



VIETNAM: DEVELOPMENTS IN COMPETITION LAW AND THEIR IMPACT ON M&A

VDB | *Loi*

March 2023



On 10 February 2023 the Government of Vietnam issued Decree no. 03/2023/ND-CP (the “**2023 VCC Decree**”) regulating the functions, tasks, powers and organizational structure of the Vietnam Competition Commission (referred as “**VCC**”) which was previously mentioned in Law on Competition no. 23/2018/QH14 dated 12 June 2018 (the “**Law on Competition**”).

Law on Competition came into effect on 1 July 2019. However, more detailed guidance on the powers and organizational structure of VCC has been subject to further implementation by subordinate regulations.

The 2023 VCC Decree is becoming effective on 1 April 2023.

Among other things it provides that VCC will take the role of Vietnam Competition and Consumer Authority known as VCCA (in Vietnamese: *Cục Cạnh tranh và Bảo vệ người tiêu dùng*). The name of Vietnam Competition Authority (in Vietnamese: *Cục Quản lý cạnh tranh*) will be changed to VCC.

The 2023 VCC Decree provides for a fairly comprehensive description of the role and functions of VCC, and it can be expected that the competition aspects of various business transactions will be subject to more in-depth scrutiny by authorities.

VCC will be responsible for considering the notification dossiers relating to economic concentration, and will take decisions on whether the transactions represent prohibited economic concentration or not.

TYPES OF M&A TRANSACTIONS THAT MAY REPRESENT ECONOMIC CONCENTRATION

Several types of transactions can potentially represent economic concentration under the Law on Competition. These transactions include:

- merger;
- consolidation;
- acquisition of shares in charter capital or assets of a target company sufficient to control its operation or its business line (referred as “**qualifying acquisition**”);
- forming joint ventures; and
- other forms stipulated by laws

Decree 35/2020/ND-CP dated 24 March 2020, details that the qualifying acquisition may include the following situations:

- buyer acquires >50% of charter capital / voting shares in the target company;
- buyer acquires ownership / the right to use >50% of assets of the target company;
- buyer acquires one of the following rights to:
 - directly or indirectly appoint / dismiss majority or all Board of Directors, Chairman of Members’ council, General Director / Director of the target company
 - amend the charter
 - make decisions on important business matters e.g., business model, business activities, locations, etc.

Not all economic concentrations are prohibited. Only the economic concentration that may cause or causes a significant anti-competitive impact on the Vietnamese market may be not allowed.

THRESHOLDS TRIGGERING THE ECONOMIC CONCENTRATION FILING

Prior approval from VCC may be required for transactions that form an economic concentration that exceed the following thresholds.

	Enterprises (except for specifically regulated businesses)	Insurance companies	Companies involved in securities trading	Credit institutions
Total assets in Vietnam of either party participating the transaction	≥3 trillion VND (approx. 126 million USD)	≥15 trillion VND (approx. 630 million USD)	≥15 trillion VND (approx. 630 million USD)	≥ 20% of the total assets of the entire credit institution
Total sales revenue generated or total purchase turnover made in Vietnam of either party participating the transaction	≥3 trillion VND (approx. 126 million USD)	≥10 trillion VND (approx. 420 million USD)	≥3 trillion VND (approx. 126 million USD)	≥ 20% of the total revenue of the entire credit institution
Transaction value <i>(This criteria applied for onshore transactions in Vietnam. The transaction value can be share purchase price, assets transfer price, value of assets merged in new entity, value of assets contributed in the joint venture)</i>	≥1 trillion VND (approx. 42 million USD)	≥3 trillion VND (approx. 126 million USD)	≥3 trillion VND (approx. 126 million USD)	≥20% of the total charter capital of the entire credit institution
Combined market share of the buyer and the target company on relevant market	≥20%	≥20%	≥20%	≥20%

Calculations above are generally made taking into account data from the fiscal year preceding the transaction or the year in which transaction is being completed. When a party to a transaction is a member of a group, group-level data may be used.



APPLICATION DOSSIER:

Application dossier shall consist of:

- a) A notification of economic concentration;
- b) Agreed contents of the economic concentration or draft contracts, memorandum of understanding regarding economic concentration between/among enterprises;
- c) Valid copies of the business registration certificates of similar documents of all enterprises engaging in economic concentration;
- d) Financial statements of all enterprises engaging in economic concentration in two consecutive years before the notification year or, in case of newly-established enterprises, from the establishment time to the notification time as per the law;
- e) The list of parent companies, subsidiaries, associate companies, branches, representative offices and other affiliated entities of every enterprise engaging in economic concentration (if any);
- f) The list of goods, services dealt in by each enterprise engaging in economic concentration;
- g) Information about market shares in the sector where economic concentration will take place held by every enterprise engaging in economic concentration in 2 consecutive years before the notification year;
- h) Proposed remedies for possible anti-competitive effects of the economic concentration;
- i) Report on assessment of positive effects of economic concentration and measures to enhance the positive effects of economic concentration.

TIMELINE

For the preliminary appraisal, it may take around 30 days for VCC to issue:

- a) Consent to economic concentration regimes;
- b) Notification that official evaluation of economic concentration is required.

In case of an official evaluation, it will take around 90 days to 150 days for VCC to do the official assessment and upon completion, the VCC shall issue a decision determining that:

- a) the economic concentration is approved;
- b) the economic concentration is approved, but subject to conditions to be implemented; or
- c) the economic concentration is prohibited.

Disclaimer:

This publication is for informational purposes only and does not represent legal or tax advice. VDB Loi is represented in Vietnam through Loi and Partners Law Company Limited.

KEY TEAM MEMBERS IN VIETNAM



JEAN LOI
Managing Partner
jean@vdb-loi.com



GIANG PHAM
Partner
pham.giang@vdb-loi.com



MAXIM KOBZEV
Partner
maxim.kobzev@vdb-loi.com



THUAN PHAM
Director
thuan.pham@vdb-loi.com



MY LE
Director
my.le@vdb-loi.com



LE THI THANH THUY
Senior Compliance Consultant
thuy.le@vdb-loi.com



PHUNG HUYNH
Consultant
phung.huynh@vdb-loi.com

VDB LOI

HO CHI MINH OFFICE

Level 16, Unit 1638

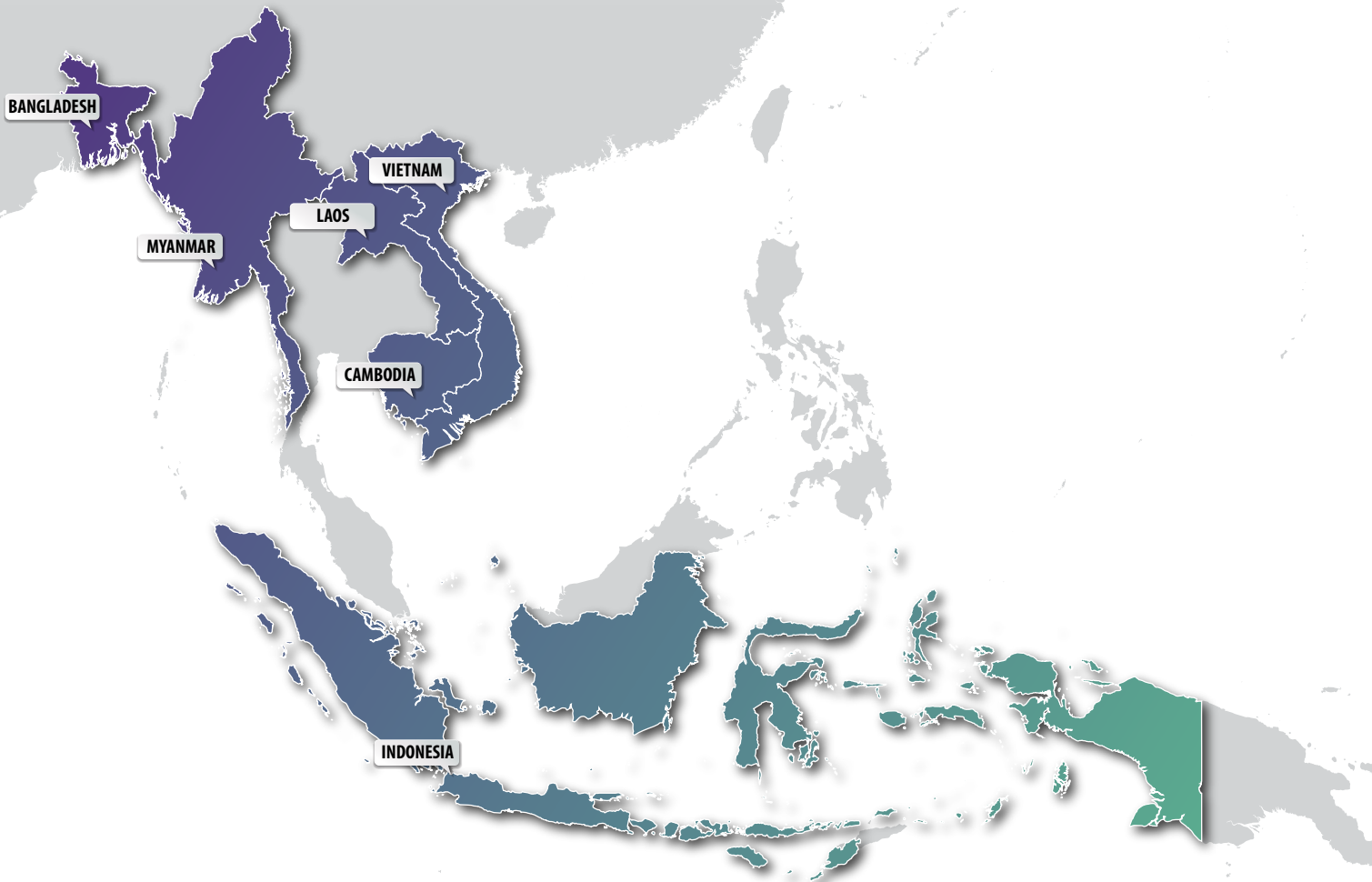
Bitexco Financial Tower

2 Hai Trieu Street, Ben Nghe Ward

District 1, Ho Chi Minh City 700000

T: +84 708 283 668

VDB LOI IN THE REGION



BANGLADESH

UTC Building, 19th Floor
Unit 1922, 8 Pantho Path
Karwanbazar, Dhaka 1215
T: +880 0 961 188 6739
WhatsApp: +95 0 997 532 7699

CAMBODIA

No. 33, Street 294 (corner of
Street 29)
Sangkat Tonle Bassac
Khan Chamkarmorn
Phnom Penh 120101
T: +855 23 964 430~434
F: +855 23 964 154

INDONESIA

Plaza Bisnis Kemang, Suite 211
Jl. Kemang Raya, No. 2
Jakarta 12730
T: +62 21 718 3415
The Cityloft Sudirman
Suite 1119, Jalan K. H. Mas
Mansyur Kav. 121, Jakarta,
10220
T: +62 21 2555 6611

LAOS

Level 4, Kolao Tower II
23 Singha Road, Nongbone
Village, Saysettha District
Vientiane
T: +856 21 454 679

VIETNAM

Level 16, Unit 1638
Bitexco Financial Tower
2 Hai Trieu Street
Ben Nghe Ward
District 1, Ho Chi Minh City
700000
T: +84 708 283 668

MYANMAR

Level 10, Units 01-05
Junction City Office Tower
Corner of Bogyoke Aung San
Road and 27th Street
Pabedan Township, Yangon
T: +951 9253 752~756
F: +951 9253 758

ParkRoyal Hotel

Jade Villa No. 13/14
Hotel Zone
Dekhina Thiri Township
Nay Pyi Taw
T/F: +95 678 106 089