



ABUSE OF DOMINANCE/MONOPOLY POSITION IN VIETNAM

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(Views expressed in this presentation do not necessarily reflect the view of the VCA)

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1.1 Introduce VCL, legal system and enforcement agency

- Being drafted as early as 2000
- Promulgated on 3rd December 2004 – The Law No 27/2004/QH11 on Competition
- Took effect from 1st July 2005

VIETNAM COMPETITION LAW

**ABUSE OF
DOMINANT
POSITION/ MONOPOLY
POSITION**

**ANTICOMPETITIVE
AGREEMENT**

**ECONOMIC
CONCENTRATION**

**UNFAIR
COMPETITION**

PROTECTION OF COMPETITION PROCESS

PROTECTION OF VIETNAMESE CONSUMERS

LEGAL SYSTEM ON COMPETITION RESTRICTIVE CONDUCTS

COMPETITION LAW

1

DECREE 06/2006/ND-CP

2

DECREE 07/2015/ND-CP

3

DECREE 116/2005/ND-CP

4

DECREE 119/2011/ND-CP

5

DECREE 71/2014/ND-CP

LAW ENFORCEMENT AGENCIES



VIETNAM COMPETITION AUTHORITY - MOIT

- General Director appointed by Prime Minister
- Investigating body for anti-trust cases
- Both investigation & decision making body on unfair competition cases



VIETNAM COMPETITION COUNCIL

- 11 - 15 members, appointed by Prime Minister
- Decision making body on anti-trust cases

1.2 What is Dominance/ Monopoly position in the market?

- A single enterprise *shall be considered holding dominant position in the relevant market if*
 - having market share of 30% or more *on the relevant market or*
 - being capable to substantially restrict competition
- A group of enterprises *shall be considered holding dominant position in the relevant market if*
 - taking concerted actions, **and**
 - falling into one of the followings:
 - 2 enterprises having a combined market share of 50% or more;
 - 3 enterprises having a combined market share of 65% or more;
 - 4 enterprises having a combined market share of 75% or more.

(Art .11 in VCL)

Monopoly position?

- **Monopoly?**
(Art 12 in VCL)

No competitor exists in the relevant market.



Only one enterprise provides goods or /and service on the relevant market

1.3 Acts of abusing of dominant and monopoly position?

Abuse Of dominance

- + Predatory pricing
- + Unreasonable pricing/minimum price fixing
- + Imposing restrictions on production/distribution; preventing technological development
- + Discriminating customers of a kind
- + Imposing unfavorable conditions on others
- + Preventing market entrance

+

- + Imposing unfavorable conditions on customers
- + Unilaterally modifying or canceling contracts without plausible reasons



Abuse of monopoly position

Prohibited
No exemption

(Art 13 in CPL)

1.4 How to control anti-competition behaviors ?

- **Legal system**

- Competition Law
- Decree (legal guidance)

- **Enforcing agencies :**

- VIETNAM COMPETITION COUNCIL
- VIETNAM COMPETITION AUTHORITY - VCA



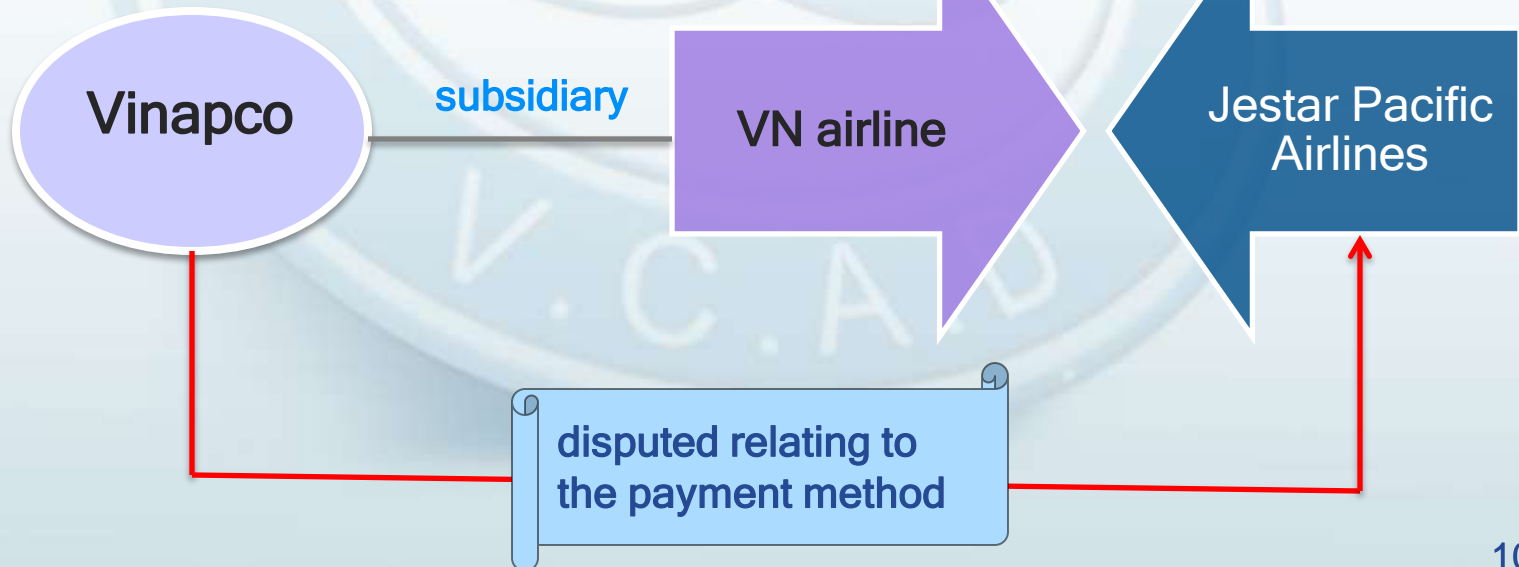
2. Case of Abuse Dominance/monopoly: Vinapco

2.1 Relevant company

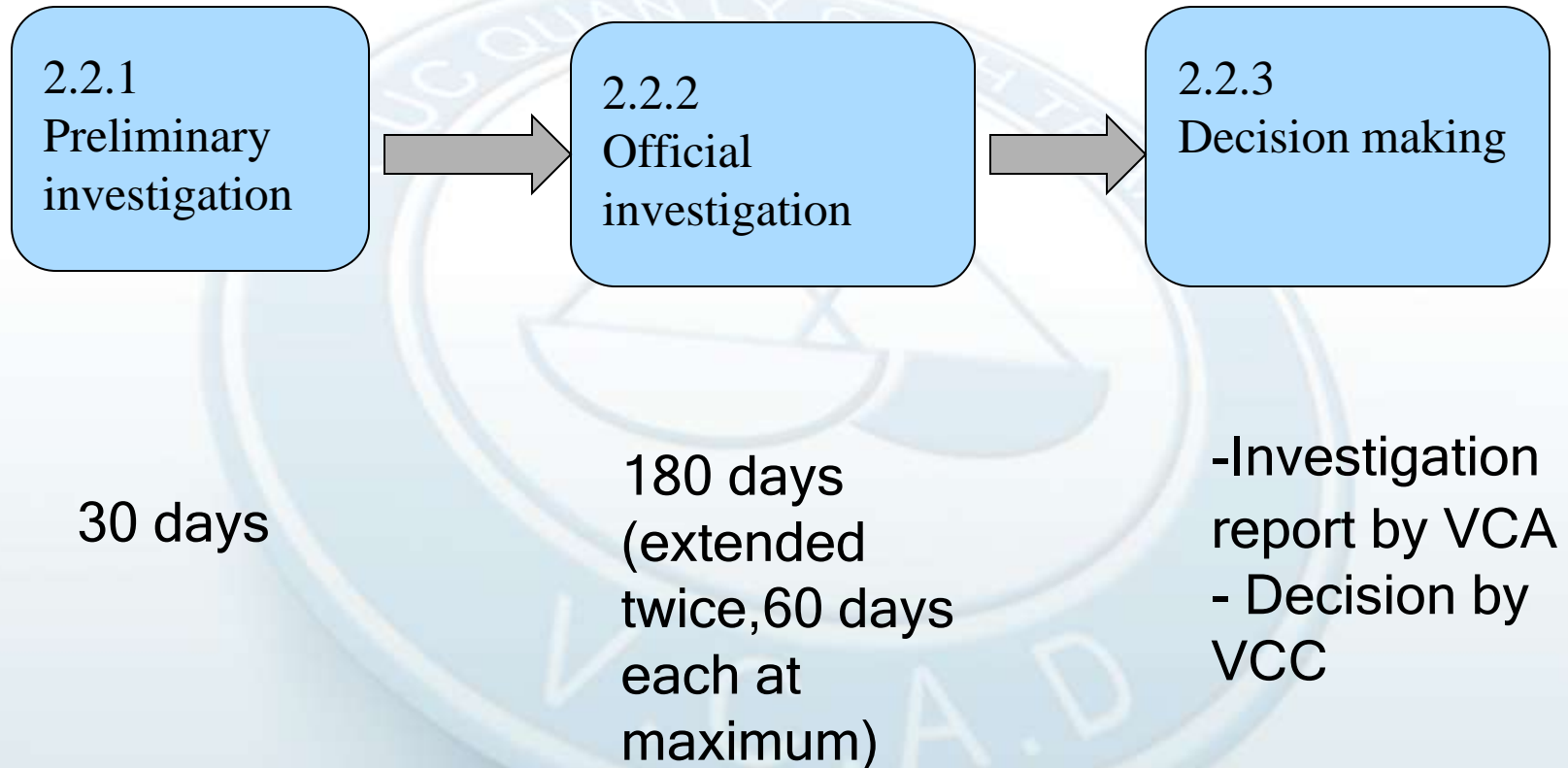
- **Investigated:** Vietnam Air Petrol Company Limited (Vinapco)-, subsidiary of Vietnam Airline
- **Related:** Jestar Pacific Airlines Company Limited (JPA).

The Dominance in supplying aviation fuel in Vietnam

Air transport in domestic market



2.2 Case handling procedures



2.2.1 PRELIMINARY INVESTIGATION

Case time : 2008/2009

(started in 4/2008, finished in 4/2009)

1st4.2008

+ feedback from passengers about flight delays by JPA due to Vinapco stop supplying the fuel.

3rd. 4.2008

VCA requested the explanation of Vinapco by document

9th4.2008

VCA received the requested document from JPA

22th4.2008

preliminary investigation about abuse of monopoly

Verification of indication of any violation :

Vinapco is the Dominance company in supplying aviation fuel in Vietnam

Relevant legal basis: Item 2-3 of Article 14, VN Competition Law

2.2.2 OFFICIAL INVESTIGATION

Market definition

(Section 1-Degree 116/2005/NĐ-CP)

- Relevant product market: Supplying aviation fuel service
- Relevant geography market: all the civil airports in Vietnam

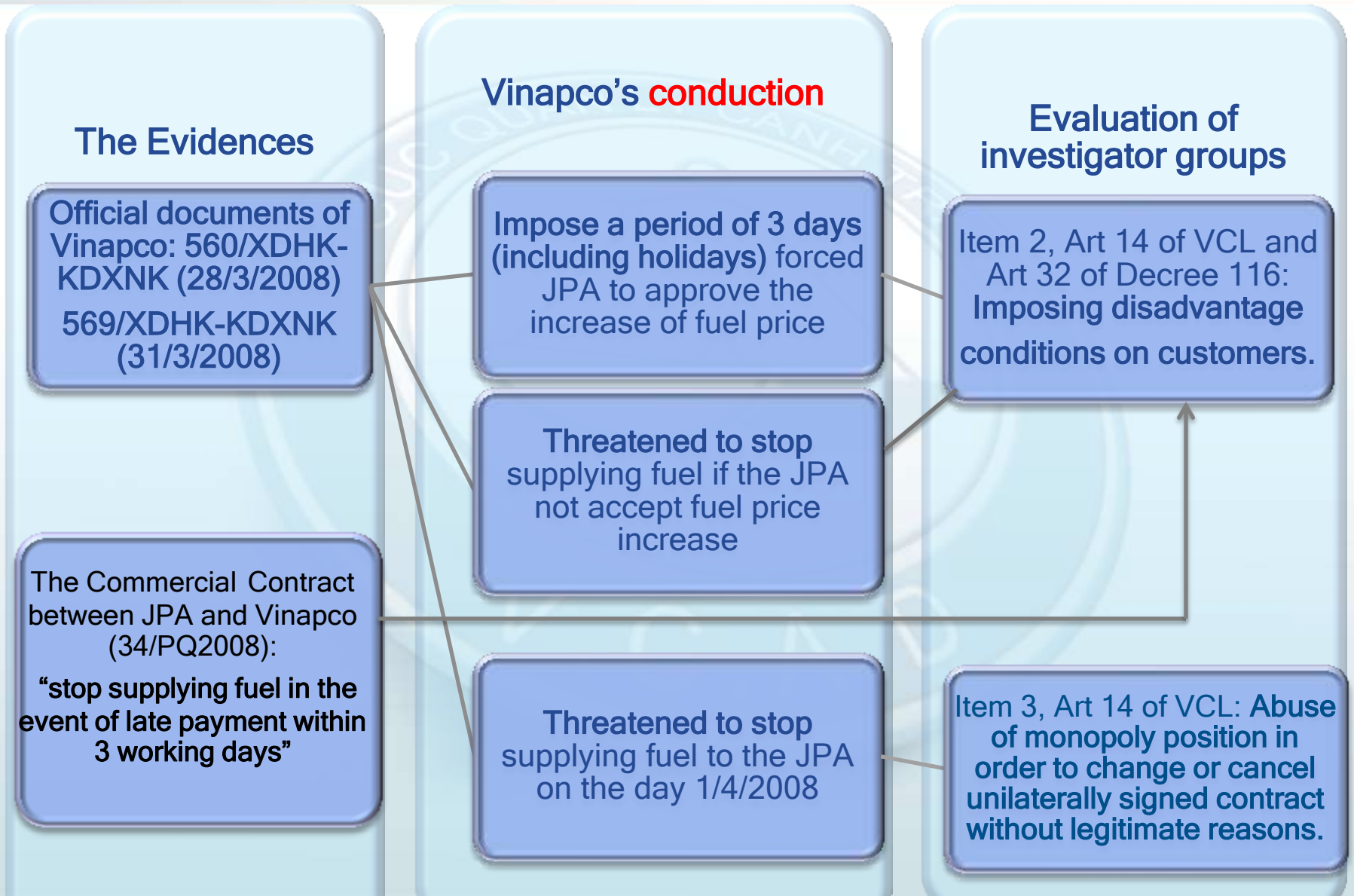
Market data/ market share of Vinapco

- The database was collected from various sources:
 - Established history (provided by Vinapco)
 - Civil aviation authority of VN confirmed
 - >> Monopoly position

Facts & evidence about competition restrictive behavior

- Vinapco's conduction in the fact
- Evaluation of investigator groups

Facts & evidences about competition restrictive behavior



Conclusion of investigator groups

Conclusion about violation

- Vinapco had a monopoly position in providing aviation fuel services in civil airports in Vietnam.
- Vinapco violated Item 2, Art.14, Competition Law as its practice on “imposing unfavorable conditions on customers” and Item3, Art.14, CL as “Abusing the monopoly position to unilaterally modify or cancel the contracts signed without plausible reasons”

Sanction

- *Monetary fine*
 - 0.05% of the total revenue of the violating enterprises in the fiscal year proceeding the year of violation: Vinapco was fined 3.378 billion VNĐ (equivalent to 190.000 USD)
- *Consequence remedying measures*
 - Removal of illegal provisions from contracts.

Competition Council has issued Decision No. 11 / QD / HDXL dated 14/4/2009 and the Decision No. 12 / QD-System Introduced on 26/6/2009.

2.3 Some concluding thoughts

- **The 1st case submitted to VCC**
- Selection of the first case is crucial
- Stronger sanctions work better?
- Effective enforcement of the Competition Law is the best way to educate businesses, publics and also investigators about the law.
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THANK YOU FOR YOUR ATTENTION

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