Competition issues in Pharmaceutical Distribution

Tran Chi Anh
18 April 2013
Agenda

– Introduction of Competition Law
– Recent Report on competition assessment of ten economic sectors, including pharmaceutical distribution
– Statistics regarding pharmaceutical industry in Vietnam
– Barriers to market entry in pharmaceutical industry
– Anticompetitive behaviors in pharmaceutical industry
– Q&A
Competition Law
Introduction

The Vietnam’s Competition Law was adopted by the National Assembly on 3 December 2004 and took effect on July 1, 2005

It governs:

– Anti-competitive Agreements
– Abuse of Market Dominance/ Monopoly
– Economic Concentration
– Unfair Competition Practices
How important is it?

A Competition Law review is necessary for:

- Commercial contracts and activities, e.g., distribution contracts, sales contracts, pricing policy, discounts and promotions, advertising, etc.
- M&A transactions, e.g., mergers, shares acquisition
- Joint venture agreements
- Conducts in trade associations
- Market research activities, e.g., collecting price information
How important is it? (2)

– Severe penalties – up to 10% annual revenues of the previous year, licenses revoked, transactions undone
– Long investigations – up to 10 months with no time limit for issuance of the conclusions
– Legal fees for defense
Issues in vertical agreements

– Abuse of dominance
  – Resale price maintenance
  – Exclusivity
  – Bundling
  – Discriminatory terms
  – Price increases

– Price fixing in certain cases
– Collusion in tenders
VCA’s Report on competition in pharma distribution
Report on competition assessment in relation to pharmaceutical distribution sector

– Announced early this year

– Provides:
  - Overview of pharmaceutical industry in Vietnam, including business models, market sales volumes and market shares.
  - Review and assessment of barriers to market entry and withdrawal, and market structure and competition status on the market.
  - Identification of anticompetitive behaviors in pharmaceutical industry.
Number of companies operating in the market

– Manufacturing companies: 263 Vietnamese enterprises manufacturing drugs which satisfied GMP-WHO standards in 2011

– Distribution companies: 1,952 companies which have traded in pharmaceutical business.

– Prior to 1 January 2009, foreign invested companies were not allowed to import and distribute drugs. After 1 January 2009, they were allowed to directly import drugs, but not to conduct local distribution.
Distribution companies in pharmaceutical industry

– The distribution system of imported drugs is complicated since it is conducted by the multiple layers of intermediaries between importers and retailers.

– The biggest domestic companies distributing drugs are National Phytopharma Joint Stock Company No. 2 (Phytopharma) and Vimedimex Medi-Pharma Joint Stock Company (Vimedimex).

– Zuellig Pharma, Diethelm, Tenamid, Tedid SA and Mega Product are the largest foreign invested companies which have held a significant market share in the distribution of drugs in Vietnam.
## Market share of top ten pharma manufacturing companies in 2011

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Market share (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Hau Giang Pharma Corporation</td>
<td>10.79</td>
</tr>
<tr>
<td>2</td>
<td>Mekophar Pharma- Chemical JSC</td>
<td>7.52</td>
</tr>
<tr>
<td>3</td>
<td>Imexpharm Pharma JSC</td>
<td>7.06</td>
</tr>
<tr>
<td>4</td>
<td>Domesco Medical Import Export JSC</td>
<td>6.33</td>
</tr>
<tr>
<td>5</td>
<td>Nam Ha Pharma JSC</td>
<td>5.12</td>
</tr>
<tr>
<td>6</td>
<td>B Braun Hanoi Pharma JSC</td>
<td>4.34</td>
</tr>
<tr>
<td>7</td>
<td>Sanofi Synthelabo Vietnam Pharma JSC</td>
<td>3.89</td>
</tr>
<tr>
<td>8</td>
<td>Traphaco Joint Stock Company</td>
<td>3.41</td>
</tr>
<tr>
<td>9</td>
<td>Cuu Long Pharma JSC</td>
<td>2.99</td>
</tr>
<tr>
<td>10</td>
<td>National Phytopharma Joint Stock Company No. 1</td>
<td>2.87</td>
</tr>
</tbody>
</table>

Source: VCA's statistics (page 45 of the Report)
## Market share of top ten pharma import companies in 2010

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Revenue (mil VND)</th>
<th>Market share (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>National Phytopharma JSC No. 2</td>
<td>3,313,412</td>
<td>10.79</td>
</tr>
<tr>
<td>2</td>
<td>Zuellig Pharma Vietnam Co. Ltd.</td>
<td>5,271,024</td>
<td>7.52</td>
</tr>
<tr>
<td>3</td>
<td>Vimedimex Medi-Pharma JSC</td>
<td>5,072,745</td>
<td>7.06</td>
</tr>
<tr>
<td>4</td>
<td>Central Pharmaceutical Company No. 2</td>
<td>1,824,108</td>
<td>6.33</td>
</tr>
<tr>
<td>5</td>
<td>Central Pharmaceutical Company No. 1</td>
<td>1,767,818</td>
<td>5.12</td>
</tr>
<tr>
<td>6</td>
<td>Hanoi Pharmaceutical and Medical Equipment Joint Stock Company (Hapharco)</td>
<td>1,307,928</td>
<td>4.34</td>
</tr>
<tr>
<td>7</td>
<td>Saigon Pharmaceutical Co. Ltd. (Sapharco)</td>
<td>1,226,360</td>
<td>3.89</td>
</tr>
<tr>
<td>8</td>
<td>Danang Pharmaceutical Medical Equipment JSC(Dapharco)</td>
<td>1,185,490</td>
<td>3.41</td>
</tr>
<tr>
<td>9</td>
<td>Hanoi Medical Import Export JSC</td>
<td>918,664</td>
<td>2.99</td>
</tr>
<tr>
<td>10</td>
<td>Binh Dinh Pharmaceutical and Medical Equipment Company (Bidiphar)</td>
<td>875,054</td>
<td>2.87</td>
</tr>
</tbody>
</table>

Source: General Statistics Office of Vietnam
Barriers to market entry in pharmaceutical industry

- International treaties: TRIPS, WTO Commitment
- Domestic regulations:
  - Registering the business and obtaining licenses for drugs to be sold
  - Provisions on standards of pharmaceutical sector: such as Good Manufacturing Practice (GMP)-WHO standard, Good Storage Practice (GSP) standard, Good Pharmacy Practices (GPP) standard for drugstores (Circular No. 43/2010/TT-BYT).
Anticompetitive behaviors in pharmaceutical industry under the Report (1)

– The Report has identified the potential anticompetitive behaviors in the industry, including issues relating to public hospital tenders, price fixing and possibly abusive conducts such as undue price increases.
Anticompetitive behaviors in pharmaceutical industry under the Report (2)

Competition issues on drug price:

– Rapid increase in prices of imported drugs through each distribution phase
– Price fixings conducted by companies in dominant position, including products exclusively imported by one distributor and products imported by two distributors
– Regulations on drug price declaration are not clear and no mechanism to manage, verify and supervise large increases in drug prices.
– Stabilization of drug prices can make monopolized products be not subject to the Competition Law.
Anticompetitive behaviors in pharmaceutical industry under the Report (3)

Competition issues on drug tenders in hospitals:

– The Competition Law prohibits the act of “Colluding to enable one or all of the parties of the agreement to win bids for supply of goods or provision of services”.

– The Report has recognized some signs of violations of the Competition Law. Specifically:
1. Expensive drugs winning the tender with large quantity

Comparision of drugs supplied to some hospitals in 2009

<table>
<thead>
<tr>
<th>Hospitals</th>
<th>Quantity of imported drugs (%)</th>
<th>Quantity of domestic drugs (%)</th>
<th>Value of imported drug (%)</th>
<th>Value of domestic drugs (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bach Mai</td>
<td>94.06</td>
<td>5.94</td>
<td>99.99</td>
<td>0.01</td>
</tr>
<tr>
<td>Cho Ray</td>
<td>62.55</td>
<td>37.45</td>
<td>99.56</td>
<td>0.44</td>
</tr>
<tr>
<td>Vietnam National Institution of Burns</td>
<td>40.59</td>
<td>59.41</td>
<td>96.59</td>
<td>3.41</td>
</tr>
</tbody>
</table>

Source: Drug Administration, Department of Health of Ho Chi Minh City (page 62 of the Report).
2. Winning tender prices of drugs supplied by some companies (such as Phytopharma or Vimedimex) have been fixed, usually equal or less than 1 VND in comparison to the ceiling prices approved by the Department of Health in the tender dossier.
3. Winning tender prices of drugs are higher/lower than the ceiling prices

<table>
<thead>
<tr>
<th>Medicine element</th>
<th>Medicine element</th>
<th>Origin</th>
<th>Unit</th>
<th>Ceiling price (VND)</th>
<th>Winning tender price (VND)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ceftriaxone 1g</td>
<td>Rocephin IV 1g</td>
<td>Switzerland</td>
<td>vial</td>
<td>179,500</td>
<td>181,440</td>
</tr>
<tr>
<td>Metoclopramide HCL 10mg/2ml</td>
<td>Primperan Inj. 10mg/2ml</td>
<td>France</td>
<td>ampule</td>
<td>2,900</td>
<td>3,002</td>
</tr>
<tr>
<td>Sodium Cocoyl Isethionate 0.45%</td>
<td>Physiogel Cleanser Gel 150ml</td>
<td>Singapore</td>
<td>bottle</td>
<td>228,000</td>
<td>71,600</td>
</tr>
</tbody>
</table>

4. Prices of drugs which are supplied to hospitals by direct contracting are higher than the market price although there are many other manufacturers who sell such drugs with lower prices.

6. Winning tender prices of some drugs have been unchanged in many years.

For example: the winning tender price of Adalat LA 60mg in Cho Ray Hospital was VND12,033 from 2006 to 2010.

=> fixing the first price of drugs by company in dominant position?
6. Winning tender prices in various hospitals were significantly different

⇒ the discrepancies in winning tender prices in various hospitals may be caused by (i) tender policy of each hospital or (ii) colluding between tenderer and party calling for tender to be enable the tenderer to win the tender.

7. A type of drug might be supplied by two winning tender suppliers

⇒ There are two possibilities: (i) two suppliers won the tender accidentally (ii) colluding to be enable two tenderers to win the tender for the supply of drugs with the same price and quantity.

8. A winning tender drug was supplied to a hospital by two different companies with different prices.
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