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# Legal Developments in Mobile Services and Mobile Phone Industry

Vietnam has seen a booming mobile services market. The mobile penetration rate has grown exponentially from just over 20% in 2006 to 80% by 2008. Vietnam has surpassed many of its peers in the sector after its WTO accession in 2007, and the introduction of Law on Telecommunication in 2009 has been an essential development. Just one year after passing the Law on Telecommunication, the government issued the Decree No. 25/2011/ND-CP (Decree 25) as an implementing regulation, which provides some groundbreaking changes to the regulation of the telecommunication sector.

## Decree 25 – Telecom Sector Competition

The promotion of competition in Vietnam has helped break down the mobile market into three leading players: Viettel (33.82% market share), Mobiphone (27.15% market share), and Vinaphone (27.19% market share). Article 3 of Decree 25 introduces a new restriction that intends to further fuel competition in the telecom sector. Under the restriction, any entity or individual that already owns more than 20% of the charter capital or shareholding of a telecom enterprise is prohibited from holding more than 20% of the charter capital or shareholding in another enterprise in the same telecom services market.

This provision directly affects the biggest telecom player, Vietnam Post and Telecommunication (VNPT), which currently owns 100% capital of both Mobiphone and Vinaphone. Decree 25 is effective from June 1, 2011, but VNPT has not yet submitted its plan of action to the Ministry of Information and Communication (MIC). VNPT has the option of putting either Mobiphone or Vinaphone through an equitization process, or merging the two into one entity. If VNPT were to opt for the latter, it would undermine competition, as the merged entity would become a market leader by a large margin. It is more likely to go through with equitization, but the question is whether foreign telecom giants such as Orange France Telecom, which has persistently attempted to buy shares of Mobiphone in the past, will benefit from this regulation.

## Decree 25 – Capital Requirements

Although previous regulations have set requirements for registered capital, Decree 25 for the first time outlines clear requirements for minimum legal capital and minimum level of committed capital for telecom players. The minimum legal capital varies depending on the service provided, ranging from VND 5 billion (approximately USD 240,000) for service with landline fixed telecom without a radio frequency band in a network of a province or city under central authority, to VND 500 billion (approximately USD 24 million) for service with landline mobile telecom network using a radio frequency band. The minimum level of committed investment is typically three or five times the minimum legal capital. Furthermore, Decree 25 requires each registering enterprise to deposit a fee of 5% of the level of committed investment in the first three years, but not less than VND 3 billion into an escrow account with MIC before the telecom license is issued.

The provisions ensure that companies investing in the telecom sector are financially sound by setting a minimum legal capital, especially for entities providing services with facility-based infrastructures. However, since the regulation defines telecom services quite broadly, companies providing text message and e-mail services via mobile applications will fall under the scope of this regulation. The development of mobile applications with innovative user interfaces provides new ground for small companies to enter the market, yet imposing such a legal capital requirement may restrict market entry and hinder innovation in this area.

## Decree 25 – Foreign Enterprises

Decree 25 also provides clear regulation of foreign enterprises with conditions consistent with WTO commitments. A foreign entity may form a joint venture or business cooperation contract with a Vietnamese entity to provide telecom services without network infrastructure. Where a foreign entity wishes to provide telecom services with network infrastructure, it must form a joint venture or business cooperation with a telecom enterprise already licensed to establish a telecom network in Vietnam. Currently all such enterprises are government owned. Since the regulation is silent on the maximum capital, existing limits set by WTO commitments still apply.

## Other Legal Developments – Mobile Phone Import Restrictions

Despite developments in the telecom sector that will affect the mobile services sector, the government has also implemented a number of regulations that could potentially hinder the growth of the mobile phone market.

In an effort to curb inflation and reduce the trade deficit, the Vietnamese government is trying to reduce imports of luxury goods to slow the erosion of its foreign currency reserves by updating the regulation on the importation of certain goods, particularly mobile phones.

In Decision No. 1380/QD-BCT, mobile phones were placed on the import-discouraged list. All goods on the import-discouraged list already have tariffs set at or near the ceilings declared in WTO commitments.

Announcement No. 197/TB-BCT, which came into effect June 1, 2011, permits only a legalized distributor to import mobile phones, as it is required to present a legalized letter of appointment or authorization as a distributor, importer, or agent from the manufacturer of the products in order to clear customs. This means that parallel imports, which previously enjoyed vague legal status, have officially become illegal in Vietnam.

The regulation places further restriction by allowing an entity to import such goods only through three designated seaports of entry: Hai Phong, Da Nang, and Ho Chi Minh City. This is a serious limitation because given the delays in processing time and docking problems in seaports, precluding importers from using border crossings and airports can lead to substantially longer processing times and higher costs. This has already been proven in practice, which led the government to amend the regulation by excluding several items from the restricted list. Mobile phones, however, still remain under the restriction.

The regulations create a number of procedural and financial barriers to the importation of legitimate mobile phones, yet it remains to be seen how effective they are in protecting consumers from defective goods by controlling the parallel import of such goods.