FBO	Facilities-based operator
FPT	Financing and Promoting Technology Company
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GSM	Global System for Mobile Communications
HTVC	Ho Chi Minh City Cable Television Company
ISP	Internet Service Provider
ITU	International Telecommunications Union
IXP	Internet eXchange Point
LOT	Law on Telecommunications
MIC	Ministry of Information and Communications (formerly the ‘MPT’)
MMS	Multimedia Messaging Service
MOIT	Ministry of Industry and Trade
MPT	Ministry of Post and Telecommunications (now called the ‘MIC’)
Netnam	Information Technology Institute
OTT	Over-the-top
RAM	Recently Acceded Member (of the ‘WTO’)
SCTV	Saigontourist Cable Television
SME	Small and Medium-sized Enterprise
SMS	Short Message Service
SOE	State-owned enterprise
SPT	Saigon Post and Telecommunications Company (also called ‘SaigonPostel’)
TPR	Trade Policy Review
TSMA	Telecommunications Specialized Management Agency
VCA	Vietnam Competition Authority
VCC	Vietnam Competition Council
VCL	Vietnam Competition Law
Vietshiptel	Vietnam Maritime Telecommunications Company
Viettel	Military Electronics and Telecommunications Company
VoIP	Voice over Internet Protocol
VNPT	Vietnam Post and Telecommunications Corporation
VTV	Vietnam Television
VCTV	Vietnam Cable Television
VND	Vietnamese *dong*
WTO	World Trade Organisation

Foreword

Services and services trade can play a central role in promoting sustainable development, supporting inclusive economic growth, and reducing poverty in modern economies. However, LDCs, LICs, and LMICs continue to face challenges in catalysing or sustaining progress across this diverse range of economic activities. With respect to trade policy and related negotiations, services have become an increasingly visible feature of discussions – domestically, regionally, as well as at the bilateral and multilateral levels.

A number of challenges impacting services trade negotiations and policy-making have been identified however. Many lack access to reliable services trade data on which to base analysis and decision-making, and skills for processing and analysing existing services trade data to underpin conclusions. Ineffective interactions between stakeholders to support decision-making – within government, and between the government and the private sector, civil society, and other non-state actors - is also a major challenge.

Against this backdrop, ILEAP, CUTS International Geneva and the University of Sussex's CARIS have partnered to undertake a series of interventions that seek to contribute to the increased and more effective participation of LDCs, LICs, LMICs and RECs in multilateral, regional and bilateral services trade negotiations.

With funding support from the UK Trade Advocacy Fund, a set of studies, toolkits and trainings are developed to assist these countries in increasing their participation in services trade. Target beneficiaries range from negotiators, policymakers, regulators, statistical officers and various non-state actors.

This case study analyses how the telecom sector been liberalized and reformed in Vietnam. From having a wholly government-owned monopoly to opening up the market, the reform road has been and remains paved with challenges. Results today are nevertheless encouraging, with prices having significantly dropped, wider choices for consumers, and private and foreign service providers finding it easier to enter and thrive in the industry.

Introduction

Recent times have witnessed the liberalization of the telecommunications sector in many developing economies around the world, which ultimately resulted in significant expansion of their telecommunications networks and improvements in performance. The supply of telecommunications services has changed from monopoly- or government-based, to market- or competition-based approaches. The driving forces behind this process have been:

- the emergence and rapid development of new technologies and services, such as internet and wireless services, which enables the entrance into the sector of competitive service providers,
- the increasing recognition that a liberalized telecom market can produce higher growth, faster innovation, and better services,
- the need to attract private capital for expansion of networks and introduction of new services, and
- strong developments of international trade in telecom services.

During the transition period from monopolistic to competitive telecom markets, governments around the world have implemented a wide range of reforms, three fundamental ones being:

- the privatization of incumbent operators, and providing them with better incentives to minimize costs and operate more efficiently
- the introduction or injection of competition into the sector, by opening up the market and allowing private and foreign participation, and
- the initiation and implementation of regulatory reforms, in the direction of imbibing competition principles into regulations.

While there is a growing consensus that all of these elements are desirable and ideally they should form inherent parts of a complete reform package, not all governments have immediately and fully executed all of them. They did so at different paces and different sequences, more often than not adopting a gradual approach. There remained significant resistance and lobbying against reforms undertaken. Privatized incumbents and former monopolists may, through use of anticompetitive practices, erect a whole lot of 'invisible' barriers, to entrench their control over others or to stop new market entries. The regulatory framework over the telecom sector, thus, in addition to regulations over price, quality, licensing, and other technical issues, etc, needs to also contain competition policy and law elements to ensure that major suppliers do not abuse their position. In this respect, important elements of competition policy and law such as the notion of major suppliers, market dominance, and essential facilities, etc are to be introduced into telecom laws and regulations. Furthermore, governments have also taken advantages of trade negotiations, bilaterally, regionally or multilaterally within the framework of the World Trade Organization (WTO), to lock-in more liberal or far-reaching market-opening commitments, to further speed up this process.

In this case study, we would look at how the telecom sector in Vietnam, a transition economy in Southeast Asia, has been liberalized and reformed, from having a wholly government-owned monopoly providing all types of basic telecommunications services in the country, to opening up the market, embracing competition and increasingly relying on market rules and dynamics. The reform road has not been smooth and is still faced with a lot of challenges, but is showing encouraging results: prices have significantly dropped, wider choices for consumers with a whole range of new, innovative products coming into the market day in day out, and private and foreign service providers are finding it easier to enter and thrive in the industry.

Those reforms have lifted the overall competitiveness of the telecom sector, making it an example that is worth following for other sectors in Vietnam in terms of liberalization and integration. In 2007, Vietnam was classified as the world's second fastest growing telecom market by the International Telecommunications Union (ITU). [1] The telecom sector in Vietnam is now considered a backbone industry of the overall economy and an enabler of development, contributing significantly to improving the lives of the people and increasing economic growth. Most importantly, Vietnam, within the context of bilateral, regional and multilateral trade negotiations, has also put in place a pro-competitive regulatory framework, which promises more benefits to come in the future.

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1 See, for example, the European Union (Economic & Commercial Counsellors) Green Book 2007 on Vietnam, available for view and download at <http://eeas.europa.eu/delegations/vietnam/documents/eu_vietnam/greenbook_07_en.pdf> , or Vietnam – An Insight (01-30 June 2008) by Ernst & Young Vietnam, available for view and download at <www.stoxplus.com/download.asp?id=273>

Section 1

The History of Reforms

Vietnam has moved from the Soviet-style centrally-planned economic development model to building a market-based economy since 1986. Benefiting from those close-to-30-years of economic reforms, the Vietnamese economy has been hugely and positively transformed. GDP has increased from US$36.66 billion in 1986 to US$77.41 billion in 2007 and US$171.39 billion in 2013, thanks to impressive GDP growth rates that averaged 6.13% from 2000 until 2014. As of 2007, the revenue that comes from the provision of telecommunications services such as fixed-line, mobile, and data made up 4.7% of total GDP of the country. With a population of more than 90 million people, 60% of which is within the working age, the telecom sector in Vietnam has huge potential for further development.

The concept of competition was formally introduced in Vietnam in the year 2003, after the licensing of new service providers, though more serious reforms with regards to opening up the Vietnamese telecom sector to foreign competition were only expected to happen following the country's accession to the WTO in 2007. However, in preparation, Vietnam has, over the years, promulgated a number of decrees and regulations, most importantly the Ordinance on Post and Telecommunications 2002 and guidance documents for its implementation. The Ministry of Post and Telecommunications (MPT– in 2007, the name is changed to the Ministry of Information and Communications - MIC) was also established in 2002, being responsible for the overall telecoms strategy and planning of the sector as well as regulating service prices. The MPT also has extensive data gathering, coordination and other functions to perform. Earlier, telecommunications services were considered a public utility, thus wholly provided by the Vietnam Post and Telecommunications General Corporation (now the VNPT Group) – a State-own monopoly.

VNPT was essentially a self-regulatory body with regulation, policy, business management and ownership mixed together. After the whole Vietnam economy moved gradually to market approaches in 1986, VNPT continued to retain its monopoly, managing all the infrastructures as well as providing all types of basic telecommunications services in Vietnam. In this initial period of reform, developments within the sector were few and slow, while service quality was hardly improved, and there was no true telecom market. It can therefore be said that the telecom market in Vietnam is relatively young as compared to that of the world, with very low starting point.

The first landmark of telecom sector reforms in Vietnam was in 1995. In the face of increasing domestic demand and changes in key sectors of the Vietnamese economy, the Vietnamese government started to implement a pro-competitive policy in the telecommunication sector by creating two domestic telecommunication companies: the Military Electronic and Telecommunication Company (Viettel – wholly owned by the Ministry of Defense), and Saigon Post and Telecommunication Company (SPT or SaigonPostel, 18% owned by VNPT). The telecoms sector started to show encouraging progresses and consumer welfare was visibly increased (more choices, reduced prices), even though competition was still limited and only happening amongst State-owned enterprises (SOEs). VNPT remained in a near monopoly position, being able to exercise significant control over the market, since all the other companies (Viettel and SPT at the time, and some others over the later years) had to depend on its infrastructures.

The second landmark change came in 2003, when the monopoly of VNPT was officially removed and competition was allowed with regards to all types of telecommunications services. A governmental decree in October 2003 and an official letter in January 2004 gave telecom enterprises the freedom to determine tariffs in the telecom service market in which they were not dominant. Some tariffs, particularly those offered by VNPT – since it remained the incumbent in the market, remained regulated. By then, there were in total 6 companies, which were licensed to establish network and provide telecom services. These were: VNPT, Viettel, SPT, Electricity Telecommunication Information Company (EVN Telecom), Vietnam Maritime Telecommunication Company (Vietshiptel), and Hanoi Telecom; amongst which only VNPT, Viettel and EVN Telecom were allowed to establish networks and provide international fixed-line telephone services. In 1997, five Internet Service Providers (ISPs) were also licensed, including: VNPT, Viettel, SPT, FPT and Netnam. Viettel and SPT were licensed to provide VoIP (Voice over Internet Protocol) service in 2001 and the Vietnam Equipment Technology and Trading Joint-Stock Company (ETC) was licensed at a later date. Foreign service providers with foreign ownership not exceeding 50 percent can provide value added services according to the Vietnam-US Bilateral Trade Agreement (BTA) from 2003.

TABLE 1 VIETNAM'S MOBILE PENETRATION RATE DURING 1995-2014 AS COMPARED WITH NEIGHBOURING COUNTRIES

S.No.	Country/Year	1995	1999	2005	2008	2009	2010	2011	2012	2013	2014
1.	Brunei Darusalam	12	20	63	103	105	109	109	114	112	110
2.	Cambodia	0	1	8	30	44	57	94	129	134	155
3.	Indonesia	0	1	21	60	69	88	102	114	125	126
4.	Lao PDR	0	0	11	33	52	63	84	65	68	67
5.	Malaysia	5	13	76	102	108	120	127	141	145	149
6.	Myanmar	0	0	0	1	1	1	2	7	13	49
7.	Philippines	1	4	41	75	82	89	99	105	105	111
8.	Singapore	9	43	98	132	139	145	150	152	156	158
9.	Thailand	2	4	46	93	100	108	116	127	140	144
10.	Vietnam	0	0	11	86	111	125	142	145	135	147

Source: International Telecommunication Union, World Telecommunication/ICT Development Report and database (http://data.worldbank.org/indicator/IT.CEL.SETS.P2)

Table 1 shows clearly how the performance of the telecom sector in Vietnam has been improved over time, given the milestones mentioned above. Up until 2005, before serious reforms were undertaken, the mobile penetration rates of Vietnam were remarkably low as compared to neighbouring countries. Breakthroughs could be observed after the 2003-2004 change, when competition was allowed, and then after 2007, when the country became a member of the WTO, thus embarking on overhauling its regulatory framework. In 2014, Vietnam's mobile penetration rate ranked No. 4 in the ASEAN region and No. 34 in the world.

The third and most recent landmark came last year in 2014, when it was decided that MobiFone, one of Vietnam's three largest mobile network operators, would be separated from its parent company - VNPT, which also owns Vinaphone – MobiFone's rival in the market and also a dominant service provider, and is now getting ready for privatisation/equitisation. This was part of the restructuring scheme proposed by the State-owned incumbent operator – VNPT – to the MIC (formerly the MPT), and was considered a landmark, since from then on, State monopoly on the telecom market in Vietnam would be completely dismantled.

The opening up of the Vietnamese telecom sector to foreign participation was first marked by Vietnam's agreed commitments under the Vietnam-US BTA as of 2000. Prior to that, under the Vietnamese Investment Law of 1992, foreign companies were allowed to provide services to Vietnam's telecom market only if they entered into a Business Cooperation Contract (BCC). BCCs are cost and revenue sharing agreements under which the foreign partner generally provides the needed equipment and training for local operators.

According to the Vietnam-US BTA commitments, Vietnam allows US companies to set up joint ventures with the Vietnamese partners authorized to provide telecom services. US companies have the right to establish joint ventures, with a 50 percent cap on US equity, to participate in value added services (such as e-mail, voice mail, electronic data, interchange, data processing) commencing from December 2003 and in the case of internet services December 2004. Under the BTA, US companies are also allowed to set up joint ventures with a maximum equity share of 49 percent in basic telecom services (such as wireless services, certain data services, leased circuit) as well as in basic voice telephone services (fixed local, long distance and international).

TABLE 2 FOREIGN PARTICIPATION IN THE VIETNAMESE TELECOMS SECTOR

S.N.	Partners	Year	Term (years)	Foreign capital	Scope	Notes
1.	VNPT-Telstra Australia (Australia)	1998	6	US$237 million	Development of international telecom network and services	Original BCC signed in 1988 Three contract extensions
2.	VNPT-Comvik (Sweden)	1995	10	US$127.8 million	Development of the national mobile phone network and services	Constructed the 1st GSM network Terminated in 2005
3.	VNPT-Voice International (Australia)		9	US$725,000	Development and exploitation of paging services in HCMC	Contract extended from 5 to 9 years
4.	VNPT-Sapura SDN-BHD (Malaysia)	1993	8	US$3.8 million	Development and exploitation of the public card phone services in HCM area	VNPT contributed US$1.6 million
5.	VNPT-Worldcorp Holding (Singapore)	1995	5	US$842,000	Development and exploitation of yellow page services	VNPT contributed US$2.3 million
6.	VNPT – Korea Telecom (South Korea)	1996	10	US$40 million	Development of network in Hai Phong city and Hai Duong, Hung Yen and Quang Ninh provinces	BCC signed 2 years earlier
7.	VNPT-Nippon Telegraph and Telephone (Japan)	1997	15	US$40 million	Development of network in the Northeast of Hanoi area. Construction of 240,000 new telephone lines	Project IRR estimated at 12-24%, with a 47/53 (NTT/VNPT) profit share. Realised on 50% of planned expansion
8.	VNPT – France Telecom (France)	1997	15	US$467 million	Development of internal network of the east of HCMC. Construction of 540,000 new telephone lines	
9.	VNPT – Cable & Wireless (UK)	1997	15	US$207 million	Development of telephone network in the east of Hanoi city. Construction of 250,000 new telephone lines	
10.	SPT-SK Telecom (South Korea)	2003	n/a	US$230 million	Development and exploitation of CDMA mobile phone network and service	First non-VNPT BCC Terminated in 2010
11.	Hanoi Telecom - Hutchison Telecom (Hongkong)	2005	15	US$656 million	Build a CDMA mobile phone network in Hanoi (S-Fone)	Ongoing
12.	GTel-Vimpelcom (Russia)	2009			Develop a new mobile phone network in Vietnam called Beeline	Vimpelcom withdrew from Vietnam in 2012 after three years of loss.

From Table 2, it could be seen that the golden age for foreign participation into the Vietnamese telecoms sector was during 1995-2003, the first period of reform. The attractiveness of the sector, however, reduced quite quickly. After the leave of the Russian VimpelCom in 2012, which led to the disappearance of Beeline brand in Vietnam, Hutchison Telecommunications from Hong Kong remains the only foreign investor in the country. Most others had had to give up the games. Comvik, the best known foreign investor, had to leave Vietnam in 2005 after the 10-year BCC finished, and after it made great efforts to help build up MobiFone into one of the leading telecom networks in the country. Meanwhile, SK Telecom and VimpelCom had to leave in 2010 and 2012, quietly, after they took loss with S-Fone and Beeline networks.

This is allegedly due to the remaining restrictions over foreign participation into the sector and State dominance being administratively maintained, which reduced the margins that foreign investors could expect and actually received.

Further liberalization with regards to trade in services, including telecommunication services, was also supposed to happen within the framework of the Association of Southeast Asia Nations (ASEAN). But most commitments made by ASEAN member states are yet to be actualized. In 2007, Vietnam officially became a member of the WTO and thereto undertook extensive commitments to further open up its telecommunications sector.

Box 1: The WTO and Telecommunications

The telecoms sector has been increasingly included in international trade agreements. The Uruguay Round of the WTO (1986-1994) incorporated some of the first international commitments in telecom services with WTO member states agreeing to further negotiations on trade in basic telecommunications within the framework of the GATS (General Agreement on Trade in Services).

The result of these negotiations between 1994 & 1997 in the Doha Round was the Agreement on Basic Telecommunication Services and its entry into force on the 5th of February, 1998, which marked an important milestone in the telecommunications industry's shift towards global competition, liberalization and open markets. The agreement contains specific commitments in the field of basic telecommunications from 69 countries representing over 90% of the world's basic telecommunications revenues. In addition to market access and national treatment commitments, the Agreement also embodies a negotiated set of pro-competitive regulatory principles contained in a reference paper.

This reference paper represents the regulatory component of the basic telecommunications agreement. It is a set of common guidelines for a regulatory framework that countries should follow to support the transition of the telecommunications sector to a competitive marketplace and to guarantee effective market access and foreign investment commitments. The reference paper deals with six regulatory principles including competitive safeguards, interconnection, universal service, licensing, allocation and use of scarce resource and creation of independent regulators. The reference paper was adopted in full and/or in part by 61 signatories to the Basic Telecommunications Agreement as additional commitments in application of article XVIII of GATS. Once adopted, the principles of the reference paper become binding commitments and enforceable through dispute settlement under the WTO.

Source: (i) Central Institute for Economic Management, Competitiveness and the Impact of Trade Liberalization in Vietnam: The Case of Telecommunications, May 2006; (ii) Boutheina Guermazi, Exploring the Reference Paper on Regulatory Principles,>

In its WTO commitments, Vietnam agreed to further open many sub-sectors of telecommunications services to foreign investors under a prescribed schedule (see Table 3 for more details). As additional commitments, Vietnam also agreed to undertake the obligations contained in the Reference Paper. Accordingly, on July 1, 2010 a Law on Telecommunications came into force in Vietnam, replacing the Ordinance on Post and Telecommunications 2002. Before that, a Law on Competition was adopted in 2004 and came into force on 2005. The Law on Telecommunications 2010 is said to have incorporated a lot of competition principles as prescribed in the Law on Competition 2004, and being quite in line with the pro-competitive regulatory principles as mentioned in the Reference Paper.

In 2013, Vietnam underwent its first Trade Policy Review within the WTO framework, and the Review Report of the WTO Secretariat mentioned that:

> "Despite Vietnam's success in telecommunications structural reform, there are still matters to be addressed, including continuing structural reform through market liberalization, State dominance in the sector, creation of an independent regulator, and reducing regional development disparity in access to telecommunication services."[2]

The only notable development in the Vietnamese telecom sector after the TPR results was known was perhaps the decision regarding MobiFone's separation from VNPT and then equitisation in late 2014, as mentioned above. Of the two mobile telephone networks owned by VNPT, MobiFone is the stronger and far more valuable asset as compared to VinaPhone. Its separation from VNPT and equitisation is expected to be completed after the second quarter of 2016, and would further reduce the State dominance in the sector, at the same time having the effect of stimulating competition. However, Vietnam is yet to have an independent regulator and much is still to be done about the regulatory framework, as would be analysed in subsequent sections.

2 See
<https://www.wto.org/english/tratop_e/tpr_e/tp387_e.htm>

Table 3: Summary of Vietnam's WTO commitments with regards to telecommunication services

Sectors and sub-sectors	Mode	WTO Commitments	
		Limitations on Market Access	Limitations on National Treatment
Basic telecommunication services - Voice telephone services (CPC 7521), including local, long- distance and international - Packet- switched data transmission services (CPC 7523**) - Circuit- switched data transmission services (CPC 7523**) - Telegraph services (CPC 7523**) - Telex services (CPC 7523**) - Facsimile services (CPC 7521** + 7529**) - Private leased circuit services (CPC 7522** + 7523**) - Radio based services (including mobile, cellular and satellite)	1	Only through BCC with Vietnam's gateway operators	None
	2	None	None
	3	None, except: *Non facilities-based services:* Upon accession joint ventures (JVs) with telecommunications service suppliers duly licensed in Vietnam will be allowed. Foreign capital contribution shall not exceed 51% of legal capital of the JVs. Three years after accession: JV will be allowed without limitation on choice of partner. Foreign capital contribution shall not exceed 65% of legal capital of the JVs. *Facilities-based services*: Upon accession, JV with telecommunications service suppliers duly licensed in Vietnam will be allowed. Foreign capital contribution shall not exceed 49% of legal capital of the JVs. 51% gives management control of the JV. In the telecommunications sector, foreign investors in BCC will have the possibility to renew current arrangements or to convert them into another form of establishment with conditions no less favourable than those they currently enjoy.	None
	4	Unbound, except as indicated in the horizontal commitments	Unbound, except as indicated in the horizontal commitments
Value added services: - Electronic mail (CPC 7523**) - Voice mail (CPC 7523 **) - Online information and database retrieval (CPC 7523**) - Electronic data interchange (EDI) (CPC 7523**)	1	Only through BCC with Vietnam's gateway operators	None
	2	None	None
	3	Only through BCC with Vietnamese partners who are authorized to provide telecommunication services. Five years after accession, joint venture (JV) with Vietnamese partners who are authorized to provide telecommunication services may be established with the capital contribution of foreign side may not exceed 49% of legal capital. JV enterprises are not permitted to construct their own long- distance and international circuit but have to lease them from the Vietnamese licensed operators.	None
	4	Unbound, except as indicated in the horizontal commitments	Unbound, except as indicated in the horizontal commitments
Value added services:	1	Only through BCC with Vietnam's gateway operators	None
	2	None	None

- Enhance/ value-added facsimile services, including store and forward, store and retrieve (CPC 7523**) - Code and protocol conversion - Online information and data processing (CPC 843**)	3	Only through BCC with Vietnamese partners who are authorized to provide telecommunication services. Five years after accession, JV with Vietnamese partners who are authorized to provide telecommunication services may be established with the capital contribution of foreign side may not exceed 49% of legal capital. JV enterprises are not permitted to construct their own long- distance and international circuit but have to lease them from the Vietnamese licensed operators.	None
	4	Unbound, except as indicated in the horizontal commitments	Unbound, except as indicated in the horizontal commitments

<u>Notes:</u>

The GATS covers all measures taken by WTO Members affecting trade in services and all service sectors. The Agreement defines trade in services as the supply of a service through any of the four following modes:

(i) Mode 1 deals with cross-border supply of a service. This mode of delivery is analogous to international trade in goods, in that a product (service) crosses a frontier that divides jurisdictions. International telephone calls fall into this category.

(ii) Mode 2 involves consumption abroad, including the movement of consumers to the jurisdiction of suppliers. Tourism is a good example of this mode, involving the movement of (mobile) tourists to (immobile) tourist facilities in another country. Some WTO Members have covered calling card services in their telecoms schedules under Mode 2.

(iii) Mode 3 entails the commercial presence of a supplier of one WTO Member in the jurisdiction of another Member. By defining trade to include sales through commercial presence, the GATS includes in its domain foreign direct investment (FDI), which accounts for a large share of all services transactions, including in basic telecommunications.

(iv) Mode 4 covers the movement of natural persons from one jurisdiction to another. This mode relates both to independent service suppliers and to employees of juridical persons supplying services.

<u>Sources:</u>

1) World Trade Organisation, *Vietnam – Schedule of Specific Commitments*, GATS/SC/142, 19 March 2007
2) Low, P. & Mattoo, A., *Reform in Basic Telecommunications and the WTO Negotiations: The Asian Experience*, WTO Staff Working Paper ERAD9801.WPF, February 1998

Section 2

Market Structure

The Vietnam telecom industry has come a long way in a short period of time. In 2013, there were a total of 6,725,329 fixed-line subscribers, 7.5 per 100 inhabitants and 123,735,557 2G and 3G mobile phone subscribers,[3] 137.93 per 100 inhabitants. In the same year, the broadband Internet services grew strongly with 33,191,166 users, representing approximately 30% of the country's population. This shows a remarkable development as the telephone density was only 3.8 telephones per 100 people in 1995 and 0.2 telephones per 100 people in 1986.[4]

Despite these changes, the telecom structure remains dominated by the State-owned incumbent VNPT. According to the World Bank, VNPT retains more than 90% of the aggregate market, including operations in all telecom segments: equipment, engineering, construction and consulting. The competitive landscapes vary according to specific segments, and competition is considered strongest in the market for mobile phone telephone services.

1. Fixed-line telephone services

VNPT and Viettel are listed in the group of the companies which hold the dominant position in the market for inter-region fixed line telephone services. Meanwhile, the dominant position in the long-distance domestic telephone services belongs to VNPT alone. According to Vietnam's 2014 White Book, the market shares (by number of subscribers) of fixed telephone service providers of VNPT and Viettel are 76.50% and 21.51% respectively. The reason for a large market share possessed by VNPT is that in the past, for a long time, VNPT is solely assigned by the government for building telephone infrastructure as well as providing telephone services.

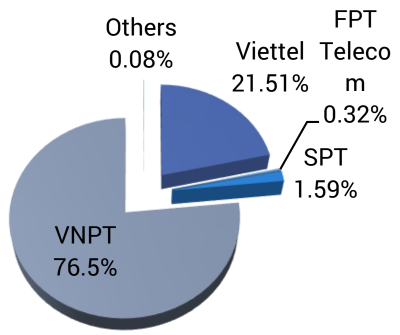
However, recently VNPT has suffered loss as a lot of fixed line subscribers have left with the rise of mobile technology. Not only the number of subscribers, but the average revenue per subscriber has also decreased significantly. The usage capacity is very small, because the subscribers only use the service as an alternative

3 2G (or 2-G) is short for second-generation wireless telephone technology. Second generation 2G cellular telecom networks were first commercially launched on the GSM standard in Finland in 1991. 3G, short form of third generation, is the third generation of mobile telecommunications technology. This is based on a set of standards used for mobile devices and mobile telecommunications use services and networks that comply with the International Mobile Telecommunications-2000 (IMT-2000) specifications by the ITU. 3G finds application in wireless voice telephony, mobile Internet access, fixed wireless Internet access, video calls and mobile TV.

4 Source: Vietnam's 2014 White Book on Information and Communication Technologies. This book has been published annually since 2009 by the National Steering Committee on Information Technology and the Ministry of Information and Communications, aimed at providing information and data in the fields of ICT infrastructure in Vietnam. Market data and information in this whole section is sourced from the White Book 2014. See <http://ict-industry.gov.vn/WhiteBook/Sach_Trang_%202014.pdf>for more details.

to mobile phone services. Currently, VNPT has only 5 million subscribers left, and it is still unclear how many more subscribers will leave.

Chart 1: Market shares (by subscriber) of fixed telephone service providers

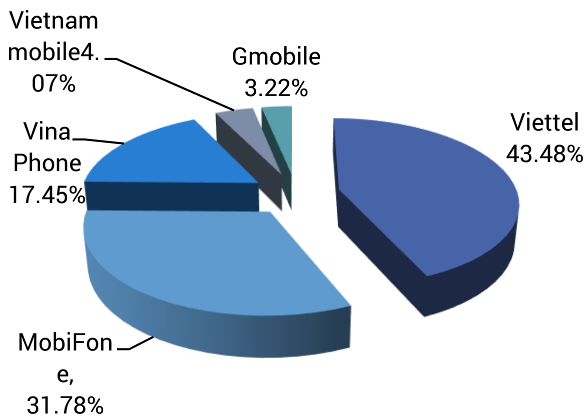


Source: Vietnam White Book 2014

2. Mobile phone services

The mobile telephone service market is significantly more competitive in Vietnam. As of 2013, this market is divided in principle between three major operators, namely MobiFone, VinaPhone, and Viettel. Viettel, MobiFone and Vinaphone accounts for 43.48%, 31.78% and 17.45% of total market share respectively. Other services providers such as Vietnammobile and GMobile only own modest market share.

Chart 2: Market shares (by subscriber) of 2G and 3G mobile phone service providers



Source: Vietnam White Book 2014

Though in general, Viettel is the service provider with the largest market share, Mobifone and Vinaphones' networks cover all cities and provinces of the country. This is due to different competitive strategy of these companies. In the first period, whereas VinaPhone and MobiFone targeted urban market with high-income class thanks to their early establishment and long-lasting monopolistic position, the success of late-comer Viettel has relied on the rural market segment and poor areas. Therefore, as the mobile market is relatively saturated, the current trend is that all the other mobile networks try to reach low-income consumers with many low-cost packages.

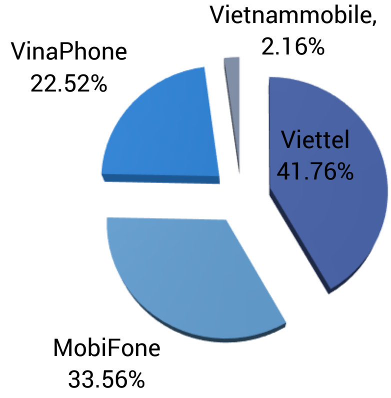
The rapidly growing mobile telecommunication market has been mainly a playground for big mobile service suppliers in recent years and competition has become increasingly aggressive between them. Vietnam's telecom market has been characterised by cut-throat price competition. The biggest service providers are said to be in a race to lower charges, provide value added services and easy purchase of SIM cards. However, competition has shown negative sides as it results in lower service quality and more difficulties for relevant authorities to control and monitor the market. In addition, it also results in harms towards small enterprises as these lack such advantages as network, capital and brand names. Though the relevant State agencies have issued numerous decisions to stop unfair competition acts, these big suppliers still find various ways to lower charges through promotion programmes.

Recent years have also witnessed a trend that companies compete by introducing new value-added services on mobile phones, instead of relying on basic services (receiving calls, making calls, SMS/MMS). In fact, it has been recognized that developing value-added services is a must for telecom service providers to survive, as voice mail and SMS are no longer reeling in high profits. It is an international trend thanks to significant development of technology and domination of over-the-top content (OTT).[5]

3. 3G services

With the 2G service market for mobile and laptop users seemingly almost saturated, mobile service providers are tapping the lucrative growing 3G market. 3G has gradually become a basic service like calls and messages. Many conditions have been eased for mobile phone subscribers, for example, they do not have to register to use 3G services or pay a certain amount of money monthly to maintain services. Currently, Viettel holds the first position in the market for 3G services with 41.76% of the market share. Meanwhile, those of MobiFone and Vinaphone are 33.56% and 22.52% respectively. The 3G packages between mobile network operators are nearly the same, with no big differences. The competitive edge will be seen more clearly only when companies launch sale promotion campaigns, offer special preferences and join forces with their partners to lower subscription fees. The 3G competition has entered a new stage, when companies need to diversify services to satisfy customers who have become more demanding.

Chart 3: Market shares (by subscriber) of 3G mobile phone service providers



Source: Vietnam White Book 2014

4. Broadband Internet services

Internet services were officially launched in Vietnam in 1997. Like mobile phones, initially, Internet was considered advanced services for a certain group of individual and corporations with high fees, and complex registration procedures. There were only Vietnam Post and Telecommunications Corporation (VNPT) providing Internet eXchange Point (IXP),[6] and four other Internet service providers (ISPs), including VNPT, FPT (Financing and Promoting Technology Company), SPT and Netnam (Information Technology Institute) which had permission to provide Internet services. During that time, consumer services were mainly Internet connection.

Vietnam Internet usage first surged in 2002 when the Decree 55/2002/ND-CP about management, providing, exploiting and using

5 In broadcasting, over-the-top content (OTT) refers to delivery of audio, video, and other media over the Internet without the involvement of a multiple-system operator in the control or distribution of the content. Over-the-top messaging refers to a similar idea, where a third party provides instant messaging services as an alternative to text messaging services provided by a mobile network operator. Consumers can access OTT content through internet-connected devices such as desktop and laptop computers, smart phones (including Android phones, iPhones, and Windows phones), smart TVs, and tablets.

6 An Internet exchange point (IXP) is a physical infrastructure through which Internet service providers (ISPs) exchange Internet traffic between their networks.

the Internet was adopted, replacing the Decree 21/1997/ND-CP. The exclusive right of VNPT over IXP was cancelled and the entrance of many ISPs into the market has resulted in increasing market dynamics and competition.

Thanks to the decisions of the Ministry of Information & Communications (MIC) to reduce the costs for Internet access, application services on the Internet have become more abundant so far with VoIP, wireless Internet, public Internet and other online services, for example Video, forum, chat, game online, etc. Several years ago, most Internet clients in Vietnam were foreign enterprises and organisations but the clientele has become much more diversified now. Broadband penetration is still low (7% in 2011), but by 2016, more than 16% of the population is expected to be connected to the Internet via broadband.

Currently, Vietnam ranks 7th in Asia and 18th worldwide in terms of Internet coverage, according to the 2014 White Book. More than 33 million Vietnamese used the Internet in 2013, an increase from 30 million in 2012. The country also ranks 8th among 148 countries in terms of lowest telecommunication and Internet charges.

There are two groups of Internet service provider. The first are big State-owned or state-dominated enterprises including VNPT, Viettel and FPT which account for 96.43% of market share. The second is a variety of small-sized private enterprises with much smaller market share, including9 ISPs and 6 OSPs.[7]

Section 3

The Regulatory Framework

The 2009 Law on Telecommunications, which entered into force in July 2010, constitutes the framework for telecommunications regulations in Vietnam, with many specific implementing rules and regulations developed separately in other subordinate legal documents. This law contains provisions for a pro-competition regulatory regime, in line with the obligations that Vietnam has agreed to undertake under the WTO Reference Paper, covering issues such as abuse of market power, interconnection rules, and access to essential facilities. All business activities in the telecom sector, however, are also subject to the purview of the Law on Competition of Vietnam, which was adopted in 2004 and came into force in 2005. The two laws are quite compatible on all the competition aspects, which would be discussed in more details here below.

5. The Competition Law 2004 (VCL)

Being a general law, the VCL applies to all business enterprises and professional and trade associations in Vietnam; overseas enterprises and associations registered in Vietnam; public utilities and state monopoly enterprises; and State administrative bodies. It has superseding

7 An Online service provider (OSP) is an Internet service provider (ISP) who also provides customers with extra services such as online sports information, stock market info., interactive games, and encyclopedia information.

power over all other enacted laws of Vietnam regarding competition-restricting practices and unfair competition acts.

Two State authorities were established for the law implementation – the Vietnam Competition Authority (VCA - with investigative powers), within the Ministry of Industry and Trade (MOIT), and the Vietnam Competition Council (VCC - with adjudicative powers), an inter-ministerial body.

The Law prohibits five broad types of anticompetitive practices:

- agreements that substantially restrict competition (Article 8);
- abuse of dominant or monopoly position (Article 13 & 14);
- 'economic concentrations' that substantially restrict competition (Article 18);
- acts of unhealthy competition (Article 39); and
- anticompetitive behaviour/decisions by officials or State administrative agencies, taking advantage of their authority (Article 120).

Anticompetitive agreements include price fixing, market sharing, restricting output, blocking investment or technological development; imposing coercive contracting conditions on other enterprises; restricting entries; excluding/foreclosing non-members from the market; and bid rigging. Except for the last three, which are considered to be violations in all cases, other agreements are prohibited only if the parties to the agreements hold a combined market share of at least 30 percent of the relevant market.

The competition authorities will have the discretionary power to grant exemptions where they consider that an anticompetitive agreement's harm to the economy and to the competitive process is outweighed by its potential benefits with regards to corporate restructuring, technological advances, increasing the competitiveness of small and medium-sized enterprises (SMEs), and increasing the competitiveness of Vietnamese firms in international markets, etc. (Article 10) Exemptions are available only if the enterprises apply for an exemption and could prove that they are entitled to the exemption.

The VCL provides for a collective market dominant position of firms having a total market share of 50 percent (for two business entities); 65 percent (for three); and 75 percent (for four) on the relevant market (Article 11). A dominant market position would apply to firms holding at least a 30 percent market share on the relevant market, or firms that are 'capable of substantially restricting competition'. Dominant firms are prohibited from undertaking predatory behaviours with the intent of driving out competitors, discriminating amongst different firms for the same transaction, blocking entry, and engaging in 'other practices' in restraint of competition as stipulated by law, etc. (Article 13)

A monopoly market position would be deemed to apply to a firm if it has no competitors for the goods it trades in or for the services it provides. (Article 12) Monopoly firms are prohibited from undertaking any of the abusive behaviours listed above pertaining to dominant firms, as well as imposing disadvantageous conditions on consumers; unilaterally rescinding or replacing a contract without legitimate reasons; refusing to transact with or discriminating against a customer without legitimate reason; and any other prohibited practice stipulated by law. (Article 14)

Economic concentration activities are defined as any conduct by a firm that aims to govern the activities of other enterprises, including, but not limited to, mergers, acquisitions and consolidations that have this aim. (Article 16-17)

All concentration cases (or in other words, mergers and acquisitions) in which the combined market share of the relevant firms would be 50 percent or more are prohibited except where, (1) the result is still a small or medium-sized enterprise or (2) the Prime Minister grants an exemption (Article 18-19). A 30-day notification to the competition authorities is mandatory where the participating parties would have a combined market share of 30-50 percent.

As regard acts of unhealthy competition, the VCL prohibits the following types: falsification of commercial instructions; infringement of business secrets; acts of bribery, inducement or coercion; defamation of other enterprises; disrupting the lawful business practices of other firms; advertisements and promotions aimed at unhealthy competition; discrimination within or by an industry association; and illegal multi-level (pyramid) selling of goods. (Article 39)

The VCL also stipulates detailed rules and procedures governing complaints, investigations, interim orders by the competition authorities, consideration of alleged abuses, and penalties thereof. Either an affected party or the VCA can initiate a case, and where the VCA determines that it has jurisdiction over an external complaint (within seven days from receipt of complaint), it must begin an investigation.

In proven cases of breach of the law, the competition authorities can impose fines of up to 10 percent of turnover of the previous financial year of the alleged parties; issue warnings; revoke legal permits or certificates; confiscate physical proof or means used to carry out the breach; require restructuring of firms or contracts; or take any other coercive measures to remedy the inflicted harm.

6. The Law on Telecommunications 2009 (LOT)

The LOT includes 63 Articles, divided into 10 chapters. A governmental decree, Decree 25/2011/ND-CP (Decree 25), was subsequently issued in 2011 to guide the implementation of this law.

6.1. Telecom regulator

Unlike many countries that have created an independent, autonomous regulatory body, prior to the adoption of this law, and ever since the beginning of all reforms in the telecom sector, the MIC (formerly the MPT) has always played the role of State administration in charge of policy-making and regulatory matters in post, telecom, IT, electronics, the Internet, radio transmission and emission techniques, radio-frequency management, and national information infrastructure. It also manages public services as well as exercises control over the State capital (for example, investment) in the sector.
Under Article 9 of the LOT, these powers and duties of the MIC continue to be maintained, including:

- to promulgate or prepare drafts of legal regulations, technical specifications and standards, economic-technical norms of telecoms strategies and telecoms development plans;
- to implement legal regulations on telecoms, strategies, and telecoms development plans;
- to manage and regulate the telecoms market; to manage the telecoms service business and telecoms operation;
- *to actively co-ordinate with the Ministry of Industry and Trade to manage competition in the formulation of telecoms infrastructure and in the provision of telecommunications services in accordance with laws on competition;*
- to inspect, verify, and resolve disputes, claims, and complaints, and to deal with violations in telecoms activities;
- to train, foster, and develop human resources; to study and apply science and technology in telecoms activities; and
- to organize international co-operation in the telecoms sector.

The LOT also refers to the establishment of a telecommunications specialized management agency (TSMA). This is a specific agency under the MIC that supports the MIC to carry out State management of the telecommunications sector. Decree 25 assigns the TSMA following tasks:

- to participate in drafting mechanisms, policies, strategies, plans, and legal regulations on telecommunications;
- to manage the telecommunications market and universal telecommunications;
- to organize the implementation of legal regulations on telecommunications; and
- to carry out other State management missions in the telecommunications sector as delegated by the Minister of Information & Communications.

6.2. Interconnection

Article 42 of the LOT provides general principles for interconnection between networks. The basic principle is that all telecom enterprises are entitled to connect with each other's networks and services in order to take advantage of existing infrastructure. In other words, a telecommunications enterprise must allow other telecoms enterprises to connect to its network or services. Interconnection is based on negotiations intended to assure the equality, rights and benefits of the parties as well as the rights and benefits of telecommunications service users and related persons.

A facilities-based operator (FBO)[8] is responsible for providing connection at any point in the telecommunications network provided that it is technically feasible. It should not discriminate in terms of charges, technical standards, network quality or telecommunication services. The interconnection charges must be calculated on the basis of market price, reasonably separate network components, or service phases without distinguishing service forms. This is very much in line with the content of the WTO Reference Paper regarding interconnection, which says:

> "2.2 Interconnection to be ensured
> Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided.
> under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
> in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
> upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities."

A private network may connect to a public network based on a written contract between a telecommunications enterprise and the owner of the private network. A private network cannot directly connect to another private network without the written consent of the TSMA.

6.3. Pricing

In its accession to the WTO, Vietnam committed to apply price controls in a WTO-consistent fashion. The LOT stipulates the following principles for determining telecommunications prices:

- to respect the rights of telecoms enterprises to determine the price and to compete in terms of price;
- to ensure the legitimate rights and benefits of service users, telecoms enterprises and the State;

8 A facilities-based operator (FBO) is a telecommunications service provider owning, as opposed to leasing, networks used to provide telecommunications services. (Definition provided by the WTO Glossary of Terms for Telecommunications Services, available for view and download at <https://www.wto.org/english/tratop_e/serv_e/telecom_e/tel12_e.htm>. Due to the high capital and technical requirements for setting up and maintaining such networks, and for economic efficiency reasons, such networks very often become a kind of essential facilities.

- *to ensure fair competition and to perform telecoms activities for public purposes; and*
- to ensure equality and non-discrimination in the determination and management of telecoms charges, except in cases designed to encourage new enterprises to enter the market.

Telecommunication charges will be calculated on the basis of:

- applicable policies and objectives of telecoms development; regulations on price management and international treaties to which Vietnam is a signatory;
- market price, market demand and supply, and an appropriate correlation with telecoms charges of regional and international countries; and
- no cross compensation among telecommunication services.

A telecommunication enterprise may determine the prices of services that it provides except the prices of services that must be determined by the State. On 13 May 2013, the MIC issued Circular 11/2013/TT-BTTTT promulgating the list of telecommunications services whose actual prices and projected price must be reported. They are:

- Terrestrial fixed telecommunications services: local phone services, data transmission service, image transmission service, conference services, local long distance phone services, international phone services, leased line services, Internet connection services, Internet access services;
- Satellite fixed telecommunications services: phone services, data transmission services, image transmission services, lease line services, Internet access services;
- Terrestrial mobile telecommunications services: phone service, SMS and MMS services, Internet access services (2G, 3G);
- Satellite mobile telecommunications services: phone services, data transmission services, SMS and MMS services, Internet access services (2G, 3G);
- Services of Vinasat satellite system: band lease services, transponder lease package.

6.4. Cross ownership

The State holds the controlling shares in telecoms enterprises that provide facilities-based telecommunications services, which play an important role in operating the national telecoms infrastructure and which have direct influence on socio-economic development, national security, and defense.

In order to ensure fair competition, Decree 25 limits the percentage of charter capital that an enterprise or an individual can own in enterprises that operate in the same telecommunications services market. If an enterprise or individual owns more than 20% of the charter capital or shares in a telecommunications enterprise, it is not allowed to own concurrently more than 20% of the charter capital or shares in another enterprise in the same telecommunications market. Such restrictions, however, only apply to terrestrial mobile communications services as listed in Circular 10/2012/TT-BTTTT of the MIC dated 10 July 2013.

6.5. Competition issues

In accordance with the principles set forth in the WTO Basics Telecommunications Agreement and the Reference Paper, a new provision on competition in the telecommunication business is stipulated in Article 19 of the LOT. Specifically, telecommunication enterprises are prohibited from engaging in practices that restrain competition, and may not commit unfair/unhealthy competition acts. In addition, any enterprise or group of enterprises in a dominant market position, as well as telecommunication enterprises controlling 'essential facilities', shall be prohibited from engaging in the following practices:

- carrying out cross compensation of telecommunications services in order to engage in unfair competition;
- using its advantage in terms of its network and essential means in order to hinder market access or to cause limitations and difficulties to other telecoms enterprises;
- using information obtained from other telecoms enterprises in order to engage in unfair competition; and
- not timely providing other telecoms enterprises with technical information of essential means and commercial information necessary for them to provide telecommunications services.

Essential facilities, as defined in Article 3.19 of the LOT, are important parts of the telecoms infrastructure which is exclusively or largely held by one or some telecoms enterprises in the telecoms market and it is economically or technically infeasible to establish new parts of the telecoms infrastructure to replace them.

A telecoms enterprise, a group of telecoms enterprises that dominate the telecoms market, or a telecoms enterprise holding essential facilities are required to keep separate statistics and accounting records for the telecommunications services they provide in order to determine the cost of telecommunications services for competition purposes. Telecom enterprises that together have a market share ranging from 30% to 50%, after shares are consolidated, must notify the TSMA prior to economic concentration. If the market share exceeds 50%, the Ministry of Industry and Trade (MOIT) will accept the exemption upon receipt of MIC's exemption acceptance.

The TSMA is responsible for settling telecommunications competition cases within 30 days from the date of receipt of a dossier. Although, the parties in a competition case must comply with the TSMA's decision, they may appeal the decision if they do not agree with it. On 15 November 2012, the MIC issued Circular 18/2012/TT-BTTTT on a List of Dominant Telecoms Enterprises, Groups of Telecoms Enterprises.

This initiative, however, was considered by the competition authorities to be not consistent with the approach of the VCL, since market definition is supposed to be a much more complex exercise which takes into account several factors and market dynamics, including technological changes, new market entries, regulatory barriers, etc. As a result, whether an enterprise should be considered as a dominant business in a market should be determined on a case-to-case basis and should not rely on a predetermined list.

TABLE 4 LIST OF DOMINANT TELECOMS ENTERPRISES, GROUPS OF TELECOMS ENTERPRISES

No.	Telecom services	Dominant Enterprises/ Groups of Enterprises
I.	Terrestrial fixed telecommunications services	
1.	Local telephone service	VNPT, Viettel
2.	Domestic long-distance telephone service	VNPT
3.	International telephone service	Viettel, VNPT
4.	Local leased line service	VNPT, Viettel
5.	Domestic long distance leased line service	VNPT, Viettel
6.	International leased line service	VNPT, Viettel
7.	Broadband Internet access service	VNPT, FPT Telecom, Viettel
II.	Terrestrial mobile information services	
1.	Phone service	Viettel, MobiFone, VinaPhone
2.	Messaging service	Viettel, MobiFone, VinaPhone
3.	Internet access service	Viettel, MobiFone, VinaPhone

Source: MIC

Section 4

Competition problems in the Vietnam telecom sector

As pointed out by the WTO Secretariat in its recent TPR report regarding Vietnam, despite the various efforts and initiatives to reform and their resulting impacts on pricing and accessibility, the country's telecom sector is still characteristically plagued by State dominance. It is evident from the different market segments as well as aggregately: the biggest shares of the market cake are still in the hands of a few State-owned incumbents/monopolists such as VNPT and Viettel, whereas the shares that belong to private firms are either small or negligent. This is often a contentious issue because not all these dominant positions or monopoly positions have been acquired as a result of 'superior skill, foresight and industry',[9] and thus winning the competition, but mainly because of the government links that these enterprises are privileged to have. This leads to the often-asked questions of whether there is a truly 'level playing field' in Vietnam and how competition policy and law, or competition principles within the sectoral regulatory framework, will apply in such a market.

State ownership, full or partial, could bring a lot of advantages towards certain enterprises in the market. Some of these advantages are quite obvious and would contribute to

9 <http://myweb.clemson.edu/~maloney/424/alcoa.pdf>

strengthening the financial/capital base of State-owned enterprises (SOEs), such as direct subsidies that some SOEs might receive from the government, land-use rights, credits provided via State-controlled financial institutions at below-market interest rate, etc. Other less obvious but no smaller advantages include favourable tax regimes or exemptions from certain type of taxes, which help to lower SOEs' costs; explicit or implicit loan guarantees for SOEs, which reduce their cost of borrowing and enhance their competitiveness vis-à-vis their privately-owned rivals; or exemption from bankruptcy rules, because governments often invest heavily in SOEs and thus naturally do not want these firms to go out of business; as well as exceptions and preferential treatments under other regulatory regimes.

To make matters worse, many SOEs are also generally absolved from paying dividends or indeed any expected return to shareholders, the most major one being the State. The Government of Vietnam does not or rarely collects their dividends/returns on these funds, and thus many SOEs are literally sitting on billions of dollars thanks for uncollected dividends. These SOEs could then freely pursue re-investments or other expansion activities, giving them an advantage over their rivals from the private sector. Enormous financial strengths, in addition to other advantages as listed above, could allow SOEs to freely engage in anticompetitive practices such as predation and others.

In addition, SOEs may also benefit from information asymmetries since they would have access to data and information which are not available to their private competitors or only available to a limited extent, due to their government linkages. Most importantly, in many cases, governments entrust SOEs with exclusive or monopoly rights over some of the activities that they are mandated to pursue. The telecom sector in Vietnam is clearly one such case, where VNPT used to be the sole service provider in the market, and its dominance continues to be artificially maintained till today even though their efficiency level was never really high. Where SOEs continue to benefit from a legal or natural monopoly, this may be of little practical consequence for the competitive landscape. The real problem is when these SOEs abuse their government-granted monopoly or dominant positions to engage in exclusionary tactics, or other exploitative behaviours, such as unreasonably high pricing.

A case that happened back in the year 2003 before Vietnam adopted the VCL involved the CDMA-based mobile telephone service provider upstart S-Fone who complained that they had tremendous difficulty connecting messaging services with other then incumbent GSM-based [10] cellular providers, VinaPhone and MobiFone, both owned by the State-owned VNPT.[11]

The agreement between the new market entrant and the incumbents called for interconnection by December 2003, but it was not implemented until mid-2004 – a full year after service was started. S-Fone management was quoted highlighting the difficulties of executing interconnection with VNPT that:

10 CDMA (Code Division Multiple Access) and GSM (Global System for Mobile Communications) are shorthand for the two major radio systems used in cell phones. GSM is a standard developed by the European Telecommunications Standards Institute (ETSI) to describe protocols for second-generation (2G) digital cellular networks used by mobile phones. As of 2014, it has become the default global standard for mobile communications - with over 90% market share, operating in over 219 countries and territories. CDMA is a channel access method used by various radio communication technologies. CDMA is an example of multiple access, which is where several transmitters can send information simultaneously over a single communication channel. This allows several users to share a band of frequencies. To permit this without undue interference between the users, CDMA employs spread-spectrum technology and a special coding scheme (where each transmitter is assigned a code).

11Nguyen/Pham, Competition Review of the Vietnamese Telecom Sector, 2005, available for downloads at <http://pdf.usaid.gov/pdf_docs/PNADE784.pdf>

> "Obviously, there are some technical problems in connecting different networks, but they are not big problems. The real problem is whether VNPT wants S-Fone to be connected or not.""Cityphone is not compatible but connected quickly with VNPT mobile networks, while it takes a very long time in the case of SFone. If VNPT has a cooperative attitude, only 10 days are needed to settle everything."

VNPT was also alleged to have used technical reasons to deny interconnection 'at any technically feasible point'. The most notable example was the requirement of VNPT that S-Fone be connected with VNPT mobile networks not directly through a tandem switch, but indirectly through a toll switch managed by VNPT. This forced S-Fone to pay an additional 250 VND per minute. According to S-Fone, this extra charge cost the company more than 1.4bn VND in the last six months of 2003, and 1bn-2bn VND in 2004. These extra charges were said to have inhibited the upstart company's competitiveness and profitability.

According to a manager from S-Fone, such indirect interconnection via a toll switch could be understandable and acceptable in the earlier period of interconnection, when VNPT was unfamiliar with the technical issues of interconnecting a CDMA-based to a GSM-based network. However, technical capability had been improved but the situation remained unchanged. In July 2004, S-Fone made a request to the line ministry to intervene to force VNPT to provide direct interconnection. The Ministry replied that it was not able to consider a solution at least until the beginning of 2005.

According to the same manager:

> "VNPT really has everything relating to telecommunications infrastructure. New entities in this industry have to borrow or hire facilities or infrastructure of VNPT. The problem is that it is always difficult to borrow or hire them. Sometimes it takes considerable time and sometimes requires large fees. Even negotiation with VNPT is also a controversial matter. [...] MobiFone and Vinaphone are monopolists in Vietnam. I understand that they do not want us to interconnect with our SMS [short message service] services. In my opinion, if they are not willing to connect messaging services with S-Fone, the Ministry should intervene in the arrangement and force VNPT to allow the interconnection of messages between MobiFone, Vinaphone and our network as soon as possible. If the Ministry had done so, our messaging services would have been connected within at most six months".

This is a typical case of raising rivals' costs, where an incumbent SOE makes it difficult for a new rival to get access to essential facilities/infrastructures that it owns, and thus makes it less viable for the rival to compete. The problem is further aggravated by the reaction or lack of action from the responsible State regulatory agency which seems to favour the SOE. Subsequently, there were also a couple of other similar cases/disputes between Viettel and VNPT, or EVN Telecom and VNPT, from 2004 to 2006, related to interconnection. In all the cases, Viettel (or EVN Telecom) complained of VNPT's interconnection refusal, and/or VNPT's applying technical measures to hinder Viettel's /EVN Telecom's services, which exemplify these concerns.

Box 2: Interconnection dispute between VNPT and Viettel

Viettel and SPT entered the telecom market in Vietnam in 1995, marking a turning point in breaking up the monopoly position of VNPT. After entering into the telecom market, Viettel launched a series of promotional programs to attract clients to its mobile service at a considerably lower price. However, as with any other telecom service provider, it had to interconnect with the VNPT system to provide services such as mobile phones, data transmission and internet. In addition, it had to connect to six transmitting stations before getting access to VNPT local stations.

Under an agreement signed between Viettel and VNPT in 2004, Viettel committed to pay a leasing fee for use of the national back-bone system and VNPT contracted to ensure connection to the network. While Viettel's mobile phone subscription rate increased remarkably, less than half of the required connections were provided by VNPT. Viettel stated that connection jams only occurred when connecting from Viettel to VNPT networks and that 80 per cent of its total calls were from Viettel to VNPT. As a result, it received a wave of complaints about quality of service from clients. Viettel argued this resulted from the limited interconnection with the VNPT network and the unwillingness of VNPT to improve connections. Viettel claimed that eight requests were made to VNPT seeking an increase in connection capacity, but VNPT rejected them each time on the ground of lack of available ports to the central switchboards along with a lack of funding for new circuit switchboards. Viettel also blamed VNPT for causing difficulties in developing its client base in the provinces.

VNPT blamed the problem on unavailability of VNPT ports, claiming there were barely enough for the maintenance of its own network and its current subscribers. However, Viettel proved that VNPT could provide more connection ports for them. While it was only agreed to use a total of 100 E1 ports, of which only 20 ports were used for its mobile service, other companies were permitted to use more than needed. For example FPT, another telecom service provider, could use 200 ports in peak time (which were used for providing internet service only) and this company had returned 100 E1 ports to VNPT. It was claimed there was discrimination against Viettel, which faced difficulties in developing their services so as to compete with VNPT.

The owner of Viettel, the Ministry of Defence, finally filed an official letter to the Prime Minister on June 25 2005, accusing VNPT of discrimination against Viettel. This letter stated that demand for Viettel's connections had not been fulfilled for five consecutive years and the "situation [was becoming] worse." The letter noted that Viettel would go bankrupt if this problem remained and requested emergency intervention to stop the situation in order to ensure the interests of about 700,000 Viettel clients.

Source: Abuse of market dominance by state monopolies in Vietnam, <http://www.thefreelibrary.com/Abuse+of+market+dominance+by+state+monopolies+in+Vietnam.-a0292992192>

Box 3: Connection dispute between VNPT and EVN Telecom

EVN Telecom, also established in 1995, is a subsidiary of Vietnam Electricity Group (EVN). EVN Telecom joined the telecommunications market offering a number of services such as E-Com (wireless fixed telephone), EPhone (inner-province mobile calls) and E-Mobile (CDMA-based technology mobile). Since the mobile service (E-Mobile) was unable to compete with current mobile providers, E-Com became the prominent service for wireless fixed telephones. This service allowed EVN Telecom to attract around 100,000 clients within one year of joining the telecom market in 2005. However, as in the Viettel case, EVN was faced with interconnection conflicts with the network infrastructure provider, VNPT.

In 2005, EVN introduced a SMS text service and advertised that this would be applicable to both E-Com and E-Mobile services, thus allowing its clients to send SMS texts to other mobile subscribers such as VinaPhone and MobiFone. However, while this service worked for E-Mobile clients, it was unavailable for subscribers to

E-Com service. As a result, EVN Telecom received complaints from its clients for being unable to send SMS texts from wireless fixed-telephone services (E-Com) to subscribers of two mobile VNPT service providers, as advertised. EVN Telecom complained that the situation was due to VNPT's failure to open connection ports for the E-Com SMS text service network and blamed VNPT's failure for retarding the development of its service. The case was remarkably similar to the conflict mentioned above between S-Fone and VNPT in 2003.

After asking the lines ministry to request VNPT to open ports for the EVN SMS service, and receiving no response from VNPT, EVN Telecom submitted an official letter to the Ministry asking for a resolution of the dispute over connection ports. It also complained that VNPT clients could not use the toll free service (1800 prefix) for any calls to the customer care service of EVN Telecom. This was because VNPT would not connect its subscribers to the EVN Telecom service and asked EVN Telecom to pay 600 VND per minute for such calls. Even after EVN Telecom finally agreed to this requirement, VNPT still delayed opening the connection for EVN Telecom. In response to these accusations, VNPT pleaded a number of technical problems to explain its behavior. It claimed that its hesitance was due to taking care to avoid offering a low quality service.

EVN claimed they faced contrived difficulties by VNPT when negotiating a connection to the VNPT system. As with Viettel, EVN Telecom had to undertake negotiations with VNPT provincial branches. It took EVN Telecom several months to negotiate with each VNPT provincial branch where they wanted to connect two networks. VNPT declared they would only open a connection for EVN Telecom if a connection jam existed and EVN Telecom could show evidence for the jam. After the direction of the Ministry regarding the opening of connection ports, the jam still existed because VNPT only opened more ports to EVN Telecom when a connection jam occurred. This caused difficulties for EVN Telecom in developing their services as a newcomer in the telecommunication market.

Source: Abuse of market dominance by state monopolies in Vietnam, <http://www.thefreelibrary.com/Abuse+of+market+dominance+by+state+monopolies+in+Vietnam.-a0292992192>

Unfortunately, all these cases happened before either the VCL or the LOT came into effect and all the competition issues were only referred to the line ministry responsible for telecommunications (the MIC, formerly the MPT), who took a technical view on the matters and, therefore, could not resolve them quite satisfactorily. This clearly shows that market opening and liberalization is the prerequisite for introducing competition into a regulated sector like telecommunications, but is not enough. Pro-competitive regulatory reforms are required to ensure that the results of liberalization are not negated by private practices, including abuses by incumbent operators to entrench their market position.

Conclusions

Considering the remarkable performance of the telecommunication sector in Vietnam today as compared to the initial days of the country's overall economic reform process, taking due note of the sector's low and late starting point, we can safely say that Vietnam has achieved significant success in its telecommunications structural reform process. The market was liberalised to both domestic and foreign investment in a gradual, phase-in manner over more than 20 years of development. Consumer welfare has been significantly increased in terms of reduced prices, wider choices and availability of many new and innovative products. A comprehensive and progressive regulatory framework has been gradually built up, in line with Vietnam's international commitments. Trade negotiations, most notably the conclusion of the Vietnam-US BTA, and negotiations within the framework of the ASEAN and subsequently the WTO accession process, have provided a tremendous push for many of those reforms to happen. And yet there are still a number of issues that need to be addressed, some of which might critically affect Vietnam's ability to continue its remarkable performance, as well as the country's further efforts to participate in world trade and conclude other deals.

7. Continuing reforms for better trade negotiations

Governments often argue that temporary control of market entry and foreign investment in the telecommunications sector is needed to allow the domestic 'infant industry' more time to adjust before full competition. However, ownership control does not always bring about the desired policy outcomes in the long run. Vietnam committed during its WTO accession that exclusive State ownership in FBO licences will be removed and existing BCC partners will have the opportunity to convert into operational licences with an investment ceiling (see Table 2). This movement away from ownership control is consistent with best practice and economics theories. It would help to remove the most fundamental and sizable hurdle in the Vietnam telecommunications industry, which is the State incumbents' control over bottleneck facilities and the dominance this affords to these players. At the same time, it would unveil many regulatory issues that are not of concern when all operations are State-owned. A transparent, predictable and non-discriminatory regulatory regime would be prerequisite to further advances in liberalisation.

Vietnam's WTO commitments and the Law on Telecommunications provide a good opportunity to grasp the benefit of its market liberalisation, but reducing investment uncertainty, at the time when current BCC partners will be applying for licence conversion, remains a task for the future. Before then, it would be preferable for the Government of Vietnam (GOV) to publish clearly defined conversion requirements and procedures. Hopefully, the flow of foreign capital which has been leaving the country due to old investment restrictions would be coming back.

Vietnam's status as a Recently Acceded Member (RAM) means that it has virtually no obligation to offer new commitments in the WTO Doha round negotiation. Yet the telecommunications liberalisation process in Vietnam is half way through, with many structural and regulatory reform efforts still needed to fully realise the objectives and benefits of telecommunications structural reform.

Vietnam is also currently negotiating the Trans-Pacific Partnership (TPP) Agreement with the US and another ten (10) countries (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, and Singapore); and the Regional Comprehensive Economic Partnership (RCEP) Agreement along with the other ASEAN Member States and their six regional free trade partners (Australia, China, India, Japan, South Korea and New Zealand). Both these two agreements are expected to be very comprehensive in scope and to cover not only trade in services in general, but also telecommunications as a specific topic. However, as compared to these other negotiating partners, Vietnam still possesses a significantly high GATS Commitments Restrictiveness Index (30.2 as compared to 65.2 of the US, 59.0 of Australia, and 52.2 of New Zealand)[12] and a low Foreign Equity Ownership Index in Telecommunications (50.0 as compared to 100.00 of New Zealand, Singapore and the US, and 63.2 of Australia)[13]. This means that the country's remaining restraints in domestic (structural as well as regulatory) reforms in telecoms would somehow become an outstanding issue in the way of these ongoing trade negotiations. Pro-competitive reforms on the home front therefore need to be continued to have more positive implications on how Vietnam is to join the world tomorrow.

8. State dominance and the creation of an independent regulator

As shown in the analysis above, the incumbent VNPT still dominates the fixed-line and mobile markets in Vietnam, which results in a lot of competition problems so far. Therefore, regulating market dominance to foster competition in the telecom sector in Vietnam is not an easy task. While, under the LOT, facility-based services are opened to private participation, the legacy of State ownership in all existing FBO operators will be an obstacle to competition and investment. Indeed, the LOT establishes a pro-competition regulatory regime to prevent anti-competitive practices and ensure interconnection as well as access to bottleneck facilities, even though the ownership relationships between the various State ministries and existing FBO operators indicates the importance of a more impartial and non-discriminatory regulatory environment.

To achieve this objective, the creation of an independent regulator would be a critical step. The current regulatory structure in Vietnam is already consistent with the WTO Reference Paper's definition of an independent regulator that is separated from service provisions, though not yet arms-length from the government. Nonetheless, the fact that all existing FBO operators are State-owned warrants a more demanding independence for the regulator. The independence of the regulator, i.e. the TMSA according to the LOT, can be ensured in different forms. As a

12 This Index measures the extent of GATS commitments for all 155 services sub-sectors as classified by the GATS and in the four modes of the GATS. Each entry in the country's schedule is assigned scores based on its relative restrictiveness, using a criteria set out by a methodology developed by the World Bank Institute. That resulted in 1,240 scores, ranging from 0 (unbound or no commitments) to 100 (completely liberalized), with an intermediate value of 50 for partial commitments. For more details, see World Bank, World Trade Indicators (GATS commitments restrictiveness index, 2007), available for view and download at <http://info.worldbank.org/etools/wti/3a.asp?pillarID=1&indList=100&regionID=0&periodID=16>

13This index shows the maximum foreign participation or ownership allowed in a country's telecom sector. A score of 100 means full foreign ownership is allowed in the telecommunications sector. See Asia-Pacific Economic Cooperation, Investing Across Borders—APEC, June 2011, p.138-158, available for view and download at <http://publications.apec.org/publication-detail.php?pub_id=1149>.

threshold, the regulator should be separated from the ministry responsible for policy/decision-making, i.e. the MIC. Independence can be further enhanced by way of providing a certain degree of autonomy in carrying out core regulatory functions, such as investigating anti-competition activities (in cooperation with the competition authorities), tariff regulation and interconnection/access dispute settlement. These regulatory structural reforms would significantly improve the quality of regulation and ensure a predictable, fair and non-discriminatory regulatory regime. It would also reduce the concerns of policy interference in regulations.

9. Lessons learnt for other developing countries

State-Owned Enterprises

The GOV's hesitation so far in privatizing the incumbent operator (VNPT) has negatively and severely affected its effort to liberalize the telecom market and induce fair competition to thrive, which is evident in the various disputes regarding interconnection between this company and other service providers. The opening up of market to private and foreign participation, therefore, should go hand in hand with the privatization of incumbent/monopolist State-owned enterprises; since the SOEs would always tend to abuse its links to the government to fend off competition and protect its position in the market. This is somewhat in line with the conclusions of an assessment of the impacts of policy reform in basic telecommunications on sectoral performance in 86 developing countries in Africa, Asia, the Middle East, Latin America, and the Caribbean over the period 1985 to 1999 by the World Bank,14 which found that: (i) complete liberalization would have been more successful in delivering results; and (ii) a simultaneous introduction of both privatization and competition would be better than introducing competition after privatizing incumbent operators.

Coherent sector reform

While preparing for the WTO accession, Vietnam adopted the Law on Competition. At the time, the country had also had an Ordinance on Post and Telecommunications (with a few provisions dealing with competition issues) and a Law on Investment that inter alia deals with foreign investment in the telecom sector (which was possible only through BCCs). This fragmented approach clearly did not deliver, since foreign investors were not happy and leaving the country, while a lot of inter-connection disputes happened, undoubtedly resulting in efficiency loss. Becoming a WTO Member, Vietnam immediately subscribed to the Reference Paper, in building up a regulatory framework that is conducive to pro-competitive reforming of the telecom sector, by adopting telecom-specific legislation - the LOT 2009. This is also the approach that we recommend that other developing countries consider favourably. The main reason for favouring this approach is that this approach would provide a more coherent approach to sector reform. A sector specific legislation would have a significant impact on attracting the attention of foreign investors to the sector. Undoubtedly countries with coherent laws would have better chance in the fierce competition for private investment in the telecom sector.

Sectoral regulator

In addition to adoption of substantive laws, developing countries should also prioritize the

14 See Fink, C., Mattoo, A. & Rathindran, E., An Assessment of Telecommunications Reform in Developing Countries, World Bank Policy Research Working Paper 2909, October 2002

establishment of independent sectoral regulator and mobilize the financial and human resources needed to ensure the proper functioning of such institutions. The dual role of the MIC both as a policy-making body and a sectoral regulator (and also previously as service provider, since the MIC manages all State capitals and shares in VNPT) has been subject to heavy criticism and significantly affect the predictability of the investment environment in the telecom sector in Vietnam.

Capacity building

A newly-established sectoral regulator would find it very difficult to discipline anticompetitive practices and unfair competition acts given its lack of specialized expertise on competition matters. The adoption and enforcement of a competition law, and the presence of and cooperation from the competition authorities, would therefore be a tremendous help to the telecom regulator in this respect.

Support to Enhance Development of Trade in Services Negotiations

With support from the UK Trade Advocacy Fund, ILEAP, CUTS International Geneva and the University of Sussex's CARIS are undertaking a series of interventions that seek to contribute to the increased and more effective participation of LDCs, LICs, LMICs and RECs in multilateral, regional and bilateral services trade negotiations.

Through the studies, toolkits and training to be delivered, the envisaged results aim to assist these stakeholders in increasing their participation in services trade.

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