ACKNOWLEDGED AND TRUSTED ADVISORS

ATA GLOBAL LEGAL LIMITED COMPANY

ATA LEGAL SERVICES

AMENDMENT TO DECREE NO. 75/2019/ND-CP ON ADMINISTRATIVE SANCTIONS IN THE FIELD OF COMPETITION LIMITING THE MONETARY FINE TO VND 2 BILLION FOR FAILURE TO NOTIFY AN ECONOMIC CONCENTRATION

Currently, the Ministry of Industry and Trade is drafting and seeking comments on the draft decree amending Decree No. 75/2019/ND-CP on administrative sanctions in the field of competition ("**Decree 75**"). According to the submission report to the Government by the Ministry of Industry and Trade, the Draft Decree amending and supplementing a number of provisions of Decree 75 on administrative sanctions in the field of competition (the "Draft") is developed with the aim of addressing existing shortcomings and inadequacies, ensuring consistency with and alignment to international practices, enhancing the effectiveness of competition law enforcement, and contributing to a fair, stable, and transparent competitive environment.

With many years of experience in providing advisory services in the field of competition, ATA Legal Services ("**ATA**") pays particular attention to changes in the legal framework governing this sector in order to promptly advise and support enterprises in ensuring legal compliance, minimizing legal risks, and thereby improving operational efficiency. With respect to the Draft, we will focus on analyzing several notable amendments and key changes, particularly those concerning administrative sanctions for violations of the obligation to notify economic concentrations – one of the most common violations committed by enterprises in recent years (as recorded by us).

1. Specific Determination of the Maximum Monetary Fine of VND 2 Billion for Failure to Notify or Implementing an Economic Concentration Without Approval

Under Decree 75, monetary fines for violations of regulations on economic concentration ("**EC**") are determined based on a percentage ranging from 1% to 5% of the total turnover in the relevant market of the violating enterprise, without any cap on the fine amount. With such a provision, enterprises with large revenues would be subject to extremely high sanctions. Although this mechanism ensures strong deterrence, in the current context where the economy has yet to fully recover, the market remains volatile, and enterprises still face numerous challenges, such fines are considered disproportionate.

Accordingly, the Draft has revised the method for determining fines from a turnover-based percentage mechanism to a fixed monetary penalty for acts of failure to notify an EC or implementing an EC without prior approval (i.e., implementing an EC without having received the preliminary appraisal result from the Vietnam Competition Commission ("VCC"), except for cases stipulated under Clause 3, Article 36 of the Law on Competition; or implementing an EC while the VCC has yet to issue a decision in cases where the EC is subject to official appraisal). The specific provisions are as follows:

- *A fine ranging from VND 500,000,000 to VND 1,000,000,000 shall be imposed on each violating enterprise whose total assets in the Vietnamese market or total sales turnover/purchase turnover in the Vietnamese market are less than VND 3,000 billion in the financial year immediately preceding the year of implementing the EC, provided that such fine does not exceed 5% of the total turnover of the violating enterprise in the relevant market in the financial year immediately preceding the year of the violation.*
- *A fine ranging from VND 1,000,000,000 to VND 2,000,000,000 shall be imposed on each violating enterprise whose total assets in the Vietnamese market or total sales turnover/purchase turnover in the Vietnamese market are equal to or exceed VND 3,000 billion in the financial year immediately preceding the year of implementing the EC, provided that such fine does not exceed 5% of the total turnover of the violating enterprise in the relevant market in the financial year immediately preceding the year of the violation.*

In our assessment, the introduction of specific fine thresholds under the Draft is entirely appropriate, since, by nature, notification of EC is merely an administrative procedure. Not every EC necessarily results in anti-competitive effects or falls within prohibited or conditional ECs. Furthermore, in our advisory practice, we have observed that many enterprises are unfamiliar with competition law requirements; in many cases,

violations arise unintentionally due to lack of knowledge or technical errors. Therefore, the two fine brackets of VND 500 million–1 billion and VND 1 billion–2 billion, determined based on the value of total assets or turnover, are sufficient to ensure compliance without imposing excessive financial burdens on enterprises.

At the same time, this sanctioning mechanism is consistent with international practices, where many jurisdictions distinguish between fixed monetary fines for violations of administrative procedures and progressive percentage-based fines for conduct that causes substantive anti-competitive effects in the market.

2. Increase in the Fine Bracket for Prohibited Economic Concentrations

Under Decree 75, both (i) prohibited EC conduct, and (ii) failure to comply or insufficient compliance with conditions imposed in conditional EC decisions, are subject to the same sanctioning bracket of 1%–3% of the total turnover in the relevant market of the violating enterprise in the financial year immediately preceding the year of the violation. However, grouping these two types of conduct under one penalty bracket is not entirely appropriate. Compared to failure to comply or insufficient compliance with conditions imposed on conditional ECs, engaging in a prohibited EC may pose a far greater degree of danger and cause more serious consequences. Thus, the maximum fine of 3% may not be sufficiently deterrent for conduct of such dangerous nature and severe consequences.

Accordingly, the Draft separates these two types of violations and adjusts the sanctioning mechanism by increasing the penalty bracket applicable to prohibited ECs. Specifically, enterprises committing violations will be subject to: "*A monetary fine of 1% - 5% of the total turnover in the relevant market of the violating enterprise in the financial year immediately preceding the year of the violation, for prohibited EC conduct.*"

3. Increase in the Fine Bracket for Violations Relating to Economic Concentrations or Anti-Competitive Conduct Where the Turnover in the Relevant Market Equals Zero or the Relevant Market Cannot Be Determined

Under Decree 75, the monetary fine for violations of regulations on anti-competitive practices and EC is determined based on a percentage of the total turnover in the relevant market of the violating enterprise. However, even where the enterprises involved in an EC do not have a relevant market or where the value of turnover in the relevant market equals zero, the violating enterprises are still subject to fines ranging from VND 100 million to VND 200 million.

In the Draft, this penalty bracket has been revised upwards to between **VND 400 million and VND 6 billion**. This bracket applies to the following circumstances:

> *(i) The total turnover of the violating enterprise in the relevant market in the financial year immediately preceding the year of the violation is determined to be zero;*
>
> *(ii) The enterprises participating in the EC that commit violations are not active in the same relevant market; are not engaged in different stages of the same production, distribution, or supply chain for a specific good or service; and do not operate in input sectors for, or provide complementary business activities to, one another.*

In practice, there are cases where the violating enterprise is a holding company, engaged solely in securities or financial investment (e.g., acquiring shares/contributing capital in other enterprises to receive dividends) without directly carrying out business operations. Similarly, there are instances where newly established enterprises participate in EC transactions but have not yet generated any turnover. The absence of a relevant market or turnover equal to zero does not mean that such transactions have no significant impact on competition in the market. Therefore, we consider this adjustment necessary and consistent with the orientation set out in Resolution No. 68-NQ/TW on the development of the private sector, which emphasizes "strictly handling acts that restrict competition, abuse dominance or monopoly, and unfair competition."

However, given that the proposed penalty bracket is very wide, we believe that lawmakers may consider subdividing it into smaller brackets applicable to specific circumstances. In particular, three sub-brackets may be appropriate:

(i) **Bracket 1 – lowest (up to VND 2 billion):** applicable to violations of the obligation to notify an EC / implementing an EC without approval, which do not fall under conditional or prohibited ECs;

(ii) **Bracket 2 – medium (up to VND 4 billion):** applicable to violations of the obligation to notify an EC / implementing an EC without approval, in cases involving conditional ECs;

(iii) **Bracket 3 – highest (up to VND 6 billion):** applicable to violations of the obligation to notify an EC / implementing an EC without approval, in cases involving prohibited ECs.

4. Clarification on the Method of Determining Fines in the Presence of Mitigating/Aggravating Circumstances

Under the Draft, the fine for administrative violations in the absence of mitigating or aggravating circumstances shall be the average level of the prescribed penalty bracket for that violation.

Where mitigating or aggravating circumstances are present, the fine is determined as follows:

- *One mitigating circumstance: the fine shall fall within the range above the minimum level and below the average of the bracket, but not lower than the midpoint between the minimum and the average. Where there are two or more mitigating circumstances, the minimum level of the bracket shall apply.*
- *One aggravating circumstance: the fine shall fall within the range above the average level and below the maximum of the bracket, but not higher than the midpoint between the average and the maximum. Where there are two or more aggravating circumstances, the maximum level of the bracket shall apply.*
- *Both mitigating and aggravating circumstances: one mitigating circumstance shall offset one aggravating circumstance.*

This provision is clear, enabling enterprises to understand their rights and obligations and facilitating the authorities in determining the appropriate fine in each case.

5. Increasing Sanctions and Supplementing Remedies for Violations of the Obligation to Provide Information and Documents in Competition Proceedings

Pursuant to the Law on Competition, enterprises, organizations, and individuals involved in competition cases—when participating in EC transactions, submitting EC notification dossiers, or applying for exemption from prohibited anti-competitive agreements—must provide full, accurate, and truthful information and documents. Any intentional provision of misleading, inaccurate, or untruthful information may distort the appraisal results of the VCC and could cause serious consequences.

Accordingly, the Draft increases the fine for failure to provide complete information and documents as required by the VCC, the Competition Investigation Agency, or the Competition Case-Handling Council, from VND 10–20 million to VND 20–30 million.

At the same time, the Draft introduces a new remedy allowing the VCC to annul notifications confirming the completeness and validity of EC notification dossiers, preliminary appraisal results of EC transactions, or decisions regarding EC transactions, if it discovers that the dossier contains inaccurate information. However, the Draft does not clarify the legal consequences in cases where enterprises have already implemented an EC after obtaining VCC approval, but such approval is subsequently annulled due to misrepresentation in the dossier. In such circumstances, it remains uncertain whether

enterprises would be deemed to have implemented an EC without notification or approval, and what legal consequences they may face, aside from penalties for failure to provide complete information and documents.

In our view, these amendments represent a significant improvement, helping enterprises to "contain" risks or damages in the event of inadvertent procedural lapses. At the same time, the new provisions will strengthen the VCC's ability to review and handle competition law violations. In line with the principle of "strictly sanctioning acts restricting competition, abuse of dominance/monopoly, and unfair competition" set out in Resolution No. 68-NQ/TW, it is foreseeable that the VCC will expand its review, inspection, and enforcement activities in the near future, with particular focus on violations concerning ECs.

With many years of experience advising enterprises in the field of competition law, ATA strongly recommends that enterprises—especially those frequently engaged in investment, mergers, and acquisitions—take a proactive and rigorous approach to risk prevention, in order to avoid violations. The consequences of sanctions are not limited to financial penalties but may also harm an enterprise's reputation and brand in the market.

Recommended preventive measures include:

- ***Proactively conducting internal reviews, or consulting professional advisory firms, to review M&A, joint venture, and alliance transactions in order to determine and comply with EC notification obligations.***
- ***Ensuring that EC notification dossiers are accurate, complete, and truthful, thereby avoiding the risk of annulment of VCC notifications/decisions or heavy sanctions.***
- ***Developing compliance plans to meet post-clearance conditions required by the VCC after an EC is approved, thereby minimizing risks and preventing adverse impacts on business operations and corporate reputation.***

ABOUT US

ATA Global Legal Limited Company (**ATA Legal Services**) is established and operated by acknowledged and experienced lawyers. Our operational goal is to become a law firm providing flexible and comprehensive legal services to both organizations and individuals, and both local and international clients. Of which, one of our core service is in-depth corporate consultance.

All partners, lawyers, advisors, consultants, and even paralegals of ATA Legal Services are well-trained and have years of experience in the areas they are in charge of. In particular, the partners of ATA Legal Services have all consulted for and worked with renowned economic groups, banks or securities companies such as Vingroup, FLC, DNP, Tasco, Techcombank, SHB, SHS, VPS, etc.

With a serious and professional working attitude along with the dedication of the team always trying to put ourselves in the position of clients to understand their needs and aspirations, we are committed to bringing the most effective and appropriate services for Valued Clients.

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