

LAW AND ECONOMICS

VIETNAM'S STATE MONOPOLIES: A HISTORICAL DEVELOPMENT



Tran Thang Long^{a, 1}

^a Ho Chi Minh City University of Law, Ho Chi Minh, Vietnam
ttlong@hcmulaw.edu.vn

Abstract

This paper explores historical developmental stages, rationales for the existence, and characteristics of Vietnam's state monopolies as legal structures. It contributes to the explanation why competition policy concerns arising from the existence of state monopolies in Vietnam are long-lasting issues and thus hopes to enrich the source of knowledge about the formation and work of state monopolies in transitional economies. It is concluded that Vietnam's state monopolies have strongly been influenced by political thinking and determined by its socio-economic context and the assertion of "leading role of state economy" concept.

¹ Author

PhD in Law (LTU, Australia), Deputy Head of Division of Legal English in Ho Chi Minh City University of Law, Deputy Head of Division of Legal English, Ho Chi Minh City University of Law

² Nguyen tat Thanh Q.4 Ho Chi Minh City, Ho Chi Minh, Vietnam

Keywords

State monopolies, competition law, state-owned enterprises, state economic groups, anti-competitive practices Vietnam, competition authority

DOI 10.17803/2313-5395.2017.2.8.361-387

TABLE OF CONTENTS

I. Introduction.....	362
II. The development of Vietnam's state monopolies	365
1. "Unions of State-Run Enterprises" (Xi Nghiep Quoc Doanh). . .	367
a. Formation.....	367
b. Modification of the model	369
2. State general corporations (GCs) — the second stage towards the formation of state monopolies	372
a. The legal basis for state corporations	372
b. Rationales for their establishment	374
c. Achievements and constraints	375
3. State economic groups (EGs) — the third stage in forming state monopolies	377
a. Development	377
b. Rationales	378
III. Conclusion.....	380
References	382

I. INTRODUCTION

The 1986 launch of a market-oriented economic reform (*Doi Moi*) in erstwhile communist Vietnam was the start of an extraordinary transition in its political economy involving the transition of state control of production to private ownership. This transition has been well documented, at least from outside.² However, that the reintroduction

² See for example, Adam Fforde, *Vietnamese State Industry and the Political economy of Commercial Renaissance: dragon's tooth or curate's egg?* (Chandos, 2007); Adam Fforde and Stefan de Vylder, *From Plan to Market The Economic Transition of Vietnam*, West view Press, 1996; Martin Gaisnborough *The (Neglected) Statist Bias and the Developmental State: the Case of Singapore and Vietnam* (2009) 30 Third World Quarterly 1317; John Stanley Gillespie, *Transplanting Commercial*

of markets involved wholesale legislative change allowing for private property and capital, and business laws to allow for contract and organization is frequently overlooked.³ In particular, little has been written on the changes in the legal form of state-owned enterprises (SOEs) and the application to them of competition laws — the very core of the transition process in legal terms. Investigation of these aspects of the process provides an ideal case study of the particular issues of transition from one form of organization of the economy to another. It highlights the complex issues of the interrelationship of legal form with economic structure,⁴ of defining and confining the political sphere, and of the control of market forces through the rule of law.⁵ It also highlights in acute form problems with transplantation theory in law and development theory in economics.⁶ It challenges political and

Law Reform, Developing a "Rule of Law" State in Vietnam (Ashgate, 2006); P. Masina, *Vietnam's Development Strategies*: Routledge, 2006; Luke Aloysius McGrath, Vietnam's Struggle to Balance Sovereignty, Centralization and Foreign Investment under DoiMoi (1996) 18 *Fordham International Law Journal* 2095.

³ That such changes are necessary is a relatively banal proposition: see Tom Ginsburg, Does Law Matter for Economic Development? Evidence from East Asia (2000) 34 *Law and Society Review* 829. However, there appears to be little such literature in relation to Vietnam.

⁴ Ronald H. Coase, The Nature of the Firm (1937) 4 *Economica* 1.

⁵ Concepts of "politics", "market" and "market forces", and "law" are inevitably theory contingent. The existing literature focuses on transition as a political process of economic change in which politics and legislative change are conflated and market as an ideal type in the Weberian sense is the touchstone through which such changes are evaluated. See, for example, Tom Ginsburg's utilisation of Weberian approaches in his review of the development literature in "Does Law Matter for Economic Development? Evidence from East Asia", (2000) 34 *Law and Society Review* 829. Without denying the validity or utility of such an approach, an assumed (it really needs no justification) contention here is that there are other fruitful ways of looking at the transition. In the instant essay, the approach is of legal structure (perhaps conflated with political decree, as the distinction is problematic in Vietnam) and its relationship with the reality of markets as analysed in the traditional triptych of conduct, structure and performance.

⁶ See, for example, Alan Watson, *Legal Transplants: An Approach to Comparative Law* (1993) 95, Pierre Legrand, The Impossibility of "Legal Transplants" (1997) 4 *Maastricht Journal of European and Comparative Law*, 111; Otto Kahn-Freund, "On Use and Misuse of Comparative Law" (1974) 37 *Modern Law Review*, 1

economic theories and combinations of them to take greater cognizance of the legal structures of society.⁷

This paper comprises three sections. In the first, it reviews the developmental stages, rationales for the existence, and characteristics of Vietnam's state monopolies as legal structures. Briefly, after *Doi Moi* a number of the larger SOEs were selected to be upgraded into state monopolies as either "state general corporations" (GCs) or "state economic groups" (EGs). The reasons given for their continued existence in these forms included that they were the legacy of the previous economy which required a transitional period; the necessity of guaranteeing a sufficient supply of public goods; that they were useful tools for the state to intervene in the economy when needed; and the demand for Vietnam's international economic integration. Although a series of important modifications and adjustments to their structures were undertaken, the application of "the leading role of the state economic sector" principle meant that those state monopolies selected for upgrade still retained their nature as state-owned enterprises. This involved in particular close links with the state and the dominance of political viewpoints in their development. Moreover, as Vietnam's state

⁷ In concentrating on political "distortions" of the paradigmatic economic market model, the existing literature, particularly cited in n. 1 above, tracing the Vietnamese transition post *Doi Moi*, fails to recognise the structuration represented by legal frameworks both as a matter of contract and of organisation (Terence Daintith and Gunther Teubner (eds.), *Contract and Organisation: Legal Analysis in the Light of Economic and Social Theory*, W. de Gruyter, 1986), property definition (Ronald H Coase, *The Problem of Social Cost* (1960) 3 *Journal of Law and Economics* 1) and the influence of the legal system (Roe M. J., *A Theory of Path Dependence in Corporate Ownership and Governance* (1999) 52 *Stanford Law Review* 127), and the regulation of the operation of the market (Robert H Bork, *The Antitrust Paradox*, Basic Books, 1978). This article deals with legal forms of organization and their regulation in terms of the regulation of the operation of markets as the first and most obvious of such structurations. See generally Stephan Haggard, Andrew Macintyre and Lydia Tiede, *The Rule of law and Economic Development*, (2008) 11 *Annual Review of Political Science* 205; Tom Ginsburg, *Does Law Matter for Economic Development? Evidence from East Asia* (2000) 34 *Law and Society Review* 829 ; Tor Kveier, *The legal Turn in Late Development Theory: the Rule of Law and the World Bank's Development Model* (2011) 52 *Harvard International Law Journal* 287. Of course, such an approach renders problematic the nature of the state and of law within Vietnam, a point to which the text soon turns.

monopolies were established by administrative decisions, rather than created through market processes, the establishment of both GCs and EGs was simply a transformation of a monopoly from being a “state monopoly” to being a “state enterprise monopoly”.

II. THE DEVELOPMENT OF VIETNAM'S STATE MONOPOLIES

For the purposes of this paper, a “state monopoly” can be defined as an economic entity controlled or influenced by the state which — having achieved sufficient economic strength — is able to conduct monopolistic behavior that is subject to competition rules.⁸ A “state enterprise” is state monopoly falling within the definition of “enterprise” in the *Enterprises Law 2014*,⁹ owned by the state and distinguishable from a state management body. Article 4(9) of the *Enterprises Law 2014* also defines state owned enterprise as an enterprise in which the State holds one hundred (100) per cent of the charter capital. It is characterized by a close link with the state due to its ownership by the state and is created by means of administrative orders. Finally, it is a “monopolist”, meaning that it meets the normal criteria of a monopoly.¹⁰

⁸ Le Hoang Oanh, *Binh luan Khoa hoc Luat Canh tranh* [Commentary on the Law on Competition] (National Political Publishing House, 2005).

⁹ Article 4(1) of the *Enterprises Law 2014* defines an enterprise as an economic institution that has its own name, assets, stable office and is duly constituted for the purpose of conducting business.

¹⁰ Mention of “monopoly” instantly raises the issue of whether the word is deployed in the economic sense of “natural monopoly”, or whether it includes those monopolies created by artificial barriers to entry. While not strictly of relevance here, it is worth parenthetically elaborating. Vietnamese state monopolies are said by Vietnamese scholars to have the characteristics of both “natural monopoly” and “profit-seeking” enterprise. According to them, a “natural monopoly” refers to a monopolist that has arisen thanks to technological characteristics and demands for products provided by the firm(s) in the economy. “Natural monopoly” thus exists objectively and does not depend on historical factors or the impacts of state policies. (Oanh, above n 7,64; UNDP and Central Institute for Economic Management (CIEM), *Mot so Van de Phap ly va The che ve Chinh sach CanhtranhvaKiemsoat Doc quyenKinhdoanh* [Legal and Institutional Issues concerning Competition Policies and Control of Business Monopoly] (Transport Publishing House, 2002) 74; Dang Vu Huan, *Phap luat Ve Kiem soat Doc quyen va Chong Canh tranh Khong Lanh manh o Vietnam* [Law concerning

State monopolies in Vietnam were formed under the aegis of Vietnam's Communist Party (CPV), in which the policy of the "leading role" of state economy has remained unchanged and unchangeable. The "leading role of the state economy" was clearly reaffirmed in Art. 51(1) of the 2013 *Constitution* that "The Vietnamese economy is a socialist-oriented market economy with varied forms of ownership and economic sectors; the state economy plays the leading role."

Monopoly Control and Anti-Unfair Competition in Vietnam][PhD in Law Thesis, Hanoi Law University, 2002) 28. Nguyen Nhu Phat, Baocao Tong hop de tai "Xay dung The che Canhtranh Thitruong o Viet Nam" [Overall Report of the Project "Building up a Market Competition Institution in Vietnam"] (2005) 7). This understanding is almost coordinate with the common economic understanding of "natural monopoly" in which an industry is a natural monopoly if a single firm can serve the market at a lower cost than multiple firms: Alison Jones and Brenda Sufrin, *EC Competition Law – Text, Cases, and Materials* (Oxford University Press, 3rd ed, 2008) 8 Alfred Kahn, *The Economics of Regulation: Principles and Institutions* (MIT Press, Reissue Edition, 1988) Chapter 4; Sanford V Berg, Fundamentals of Economic Regulation (paper presented at the Fifth Annual PURC/World Bank International Training Program on Utility Regulation, January 11, 1999); Mark A Jamison and Sanford V Berg, *Annotated Reading List for a Body of Knowledge of Infrastructure Regulation* (2008) <http://www.regulationbodyofknowledge.org/documents/bok/chapter2.pdf>; William W. Sharkey, *The Theory of Natural Monopoly* (Cambridge University Press, 1982) 2; Frederik M. Sherer, *Industrial Market Structure and Economic Performance* (Houghton Mifflin, 2nd ed, 1980); George Yarrow, The Economics of Regulation in Venkata Vemuri Ramanadham (ed.) *Privatization and After: Monitoring and Regulation* (Routledge, 1994) 38; see also Organisation for Economic Co-operation and Development (OECD), *Corporate Governance of State-Owned Enterprises: A Survey of OECD Countries* (OECD, Publishing, 2005) 20. "Natural monopolies" in this economic sense often operate in industries that provide public services to facilitate production and everyday life, such as public transportation, postal services, and telecommunication; and those industries that involve public interest and leisure: Xueguo Wen, Market Dominance by China's Public Utility Enterprises (2008–2009) 75 *Antitrust Law Journal* 153. It is problematic to disaggregate the natural monopoly elements of existing monopolies, although to do so has been the objective of much competition policy reform in OECD countries; programs of legislative reviews are frequently recommended for this purpose; see David Wishart, Competition Policy: the Reform of Laws and Regulation [2011] *LAWASIA Journal* 39 and, more generally, Chris Arup and David Wishart, *Competition Policy with Legal Form – reviewing Australian and overseas experience* (a Special Edition of *Law in Context* 2002, Vol. 20(1)) Federation, 2002. In Vietnam, all natural monopolies in the economic sense of the phrase were in the hands of the state: Le Hoang Tung, Competition and Monopoly in Vietnam (Paper presented at International Workshop on Competition Policy in Seoul, July 30 – August 2, 2001); in these areas, there were only one or few state firms operating because the

Historically, Vietnam's state monopolies came to exist in three stages: (i) the formation of the union of state-run enterprises; (ii) the establishment of state general corporations (GCs) and (iii) the formation of state economic groups (EGs). The next section describes this in the context of socialist ideas and political determination as illustrated by the policies of the CPV.

1. "UNIONS OF STATE-RUN ENTERPRISES" (XI NGHIEP QUOC DOANH)¹¹

a. Formation

The state economic sector in Vietnam emerged in the late 1950s with the introduction of a Soviet-style centrally planned economy¹² (a so-called Stalinist-derived economic system¹³) in the North and later in the whole country following its reunification. The state sector developed rapidly to seize the leading role in the economy.¹⁴ Before

participation of the private sector was rejected. They were state monopolies, created by the state by means of administrative decisions and legislation, in order to meet the demand for the socio-economic development of the country during a specific period of time. See Oanh, above n. 1, 64. Hence in the Vietnamese context, there is little to differentiate a natural monopoly from a state monopoly: Tung, above, and a monopoly means state monopolisation; for example, there are state corporations in areas such as in telecommunication, mineral exploitation, ship building, energy, petroleum, etc. They are either EGs or larger GCs, of which there are only a comparative few. Ultimately the distinction is meaningless in the context here, where the question is of the control of monopolies whether natural or state-created or even evolved as a matter of the survival of the fittest (which last may not be different from either of the former).

¹¹ According to Tu Dien Tieng Viet [the Dictionary of Vietnamese], *Xi nghiep Quoc doanh* is defined as "an economic organisation established, invested and managed by the state to carry out business activities or to provide public services in order to fulfil socio-economic targets set by the state". See <http://dictionary.bachkhoa-toanthu.gov.vn/default.aspx?param=134BaWQ9ODMyMyZncm91cGlkPTgma2luZD-oma2V5d29yZDo=&page=19>.

¹² The command model affected many aspects of the economy and this was seen in the recognition of economic sectors. As a result, by the 1960s, the legal system did not recognise the private sector at all and only state-run companies and collectives were accepted. See Gillespie, above n. 1, 14.

¹³ Luke Aloysius McGrath, above n. 1.

¹⁴ Truong Dong Loc, *Equitisation and Stock-Market Development: the Case of Vietnam* (PhD in Economics Thesis, University of Groningen, 2006) 37.

comprehensive reform in 1986 (Doi Moi), domination of the economy by the state sector was a legal principle.¹⁵ State-run enterprises were the main “players”,¹⁶ basically operating in an environment without competitors¹⁷ and were managed by either the central government — through line ministries or local governments.¹⁸

The initiative for the development of a centralized and large scale model of state-owned enterprises was first mentioned earlier in government *Decree No. 302/HDBT* dated 20 December 1978. It aimed to develop a model of state run enterprises with larger economies of

¹⁵ Nguyen Nhu Phat, The Role of Law during the Formation of a Market-driven mechanism in Vietnam in John Stanley Gillespie (ed), *Commercial Legal Developments in Vietnam: Vietnamese and Foreign Commentaries* (Butterworths, 1997). Fforde and de Vylder (above n. 1, 4, note 9) make the point that there was, at least before the 1990s, little distinction between party decree and state legislation. They proceed to use the term decree and legislation interchangeably, although deny that to do so is to implicate Vietnam in a Western sense of “the rule of law”. Profound jurisprudential question arise at this point. Certainly the question of the difference between “legislation” including party decrees in the sense of rule of law and management from within the State/Party structure is begged. Here we take the view above, that formal decree is one thing and management another, and that the latter is a matter of necessarily incomplete competition policy.

¹⁶ Hubert Izdebski, Legal Aspects in Economic Reforms in Socialist Countries (1989) 37 (4) *American Journal of Comparative Law* 730. See also Vu Lien Huong, *The Role of Competition Policy and Approaching Method of Competition Bill of Vietnam* (2003) www.apecp.org.tw/doc/APEC-OECD/2003-12/014.pdf; Le Danh Vinh, Building Competition Law in Vietnam to Meet the Need of Regulating Market Economy and in the light of Trade Liberalization and International Economic Integration (Paper presented at ASEAN Conference on Fair Competition Law and Policy in the ASEAN Free Trade Area (AFTA) Bali, March 5–7, 2003) http://www.jftc.go.jp/eacpf/04/vietnam_p.pdf.

¹⁷ Sujian Guo, *The Political Economy of Asian Transition from Communism* (Ashgate, 2006) 32; Tran Tien Cuong, Restructuring of State-Owned Enterprises and Relation between the State and State-Owned Enterprises in Vietnam, in John Stanley Gillespie (ed), *Commercial Legal Developments in Vietnam: Vietnamese and Foreign Commentaries* (Butterworths, 1997) 385.

¹⁸ Borje Ljunggren, *The Challenges of Reform in Indochina* (1993) cited by Le Khan and Ashol K. Dutt, Central Planning and Market Elements in Vietnam’s Economy in Ashok K Dutt et al (eds), *Challenges to Asian Urbanization in the 21st Century* (Kluwer Academic Publishers, 2003) 105; Fforde and de Vylder, above n. 1, 58.

scale.¹⁹ The term “Union of State-Run Enterprises” (*Lien Hiep Xi nghiep Quoc doanh*)²⁰ used in this Decree describes an organization consisting of several enterprises having close relationships in the same economic and technical areas.²¹ In addition, *Xi nghiep Lien hiep* conducted both business and state management functions.²²

The performance of Unions of State-Run Enterprises had some encouraging achievements. They contributed significantly to the enhancement of production capacity, the maintenance of product quality, the fulfillment of assigned tasks and the satisfaction of local consumers and of export demands. More importantly, they led to new thinking regarding the management of enterprises of greater size and capacity and about the form of industrial behavior. There were a number of successful such unions, including as to textiles and railways, and some unions became typical seeds for the development of the next models of state enterprises.²³

b. Modification of the model

Despite its successes, the Union of State-Run Enterprises model showed critical flaws. Some such unions even became obstacles to economic development in later periods. Unions were simply vertical

¹⁹ Bui Van Huyen, *Xay dung va Phat trien Tap doan Kinh te o Viet Nam* [Building and Developing Economic Groups in Vietnam] (National Political Publishing House, 2008) 98.

²⁰ The term “Union of State-Run Enterprises” [*Lien hiep Xi nghiep Quoc doanh*] was later defined as “an organization carrying out economic activities in production and services, whose members are state-run enterprises”. The *Statute of Union of State-Run Enterprises* attached to the *Decree No. 27/HDBT* on 22 March 1989 <http://www.thuvienphapluat.vn/archive/Nghi-dinh/Nghi-dinh-27-HDBT-Dieu-le-Lien-hiep-xi-nghiep-quoc-doanh-vb37732t11.aspx>.

²¹ This was stipulated in the *Statute of Enterprise Run Union* attached to the *Decree No. 302*. There were several unions consisting of state-run firms operating in the same range of production or provision of goods and services such as food, textile and garments. For example, Nam Dinh Textile during 1980 was a typical one consisting of a number of textile companies. Similarly, from 1989 to 2003, Vietnam Railways was another one which consists of many companies involving in the provision of railways services.

²² Huyen, above n 18, 98.

²³ *Ibid* 99.

combinations of enterprises without an economic rationale. They became “intermediate administrative bodies”, hindering business activities of their member enterprises. There was also a lack of managerial capability, with outdated thinking among CEOs. Local and provincial Unions were then created.²⁴ As a result, the entire economy was vertically partitioned, failing to mobilize all resources for development

After the 6th CPV Congress in December 1986, the centrally planned mechanism came to an end and had to be replaced by a market-oriented economy. Numerous important documents were promulgated to accelerate the SOE reform.²⁵ Among them was the *Decree No. 217/HĐBT* on 14/11/1987 concerning the renewal of the planning, economic accounting and socialist business of state enterprises. This Decree began the commercialization process of state enterprises and marked the most important step in acknowledgement of this change,²⁶ placing state enterprises on a commercial footing, with increased autonomy and financial responsibility.²⁷ Autonomy was initially granted to SOEs to formulate and implement their own long-term, medium-term and short-term operating plans, based on socio-economic development guidelines set by the Government.²⁸

²⁴ Ibid.

²⁵ Mekong Economics, *SOE Reform in Vietnam* (2002) <http://www.mekongeconomics.com/Document/Publications/2002/MKE%20SOE%20Reform%20in%20Vietnam.pdf>.

²⁶ Vu QuocNgu, *The State-Owned Enterprise Reform in Vietnam: Process and Achievements* (2002) <http://www.iseas.edu.sg/vr42002.pdf>.

²⁷ Brian Van Arkadie and Raymond Mallon, *Vietnam – A Transition Tiger?* (Asia Pacific Press, 2003); Mekong Economics, above n 24.

²⁸ Loc, above n 13; Ngu, above n 25; Arkadie and Mallon, above n 26; Nguyen Van Huy and Tran Van Nghia, Government Policies and State-Owned Enterprise Reform in Ng Chee Yuen, Nick J Freeman and Frank H Huynh (eds), *State-Owned Enterprise Reform in Vietnam: Lesson from Asia* (Institute of Southeast Asian Studies, 1996); Le Viet Thai, Vu Xuan Nguyet Hong, Tran Van Hoa, nti-trust Law and Competition Policy in Vietnam: Macroeconomic Perspective in Tran Van Hoa (Ed) *Competition Policy and Global Competitiveness in Major Asian Economies* (Edward Elgar Publishing, 2003) 140; Elizabeth St. George and Mary Quilty, Reconfiguring Socialist Ideology in Vietnam: The 2006 Tenth National Party Congress and the lead-up to Vietnam’s entry into the World Trade Organisation (Paper presented at the 16th Biennial Conference of the Asian Studies Association of Australia, Wollongong, 26–29 June 2006).

The next development in this regard was the release of *Decree No. 27/HĐBT* on 22/3/1989, introducing a new Statute for enterprise unions. A “Union of State-Run Enterprises” was specified as a large scale state enterprise which consists of member enterprises having close relations in terms of business branches.²⁹ According to this Decree, existing unions were to be classified into two groups. The first one included those enterprises operating in the same industry (e.g. textile, food processing and chemicals) and which voluntarily amalgamated into Unions.³⁰ The second group had a higher level of economic concentration consisting of state companies operating in specific industries such as railways, electricity, aviation, etc. Unlike the first group, these Unions were created by means of administrative orders and the union’s properties and assets were combined from those of Union members. Union membership was to be compulsory and member enterprises would not have a fully independent legal status.³¹ These Unions were later restructured to form GCs according to the *Decree No. 91* as key constituents.³²

²⁹ Huyen, above n 18, 98.

³⁰ In this group, the properties of unions were contributed by those of union members and a Board of Management was formed to include representatives of union members. However, the activities of the unions were implemented by the members themselves. The unions in fact did not have actual rights in making important decisions regarding the business activities of the entire union.

³¹ Arkadie and Mallon, above n 26, 132.

³² Vu Huy Tu et al, *Co cau Lai Doanhnhghep Nhanuoctheo Luat Doanhnhghep Nam 2005* [Restructuring State Corporations according to the *Enterprises Law 2005*] (National Political Publishing House, 2007) 17. For example, the Machines and Industrial Equipment Corporation (MIEC) was among the first corporations to be established in accordance with Statute 27. The MIEC was established on 12/5/1990 by *Decree No. 155/HĐBT* of the Council of Ministers. See www.mie.com.vn; Other examples are the Vietnam Civil Aviation Corporation, Vietnam General Rubber Corporation (GERUCO), the Vietnam Railway Corporation (VR); following *Decision No. 575/QĐ/TCCB-LD* dated April 10, 1990 of the Minister of Transport, the General Railway Administration (established in 1955 as a administration department) was reformed to become the Vietnam Railway Union. See <http://www.vr.com.vn/English/history.htm>.

Ultimately the Union model came to an end under *Decree No. 388/HĐBT of Council of Ministers* dated 20 November 1991.³³ All state enterprises were required to re-register or close. However, the desire for large economic organizations having a high level of capital consolidation and competitive capacity to integrate into the world market³⁴ remained as important as before.

The Unions of State-Run Enterprises model of the legal status of state-run enterprises was unsuccessful because no actual changes were made in terms of ownership of state assets and management mechanisms. However, they did form a basic foundation for the establishment of groups of state enterprises and created a remarkable change in the recognition of the role of state enterprises, as well as demands for their reform and acknowledgement of the need for larger and more powerful state enterprises.

2. STATE GENERAL CORPORATIONS (GCS) — THE SECOND STAGE TOWARDS THE FORMATION OF STATE MONOPOLIES

a. The legal basis for state corporations

The next significant step on the path to state monopolies was marked by the establishment of state general corporations (GC)³⁵ in the equitization (securitization) process of SOEs. The *Decisions No. 90 and 91/TTg*³⁶ were adopted during this time to consolidate state enterprises

³³ The Decree was introduced under calls for the consolidation of the state enterprise sector from the late 1990s, when serious problems regarding state enterprises occurred under the effects of the world political situation, tougher budget constraints and increased competition. See Arkadie and Mallon, above n 26, 125–126.

³⁴ Communist Party of Vietnam, *Documents of the 7th Meeting of Central Committee Section VII* (National Political Publishing House, 1994) 90.

³⁵ This was due to the call for grouping state enterprises into large corporations mentioned in the Political Report of the 7th CPV Party Congress. See Arkadie and Mallon, above n 26, 132.

³⁶ Two Decisions were adopted on 07/3/1994 on the establishment of some GCs. While *Decision No. 90* aimed to establish state corporations with at least five voluntary SOE members and a minimum legal capital of VND100 billion, *Decision No. 91* aimed to form much larger corporations with at least seven SOE members appointed by the State and a minimum legal capital of VND1,000 billion. See UNDP Vietnam, *The State as Investor: Equitisation, Privatisation and the Transformation of SOEs in Viet Nam*

in order to rationalize state enterprise supervision and to facilitate the abolition of line ministry and local authority control over state enterprises.³⁷ *Decision No. 91* was aimed specifically at experimentally creating numerous large pilot state corporations following the model of business groups. Such pivotal GCs were believed to enable production synergies and the pooling of investments of member enterprises.³⁸ For these reasons the corporations to be selected were leading companies and corporations in the same economic branches and in the same territorial areas. However, given the compulsory criteria set forth in the decision, most of the GCs established by this *Decision No. 91* were centrally run enterprises, even though the decision actually did not state clearly whether state general corporations had to be formed from state central or local run enterprises. Additionally, they had to “occupy important positions in the national economy, satisfy the needs of the domestic market and promise to expand their business relations abroad”.³⁹ The term “economic group” was then used to refer to those consolidated corporations.

With the creation of such GCs, a new form of legal representation of organizations was introduced, including holding company and parent-subsidary models.⁴⁰ However, due to the ambiguity of the term “economic groups”, 18 of the first state corporations established according to *Decision No. 91* were not officially called “state economic groups” (*Tap doan Kinh te Nha nuoc*), but rather they were termed “State Corporations 91” (*Tong Cong ty 91*). In fact, the low level of

(2006), 15 <http://www.undp.org.vn/undpLive/System/Publications/Publication-Details?contentId=2079&languageId=1&categoryName=&CategoryConditionUse=>; Leila Webster and M Reza Amin, *Equitisation of State Enterprises in Vietnam: Experience to Date* (2008) [http://www.ifc.org/ifcext/mekongpsdf.nsf/AttachmentsByTitle/PSDP+3/\\$FILE/PSDP-No-3-EN.pdf](http://www.ifc.org/ifcext/mekongpsdf.nsf/AttachmentsByTitle/PSDP+3/$FILE/PSDP-No-3-EN.pdf).

³⁷ The two Decisions also put an end to the vagueness regarding procedures for re-registration of existing unions of enterprises and state enterprises. See Arkadie and Mallon, above n 26, 131–132; Mekong Economics, above n 24.

³⁸ UNDP Vietnam, above n 35.

³⁹ Article 1 of the *Decision No. 91/TTg* of the Prime Minister on the Establishment of the Pilot Business Groups.

⁴⁰ UNDP Vietnam, above n. 35.

capital consolidation, limited competitive capacity and administrative failures were reasons for the demise of this model, even though they had been expected to become “giants” in the Vietnamese economy.

b. Rationales for their establishment

In general, the establishment of GCs was aimed at meeting the need for further SOE reform and the demand for deeper integration into the world economy. First, state enterprises were to be restructured and consolidated to create powerful and capable corporations to act in leading roles in the economy. Thus, the formation of GCs was regarded as significant for improving the business performance of state enterprises⁴¹ and for gradually removing the direct intervention of line ministries and local administration.⁴² This was expected to enhance the competitive capacity of the “Corporations” themselves and their member companies.⁴³ GCs were also to play an important role in the development and application of technology and science investment in all the corporations and in each member company.

Second, the form of GCs was to facilitate the process of consolidation of capital in state-owned enterprises. Capital contributed to corporations was to be invested reasonably in effective companies and projects, allowing corporations to concentrate on long-term projects and limiting the situation in which investment was scattered over every company. Being incorporated into a group, a company could supposedly diversify its operations, benefit from gaining more market share, have more flexible business strategies, avoid risk, have the chance to maximize its profits by reducing tax payments and the costs of share issuance and enhance the ability to pay debt service charges.⁴⁴

⁴¹ Arkadie and Mallon, above n. 26, 131–132.

⁴² Khuc Hoang Giang, *Mot so Van de ve Diavi Phaply Cua Tong Cong ty Nha nuoc Trong Nen Kinh te Thi truong o Viet Nam* [Some Issues regarding the Legal Position of State General Corporations in Vietnam’s Market Economy] (LLM Thesis, Hochiminh City Law University, 2000) 20.

⁴³ Ibid.

⁴⁴ Le Thi Lanh, *Groups in Vietnam: Situation and Future Development* (2001) <http://www.ueh.edu.vn/tcptkt/english/2001/thang05/wlanh.htm>.

c. Achievements and constraints

The formation of GCs shows the desire of the Vietnamese government to make SOEs more capable in the context of Vietnam's international economic integration, to fulfill the need for faster trade liberalization⁴⁵ and to deal with the participation of transnational corporations. GCs are said to have brought positive effects.⁴⁶ Those established in key industries of the economy are believed to have helped in promoting growth, stabilizing socioeconomic conditions and ensuring their orientation and regulation by the state.⁴⁷ Besides, they contributed remarkably to the state budget and to employment arrangements.⁴⁸

The establishment of GCs, however, did not meet the objective requirements of economic development and did not achieve the expected targets. GCs were generally small-scale, as compared to those in the region and the world. Their business efficiency was still far from what was expected, despite receiving support and investments from the state.⁴⁹ Their role in terms of technology support and market creation was limited. Many of them continued to rely on state support. There was also a failure in the attempt to separate business functions from ownership and management functions. In fact, GCs still exercised management functions such as producing sectoral schemes, coordinating international relations and being involved indirectly in price-setting. Moreover, ownership remained opaque.

⁴⁵ Hisaaki Mitsui, *Vietnam's State Enterprise Reform; What Phase has it Reached?* (1997), 48 <http://www.springerlink.com/content/1047247011j4vwpq/fulltext.pdf>.

⁴⁶ Tran Tien Cuong, *Restructuring of State-Owned Enterprises and Relation between the State and State-Owned Enterprises in Vietnam* in John Stanley Gillespie (ed), *Commercial Legal Developments in Vietnam: Vietnamese and Foreign Commentaries* (Butterworths, 1997) 382; Tu et al, above n 31, 193.

⁴⁷ Tu et al, above n 31, 192; Cuong, above n 46, 382.

⁴⁸ Tu et al, above n 31, 193.

⁴⁹ Trang Thi Tuyet et al, *Mot so Giai phap Hoan thien Quan ly Nha nuoc Doi voi Doanh nghiep* [Some Solutions to Enhance State Management for Enterprises] (National Political Publishing House, 2006), 91.

Few changes were made regarding organization and management.⁵⁰ As a result, conflicts over the exercise of ownership rights were not resolved properly and properties invested in corporations and their members were still technically vested in the state: the total capital of originating corporations was simply accumulated from the state invested capital into each member. Moreover, the capital of most GCs was limited and the ability to accumulate further capital was weak: their capital was inherited from state companies which were basically small in scale and limited in capital development. In terms of management structure, GCs, rather than being created by the internal demand of development of each enterprise, were formed by means of administrative decisions of the state.⁵¹ Further, their lack of close relations between subsidiaries or between themselves and the general corporation,⁵² and their voluntary status and the freedom for making decisions by member companies were ignored or denied.⁵³ The role of corporations in coordinating the relationship with member companies was limited and based mostly on administrative decisions.⁵⁴

Finally, GCs maintained close links with their former line ministries. They, in fact, were the successors of formerly subdivided branch ministries.⁵⁵ Therefore, GCs kept operating under the direction of the ministries concerned. This remained the position when some GCs were later upgraded to EGs. The close relationship was illustrated by the management apparatus of the newly formed GCs.⁵⁶ Besides, as most GCs were formed on the basis of core enterprises in specific areas, they specialized in them.⁵⁷ GCs were established according to business

⁵⁰ Tu et al, above n 31, 26; UNDP and CIEM, above n 3, 72.

⁵¹ Ibid 91.

⁵² Le Thi Lanh, above n. 43.

⁵³ Huan, above n. 3.

⁵⁴ Tuyet et al, above n. 49, 91; Tu et al, above n. 31, 196.

⁵⁵ Mitsui, above n 44, 48.

⁵⁶ Ibid. In particular, the staff of branch ministers concerned were now assigned to become CEOs of those corporations.

⁵⁷ For example, specific GCs could be found to be the former Vietnam Electricity Corporation, Vietnam National Chemical Corporation, Vietnam Steel Corporation, Vietnam National Salt Corporation... See Tu et al, above n 31, 196.

branches and divided into geographical regions, causing other negative effects.⁵⁸ It limited customer's options for products and services and also restrained corporations from participating in other areas.

3. STATE ECONOMIC GROUPS (EGS) — THE THIRD STAGE IN FORMING STATE MONOPOLIES

a. Development

The next CPV document that had implications for the acceleration of SOE reform was *Resolution 05/NQ-TW* of 24/9/2001.⁵⁹ It paved the way for the clarification of the term “state ownership in SOEs”.⁶⁰ The desire for a number of “giants” in the economy was once again confirmed, as there was a plan to establish some specialized economic groups on the basis of existing state corporations. It was argued that state economic groups would be crucial, allowing Vietnamese enterprises to compete in the international sphere in sectors such as petroleum, telecommunications, electricity and construction.⁶¹ This was to support state corporations and state economic groups holding key positions in the economy.

⁵⁸ For example two Food Corporations were established in the north and the south respectively. The Vietnam Northern Food Corporation (VINAFOOD1) was established by the *Decree 312/TTg* dated 24/5/1995 and later was transformed into a wholly state-owned company in 2009. The Vietnam Southern Food Corporation (VINAFOOD2) was established by the *Decree 979/QĐ-TTg* dated 25/6/2010. The same thing can be seen through Electricity Corporations before the birth of Vietnam Electricity Group (EVN), there were the Power Corporation No.1 in the North, the Power Corporation No.2 in the South and the Power Corporation No.3 in the Central in the 1990s. They became members of Vietnam Electricity Group in 2006.

⁵⁹ It was released at the CPV's Third Party Plenum in 24/09/2001. Break-through viewpoints in this resolution were that “it is not essential for state enterprises ‘to hold a large share in all branches and sectors and products of the economy’” and acceleration of the equitisation process was seen a key to achieving “radical change for improving the efficiency of state enterprises”. See Arkadie and Mallon, above n 26, 140.

⁶⁰ Arkadie and Mallon, above n 26, 140. See also Dao Xuan Thuy, *Dieu kien va Giai phap Hinh thanh Cac Tap doan Kinh te Tu Cac Tong Cong ty 91* [Conditions and Solutions for the Establishment of Economic Groups on the Basis of the 91 State General Corporations] (National Political Publishing House, 2009).

⁶¹ Arkadie and Mallon, above n 26, 142.

b. Rationales

As discussed above, the idea for EGs began to emerge after the 1990s, for which the *Decrees No. 90* and *No. 91* were milestones. When Vietnam moved firmly towards a market economy in the early 1990s, SOEs were unable to compete in both domestic and world markets because of the small size of most SOEs compared to international standards and their financial, managerial and organizational fragility.⁶² The purpose of SOE reform was to mobilize forces for development, tighten vertical and horizontal linkages among state owned enterprises and facilitate conditions for the formation of strong state enterprises in order to keep up with the pace of opening markets. To maintain the pace of reform of SOEs, EGs were seen as necessary.⁶³ In addition, it was thought important to avoid the private monopoly of crucial products for the economy, to enhance national competitive capacity and to assume national defence and security tasks.⁶⁴

The formation of state conglomerates was seen as a way of securing the leading role of the state sector. State control over a number of strategic industries with high growth potential was expected to effectively deal with the problems of SOEs. It would enhance the ability of SOEs' to access financial resources and to achieve economies of scale in production and management, making it possible for Vietnamese SOEs to

⁶² Tran Van Tho, *Vietnamese Gradualism in Reforms of the State-Owned Enterprises* (2000) 92 <http://www.f.waseda.jp/tvtrran/en/recentpapers/EO2States-owned%20entreprises%20in%20Vietnam.doc>; Thuy, above n 60, 82.

⁶³ See, eg, Nguyen Trung, Do Huy Ha, Ari Kokko and Fredrik Sjöholm, Dao Xuan Thuy, Bui Van Huyen.

⁶⁴ Nguyen Trung, for example, argued that certain products or industries should remain under state control. Since such products or industries are monopolistic in nature, it would be dangerous if they were under control of private sector for which profit-seeking is the target, because this could distort the market, damaging the general development of the whole economy and lowering the competitive capacity of the country. See Nguyen Trung, *Vai Suy nghi ve Tap doan Kinh te Quoc doanh o Nuoc ta* (2008) [Some Thoughts about State Economic Groups in Our Country] http://www.viet-studies.info/NguyenTrung/NguyenTrung_VeTapDoanKinhTe.htm; See also Thuy, above n 60, 166.

compete equally with foreign multinational corporations.⁶⁵ Overcoming the generally poor financial situation of SOEs would enhance the competitive capacity of SOEs in particular and the economy in general, and to ensure successful international economic integration.⁶⁶

The second main rationale for the development of EGs was to address institutional imperfections in the GCs model.⁶⁷ Four major reasons for the upgrading the institutional structure of GCs were posed, namely: the demand for re-organization of the market in light of the socialist oriented market economy, the need for enhancement of science and technology in state enterprises, the continuing increase of competitive pressure in the course of market openings and the demand for powerful state enterprises in the context of economic globalization.⁶⁸

Third, the need for the establishment of strong EGs was supported by the demand for international economic integration. A number of powerful groups involved in the key economic sectors served as a driving force behind the development of the national economy.⁶⁹ International

⁶⁵ Thuy, above n 60, 163–166; Huyen, above n 18, 42; Ari Kokko and Fredrik Sjöholm, *Some Alternative Scenarios for the Role of the State in Vietnam* (2000) 13 (2) *Pacific Review* 257–277.

⁶⁶ Thuy, above n. 59, 79–86; Presentation by Deputy Prime Minister Nguyen Tan Dung to a two-day workshop on state enterprise in March 2002 (as reported in *Saigon Times Weekly*, 9 March 2002) cited by Arkadie and Mallon, above n 26, 142.

⁶⁷ Thuy, above n. 59, 82; Huyen, above n 18, 12; Limitations are administrative linkages between state corporations and their member companies, the lack of motivation in maximizing state budget in business, the unclear definition of responsibilities of authority bodies and corporations and between corporations and their members and the narrow scope of business of state corporations. See Do Huy Ha, *Xay dung Tap doan Kinhte: Giaiphap Nang cao Khanang Canhtranhva Hoi nhap Cua Cac Tong Cong ty Nhanuoc Hien nay* [Building State Economic Groups: Solutions to Enhance Competition and Integration Capability of General State Corporations Today] (2007) *Quanly Kinhte* [Economic Management] 15–16 http://www.ciem.org.vn/home/vn/upload/webimage/image/1190686803136_bai_2.pdf.

⁶⁸ *Ibid.*

⁶⁹ Thuy, above n 59; Vietnam Net, *Building powerful domestic economic groups* <http://english.vietnamnet.vn/biz/2008/05/780953/>; MUTRAP, *Hoi Nghi So ket Thi diem Mo hinh Tap doan Kinhte Thuoc Bo Cong thuong* [Meeting on the Preliminary Wrap-up Report of the Model of Economic Groups belonging to the Ministry of Industry and Trade](2008) <http://www.mutrap.org.vn/Lists/Posts/Post.aspx?List=5276b79d-4e3a-4c5b-a2ad-c903807cc7ea&ID=40>.

economic integration placed SOEs in the playing field with the foreign firms under the common rules of international trade. SOEs were facing huge competitive pressure from foreign firms, thus affecting their “leading role”.⁷⁰ The economies of scale and competitive capacity of Vietnam’ SOEs and private industries were limited. The treatment to be applied to SOEs was to be the same as that applied to the others.⁷¹ Activities of state enterprises and access to markets currently reserved for SOEs were to be regulated in light of the enabling environment for private-sector development and this was to be a key complement to the implementation of international agreements.⁷² Consequently, there would be difficulties for inefficient SOEs which relied heavily on state support. EGs, with their strength and great economic potential, their capability to operate in many sectors, could make use of these advantages to compete effectively and sustainably.⁷³

III. CONCLUSION

The development of EGs was considered necessary for achieving sufficient capacity in speeding up the economic integration process and for mobilizing all resources for economic development. In parallel with this process, monopolistic practices were to be regulated by competition law.⁷⁴ EG establishment was said to be necessary to meet the demand

⁷⁰ Central Institute for Economic Management (CIEM) and Swedish International Development Agency (SIDA), *Tieptuc Xay dung va Hoanthien The che Kinhthetruong Dinhhuong XHCN o Vietnam* [Continuous Building and Perfecting Institutional Framework for Market Economy with Socialist Orientation in Vietnam] (Science and Technology Publishing House, 2006) 104; Thuy, above n. 59, 83–84.

⁷¹ In particular, state subsidies previously given to SOEs will be abolished while most of the earlier methods of supporting local industries i.e. high tariffs, local content requirements... are no longer accepted.

⁷² Klaus Rohland Interviewed with Vietnam News Agency, State to Tread Fine Line in Boosting Competitiveness (2006) <http://vietnamnews.vn/vnnet.vn/showarticle.php?num=01COM151206>.

⁷³ Thuy, above n 59, 82–83; Tuan Vietnam, Dieu hanh Tap doan Kinhte o Vietnam [Regulating Economic Groups in Vietnam] <http://www.tuanvietnam.net/news/InTin.aspx?alias=tulieusuyngam&msgid=4089>.

⁷⁴ Tran Tien Cuong, Viet Nam Se Co Nhung Tap doan Kinhte Manh? [Will Vietnam Have Powerful Economic Groups?] <http://www.mof.gov.vn/Default.aspx?tabid=612&ItemID=20841>.

of international economic integration and the desire of Vietnam's government to have some powerful and capable firms to compete with foreign firms. The establishment of economic groups was seen as a suitable method, commensurate with Vietnam's characteristics in the transitional period.⁷⁵ When Vietnam's agreements with the WTO came into effect in January 2007, this became significant.⁷⁶

As in the case of the GC model, it is sometimes stated that Vietnam's EGs were inspired by Asian models.⁷⁷ However, Vietnam's EGs were in fact built on an import substitution model characterized by protection from foreign imports and state subsidies on a continuing basis. Moreover the emergence of state conglomerates only furthered the close ties between politicians and business, bringing about the threat of corruption and the influence of enterprises in the decision making process.⁷⁸ Furthermore, the nature of EGs created serious concerns regarding their impact on competition.⁷⁹ As no substantive changes were made regarding their nature,⁸⁰ state economic groups become just another form of state general corporations.⁸¹

⁷⁵ Ibid.

⁷⁶ Jonathan Pincus and Vu ThanhTu Anh, *Vietnam feels the Heat* (2008) 171 *Far Eastern Economic Review* http://www.viet-studies.info/kinhte/VN_feels_heat_FEER.htm.

⁷⁷ It is argued that Vietnam's state economic groups were inspired by the Japanese keiretsu (Mitsubishi, Mitsui, etc.) and the South Korean chaebols (Samsung, Daewoo, Kumho, etc.). See Harvard Vietnam Program, John F Kennedy School of Government, *Choosing Success: The Lessons of East and Southeast Asia and Vietnam's Future* (2008) http://www.fetp.edu.vn/Research_casestudy/PolicyPapers/PP001_Choosing_Success_E.pdf.

⁷⁸ Dwight H Perkins and Vu ThanhTu Anh, *Vietnam's Industrial Policy. Designing Policies for Sustainable Development* (2008) www.vdf.org.vn/Doc/2008/VDFConf_Presentation3_PaperEng.pdf.

⁷⁹ See, eg, Dwight H. Perkins and Vu Thanh Tu Anh, *Tran Kim Hao, Le Dang Doanh, Dang Vu Huan*.

⁸⁰ It is pointed out by Perkins and Vu Thanh Tu Anh that COEs (general managers and boards of directors) of state economic groups were positioned by the government. Line ministries have had their representatives to act in supervisory roles over newly formed economic groups. See Perkins and Anh, *above n 78*.

⁸¹ Harvard Vietnam Program, *above n 77*.

REFERENCES

Arkadie, B. Van and Mallon, R. (2003). *Vietnam — A Transition Tiger?* Asia Pacific Press.

Arup, C. and Wishart, D. (2002). Competition Policy with Legal Form — reviewing Australian and overseas experience. *Law in Context*. Special Edition. Vol. 20 (1).

Berg, S. V. (1999). *Fundamentals of Economic Regulation* (paper presented at the Fifth Annual PURC/World Bank International Training Program on Utility Regulation, January 11).

Borje Ljunggren (1993). The Challenges of Reform in Indochina, cited by Le Khan and Dutt, A. K. (2003). Central Planning and Market Elements in Vietnam's Economy, in Dutt A. K. et al (eds.). *Challenges to Asian Urbanization in the 21st Century*. Kluwer Academic Publishers.

Bork, R. H. (1978). *The Antitrust Paradox*. Basic Books.

Bui Van Huyen (2008). *Xay dung va Phat trien Tap doan Kinh te o Viet Nam* (Building and Developing Economic Groups in Vietnam). National Political Publishing House.

Central Institute for Economic Management (CIEM) (2002). *Mot so Van de Phap ly va The che ve Chinh sach Canh tranh va Kiem soat Doc quyen Kinh doanh* (Legal and Institutional Issues concerning Competition Policies and Control of Business Monopoly). Transport Publishing House.

Central Institute for Economic Management (CIEM) and Swedish International Development Agency (SIDA) (2006). *Tiep tuc Xay dung va Hoan thien The che Kinh te thi truong Dinh huong XHCN o Vietnam* (Continuous Building and Perfecting Institutional Framework for Market Economy with Socialist Orientation in Vietnam). Science and Technology Publishing House.

Coase, R. H. (1937). The Nature of the Firm. *Economica*. 4. 1.

Coase, R. H. (1960). The Problem of Social Cost. *Journal of Law and Economics*. 3. 1.

Communist Party of Vietnam (1994). *Documents of the 7th Meeting of Central Committee Section VII*. National Political Publishing House.

Daintith, T. and Teubner, G. (eds.) (1986). *Contract and Organisation: Legal Analysis in the Light of Economic and Social Theory*. W. de Gruyter.

Dang Vu Huan (2002). *Phap luat Ve Kiem soat Doc quyen va Chong Canh tranh Khong Lanh manh o Vietnam* (Law concerning Monopoly Control and Anti-Unfair Competition in Vietnam). PhD in Law Thesis. Hanoi Law University.

Dao Xuan Thuy (2009). *Dieu kien va Giai phap Hinh thanh Cac Tap doan Kinh te Tu Cac Tong Cong ty 91* (Conditions and Solutions for the Establishment of Economic Groups on the Basis of the 91 State General Corporations). National Political Publishing House.

Do Huy Ha (2007). *Xay dung Tap doan Kinh te: Giai phap Nang cao Kha nang Canh tranh va Hoi nhap Cua Cac Tong Cong ty Nha nuoc Hien nay. Quanly Kinh te* (Building State Economic Groups: Solutions to Enhance Competition and Integration Capability of General State Corporations Today. *Economic Management*). Available at: http://www.ciem.org.vn/home/vn/upload/webimage/image/1190686803136_bai_2.pdf.

Dwight H. Perkins and Vu Thanh Tu Anh (2008). *Vietnam's Industrial Policy. Designing Policies for Sustainable Development*. Available at: www.vdf.org.vn/Doc/2008/VDFConf_Presentation3_PaperEng.pdf.

Fforde, A. and Vylder, S. de (1996). *From Plan to Market The Economic Transition of Vietnam*. Westview Press.

Fforde, A. (2007). *Vietnamese State Industry and the Political economy of Commercial Renaissance: dragon's tooth or curate's egg?* Chandos.

Gaisnborough, M. (2009). The (Neglected) Statist Bias and the Developmental State: the Case of Singapore and Vietnam. *Third World Quarterly*. 30. 1317.

George, E. St. and Quilty, M. (2006). *Reconfiguring Socialist Ideology in Vietnam: The 2006 Tenth National Party Congress and the lead-up to Vietnam's entry into the World Trade Organisation*

(paper presented at the 16th Biennial Conference of the Asian Studies Association of Australia, Wollongong, 26–29 June).

Gillespie, J. S. (2006). *Transplanting Commercial Law Reform, Developing a 'Rule of Law' State in Vietnam*. Ashgate.

Ginsburg, T. (2000). Does Law Matter for Economic Development? Evidence from East Asia. *Law and Society Review*. 34. 829.

Haggard, St., Macintyre, A., and Tiede, L. (2008). The Rule of law and Economic Development. *Annual Review of Political Science*. 11. 205.

Izdebski, H. (1989). Legal Aspects in Economic Reforms in Socialist Countries. *American Journal of Comparative Law*. 37 (4). 730.

Jones, A. and Sufrin, B. (2008). *EC Competition Law*. Text, Cases, and Materials. 3rd ed. Oxford University Press.

Kahn, A. (1988). *The Economics of Regulation: Principles and Institutions*. Reissue Edition. MIT Press. Chapter 4.

Kahn-Freund, O. (1974). On Use and Misuse of Comparative Law. *Modern Law Review*. 37. 1.

Khuc Hoang Giang (2000). *Mot so Van de ve Diavi Phaply Cua Tong Cong ty Nhanuoc Trong Nen Kinhte Thitruong o Viet Nam* (Some Issues regarding the Legal Position of State General Corporations in Vietnam's Market Economy). LLM Thesis. Hochiminh City Law University.

Krever, T. (2011). The legal Turn in Late Development Theory: the Rule of Law and the World Bank's Development Model. *Harvard International Law Journal*. 52. 287.

Le Danh Vinh (2003). *Building Competition Law in Vietnam to Meet the Need of Regulating Market Economy and in the light of Trade Liberalization and International Economic Integration* (paper presented at ASEAN Conference on Fair Competition Law and Policy in the ASEAN Free Trade Area (AFTA) Bali, March 5–7). Available at: http://www.jftc.go.jp/eacpf/04/vietnam_p.pdf.

Legrand, P. (1997). The Impossibility of "Legal Transplants". *Maastricht Journal of European and Comparative Law*. 4.

Le Viet Thai, Vu Xuan Nguyet Hong, Tran Van Hoa (2003). Anti-trust Law and Competition Policy in Vietnam: Macroeconomic Perspective, in

Tran Van Hoa. *Competition Policy and Global Competitiveness in Major Asian Economies*. Edward Elgar Publishing.

Le Hoang Oanh (2005). *Bình luận Khoa học Luật Cạnh tranh* (Commentary on the Law on Competition). National Political Publishing House.

Masina, P. (2006). *Vietnam's Development Strategies*. Routledge.

McGrath, L. A. (1996). Vietnam's Struggle to Balance Sovereignty, Centralization and Foreign Investment under Doi Moi. *Fordham International Law Journal*. 18. 2095.

Mekong Economics (2002). *SOE Reform in Vietnam*. Available at: <http://www.mekongecomics.com/Document/Publications/2002/MKE%20SOE%20Reform%20in%20Vietnam.pdf>.

Nguyen Nhu Phat (1997). The Role of Law during the Formation of a Market-driven mechanism in Vietnam, in Gillespie, J. S. *Commercial Legal Developments in Vietnam: Vietnamese and Foreign Commentaries*. Butterworths.

Nguyen Nhu Phat, Bao cao Tong hop de tai (2005). *Xây dựng Thể chế Cạnh tranh Thị trường ở Việt Nam* (Overall Report of the Project "Building up a Market Competition Institution in Vietnam").

Nguyen Van Huy and Tran Van Nghia (1996). Government Policies and State-Owned Enterprise Reform, in Ng Chee Yuen, N. J. Freeman and F. H. Huynh (eds.). *State-Owned Enterprise Reform in Vietnam: Lesson from Asia*. Institute of Southeast Asian Studies.

Organisation for Economic Co-operation and Development (OECD) (2005). *Corporate Governance of State-Owned Enterprises: A Survey of OECD Countries*. OECD, Publishing.

Pincus, J. and Vu Thanh Tu Anh (2008). Vietnam feels the Heat. *Far Eastern Economic Review*. 171. Available at: http://www.viet-studies.info/kinhte/VN_feels_heat_FEER.htm.

Roe, M. J. (1999). A Theory of Path Dependence in Corporate Ownership and Governance. *Stanford Law Review*. 52. 127.

Rohland, K. (2006). *State to Tread Fine Line in Boosting Competitiveness*. Interview with Vietnam News Agency. Available at: <http://vietnamnews.vnnet.vn/showarticle.php?num=01COM151206>.

Sharkey, W. W. (1982). *The Theory of Natural Monopoly*. Cambridge University Press.

Sherer, F. M. (1980). *Industrial Market Structure and Economic Performance*. 2nd ed. Houghton Mifflin.

Sujian Guo (2006). *The Political Economy of Asian Transition from Communism*. Ashgate.

Trang Thi Tuyet et al (2006). *Mot so Giai phap Hoan thien Quan ly Nha nuoc Doi voi Doanh nghiep* (Some Solutions to Enhance State Management for Enterprises). National Political Publishing House. 91.

Tran Tien Cuong (1997). Restructuring of State-Owned Enterprises and Relation between the State and State-Owned Enterprises in Vietnam, in Gillespie, J. S. *Commercial Legal Developments in Vietnam: Vietnamese and Foreign Commentaries*. Butterworths.

Tran Tien Cuong. *Viet Nam Se Co Nhung Tap doan Kinh te Manh?* (Will Vietnam Have Powerful Economic Groups?). Available at: <http://www.mof.gov.vn/Default.aspx?tabid=612&ItemID=20841>.

Tran Van Tho (2000). *Vietnamese Gradualism in Reforms of the State-Owned Enterprises*. 92. Available at: <http://www.f.waseda.jp/tvttran/en/recentpapers/E02States-owned%20enterprises%20in%20Vietnam.doc>.

Truong Dong Loc (2006). *Equitisation and Stock-Market Development: the Case of Vietnam*. PhD in Economics Thesis. University of Groningen.

UNDP Vietnam (2006). *The State as Investor: Equitisation, Privatisation and the Transformation of SOEs in Viet Nam*. 15. Available at: <http://www.undp.org.vn/undpLive/System/Publications/Publication-Details?contentId=2079&languageId=1&categoryName=&CategoryConditionUse=>.

Vu Huy Tu et al (2007). *Co cau Lai Doanh nghiep Nha nuoc theo Luat Doanh nghiep nam 2005* (Restructuring State Corporations according to the Enterprises Law 2005). National Political Publishing House.

Vu Lien Huong (2003). *The Role of Competition Policy and Approaching Method of Competition Bill of Vietnam*. Available at: www.apec.org.tw/doc/APEC-OECD/2003-12/014.pdf

Vu Quoc Ngu (2002). *The State-Owned Enterprise Reform in Vietnam: Process and Achievements*. Available at: <http://www.iseas.edu.sg/vr42002.pdf>.

Watson, A. (1993). *Legal Transplants: An Approach to Comparative Law*. 2nd ed. Edinburgh.

Webster, L. and Amin, R. M. (2008). *Equitisation of State Enterprises in Vietnam: Experience to Date*. Available at: [http://www.ifc.org/ifcext/mekongpsdf.nsf/AttachmentsByTitle/PSDP+3/\\$FILE/PSDP-No-3-EN.pdf](http://www.ifc.org/ifcext/mekongpsdf.nsf/AttachmentsByTitle/PSDP+3/$FILE/PSDP-No-3-EN.pdf).

Wishart, D. (2011). Competition Policy: the Reform of Laws and Regulation. *LAWASIA Journal*. 39.

Xueguo Wen (2008–2009). Market Dominance by China's Public Utility Enterprises. *Antitrust Law Journal*. 75. 153.

Yarrow, G. (1994). The Economics of Regulation in Venkata Vemuri Ramanadham. *Privatization and After: Monitoring and Regulation*. Routledge.