23 December 2013

Minister Hoang Tuan Anh
Minister of Culture, Sport and Tourism
hoangtuananh@chinhphu.vn
BỘ VĂN HÓA, THỂ THAO VÀ DU LỊCH (MoCST)
51 Ngô Quyền,
Hà Nội

Comments on Decree 181/2013/ND-CP, issued by the Government on 14 November 2013, providing Details on the Implementation of a Number of Articles on the Law on Advertising ("Decree 181")

Dear Your Excellency Minister Hoang Tuan Anh,

The Asia Internet Coalition (AIC) is an industry association formed by eBay, Facebook, Google, LinkedIn, Salesforce and Yahoo. The AIC seeks to promote the understanding and resolution of Internet policy issues in the Asia Pacific region.

Internet advertising has opened up many new business opportunities for Vietnamese companies that are now able to reach their customers in new and innovative ways. We share your Ministry's interest in ensuring that Vietnamese consumers are protected from bad advertising practices. Many of the AIC's members are world leaders in online advertising and have valuable experience on how to protect consumers, which they would be happy to share with your Ministry.

We are concerned that the provisions contained in Chapter III of Decree 181, when read together, could be interpreted as being inconsistent with Vietnam's commitments under several international trade agreements, in particular the General Agreement on Trade in Services ("**GATS**"), Vietnam's WTO Schedule of Commitments ("**Schedule**"), and Vietnam's commitments under the U.S. - Vietnam Bilateral Trade Agreement ("**BTA**").

More specifically, when read together, the articles in Chapter III of Decree 181 appear to create a new requirement that foreign advertising services providers supplying advertising into Vietnam on a cross-border basis must do so via a lawfully registered advertising services provider in Vietnam ("**Requirement**").

Under the Annex G Part II.1.C(a) of the BTA, Vietnam agreed not to place any limitations on the cross-border supply of advertising services (except for advertising services for wines and cigarettes). If implemented as discussed above, the Requirement would likely to be inconsistent with the BTA.

Moreover, under the Schedule on Business Services 1.F(a), Vietnam committed not to adopt or maintain any limitations on the cross-border supply of advertising services (except for the advertising of wines and spirits which shall be subject to domestic regulations).[1] Thus, if implemented as discussed above, the Requirement would appear to establish a quantitative limit on foreign advertising service suppliers eligible to provide their services into Vietnam. According to Article XVI(1) of GATS, Vietnam is obliged not to "accord services and service suppliers of any other Member treatment less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule." According to Article XVI(2) of GATS, Vietnam is only allowed to adopt or maintain restrictive measures to the advertising sector if, by the time of its accession, Vietnam did not undertake any commitments with respect to advertising sector, or it has inscribed these restrictive measures in the Schedule. Therefore, the Requirement, if implemented as discussed above, would likely constitute a violation of GATS.

Furthermore, it is unclear from the text of Chapter III how its provisions will be implemented in practice. In particular, the relationships and obligations of "website owners," "foreign advertising services providers," "domestic advertising services providers" and "advertising customers" are unclear. For example, a plain reading of Article 13 of Chapter III of Decree 181 suggests that a new obligation will be imposed on the Vietnamese customers of cross-border advertising services providers to work through a domestic advertising services provider, while Article 14 requires "website owners" (not foreign advertising services providers) to notify the Minister of Culture, Sport and Tourism of the details of the domestic advertising services provider who works with the foreign advertising services provider that has placed ads on the website of the "website owner."

We, therefore, respectfully request that the Government of Vietnam further clarify the intent and application of Chapter III of Decree 181, and to re-consider implementing these provisions if it would result in the same being regarded as incompatible with Vietnam's commitments under the international agreements discussed above.

Yours Sincerely,

Dr. John Ure
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[1] Under the WTO Schedule of Commitments, with respect to the Market Access Restriction column of Advertising Services, Vietnam committed "none", which means Vietnam provides full market access with respect to the cross-border advertising services.