

## Comments on Draft Decree on detailing and guiding the implementation of some provision of the Law on Telecommunications

Submitted by

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Article number	Comments
3.1	<p>This article introduces a “specialized agency” in charge of telecommunications under the Ministry of Information and Communications (MIC).</p> <p>Is this an independent regulatory agency as defined by the WTO telecoms reference paper, and if so, when will this agency be established and what will be its detailed scope of activity and powers? Will there be further decrees or decisions outlining these? What are the intentions of the Vietnam Government?</p>
4.1	<p>Noted that ownership of more than 20% of the chartered capital or shares in two or more different telecoms enterprises which do business in the same telecoms market will not be permitted.</p> <p>How does this impact the VNPT Group that has 100% shares in two competing mobile phone companies?</p> <p>What would be the case if a foreign company had shareholdings of more than 20%, but less than a controlling stake, in two separate foreign registered companies that planned to invest the Vietnam telecoms market? Would these two companies be permitted to invest in the sector, or would only one be allowed to invest?</p>
5.2	<p>Noted that foreign investors must either enter into a joint venture or BCC with an already licensed operator in Vietnam.</p> <p>This provision will restrict the ability of new entrants to the telecoms market, and will result in less competition and less innovation of products and services in the market.</p>
5.4	<p>Noted that there will be a 30% cap on a single foreign investor’s shareholding in a telecoms enterprise. This appears to be in conflict with Vietnam’s WTO undertaking that up to a 49% shareholding in a company engaged in providing telecommunications network services would be allowed.</p> <p>Whilst it may be argued that there was nothing to stop multiple</p>

	<p>unrelated foreign companies buying up to 49% providing that none of these individually exceeded a 30% shareholding, the new provision does not seem to be in the spirit of the commitment given to the WTO.</p> <p>Additionally, will foreign investors in the telecoms network sector that already have shareholdings in excess of 30% have their rights grandfathered? One foreign investor in Vietnam currently has a 40% shareholding in a company providing mobile telecoms network services.</p>
5.5	<p>Noted that if a project is confined to one province or city, the local Department of Information and Communications (DIC) is responsible for giving project appraisal comments, whilst if the project is planned to be implemented in two or more projects, the "specialized agency" would provide appraisal comments.</p> <p>The local DICs will be directly under the local peoples' committees and the MIC, and thus not fully independent or have the expertise that the specialized agency should have. Appraisal comments for all projects, whether these cover one province or several, should be made by the specialised agency.</p>
8	<p>Noted that the power to grant telecoms licences is split between the MIC and the specialised agency depending upon the licence type.</p> <p>In most jurisdictions the power to issue licences resides with the independent regulator not the policy department of government. Vietnam should consider a similar practice whereby the government, through MIC, sets the policy goals, including the type of licences, and the specialized agency grants the licences.</p>
9	<p>Noted that this article contains various minimum investment criteria, minimum numbers of subscribers and minimum legal capital requirements.</p> <p>At the lower end of the scale, companies providing telecoms services without network infrastructure (service based operators) must base their investments on very high minimum numbers of subscribers – for fixed services 1 million in each of Hanoi and Ho Chi Minh City and 100,000 in each province within the service area. For mobile non-network services, the number is 2 million.</p> <p>These high minimum numbers of subscribers will inhibit the entry into the telecoms market of new service providers that may wish to offer niche telecoms services to particular sectors, for example banking and finance or the IT industry, where the total addressable market is far less than the stipulated minimum numbers.</p>

17.5	<p>Noted that Vietnamese telecoms enterprises, when providing service overseas, shall comply with both Vietnamese law and the law of the country where service is provided.</p> <p>The draft is silent on what happens when these laws are in conflict.</p>
18.4	<p>Noted that MIC will have a detailed role in setting the regulations for resale services. This activity would be more appropriately handled by the specialized agency.</p>
22	<p>Changes of telecoms subscriber numbers. There appear to be no provisions for subscribers to take their fixed or mobile numbers with them when they change service provider (number portability). Number portability will be an important factor to aid competition in the market and to ensure more efficient use of the supply of telephone numbers in Vietnam that this article, in part, addresses</p>
27.8	<p>The proposed floor of 50% for price decreases during promotional periods seems arbitrary. There is no scope for giving away services either free of charge or for a very low fee for a trial basis. This will restrict competition and make it harder for new entrants to the market.</p>
29	<p>Noted that MIC will manage and approve telecoms prices. In most jurisdictions, any remaining management of prices is undertaken by the regulatory body rather than a ministry.</p> <p>There is a vague statement in 29.4: "telecom enterprise.....shall not provide telecoms services at a rate <b><i>much lower than the average rate</i></b> in the telecoms market". This statement will give rise to different interpretations and to disputes.</p>
33.4	<p>This article implies, <i>inter alia</i>, that building owners must allow competitive access by telecoms providers to their buildings. Is this the intention? If so, it is to be welcomed as many building owners permit tenants to use only one telecoms service provider, and that provider may have monopoly rights within the building.</p>

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