

# Price Agreements to Restriction Competition-Vision from the Affects, Sustainable Nature, Impact Assessment, and Proposals of Legel Control

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## Abstract

In order to control price competition restriction agreements by law, the state needs to accurately identify the price instrument and the influence of the price-use agreement to limit competition. A pricing tool to be used effectively in restraining price agreements and that is often a way to maximize the profitability of the business. The legal nature of the act of agreement to use prices to limit competition revealed in the price fixing agreement is an agreement between enterprises on the same relevant market.

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**Index terms**— price; price agreement; competition restriction; competition restriction agreement.

## 1 Introduction

he goal of businesses is to maximize profits. In order to develop, every business must have a reasonable pricing strategy by itself. Price is the result of competition and is also an effective means of competition. In order to maximize profits, businesses tend to eliminate price competition through anticompetitive agreements. It is the price agreements between competitors that have profoundly influenced the competitive structure in the market, thereby having a great impact on other firms doing business in the same relevant market or partnering. Great impact on consumers by stripping the right to choose competitive prices for the goods and tools that enterprises supply. In the study of economics, an agreement to use prices to limit competition can be divided into price fixing agreements to exploit customers and agreements to use prices to strengthen position in the relevant market. They are all anti-competitive agreements that are toxic to the market.

## 2 II.

Research question a) What is the legal nature of agreement on using price to limit competition?

i. What is the economic rationale and what is the legal basis for assessing the impact of price agreements to limit competition and for how to control them by law?

III.

## 3 Research Method

? Interpretation method This is the method applied to study the basic theoretical issues of the law controlling the price-fixing agreements to limit competition; the study of economics when considering price use agreements.

## 4 ? Methods of analysis and commentary

This method is applied to present the specific provisions of the international legal system as well as the Vietnamese legal system on price-fixing agreements to limit competition.

## 5 ? Comparative jurisprudence

This method is also used to study the provisions of international law, study international case law, laws of different countries and compare with the provisions of competition law of Vietnam to evaluate the compatibility and conformity through which to draw experience and specific solutions in the laws of the countries. On that basis, the author proposes a solution to perfect the Vietnamese competition law in terms of controlling price fixing agreements to limit competition.

## 6 ? Methods of systematizing and synthesizing

This is a research method used to generalize and draw basic conclusions and proposals on the author's new contributions to the improvement of Vietnamese law on controlling price agreements. competition restriction.  
IV.

## 7 Research Results

a) Price agreement and price agreement influence tools to limit competition i. The pricing tool is used effectively in restraint agreements. Agreements using prices to restrict competition are agreements that agree to act between enterprises competing in the relevant market formally or informally in the form of an implicit or public agreement. In which businesses use prices as a tool to achieve the purpose of restraining competition in the relevant market. In order to be able to achieve monopolistic profits or behave in the relevant market as a monopoly, competing firms must emulate that position through agreed-to-act agreements. Therefore, it can be seen that the subjects carrying out anti-competition agreements in general and agreements using prices to limit competition in particular are enterprises located on the same relevant market.

An agreement to use price to limit competition can be either a public agreement or a tacit, formal or informal agreement. All are agreement but the agreement to use the price to limit competition and the contract differs in terms of approach. Contracts are agreements between parties to establish, change or terminate rights and obligations. It is governed by civil law and specialized laws. In which, the law will provide for effective conditions for this agreement to be considered a contract. The conditions can be the conditions of the subject's capacity, the form of the contract.. Meanwhile, the price agreements to limit competition are understood as the agreements between the parties on the action, thereby controlling the ability to act independently between the parties in the relevant market. With an approach to ensure the order of competition in the market, the factor that is concerned is whether or not enterprises proceed to eliminate or reduce competition pressure through agreement. Therefore, the form of the agreement is not the factor that needs to be concerned. By its unjust nature, competition restriction agreements are prohibited by the competition laws of many countries. As a result, these agreements can take place publicly or implicitly. According to Herbert Hovenkamp, "although under Article 1 of the Sherman Law, an agreement between the parties is required. But this agreement can be determined based on evidence based on its context. The court can still handle collusion even though there is no direct evidence that the defendants have participated in the action together. So it can be seen that the public or tacit agreement, written or verbal, is essentially just a way for the parties to reach agreement to act. The differences of the forms have almost no effect on the purpose of the agreements to restrain competition.

The long-term goal of the business is profit. Consistent with that goal, businesses will tend to increase selling prices to obtain exclusive profits. In terms of economy, firms in competitive market and monopoly profit are different.

## 8 Competitive market $P = MR = MC$

## 9 Monopoly profit $P > MR = MC$

In which: P: Selling price; MR: Marginal revenue; MC: Marginal cost Accordingly, in a competitive market, businesses will maximize profits when selling price equals marginal revenue. Meanwhile, in the monopolistic market, the firm's selling price is higher than its marginal revenue.

Businesses will have an incentive to jointly set an output in order to achieve the desired price. In other words, through a consensus agreement of action, firms acted as either a dominant or monopoly firm (depending on whether this agreement included all or only the majority of the above firms. relevant market) so that it can be directed to the level of profit that a dominant / monopolist can get. According to Herbert Hovenkamp, agreed-upon firms act as likely to enjoy monopolistic profits like a single monopoly. Consider how to maximize the profitability of a monopoly through the following figure:

This illustration is taken from: N. Gregory Mankiw (2011), Principles of Economics, 6th Edition, Cengage Learning, page 307

Looking at the above figure, if price is P, marginal revenue is MR, marginal cost is MC, businesses will base on the intersection point  $P = MR = MC$  (point A) and determine the needs of users by the demand curve is to determine the demand level B, from which the price can be fixed in line AB. In other words, users pay more when businesses emulate a monopoly position in the relevant market through a consensus act. But on the other hand, according to the rule of supply, when the price increases, the supply also increases (because the supply curve is an upward slope). Other firms (operating on the same relevant market or potential competitor business) will

tend to enter the market or supply more. The positions of the participating businesses will be shaken. Therefore, these businesses have two options, either to reduce the selling price (which also means the profit will decrease) or seek to eliminate these businesses to consolidate or increase market share in the relevant market. However, it is theoretically necessary to distinguish anticompetitive agreements (in which price agreements are part) from those promoting anticompetitive agreements (hereinafter referred to as deals are facilitated). Because these promotion agreements, although very similar to anti-competition agreements, in terms of impact on competition, they are completely different in nature from anti-competition agreements. The United States is one of the pioneers in establishing institutions that govern anti-competition and monopoly agreements.

U.S. antitrust laws stipulate that while the exchange agreement, providing information on prices by itself is not illegal, proof that competitors share information to fix prices will be grounds for asserting evidence for conspiracy or illegal conduct. The assessment of the lawfulness of the act of exchanging and providing information in the United States must be done based on "rule of reason" -a specific analysis method in the Antitrust Law. helps to distinguish between legal and illegal communications through balancing the non-competitive effect of information exchange between competitors versus the benefits of potential competition of behavior.

Evidence of damage from anticompetitive behavior, such as an increase in prices across the industry following the exchange of information, would be the strongest factor in finding illegal exchanges. In the absence of such obvious anti-competitive effects, the following criteria will have to be considered in evaluating the legality of communication, including: ? The nature and quantity of information (widely exchanging information about prices, outputs, large costs, marketing strategies and new product development are more likely to have anticompetitive implications); ? When information is shared vs. price change (past data sharing is generally considered less problematic than current data sharing); ? The will of the parties when exchanging information (for the purpose of restraining competition, such as to fix prices or stabilize prices, will be a problem); ? Industry structure (in concentrated industries, an exchange between a few firms can be a high risk to competition); ? The level of publicity of information exchange (when information is publicly disclosed, the risk from information exchange between competitors will be low); ? how communication is structured and controlled (direct communication is often more competitive than exchanging through a middleman); ? Exchange frequency (exchange more often, problems may occur more). The World Bank and the OECD classify an information exchange agreement as a kind of agreement that facilitates anti-competition agreements. Accordingly, these agreements may motivate the parties to enter anticompetitive agreements, but can also bring positive aspects to the market. Specifically, agreements that facilitate anti-competitive agreements are agreements that require unified action in sharing information, agreeing on product standardization, accepting specific conditions or price-related activities can make restraint agreements easier in oligopolistic markets to avoid mutual competition, even in the absence of anticompetitive agreements. explicitly. Therefore, the World Bank and the OECD recommend that when evaluating the anticompetition agreement facilitation agreements, it is necessary to evaluate the following four questions: agreements occur in markets where market characteristics these arrangements facilitate the formation of cartels; Agreements do occur with most of the major competitors in the market; agreements that make it easy to reach or maintain public or implicit anti-competitive agreements on price or output; Agreements do not have any meaning to promote competition or competitive interests if there is less harm than damage it causes to competition.

b) The legal nature of price fixing agreements in order to limit competition i. Price-fixing agreement is an agreement between enterprises on the same relevant market.

From this agreement, limits or eliminates the possibility of price action among businesses participating in the agreement in order to increase profits. According to the World Bank and the OECD, the price fixing agreement is a commonly used term to describe a series of actions taken by competitors that directly affect prices. From an economic point of view, the nature of the price fixing agreement is to simulate the position of the monopolist, thereby using the market power gained by the parties through a unified agreement. impact to the price and output output in the relevant market. However, in order to ensure the effectiveness of the price fixing agreements, it is necessary to meet certain conditions in economic terms.

ii. The conditions for the effectiveness of agreements generally include the following three main conditions costs always want to set a low price, while the rest tend to set a higher price. The higher the number of firms participating in the pricing agreement, the more pronounced the conflict is and the less sustainable the agreements are. Competition restriction agreements and price fixing agreements, because they are illegal, often take place in secret. The larger the number of businesses, the more difficult it is to operate and maintain the confidentiality of the agreement.

The second condition: Barriers to market entry exist.

With the nature of setting high prices in the market, price fixing agreements face the risk of losing market share if customers can easily have an alternative to consumer demand. Therefore, the barrier to market entry is one of the important factors for the effectiveness and operation of the agreements. There is a similarity between the price-fixing agreement and the destructive pricing act in terms of preconditions. Because the nature of destructive pricing behaviors is sacrificing short-run benefits to increase prices in the long run, after a successful destructive strategy. Therefore, if the industry has low barriers to market entry, it also means that businesses will find it difficult to increase prices to offset the costs of selling losses. It is also a condition that the dominant business also considers before engaging in behavior.

## 11 D) DIFFERENCES IN PRODUCTION COSTS CREATE LAXITY OF THE DEAL

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The third condition: Uniformity of products. The agreement would be much more difficult if the industry had many businesses, if the products were not standardized, and if demand and cost conditions changed rapidly. From the above concept, it is possible to identify the act of price fixing agreement through the following characteristics: First, the subjects performing the price fixing agreement act are competitive enterprises. The Model Competition Law prohibits agreements between competitors or potential competitors, whether agreements exist in written or oral, formal or informal agreements; price fixing agreements or other terms of sale, including in international trade.

Second, there must be a consensus to act between the parties. Agreements agreeing to act in anticompetitive agreements in general and price fixing agreements in particular do not necessarily constitute a contract. Under the Model Competition Law, this agreement is whether written or verbal, formal or informal. Regarding the aspect of agreement cannot fail to mention a phenomenon in the oligopoly market. Accordingly, the oligopoly market simply understands that the market only exists in a small number of businesses, in which the behavior change of any business can affect the rest of the industry. When a firm in this market, especially the leading firm or the one with the lowest costs of production, raises prices, the rest can choose to respond by either keeping the price or increasing. prices follow. Even in the case of other firms raising prices, it is a normal business response. Therefore, the existence of

The first condition: The market structure must be a concentrated market. A market where the less number of businesses is, the more favorable it is for the parties to conduct anti-competition agreements in particular and price-fixing agreements in particular. A market structure of few firms has solved the problem of anticompetitive agreements: firms always have differences in production costs. Therefore, it will be very difficult to set different prices for firms at different production cost levels. Firms with optimal production an action agreement is an important factor to distinguish the difference between the anti-competitive agreement act (an illegal act) and the enterprises' reactions to the changes in a competitor's business behavior in the oligopoly market. Third, the content of the agreement related to the price of goods and services. There are various forms of price fixing agreements. The simplest form is that the parties agree on a rate that applies to some or all of the customers. However, according to the recommendations of the World Bank and OECD, in addition to the agreement setting a fixed price, in fact, countries in the process of building competition laws should also consider classifying the following behaviors in price fixing group acts: price increase agreements; pricing formula agreements; agreements that maintain a fixed percentage of competitive prices of undetermined products; agreements that do not discount or establish an identical discount; credit terms agreements that apply to customers; agreements that eliminate the practice of offering at low market prices to reduce supply and keep prices high; The deals do not discount prices if not notified to other members; Compliance agreements with published prices. Fourth, the purpose of the price fixing agreement is to increase profits. The exploitative nature of WB and OECD price fixing agreements is that if the customer has no other option to replace the product under the price fixing agreement, it is not easy to cut down on consumer demand. then the price will increase very high. At the very least, the price fixing agreement sets prices above those of the most ineffective producers in the market. The price fixing agreement can be conducted as a stand-alone agreement or it can be part of a collusion agreement between businesses that governs most of the businesses of its members. Examples include collusion in bidding, division of markets and customers, production and sales quotas.

## 10 c) Unsustainability of price agreements to limit competition

Agreements between firms will bring benefits to businesses, but the nature of these agreements is less sustainable links. There are various factors affecting the unsustainability of anti-competition agreements. Basically, the laxity of the linkages between enterprises in a restraining agreement can be assessed through the following basic factors: the difference in production costs of each firm in the agreement.; business goals in the competition process; market structure and transparency; state sanctions against competition restriction agreements.

## 11 d) Differences in production costs create laxity of the deal

The essence of anti-competition agreements is that by consensus of action, these enterprises want the group of enterprises participating in the agreement to act as a single enterprise. However, that is in theory. In fact, the businesses participating in the agreement have different production costs. The difference in production costs can arise from the size of the business, production lines and technology, supply chain management or other reasons.

When participating in the agreement, because towards unity of action, enterprises will have to ignore the difference in production costs to fix a uniform price. As a result, the benefits businesses get through the agreement will vary widely. This is also the fundamental difference between an oligopoly and a group of businesses that emulate dominance or monopoly through unified action agreement. This difference in the distribution of benefits, will make the linkage of the participating businesses less sustainable.

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## **12 e) The goals of the business in the competition process create the unsustainability of the agreement**

The goal of the business in the competition process is one of the important criteria, affecting the sustainability of the agreement. The goal of a business in the business process can be because of making a bigger profit than it is now or it can also be to gain market share. With different goals, an organization may be more motivated to engage in behaviors that benefit it, even though these behaviors may go against what the company has committed to in its agreements with other businesses.

When conducting anti-competitive agreements, the company's strategy is to cut production, thereby increasing selling prices. When a restraint agreement is in place, two things are true: Because agreements are always aimed at cutting output, businesses always sell less than they sell. predeal and is probably less than its own production capacity; Selling prices in agreements always bring high profits. When the firm is producing at a level of output below production capacity and where marginal revenue is higher than marginal cost, the firm has an incentive to sell more than it has agreed to other business.

## **13 f) Market structure and information transparency are one of the basic factors that create the lax of linkages among firms in the agreement**

If the differences in production costs and differences in competitive strategy of the firms participating in the agreement are considered as internal factors affecting the stability of the agreements, then the market structure and the Transparency of market information is an external factor that strongly impacts competition restriction agreements. Market structure is seen mainly through factors such as the number of rival firms in the relevant market, and the concentration of buyers. Along with the differences as analyzed above, the more enterprises that exist, the more lax the agreements are. Economists agreed that anticompetitive agreements were more likely to occur in markets where market concentration was high, markets comprising only two to seven or eight firms. A market where there are more firms, 15 or 20 firms, agreement to restrain competition is extremely difficult. According to the OECD, a market structure with a small number of firms is one of the key opportunities for anticompetitive agreements. This can be explained through the following two aspects: First, anti-competition agreements, often illegal agreements. So, these agreements often take place in secret. The more businesses participate, the more information exchange and coordination becomes difficult. And more importantly, the easier it would be to make the deals uncovered. Second, in a market where there are many firms, it is very difficult to enter into anti-competitive agreements where all firms are members of the agreement. On the other hand, competition restriction agreements are only effective when 100% of enterprises in the industry participate. On the contrary, the implementation of agreements where there are many enterprises that do not join the agreement only weakens the effectiveness of these agreements. Firms that did not participate in the agreement could increase their output in proportion to the portion that the group of participating firms had cut. If that happens, the businesses participating in the agreement cannot raise prices, while losing market share to competitors. On the other hand, in a market with lots of businesses, the best strategy for businesses is not to enter into anticompetitive agreements. Accordingly, businesses will increase the selling price at a certain level, lower than the price set by the group of participating businesses. But since they don't enter into the deal, they are not bound by anti-competition agreements: they have the right to sell as much as they want.

From the economic perspective, the nature of basic factor agreements gives the participating firms high profits from cutting output to raise prices. But also from that process will arise a conflict of interests between each member of the agreement and the common interests of the whole group of businesses participating in the agreement. However, when an enterprise breaks an anti-competitive agreement, it is likely that this enterprise will face sanctions / retaliation by the remaining enterprises if this behavior is detected. Compliance and agreement breaking factors always exist as opposite sides of anti-competition agreements. In a market where information about goods or services is adequately provided, and customers' wide and easy access to information will be necessary for anticompetitive agreements. Because when the act of selling goods below the price agreed by the business group, it is this easily accessible information that will return to denounce the betraying business. Faced with retaliation measures of the remaining enterprises, enterprises' motivation to break anti-competitive agreements will decrease. In other words, in the context of adequate market information, the stability of anticompetition agreements is high. But the problem will become different, when the market information is incomplete or the behaviors that the business group agree to are the behaviors not related to price.

## **14 g) State sanctions**

State sanctions are also one of the important factors affecting the sustainability of anti-competition agreements. When conducting competition restriction agreements, businesses always have a choice: whether to join the agreement or not. What businesses should consider when making or participating in anticompetition agreements is that the benefits of joining an agreement are attractive enough not to care about the state's ban? Even when participating in anti-competitive agreements, this factor is still the factor that has the potential to have

## 15 I) COMPETITION RESTRICTION EFFECTS

a great impact on the sustainability of the agreement. Once the sanctions are not strong enough and especially the inconsistent enforcement of competition law will reduce the deterrence of the law. In other words, in such a context, enterprises lack incentives to abandon or stop anti-competition agreements or cooperate with state authorities in dealing with anti-competitive agreements.

h) The impact of the agreement on using prices to limit competition From an economic point of view, the unified agreement of action between enterprises eliminates the independent action between enterprises participating in the agreement. The nature of price agreements to restrict competition is to simulate the position of the monopolist and act in the monopoly's manner. On the other hand, by combining the market power of enterprises participating in anti-competition agreements, it also helps enterprises to carry out activities that promote competition in the market. Therefore, evaluating the impact of the price agreement to limit competition must be assessed on both the anticompetitive effects and the competition-promoting effects.

### 15 i) Competition restriction effects

Anti-competitive agreements restrict price competition between participating firms. The agreements thereby distort the inherent laws of movement of the market. The two objects affected by these agreements are consumers and competing businesses that are not one of the parties to the agreement. Consumers are strongly affected by price agreements. Because they will not enjoy the good prices that businesses offer when they are under competitive pressure in the market. It can be said: decreased output, increased price is the key factor in price use agreements. To evaluate the effectiveness of market models on society, economics uses the concept of social surplus. Accordingly, the total social surplus is determined by the sum of producer surplus plus the total consumer surplus. Consumer surplus is understood as the subtraction of the amount that the buyer is willing to pay for the goods from what they have to actually pay. It measures the benefit a buyer gets from a purchase. The surplus of production is the amount that the seller is paid after subtracting the cost of production. A producer surplus measures the benefit a seller receives from entering a market.

The monopolist will produce at a point where marginal revenue equals marginal cost. So price and output will be  $P_m$  and  $Q_m$ , respectively. In a competitive market price should be equal to marginal cost. Hence price and output will be  $P$  and  $Q_c$ , determined at the intersection of the average revenue curve (also the demand curve) and marginal cost curves. Consider how the social surplus changes if we change from the competitive price  $P_c$  to the monopolistic price  $P_m$  through the following diagram:

This illustration is taken from: Robert S. Pindyck, Daniel L. Rubinfeld (2013), Microeconomics, 8th Edition, Pearson, p. 378 In the monopoly market, the price is high so demand will decrease. Because of the high price, the consumer will lose the consumer surplus, which is the rectangle A. Users who don't buy at  $P_m$  but only buy at  $P_c$  also lose the consumer surplus, which is triangle B. The total loss of consumer surplus will be  $A + B$ . Producer, who will receive rectangular portion A from selling at a higher price but will lose triangular C, the profit gained when selling quantity  $(Q_c - Q_m)$  at the price  $P_c$ . Thus, the total surplus that the monopolist has will be  $A - C$ . Thus we have: the social loss will be  $B + C$ . This is the social loss of monopoly power. Thus, the consequences of price use agreements not only make consumers buy goods at a higher price, but more importantly, price agreements have contributed to the distribution of resources in society. effective.

Other firms operating in the same relevant market but not one of the parties to the price use agreement (rival enterprise) are also subject to the price use agreements. As analyzed above, the tendency to consolidate and / or expand market share in the relevant market is one of the motivations for businesses to conduct anti-competitive agreements, in which the price tool is a powerful tool for achieving this. By amassing power from all firms, price agreements aimed at removing competitors from the relevant market put great pressure on firms' normal business performance. prime. The pressure not only stops at declining profits, but more seriously, these businesses cannot enter the market, expand their business or even be forced to leave the relevant market.

From an economic management perspective, competition restriction agreements can make the competitiveness of the economy ineffective. By limiting or eliminating competition, domestic firms have no incentive and pressure to change technology or improve production processes to optimize production costs. More seriously, if anticompetitive agreements occur in the primary fuel market, which serves as the input of other manufacturing industries, these arrangements could make the manufacturing that is affected through increased production costs. So it can be said that a competitive market can increase international competitiveness, increase employment and establish a higher standard of living. The competition-promoting effect of price agreements is seen from the economics of scale. Accordingly, the economy of scale is understood as the long-term average production cost of an enterprise will decrease as production scale increases. There are many activities that require resource coordination by businesses in the industry. It is not optimal for each enterprise to conduct activities independently, in terms of economics, in many cases. By allowing businesses to enter into coordination arrangements, new products can be created, boosting production value and thereby increasing consumer welfare. There are two factors that need to be considered when assessing the competitionpromoting aspect of new product research and development agreements: Through action agreements, firms can not only add up. resources, promoting the value of the law of the economics of scale, but more importantly, this activity also contributes to risk sharing for all or most of the businesses in the industry, in the case of This action failed. One of the important conditions for businesses to conduct price agreement acts is that they have to create a similarity of products. This similarity is understood as the standardization of products, unification of warranty delivery conditions, unification of payment conditions ...

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But also through this unification it contributes to making the market become more production standards should be transparent and unified. In terms of consumption, these factors are also positive factors.

In short, the main effect of price use agreements is fundamentally disturbing the rules of the market, consumer surplus in particular and social surplus falling. But also from the negotiation process, the agreements to use prices under certain conditions also promote competition through the unification of business conditions, standardization of products, and transparency of market information. It is these two intertwining aspects that make the control of price agreements very complicated. The theoretical requirement is how to prevent harmful effects but put in comparison with the meaning of promoting competition that the agreements bring. The competition authority must differentiate between restraint or competition promoting practices or at least both of these aspects. An overly restrictive policy prevents beneficial competition; an overly lax policy will allow competitors to suppress competition, raise prices and reduce output, thus hurting both consumers and the economy.

## **16 k) How to deal with agreements on using prices to limit competition**

i. Sanctions against agreements to use prices to limit competition Sanctions are one of the important components that make up the legal institution that controls price agreement acts to limit competition. The purpose of the sanctions is to punish violations of the competition law. Accordingly, sanctions in competition laws must create real risks to the parties when they enter into or are considering the possibility of entering into price use agreements to limit competition. To achieve the goal of punishing violations and, above all, deterring and preventing parties from entering into price agreements to limit competition, sanctions must ensure greater benefits than businesses can be reached when entering into an agreement. Breaking competition rules is beneficial if the behavior is not punished, which is the reason why the business should act. Usually, the sanctions that apply to agreements using prices to limit competition are generally a fine. Determining the amount of the fine will depend on many factors such as the level of confidentiality of the act, the seriousness and illegal benefits that the act brings. Some countries, such as the United States and Canada, which use price agreements to limit competition can also be imprisoned. In addition to these two financial sanctions, countries may consider additional remedies. Among the sanctions, fines are the most common sanctions applied by countries. Under EU competition laws, agreements using prices to limit competition may result in a fine of up to 10% of the preceding year's total sales. However, it must be seen that fines of up to 10% of this total revenue by the Council of Europe are quite heavy and the range (0-10%) is very wide. Because of that, it is necessary to have criteria to quantify fines. On that basis, in 2006 the European Commission issued Guidance on methods for determining penalties specified in Article 23 (2) (a) of Decision No. 1/200. There are two important points in this Guide:

## **17 l) General principles**

In determining penalties, the European Commission's Directive 2006 / C 210/02 needs to consider the following factors: the value of the goods or services; time of the violation; the impact of the competition restriction agreement on the market; number of years in which the parties to an anticompetition agreement. The European Union's competition laws have clear delineation of types of competition restriction agreements. Accordingly, the serious anti-competitive agreements are always subject to higher sanctions than the remaining anti-competitive agreements. Horizontal price-fixing, market-sharing and output restriction agreements are often confidential, with the nature most damaging to competition and subject to severe fines.

## **18 m) Method of determining the penalty**

Based on the above general principle, in specific cases in order to make a final decision on the fine level, the Committee needs to rely on aggravating and extenuating circumstances so that it can decide the level of the fine. verb 0% -10% of total revenue of the business.

## **19 n) Aggravating circumstances**

? When a party continues or repeated a violation as soon as the National Competition Commission or Authority has found it to be in violation of Articles 81, 82: the fine can be increased by 100% for each violation; ? Refuse to cooperate with or obstruct the Commission in conducting an investigation; ? Role as leader, or initiator of violations; The Commission will also be particularly interested in any steps or stages of implementation intended to compel other firms to enter into anticompetitive agreements or to adopt retaliation measures that they seek. Applicable to other businesses for the purpose of ensuring enforcement of violations of commitments in anti-competitive agreements. However, the general rule is that even if firms participating in the agreement to use prices to limit competition fall into aggravating circumstances, the Commission must comply with the maximum fine set by the Council of Europe. . Accordingly, the final penalty shall not exceed 10% of the total revenue of the preceding fiscal year of the enterprise or association that has engaged in the violation as provided for in Article 23 (2). Decision No. 1/2003. On the other hand, for businesses serving as a senior member, initiating or having an important role in anti-competitive agreements, the way to handle it is always stricter than that of other businesses. At the same time, these subjects will normally not be entitled to the leniency program in

## 20 O) EXTENUATING CIRCUMSTANCES

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competition laws or will enjoy the leniency, but only to a limited extent, the reduction of fines and not the total exemption. This stems from the role these firms play in initiating and operating anticompetitive agreements. According to a 2006 notice of the European Commission, enterprises that take measures to force other enterprises to enter into an anticompetitive agreement or maintain such agreement will not be exempt from penalties. It can still be considered for a fine reduction if the business meets the relevant requirements. On the same principle, under the provisions of the US corporate leniency policy, one of the conditions for an enterprise to enjoy full leniency is that the enterprise has not forced another party to participate. illegal and explicit activity is not the leader or originator of these activities.

### 20 o) Extenuating circumstances

The European Commission will consider reducing the fine based on the previously determined base amount. According to Guideline 2006 / C 210/02, the circumstances for mitigating fines imposed on enterprises participating in anti-competitive agreements include the following: ? In the event that the business concerned provides evidence that it ceases the breach as soon as the Commission intervenes: this will not apply to the deal or covert action (especially the restrictive agreements compete); ? When the business provides evidence that violations have been committed due to negligence;

The firm provides evidence that its participation in the infringement is substantially limited and thus demonstrates that, during the period during which it is the violator, it actually avoids the application of the infringement. This is done by applying competitive practices in the market: If merely one enterprise enters into a competition restriction agreement for a shorter period of time than others will not be considered a downside. slightly because this is already reflected in the base amount;

? The business concerned has cooperated effectively with the European Commission in excess of the requirements that the leniency policy requires enterprises to fulfill;

? When the enterprise's anti-competitive behavior has been allowed or encouraged by public authorities or law.

In addition to the aggravating and mitigating circumstances, the leniency policy is one of the factors that greatly affects the amount of fines that enterprises have to suffer. Businesses can be exempt from the full amount of fines if they cooperate with the European Commission or reduce the money under certain conditions. The Commission will apply the leniency rules in accordance with the conditions specified in the applicable notice.

p) A leniency policy on price agreements to limit competition This is the government's policy to win immunity for members participating in anti-competition agreements to actively declare, provide documents and evidence to prove the existence of anti-competitive agreements. with competition authorities. Businesses that enjoy leniency will be exempt from part or all of the administrative or criminal sanctions they should have suffered. The leniency program has been built in the direction of combining with the design of heavy sanctions, sufficient deterrence to take effect.

The recognition of the leniency policy in the Competition Law 2018 plays a very important role because it will help quickly and accurately detect and break anti-competitive agreements. In fact, most anticompetitive agreements negatively affect the competitive environment between businesses and consumers' interests through agreements on market division, on prices, on terms of contracting. However, these types of agreements are difficult to detect due to their high secrecy. Therefore, it is not easy to discover the existence of anti-competition agreements and obtain evidence related to this agreement. Therefore, the leniency policy specified in the Competition Law 2018 will create favorable conditions for entities participating in the competition restriction agreement to voluntarily declare and cooperate with authorities in investigation process to enjoy the exemption or reduction of the fine. Because the sooner the subject declares and cooperates with the investigation, the higher the level of exemption and reduction of liability. When the subjects quickly report to enjoy the leniency policy, the illegal competition restriction agreements will soon be broken. In order to apply the leniency policy, the enterprise must be a member of an anti-competition agreement. This business must proactively approach the competition authority to confess their participation in the agreement. At the same time, this enterprise must also strive to support competition authorities in the investigation and handling of violations. As for individuals who are individuals such as managers, employees, and employees of enterprises, when participating in a prohibited competition restriction agreement, they will not be subject to leniency policy under the Competition Law. contest even if they voluntarily report this agreement behavior. Therefore, the leniency policy is seen as an effective way to help the authorities to quickly and effectively access and break the prohibited anti-competition agreements. The basic principle that competition law must prioritize is to create a risk for businesses to worry if they do not voluntarily cooperate with competition authorities. On the other hand, dominant strategy is the optimal choice of businesses. But if the benefits of complying with anti-competition agreements are too great compared to the risk of being dealt with and if businesses have time to exchange information and come up with a response plan, Image may differ. As for the de-competition agreements in practice, enterprises easily exchange information with each other when the anti-competition agreements between them are discovered. Therefore, in order for the leniency policy to take effect, it is necessary to create a race between businesses to compete for the tolerance of the law.

In Vietnam today, according to the provisions of Clause 1, Article 112 of the Vietnam Competition Law 2018: "Enterprises voluntarily report to help the National Competition Commission detect, investigate and handle anti-



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competitive agreements. Prohibited paintings specified in Article 12 of this Law are exempted or reduced from the fine level according to the leniency policy". Thus, the Vietnam Competition Law 2018 has determined that the beneficiaries of the leniency program are only enterprises. Enterprise here is understood as an entity conducting business for profit and is an independent entity in the market, regardless of whether it is a specific natural or legal entity, or can also be entitled to. leniency according to each enterprise's own leniency policy. . In order to encourage individuals to proactively report and cooperate with competition authorities in the investigation process, the general trend of countries around the world today is towards recognizing individuals as well For those who are entitled to a leniency policy, such as in Poland, individuals holding a managerial position or former manager of the business can also apply for leniency on their own, or in Ireland, the waiver program Except for the Cartel Immunity Program in effect on January 22, 2015, which also extends immunity to individuals who are directors, employees and employees voluntarily acknowledge their participation in anti-competitive agreements. From the above evidence, it can be seen that Competition Law 2018 does not have harmony with the world trend. From a personal perspective, this is an issue to consider because if individuals related to businesses with anti-competitive agreements are prohibited but confessing as individuals, they are not entitled to. The leniency policy is a problem that needs to be reviewed. For the purpose of the recognition, regulation and implementation of a leniency policy is to facilitate the access process, detect and process dangerous anti-competitive agreement acts but if the policy is It only applies to business objects such as the Competition Law 2018 is not reasonable, and has not created incentives for individuals to actively denounce violations because even though they report, confessing, they also do not enjoy the leniency policy, which leads to the failure to promote the goal of promptly detecting dangerous anti-competition agreements that the leniency policy aims at. This creates an undue limitation for the role of leniency program. Therefore, from the point of view of the author, in order to achieve the goal of enhancing the ability to control and handle prohibited competition restriction agreements, the Competition Law should be regulated in the direction of the beneficiaries of the drilling policy. roses must include both individuals and businesses, not only businesses that are currently subject to this policy. Accordingly, in the event that the company satisfies the conditions for the exemption, the company's directors, leaders and employees will also enjoy the leniency policy provided they sincerely acknowledge and report. His violation concurrently with the company's reporting of violation and continue to support the investigation. In case the company declares to be the subject specified in Clause 4, Article 112, does not satisfy the conditions to enjoy the exemption, directors, leaders and employees are only entitled to the exemption of the leniency policy if they voluntarily report to investigating agencies as an individual. In the event that an employee of the member company declares that the anti-competitive agreement is prohibited personally and the company comes after its employee, this exemption is only available to the employee for the company. has not met the above conditions. The author thinks that the above provisions will contribute to increasing the attractiveness of the leniency policy towards individuals, thereby creating incentives to encourage individuals to actively participate in denunciations and self-reporting. confess, sincerely declare anti-competition agreements, thereby helping competition agencies to easily detect and promptly handle these agreements. q) Exemptions from price agreements to limit competition If a competition policy is too loose, violations cannot be effectively controlled. Meanwhile, if a competition policy is too strict, it will not promote the positive elements of the anti-competition agreement. In order to well balance the two aspects of punishing anticompetitive behaviors and grant the exemption to favorable anti-competitive agreements, it is necessary to define under what conditions, the agreements are This is beneficial for the competition and / or the consumer.

## 21 i. The deal's competitive-boosting aspect

Agreements between competitors do not always cause harm to competition and to consumers. In certain cases, these arrangements can provide value that fosters competition in the marketplace. One of the positive aspects of competition promotion agreements are new product research and development (R&D) agreements. Research and development costs, especially creating breakthrough products, are often enormous. High cost and high risk are one of the biggest challenges of research and development activities. Therefore, it is ineffective for each individual enterprise to perform this activity independently from an economic perspective. That is also the reason why businesses agree to jointly carry out research and development activities. In the practice of competition law, countries always consider agreements to promote product research and development always as competition promoting agreements or will grant such agreements an exemption. Because of the nature of research and development activities are research investment activities that are risky. The key to this process is to face risks in the investment process to benefit from a new product that will be breakthrough or high return in the future. Therefore, forcing firms to allow a fourth firm to participate in the production of a new product would be unfair for businesses that had already faced the risk from the start and allowed the fourth firm to take advantage. from the risk of other businesses unjustly. In its 1998 international competition law enforcement policy guide, the US Department of Justice also emphasizes this aspect with respect to denial of transaction agreements. Accordingly, forcing the joint venture to open up opportunities for competitors to become members of the joint venture (or license research and development products of the joint venture to businesses that want to). license ownership) will reduce the motivation of research and development joint ventures. The consequence of implementing a policy that does not allow joint ventures to choose members could have the worst consequences of encouraging firms to

avoid risks (without having to start initially) but they have grounds to hope to be given the right to share the results from previously ventured businesses through competition litigation.

### 22 ii. Exemption of competition restriction agreements

As analyzed above, there are anti-competition agreements that are completely harmful to competition and consumers. These are agreements that are classified by the laws of the countries into a group of particularly serious anti-competition agreements and dealt with on the principle of default violation. But there are also agreements like research and development agreements that are valuable in promoting competition. At the same time, there are also anti-competitive agreements, but under certain conditions, these agreements promote competition. Therefore, in order to create the effectiveness of controlling anti-competition agreements, in practice, countries divide the exemption criteria into three groups:

? Group 1: exemptions that apply automatically Exemptions are applied automatically, which means when an enterprise implements agreements, but under the provisions of the competition law it is defined as the agreements with an implicitly competitive promoting value. . The competition authority does not need to consider the beneficial or anticompetitive aspects of an agreement. Under European Union competition laws, research and development agreements are automatically exempt. Accordingly: Subject to Article 81 (3) of the Agreement, the provisions of these Regulations, declare that Article 81 (1) shall not apply to agreements between two or more parties (hereinafter referred to as parties) relating to the conditions pursued by those parties: joint research and development of products or processes, and joint exploitation of the results of such research and development; jointly explore research and development results of products or processes that they have previously researched and developed; or jointly research and develop products or processes jointly, but do not include the joint exploitation of the results. This waiver shall apply in the event that such agreements (hereinafter "research and development agreements") contain competition restrictions within the scope of Article 81 (1).

? The second group: exemption applies according to the market share threshold Market share is one of the important bases for assessing the market strength of one or a group of businesses in the relevant market. Under EU competition law, most exemptions use the market share threshold as a basis for consideration. According to the European Commission's Decision 330/2010 of 20 April <sup>1 2 3</sup>

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<sup>1</sup>Price Agreements to Restriction Competition-Vision from the Affects, Sustainable Nature, Impact Assessment, and Proposals of Legal Control © 2020 Global Journals

<sup>2</sup>Price Agreements to Restriction Competition-Vision from the Affects, Sustainable Nature, Impact

<sup>3</sup>( )G © 2020 Global Journals

2010 on the application of Article 101 (3) of the TFEU on the vertical classification of agreements and acts of coordination, the The part to consider for application is not to exceed 30%: "If the share of each party to the agreement does not exceed 30% in the relevant market, the vertical agreements do not imply some kind of restriction. competition, often leading to improved production or distribution and benefits the user ".

Pursuant to the European Commission's Decision No. 2659/2000 of 29 November 2000 on the application of Article 81 (3) of the Agreement to the Classification of Research and Development Agreements, the subject of a waiver only applies to agreements between competitors when the market share does not exceed 25% on the relevant market. Where two or more participants are competitors, the exemption under Article 1 shall apply for the period specified in paragraph 1 only if, at the time of the conclusion of the research and development agreement. Agreements on research and development of combined market share of the parties not exceeding 25% in the relevant market for products that are likely to be improved or replaced by contractual products.

? Third group: severe competition restriction agreements Price-fixing, market division, and bidding collusion are agreements that are classified by countries as serious agreements. Their severity is judged from the fact that they are outside for reasons (in the interests of consumers) and fail to meet one of the following conditions: the effect of promoting technical progress, technology, improve the quality of goods and services; enhancing the competitiveness of Vietnamese enterprises in international markets; promote the uniform application of quality standards and technical norms of product categories; agree on contract performance, delivery, and payment terms, but not related to price and price factors. Competition law enforcement experience has shown that these agreements seriously harm competition and do not have any basis to justify this behavior. So, in addition to applying the default violation principle to deal with, these agreements will also be implicitly not entitled to an exemption. However, it must be seen that, despite being divided into such groups, in reality, competition authorities always have the right to review or withdraw prior waivers decisions when the context is no longer relevant. . The general rule of thumb is that the application of an exemption is always conditional and always limited. The European Commission may withdraw decisions to grant an exemption if it discovers in any particular agreement, decision or joint action of firms for which the Commission has decided to grant an exemption. The previous subtraction is no longer consistent with Article 101 (3) TFEU.

V.

## .1 Discussion and Conclusion

Agreements using prices to limit competition are anti-competitive agreements seriously, distorting or eliminating competition in the market, thereby greatly affecting the interests of consumers. Therefore, the issue of controlling the agreements to use prices to limit competition is always one of the important contents of the competition law in many countries. To be able to counter such agreements, it is necessary to understand the working principles and the economic nature of the behavior. In terms of economics, the unity of action will bring businesses the ability to dominate competition in the market. But economics also shows that there are also unsustainable elements in the process of agreeing to act by agreement. By exploiting unsustainable elements in price-based agreements to limit competition, competition laws in countries such as the United States and the EU have developed leniency as an effective tool to break competition restriction agreements. The fundamental core of leniency in competition law is game theory. This policy utilizes conflicts of interest between the pursuit of its own interests and the continued upholding of agreements established by the parties. Practice in other countries has confirmed, leniency policy is an effective tool to combat anti-competition agreements. Agreements using prices to limit competition will bring businesses many benefits, if these agreements are not punished by the law. This will make businesses more inclined to commit violations in the future. Therefore, sanctions imposed on price agreements to limit competition are one of the indispensable parts of the rules that control this behavior. In terms of sanctions, it is necessary to clarify the forms of sanctions that competition law can apply to acts of agreement on using prices to limit competition. At the same time, the law must provide criteria to quantify the penalty for firms playing different roles in the same group of firms participating in the price agreement to limit competition. The role of control over price agreements to limit competition will be ineffective, if the law does not take into account the positive effects of these agreements. Under certain conditions, price agreements to limit competition also play a role in promoting competition, either promoting economic development or optimizing the use of resources. Therefore, the issue of immunity is always an indispensable part of the competition laws of other countries in controlling the anti-competition agreements in general and the agreement on using prices to restrict competition in particular.

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