FOREWORD

1. The necessity of research topic

The economy of each country is recognized and assessed through the formation, mobilization and development of businesses. Today, countries around the world recognize the great role of businesses in promoting the development of each country's economy, each region as well as the world. This is recognized in all documents of the State from regulations on national economic development policies to legal documents on issues related to the formation and development of business in all sectors, business lines.

However, in the business process, there have been some acts of enterprises that hinder and limit competition for other enterprises in the market. One of the manifestations of the phenomenon of competition restriction is the form of abuse of the monopoly position of enterprises, especially businesses that are enjoying direct or indirect incentives from economic development policies sacrifice of the State of Vietnam. This shows that, in fact, the law on controlling acts of abuse of monopoly position of enterprises in Vietnam has not really been effective enough to play a role in creating a strong competitive environment for businesses in the economy.

Up to now, published scientific researches related to abuse of monopoly positions have had certain results have not been evaluated comprehensively in order to complete an objectively and overall on this issue. Therefore, the PhD students has chosen the topic "Law on controlling acts of abusing the monopoly position of enterprises in Vietnam" for the thesis of scientific research at the doctoral level in law to contribute a part of theoretical and practical basis for the process of completing the competition law of Vietnam today.

2. Purpose and task of research

2.1. Purpose of research

On the basis of analyzing and evaluating the law and enforcing the law on monopoly control, the thesis proposes solutions to complete and improve the quality of law enforcement on controlling acts of abuse of monopoly position of enterprises in Vietnam.

2.2. Task of research

2.2.1. The task of theoretical research

In order to achieve the purpose of the above research topic, the thesis identifies the following theoretical research tasks:

Firstly, build a theoretical basis on the law to control the abuse of monopoly position of enterprises with a focus on clarifying the concept of enterprise monopoly, the criteria for determining the monopoly position of enterprises, the concept of abuse of the monopoly position of enterprises and the evaluation criteria, the concept of controlling the abuse act of monopoly position of enterprises to create a theoretical basis for research the law on controlling abuse act of monopoly position by enterprize.

Secondly, build the basic principles of the law on controlling the abuse of monopoly position of enterprises with the aim of eliminating barriers to market entry, ensuring business freedom of enterprises, consumer rights and the role of regulating and managing the market of the state.

Thirdly, assess the overall dominant factors, impact on the legal structure of controlling acts of abuse of monopoly position of enterprises, especially considering the specific conditions of Vietnam today.

Fourth, completing the content of the law on controlling acts of abusing the monopoly position of enterprises in Vietnam.

Fifth, compare with the law of some developed countries in the world on the law to control the abuse of monopoly position of enterprises, thereby analyzing and giving lessons for Vietnam in completing the law on controlling the abuse of monopoly position by enterprises.

2.2.2. Overall analyzing, evaluating the status of the law on controlling acts of abusing the monopoly position of enterprises in Vietnam

Firstly, analyze the current situation of the content of the law on controlling acts of abusing the monopoly position of enterprises in Vietnam on the basis of comparing with the laws of some countries in the world: Real status analysis of the law on controlling acts of abusing the monopoly position of enterprises in Vietnam according to the basic contents that the law on control of abuse of monopoly position of enterprises in Vietnam is legally valid as a matter of determining what a monopoly enterprise in Vietnam is, abuses acts that are prohibited under current Vietnamese law provisions for enterprises, issues of control enterprises operating in state-owned fields, the authority of state management agencies in this area, competitive proceedings and handling violations.

Secondly, assess the practice of applying and enforcing the law on controlling the abuse of monopoly position of nterprises in Vietnam.

Thirdly, from the analysis and evaluation to indicate the limitations of legal regulations on controlling the abuse of monopoly position of enterprises to create a basis for proposing to improve the law of controlling abuse of monopoly position in Vietnam.

2.2.3. Proposing orientations and solutions to complete and improve the effectiveness of law enforcement in controlling the abuse of monopoly position of enterprises in Vietnam

Firstly, giving directions to complete and improve the effectiveness of the implementation of legal provisions on controlling acts of abusing the monopoly position of enterprises in Vietnam.

Secondly, propose solutions to improve the contents of the law to control the abuse of monopoly position of enterprises on the basis of scientific bases as well as recommendations to improve the performance of legal regulations on controlling acts of abusing the monopoly position of enterprises in the direction of conformity with international law, contributing to enhancing the effectiveness of Vietnamese law in the process of international integration.

3. Objects of research and scope of research

3.1. Objects of research

The research object of the thesis is the provisions of law on controlling acts of abuse of monopoly position of enterprises and the practice of applying these regulations. Besides, the thesis also studies and compares the regulations and practices applied in some countries around the world to absorb experience for Vietnam.

3.2. Scope of research

In term of content, the scope of the thesis research includes acts of abusing the monopoly position of the enterprise in terms of the economy's specific conditions and the current law on controlling the abuse of monopoly position by enterprises in Vietnam.

In terms of space, the thesis studies the laws and practices of applying laws on controlling acts of abusing the monopoly position of enterprises in Vietnam since the Vietnam Competition Law in 2004 came into effect so far. Besides, the thesis also extends the scope of research into the competition laws of some countries with developed market economies such as the US, European Union or China ...

In terms of time, the thesis studies the law and practice of applying the law on controlling acts of abusing the monopoly position of enterprises in Vietnam since the Vietnam Competition Law 2004 took effect, the Vietnam Competition Law 2018 were

issued, guiding documents to date to assess the situation and propose feasible solutions to 2030.

4. Research method

In order to fulfill the goals and tasks set out, the thesis is based on the methodology of dialectical materialism with the following specific research methods:

Firstly, the analysis - synthesis method is mainly used in the whole thesis for each content and problem mentioned by the thesis. With the analysis of the core issues of monopoly control, the thesis synthesizes and draws points and conclusions into the main research results of the thesis.

Secondly, the comparative - collation method, especially the comparative law method used to compare the rule of law and the applicable practice of law to control the abuse of monopoly position of the enterprises in some countries in the world and Vietnam. The comparison and collation will help the thesis point out the logical contents of legal doctrines, views of the jurists, the actual law provisions as well as the practical application of the countries. In the world, there are specific contributions in the proposals to improve the law on controlling abuse of monopoly position of enterprises in Vietnam.

Thirdly, due to the competition anti-restriction law closely linked with the knowledge of the economy, the interdisciplinary research method is also used by the thesis in the research process combining economic and legal theories to make clarifying the rationale for the abuse of monopoly position and controlling the abuse of monopoly position by enterprises on a reasonable basis.

In addition to the main methods used above, the thesis also uses some other methods such as historical methods, statistical methods.

5. New contributions of the thesis

In theory, the thesis has made the following basic contributions:

Firstly, the thesis builds, adding to the theory of the abuse of monopoly position of enterprises and the basic determinants of this behavior in specific conditions in Vietnam.

Secondly, the thesis points out the bases for determining the monopoly position of enterprises in the relevant market in order to facilitate the determination of the subjects of regulation of the law on controlling abuse of positions. monopoly of enterprises in Vietnam.

Thirdly, on the basis of reference and inherit the value of the results of scientific researches achieved by domestic and foreign scientific researchers, the thesis has

developed the theory system of France. laws on the control of enterprises 'abuse of monopoly positions with new contents such as the concept of enterprises' abuse of monopoly position, the basic principles of control law acts of abusing the monopoly position of enterprises, determining the authority and responsibility, the role of state management agencies, sanctions applied to the abuse of monopoly position of enterprises

In terms of practice:

Firstly, the thesis has systematically analyzed the limitations of the law on controlling acts of abusing the monopoly position of enterprises in Vietnam.

Secondly, the thesis has proposed some solutions to complete the law on controlling acts of abusing the monopoly position of enterprises such as completing the concept of enterprise monopoly, the concept of abusive behavior exclusive position of enterprises, completing regulations on legal status and jurisdiction of competition authority, completing regulations on sanctions applied to abusive behaviors monopoly position of enterprises in Vietnam.

6. Structure of the thesis

In addition to the introduction, conclusion and list of references, the thesis's topic is structured into sections including:

Overview of the research of topic of the thesis.

Chapter 1. Theoretical issues of enterprises' abuse of monopoly position and the law of controlling the abuse of monopoly position by enterprises.

Chapter 2. Legal status of controlling abuse of monopoly position of enterprises in Vietnam.

Chapter 3. Directions and solutions to complete and improve the effectiveness of law enforcement on controlling the abuse of monopoly position of enterprises in Vietnam.

OVERVIEW OF THE RESEARCH OF TOPIC OF THE THESIS

- 1. The results of legal research on control of abuse of monopoly position of enterprises
- 1.1. The results of legal research on control of abuse of monopoly position of enterprises

1.1.1. Reasoning about monopoly and abuse of monopoly position in enterprise

From the conceptions of enterprise monopoly at relevant domestic and foreign scientific research projects, there has not been a specific concept or definition of monopoly in enterprise because there are at least two different understandings about the monopoly position of enterprises between the conception of Vietnam and some countries in the world.

Regarding the concept of abuse of monopoly position of enterprises, it is not mentioned much in domestic scientific research projects. When referring to the abuse of enterprise monopoly position of the business, the authors often integrate the concept of this behavior in relation to the concept of monopoly in business, marketing power issuess and the purpose of the enterprise's abuse of monopoly position to provide a way to understand this abuse. Thus, at present, the abuse of monopoly position of enterprises is still understood with the terms that are not quantified specifically as "disadvantage", "causing damage", "limiting competition in a significant way" for customers and competitors. It can be seen that at the present time, a concept of abuse of enterprise monopoly position of business has not been formed, fully expressing the nature and extent of negative impacts of this behavior for competitive environment in business.

1.1.2. Legal theory of controlling the abuse of monopoly position of enterprises

Until now, no scientific work in Vietnam has been studied in a comprehensive way as well as the content of the law on controlling the abuse of monopoly position of enterprise in Vietnam. In addition, the current review and evaluation of the factors affecting the law on controlling acts of abuse of monopoly positions in Vietnam currently do not have any scientific research projects mentioned overall. Factors of development orientation and policies of the State of Vietnam in the period of 2010-2020; international economic integration issues; The compatibility between competition law and related laws in the overall legal system of Vietnam has not been updated and analyzed. In addition, the basic principles of the law on controlling abuse of the monopoly position of enterprises have not been mentioned in any scientific research.

1.2. Researches on the legal status of controlling monopoly abuse in Vietnam

1.2.1. About regulations of law

Scientific research projects mention the legal status of controlling acts of abusing the monopoly position of enterprises in Vietnam, but there is no comprehensive analysis of the status of the law on controlling the abuse of the monopoly position of enterprises in Vietnam through a number of basic contents of legal provisions such as the determination of abuse, proceedings and authority of the state management authority or measures to handle abuse. Besides, these scientific studies have not pointed out the shortcomings of

the legal regulations on controlling acts of abusing the monopoly position of enterprises in a comprehensive manner according to the content of legal provisions.

1.2.2. On law enforcement controls monopoly position abuse

The practice of implementing laws on controlling acts of abusing the monopoly position of enterprises in Vietnam so far has not been mentioned much in scientific research projects, mainly on the case of VINAPCO. However, the authors have only analyzed briefly but have not evaluated in detail the whole case in order to better understand the advantages and limitations of law enforcement on controlling the monopoly position of enterprises in Vietnam today.

1.3. Regarding proposals, solutions to control the abuse of monopoly positions

It can be seen that, in each aspect and at different levels, scientific research projects have made many proposals in completing the legal provisions on controlling the abuse of monopoly position of enterprises in Vietnam. However, the proposals up to the present time are no longer consistent with the characteristics of the current Vietnamese economy, and rapid changes in the global economic globalization trend that Vietnam is participating in. Therefore, the author will propose solutions according to the peculiarities of Vietnam's socialist-oriented market economy in an independent and comprehensive way to complete and improve the effectiveness of the law on controlling the abuse of monopoly position of enterprises in Vietnam.

1.4. The issues that thesis inherits

The thesis inherits the views in the relevant scientific research on the rationale for monopoly phenomenon, acts of abusing the monopoly position of enterprises and the legal role of controlling the abuse of monopoly position of enterprises in maintaining and ensuring a healthy and fair competition environment according to the principles and purposes set by the State. Next, the thesis inherits the results of assessing the situation as well as the implementation of the law on controlling abuse of monopoly positions of enterprises in countries around the world such as the United States and Europe Union, China and Vietnam to propose solutions to complete and improve the effectiveness of the law on controlling the abuse of monopoly position of enterprises in Vietnam today.

1.5. The issues of the thesis that should continue to be researched

On the basis of inheriting the results of scientific research projects, the thesis identifies the issues that need to be continued to be implemented, including: (1) Determining monopoly phenomena in the specific conditions of the economy Vietnam

market today; (2) Basis and criteria for determining the abuse of monopoly position by enterprises; (3) Characteristics, method of adjustment, scope of regulation of the law to control the abuse of monopoly position of enterprises; (4) The basic principles of the law on controlling the abuse of monopoly position of enterprises in Vietnam; (5) The contents of the law on controlling acts of abuse of monopoly positions of enterprises in Vietnam include the authority to handle violations, proceedings and handling measures; (6) Solutions to complete and improve the effectiveness of law enforcement in controlling the abuse of monopoly position of enterprises in Vietnam.

2. Basis of theory and research approach of the thesis

2.1. Basis of theory

Adam Smith's competitive theory has shown that the concept of classical competitive freedom is interpreted as a free competitive environment of economic entities where there is no dominant participation of state and mônpoly status appears only when there is unlawful interference with this free competition process¹. This is also the foundation of competitive theory to solve theoretical issues set in the thesis.

More importantly, legally, the theoretical basis of forming legislation on controlling acts of abuse of monopoly or general law when forming the State - organizational model for each country then the political views with the "Legal Spirit" of enlightened philosopher Montesquieu are mainstream. Accordingly, the reasons that determine the legal status for each country are based on the specific conditions of each country, as well as the need to formulate legal provisions with each country and its relationship between the political institutions and the formal form of the State with the content of that State's laws are dialectical. Besides, the views of the Party and State of Vietnam on the completion of the socialist-oriented market economy institution with the relevant focus is to ensure fair, transparent, equal and controlled competition. Monopoly control in all fields is also the basic theoretical basis for the thesis of the PhD student in researching and providing appropriate and feasible solutions and proposals to ensure the effectiveness in the implementation process.

2.2. Research hypothesis

The thesis is analyzed and evaluated based on the hypothesis that the law on controlling abuse of monopoly position of enterprises and enforcement mechanism is an essential tool to ensure the best fair competition environment, equality and transparency that each socialist market-oriented economy aiming at building, protecting and

developing. However, the law on the abuse of monopoly position in Vietnam still has many limitations, making the implementation in reality difficult.

2.3. Research question

The thesis is responsible for solving the following research questions: (1) What are the criteria for determining the monopoly position of enterprises in the relevant market?; (2) What are the criteria for determining the abuse of monopoly position by enterprises?; (3) The impact of enterprises' abuse of monopoly position on the market?; (4) How is the lesson of some countries in the world on the law of controlling the abuse of monopoly position of enterprises for Vietnam?; (5) How does the law on controlling abuse of monopoly position of enterprises have basic contents? (6) How is the current law on controlling acts of abusing the monopoly position of enterprises in Vietnam, and what limitations exist to overcome and improve? (7) The orientation of the State of Vietnam in how to improve the law on controlling acts of abusing the monopoly position of enterprises, does it affect the content of law on behavior control abuse of monopoly position of enterprises in Vietnam?; (8) What solutions are needed to complete and improve the effectiveness of law enforcement in controlling the abuse of monopoly position of enterprises in Vietnam?

2.4. Research direction of the thesis

On the basis of acquiring the doctrines and perspectives of scientific research projects, the thesis continues to solve the legal issues of controlling the abuse of monopoly position of enterprises that have not been approached by scholars or have not been thoroughly solved in previous scientific research projects, including: (1) The thesis is an intensive scientific research on monopoly, abusive behavior using the monopoly position of enterprises and related characteristics in a legal perspective; (2) The thesis evaluates the law on controlling acts of abusing the monopoly position of enterprises in the world and the suitability as well as the specificity of the law on controlling the abuse of monopoly positions of enterprises in Vietnam; (3) The thesis inherits the assessments of scientific studies but further analyzes on the limitations of the law on controlling acts of abusing the monopoly position of enterprises in Vietnam; (4) The thesis offers orientation solutions as well as specific solutions to complete and improve the enforcement efficiency of laws on controlling abuse of monopoly position of enterprises Viet in Nam.

CHAPTER 1. THEORETICAL ISSUES ON ABUSE ACTS OF MONOPOLY POSITION AND LEGAL REGULATIONS ON CONTROL OF ABUSE ACTS OF MONOPOLY POSITION OF ENTERPRISES

1.1. Overview of the control of the abuse of monopoly position of enterprises

1.1.1. The concept of an enterprise's monopoly position in the economy

Monopoly is a phenomenon that appears in parallel with the development of a market economy. The conceptions of monopoly, including the antitrust law theory, were developed as part of modern theory of competition.

From an economic perspective, the researchers say that monopoly is "The phenomenon in which an enterprise is a seller of a particular product without any close goods to replace."

From a legal perspective, according to the Black's Law Dictionary, the 9th edition published in 2009, monopoly is construed as "A control or advantage achieved by a supplier or a manufacturer" achieved in a commercial market (ie a specific commodity or service) in a certain area"; "It is a state of the market in which only one economic entity produces a certain kind of goods or provides a certain kind of service." Thus, with the definition of an enterprise monopoly, it is understood that there is only one subject in the market, that is, the market is held by a single entity with 100% market share. This implies that it is the only subject that can decide how much to produce to deliver to the market, as well as deciding what price to sell to that market. Therefore, this definition also has similarities with economists implicitly agreeing that market power is crucial to determining monopoly phenomenon.

Judging from the access to economic theories of classical competition until now, as well as the views of economists and jurisprudence that can identify, the monopoly phenomenon is a phenomenon that a business entity holds maximum market power that can control the price and output of goods and services provided on a relevant market.

1.1.2. The concept of enterprises' abuse act of monopoly position

According to a research by John H. Shenefield & Irwin M. Stelzer, monopoly abuses are for the purpose: "... enterprises use monopoly position as a lever to increase their market share... creating illegal barriers to prevent competitors from entering the market, increasing the cost of competitors trying to stay on the market, stripping away opportunities to reach competitors' customers unfairly ... "

Thus, the act of abusing the monopoly position of an enterprise is an act that an enterprise uses its monopoly position in the market to exploit unreasonably competitive or disadvantageous advantages for the customers/consumers or create barriers to market entry for potential entities.

1.1.3. The meaning of controlling the abuse of monopoly position by enterprises

Acts of abusing the monopoly position of enterprises cause much damage to consumers and therefore it is one of the focus of controlling the abuse of monopoly position of businesses aiming at, in which the State will issue certain legal frameworks to force monopoly businesses not to perform certain acts to protect the interests of consumers and competitors.

1.2. Theoretical issues of law control the abuse of monopoly position of enterprises

1.2.1. History of establishment and development

Considering the history of the establishment and development of the law on the control of abuse of the monopoly position of enterprises in the world, it is first of all in the United States. Accordingly, the law of controlling the abuse of monopoly position is formed from three basic laws: the Sherman Act of 1890, the Clayton Act of 1914 and the Federal Trade Commission Act of 1914. Sherman's law approved in 1890 is considered one of the first laws in the world to control monopoly of enterprises. With the enactment of this law, the US Government clearly demonstrates the socio-political impetus of democratic control in economic institutions.

In Europe, there are many countries that are aware of the establishment of an early monopoly control law and have a certain influence on regional countries as well as the European Union's legal system about future monôply controls such as Germany, France and England. The European Union antitrust legislation is covered by the European Union's function agreement (TFEU). Article 102 of the TFEU prohibits acts of abusing the market power of monopoly or dominant companies in the market that affect the commercial activity between member states in the union. In Vietnam, the Competition Law of 2004 and the coming is the Competition Law of 2018, which includes legal provisions on controlling the abuse of monopoly position of enterprises.

1.2.2. Legal concept of controlling acts of abuse of monopoly position of enterprises

The requirement to control the abuse of the monopoly position of enterprises is naturally derived from the interests of the State and consumers. Control of enterprises' abuse of monopoly position is understood as a way of exercising the State's management function through its power to directly or indirectly affect the behaviors of enterprises. Industry has a monopoly position in the relevant market to ensure legitimate rights and interests of the State and consumers in society. The most important and effective support tools of the State in this regard are the competition policy and the law of controlling the abuse of monopoly position of enterprises that the State has built, issued and actual implementation.

Subjects of the law on controlling the abuse of monopoly position by enterprises include the abuse of monopoly positions of defined enterprises holding this position in the relevant market. The act of abusing the monopoly position of an enterprise is understood as the behavior unilaterally used by an enterprise in exploiting an advantageous position with absolute market power to manipulate the market, causing damage or loss to competitors or create barriers to entry of new competitors.

The scope of application of the law on the control of the abuse of monopoly positions by enterprises is determined to include the abuse of monopoly positions of enterprises carried out in and outside the country as long as that behavior affects the assurance of a fair and equitable competitive environment on the national territory, affecting the operating mechanism of that national market economy as well as the benefits public of the whole society that the country is protecting.

The basic principles of the law of controlling the abuse of monopoly position by enterprises include: (1) Principles of freedom of competition; (2) Principles of respect and assurance of State interests and public interests.

1.2.3. The basic contents of the law on controlling abuse of monopoly positions

1.2.2.1. Determine the monopoly position of the enterprise

a) Relevant market

The relevant market also has the characteristics of the basic market with the characteristics of economics. Relevant markets refer to the extent to which competition for enterprises' goods and services can occur. The determination of a relevant market needs to identify factors such as the assessment of the interchangeability of the feature,

the intended use, the choice of the person who needs all the above goods or services in the market; geographic factors; space factors; The direct competitors of businesses in the market. The determination of the relevant market is important, which is the basis for determining the competitive market boundaries between enterprises to determine the monopoly position of enterprises in the market being considered.

b) Market share and market power

Determining market share is the traditional method for identifying enterprises with monopoly positions. Market share is usually determined by the number of products of the enterprise in the market compared to the total quantity of products sold in the market of that enterprise and other competitors, actual revenue or forecast in the relevant market of that enterprise. Market share is an important factor in determining the financial strength, scale and related advantages of the enterprise. These are also factors that create the market power of enterprises in controlling and overviewing the development of the relevant market.

- 1.2.3.2. Identify acts of abusing the monopoly position of prohibited enterprises
 Normally the abuse of monopoly positions by enterprises includes:
- (1) Selling goods and services below the cost; (2) Unreasonable pricing; (3) Price discrimination; (4) Tying customers to buy accompanying products; (5) Maintain or attempt to maintain a monopoly position; (6) Imposing different conditions for similar transactions; (7) Imposing unreasonable trading conditions; (8) Trading and merging enterprises; (9) Refusing to trade without good reason; (10) Agreements to form a monopoly group.
- 1.2.3.3. Determine the power of the competition authority in handling the abuse of the monopoly position of the enterprise

The law on controlling acts of abuse of monopoly positions by enterprises provides for regulations on the power of State management agencies to clearly define the roles and functions for specific state management agencies in law enforcement to avoid the overlap of authority among agencies in the State apparatus system, ensuring the independence, concentration and flexibility of specialized State management agencies in specific fields.

1.2.3.4. Provisions of order and proceedings and measures to handle acts of abuse of the monopoly position of enterprises

Proceedings and procedures in the law on control of abuse of monopoly positions are the order of conducting investigations, procedures for handling and processing cases

of abuse of monopoly position of enterprises adopt specific manifestations of enterprises in the market which are prohibited by law. In most countries around the world when regulating competition order and procedures in general, including the proceedings and procedures applicable in the law on controlling acts of abusing position. Enterprises' rights are administrative proceedings and procedures.

CONCLUSION OF CHAPTER 1

From the history of establishing a law on controlling abuse of monopoly position, enterprises can see the conception of monopoly, the abuse of monopoly position of enterprises, and the legal control acts of abusing the monopoly position of enterprises and the current basic contents are based on the theory of competition to economists and the viewpoint of the state's competition policy and lawyers.

CHAPTER 2. CURRENT SITUATION OF LAW ON CONTROL OF ABUSE ACT OF MONOPOLY POSITION OF ENTERPRISES AND ACTUAL IMPLEMENTATION IN VIETNAM

2.1. Content of legal regulations on controlling acts of abusing the monopoly position of enterprises in Vietnam

2.1.1. About identifying enterprises with a monopoly position

- 2.1.1.1. Identify related market
- a) Market of related products

Market of related products is understood as "the market includes products and services that are capable of being replaced by users for reasons of characteristics, price and use"; the related geographic market is understood as "the geographical area in which the enterprise provides or consumes products or services with similar competitive conditions, distinguished from neighboring areas due to different competitive conditions between regions".

b) Related geographic market

According to Article 7 of Decree No. 116/2005/ND-CP, the related geographic market is a geographical area with similar competitive conditions for product categories and differentiation from other areas. The determinants of similar competitive conditions and help differentiate from other areas include cost, time of transporting goods in geographic areas and barriers to market entry.

c) Market share and market power

Significant market power of enterprises and groups of enterprises is determined based on the following factors: (1) Correlation between market share among enterprises in the relevant market; (2) Financial strength and size of enterprises; (3) Barriers to entry and market expansion for other enterprises; (4) Ability to hold, access and control the distribution and consumption market of goods, services or supply of goods and services; (5) Advantages of technology and technical infrastructure; (6) Ownership, holding, access to infrastructure; (6) Ownership and use rights of intellectual property rights; (7) Ability to switch to supply or demand for other related goods and services; (8) The specific elements in the industry and fields where enterprises are doing business.

New provisions of the Vietnam Competition Law of 2018 on this remarkable market power are inherited regulations on the ability to significantly limit competition of enterprises in the relevant market and regulations on market entry barriers under the guidance in Decree No. 116/2005/ND-CP (Article 8, Article 22) but also new, in accordance with the practice of monopoly enterprises in Vietnam and information international rules.

2.1.2. For acts of abuse of monopoly position that is prohibited

a) Imposing unreasonable purchase prices, selling prices of products or fixing minimum reselling prices, or potentially causing damage to customers

The law of controlling the abuse of monopoly position in Vietnam now concerns the interests of suppliers and customers using proprietary products when the regulations on acts related to the price imposition of monopoly enterprises.

- b) Restricting production and distribution of goods and services; market limits; hinder the development of technology, causing damage or potentially causing damage to customers
- c) Acts of applying different trade conditions in similar transactions leading to or potentially leading to preventing other businesses from participating, expanding markets or eliminating other enterprises

This behavior is prohibited to protect customers using proprietary products and services that aim to protect the competitive environment through ensuring the freedom of business of all subjects in the market. Regarding the factors considered as discrimination in transactions, we can refer to the guidance of the Decree No. 116/2005/ND-CP.

d) Imposing conditions for other enterprises to sign contracts to buy and sell goods, services or request other enterprises, customers accept obligations not directly related to

the object of the contract resulting in or potentially leading to prevent other enterprises from participating, expanding markets or eliminating other businesses enterprises

d) Preventing other enterprises from entering or expanding markets

This behavior is understood as an act of creating certain barriers to prevent participation or market expansion of other enterprises. The new regulation of Vietnam Competition Law in 2018 clearly shows objective awareness and is consistent with international practices as well as practices of enterprises in the market economy that significant market power is the determinant factor of the monopoly position of the enterprise, besides considering the secondary factor is the market share of the relevant market.

e) Imposing adverse conditions for customers

The Vietnam Competition Law of 2018 inherited intact from the provisions of the Vietnam Competition Law in 2004. Therefore, the act of imposing adverse conditions on customers is understood in accordance with the detailed instructions of Decree No. 116./ 2005/ND-CP dated September 15, 2006, detailing the implementation of a number of articles of the Competition Law which are acts that monopolies force customers to accept unconditionally the tasks need to be implemented and how difficulties and disadvantages for enterprises' customers during contract implementation. This may make it difficult to prove that violations by monopolies are difficult because the law of controlling the abuse of the monopoly position of Vietnamese enterprises has not given a basis for determining the unconditional acceptance of obligations to fulfill and how is the difficulty and disadvantage that those obligations cause to customers of monopolies in the process of contract performance. It is hoped that this restriction will be finalized in the provisions of the Government's decree guiding more details in the future.

g) Taking advantage of a monopoly position to unilaterally change or cancel a signed contract without a good reason

The object of this behavior is the customer, ie only those who use the monopoly's goods or services. However, similar to some of the situations mentioned above, in the monopoly market, not only will customers be damaged if they suddenly cancel the contract but also from the supplier for the operation of monopoly enterprises will also suffer losses.

2.1.3. Regarding jurisdiction to handle acts of abuse of the monopoly position of enterprises in Vietnam

Currently, regulations on organizational structure and enforcement of competition laws in Vietnam Competition Law in 2004 will have two state management agencies participating in the competition law enforcement process as a competition management agency and Competition Council. Vietnam Competition Law of 2018 has streamlined the competition administration authority and the competition council unified into the National Competition Committee. Regarding the legal status, the National Competition Committee under the Ministry of Industry and Trade is responsible for conducting competition proceedings. The restructuring of the competition administration authority and the competition council into the National Competition Committee on the one hand addresses the streamlined requirement of the State apparatus set by the Government, on the other hand eliminates the cumulation mechanism responsibilities of the members of the Competition Council have ensured the process of resolving cases related to the abuse of monopoly position of the business is always smooth, seamless, effective, focused and unified. At the same time, when considering and learning experiences of other countries in the world, this is entirely appropriate because the advantages of this model have been proved in the world and are suitable for the completion of the term. The regime of the old model has been operating for over 14 years.

2.1.4. Related to competition proceedings

Competition proceedings in the legislation on controlling abuse of monopoly positions are the order of conducting investigations and handling cases of abuse of the monopoly position of enterprises through the specific expression Specific of enterprises in the market. Competition procedures are stipulated in Chapter 5 of the Competition Law 2004 (Chapter 8 of the Competition Law of 2018). Besides, the provisions of the 2015 Administrative Procedure Law (for complaints about administrative decisions of competition administration agencies), the 2015 Civil Procedure Code (for those damages due to the application of preventive measures by the authorities) and the 2015 Criminal Procedure Code (for competition crimes must be tried in criminal proceedings).

2.1.5. Regarding sanctions dealing with abuse of enterprises' monopoly position in Vietnam

In the past, when the Vietnam Competition Law of 2018 was not yet adopted, the legal basis for dealing with acts of competition law in general and the law on controlling

acts of abuse of monopoly positions of enterprises in particular will be applied in accordance with Article 22 of Decree No. 71/2014/ND-CP detailing the handling of violations of law in the field of competition.

In addition to administrative sanctions, the Criminal Code of Vietnam has for the first time imposed criminal responsibility for the abuse of the monopoly position of businesses, at Article 217 of the Vietnam Penal Code in 2015. The Criminal Code 2015 is the legal basis for handling criminal liability for violations of enterprises that abuse abuse of monopoly in the interests of society. Accordingly, the Criminal Code 2015 regulates penal liability for abuse of the monopoly position of a business, particularly a commercial legal entity committing an abuse of monopoly position is fined from 3,000,000,000 VND to 5,000,000,000 VND or suspend operation for a period of 6 months to 2 years (Point b, Clause 4, Article 217). In addition, commercial entities may be subject to a fine of between VND 100,000,000 and VND 500,000,000, prohibit business, prohibit activities in certain areas or prohibit capital mobilization from 1 year to 3 years (Point c, Clause 4, Article 217).

2.2. Practical implementation of the law on controlling acts of abusing the monopoly position of enterprises in Vietnam

In the process of law enforcement on the control of the abuse of monopoly position, until now, the competition management agency and competition council have only officially conducted investigations and tried manage a case about the abuse of the monopoly position of the enterprise. Specifically, the aviation Petroleum Company VINAPCO has abused its monopoly position in the aviation fuel market to impose adverse conditions and unilaterally change/cancel the purchase and sale contract of air cargo JET-A1 number 34/PA-2008 for air cargo PACIFIC AIRLINES (PA). This is a handling of the Vietnam Competition Council, which clearly shows the unified application of legal provisions on controlling the abuse of monopoly position in Vietnam.

In view of objectively, the law on controlling acts of abuse of monopoly position of enterprises in Vietnam is formed but has not been effective in the implementation process. The cause of this problem is: Vietnam still recognizes many areas of State monopoly with its own control mechanism. Thus, the law on controlling acts of abuse of monopoly position of enterprises is not applicable to enterprises operating in the monopoly sector in Vietnam, but mainly Government enterprises. Because the regulated subjects of the law on controlling abuse of monopoly positions of enterprises in Vietnam

are only determined for enterprises with 100% market share in the process of enforcement, it has been abandoned; many cases of violations were omitted. Continuing the process of detecting violations and conducting a difficult investigation when State monopoly enterprises are directly under the managing ministries and local state management agencies. The monopoly enterprises tend to expand their business lines so collecting evidence to identify relevant markets, revenue ... is also a difficult obstacle for the public investigation work of law enforcement agencies on controlling acts of abusing the monopoly position of enterprises in Vietnam.

In fact, with the "principle of implementing State monopoly in commercial activities for essential goods and services that the State needs to monopolize in relation to national defense and security, ensuring national interests or other economic sectors without demand and ability to participate ", the risk of abuse of the monopoly position of the State agency directly performing or the enterprise is designated by the State agency to perform still happen. For example, in the field of gold bar production of the State Bank of Vietnam.

CONCLUSION OF CHAPTER 2

In addition to the updated regulations that interact with international practices, the law on control of abuse of Vietnam's monopoly position still has a number of improvements to enhance performance.

CHAPTER 3. ORIENTATIONS AND SOLUTIONS TO COMPLETE AND IMPROVE THE LEGAL PERFORMANCE EFFICIENCY ON CONTROL OF ABUSE ACT OF MONOPOLY ENTERPRISE IN VIETNAM

- 3.1. Orientation to improve the law on controlling acts of abusing the monopoly position of enterprises in Vietnam
- 3.1.1. Completing the law in line with the Party's policies and guidelines on building and completing the socialist-oriented market economy institution in Vietnam
- 3.1.2. Completing the law in accordance with the trend of international economic integration
- 3.1.3. Completing the law in accordance with the specific conditions of the socialist-oriented market economy and the development of enterprises in Vietnam
- 3.2. Solutions to improve the law on controlling acts of abusing the monopoly position of enterprises in Vietnam

3.2.1. About determining the monopoly position - the condition to control the abuse of the monopoly position of the enterprise

Therefore, the first factor should have additional amendments in Vietnam's competition law in the field of controlling monopoly phenomenon, which is a change in the concept of monopoly phenomenon, in which the concept should be conceived. Monopoly phenomenon does not necessarily have only one enterprise doing business in the market (monopoly still includes only one business enterprise operating in the market) but need to coordinate, considering market share factors combined with the market power of businesses. In addition, the world has also mentioned the group monopoly phenomenon, which should be supplemented in the definition of monopoly enterprises in Vietnam.

3.2.2. On the issue of State monopoly control

Currently, the criteria as well as the mechanism to identify the state and enterprises of state monopolies need to be completed and concretized in the following direction: criteria and mechanisms for determining the state and monopoly enterprises should be stipulated first in the law on controlling acts of abuse of monopoly position of enterprises. Subsequently, state monopolies can be exempted from complying with some provisions of the competition law regarding competition restrictions but must not abuse monopoly abuse to conduct acts in order to limit competition, market bias, maximize the benefits for enterprises.

3.2.3. On the issue of identifying acts of abuse of prohibited monopoly positions by monopoly enterprises

Firstly, is to add the concept of "buying for exclusion" when the monopolist buys input materials at high prices, making other competitors incapable of buying and being excluded from the market.

Secondly, it is not in the current behavior that the price of input materials is seriously reduced because of natural causes, but monopolists after the production process do not lower production costs as behaviors that would have happened to enterprises operating in competitive markets.

Thirdly, paragraph 4 of Article 13 of the Competition Law should be revised to protect the interests of consumers or product users.

Fourthly, a further part is in Clause 4, Article 13 of the Competition Law, and is stipulated in more detail in Article 29 of Decree No. 116/2005/ND-CP which needs to be

supplemented as a more appropriate case of forms of distribution the price differences of monopoly enterprises.

The act of imposing conditions for other enterprises to sign contracts for purchase and sale of goods or services or forcing other enterprises to accept other obligations unrelated to the contract specified in Clause 5, Article 13 of the competition law, once again lawmakers only consider that a group of customers who engage in monopoly transactions are those who can suffer losses from forced acts from the monopolists.

3.2.4. Regarding the issue of determining the legal status and authority of the competition agency

The independent position of the competition agency helps to ensure and promote the agency's concentration of expertise, righteousness, transparency and accountability. There should be a mechanism for the National Competition Committee to operate more independently, directly under the Government, with a monitoring mechanism of the National Assembly or the Standing Committee of the National Assembly to help ensure and promote professional focus transparency, transparency and accountability and responsibility of this agency.

3.2.5. Regarding sanctions to handle the abuse of monopoly position of enterprises

Therefore, it is recommended to change the sanction level, which is to set the penalty percentage on the lower floor, and not set the maximum penalty. In addition, there are two thresholds of 1% - 5% penalty rate and from 5% - 10% with clear bases for application, creating a relative legal basis for related entities. A further mechanism of sanctions should be considered to apply to Vietnamese law of US antitrust laws that regulate three times the compensation of monopolies for corporate behavior that cause damage to other entities from \$ 200,000 or more. Should abolish the provisions of the Competition Law of 2018 on the ceiling of administrative penalties is a maximum of 10% of the previous year but not exceeding the lowest level of the provisions in Clause 2 of Article 217 of the Criminal Code, ie no exceeding the fine of 3 billion VND. In addition, the law of controlling the abuse of monopoly position by enterprises also needs to add the level of punishment applied to the re-enforcement of the abuse of the monopoly position of the violated enterprises in the future. In addition, in the regulations on sanctions applied to monopoly firms, the act of abusing monopoly positions should be supplemented with the exemption case provision when satisfying the assigned conditions.

3.3. Solutions to improve law enforcement effectiveness in controlling the abuse of monopoly position of enterprises

3.3.1. Raising awareness and legal knowledge of related subjects

Firstly, it is necessary to promote the role of professional associations in disseminating legal knowledge and legal education to their members.

Secondly, the State should also have programs to disseminate legal knowledge on controlling acts of abusing the monopoly position of enterprises in a positive and proactive manner on the scope of further expansion through many media channels of mass information.

Next, judgments and decisions related to judging acts of abuse of the monopoly position of the enterprise need to be made public so that related entities can easily access, thereby improving the legal knowledge, cultural competitiveness and awareness of their supervision.

3.3.2. Enhance the role of state agencies in post-inspection activities

3.3.3. Speeding up the equitization process at State enterprises

CONCLUSION

On the basis of modern economic theories, the thesis has analyzed the theoretical basis of the establishment and development of laws on controlling acts of abusing the monopoly position of enterprises. Accordingly, the establishment and improvement of the law on controlling acts of abusing the monopoly position of enterprises is a realistic and objective requirement in the process of mobilizing the economy of each country. Legislation on controlling abuse of monopoly position plays an important role in preventing serious consequences for the market and the economy when abusing monopoly positions of the enterprise is carried out in fact. The study of the theoretical issues of the law on controlling acts of abusing the monopoly position of enterprises, the author adds the notion of monopoly position of enterprises, acts of abusing the position of monopoly rights and issues of controlling abusive behaviors on the basis of understanding these issues through relevant scientific research works as well as legal provisions on controlling abuse of monopoly positions of enterprises in developed countries around the world such as the United States, European Union or China. With the analysis and evaluation on the basis of comparing the status of the law on controlling acts of abusing the monopoly position of enterprises in Vietnam and some countries in the world in the process of inheriting and developing relevant economic doctrine, the thesis

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has made judgments about the positiveness as well as the limitations of the existing laws in Vietnam. Since then, the thesis offers a number of solutions to perfect the law on controlling acts of abusing the monopoly position of enterprises as well as improving the efficiency in the implementation process on the basis of conformity with the orientation of The Communist Party of Vietnam on perfecting the market economy institution, in line with international standards and international commitments that Vietnam has participated.