ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION
SCHUMPETER PROJECT ON COMPETITION POLICY

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COMMENTS OF ITIF

Before the

Ministry of Industry and Trade

Socialist Republic of Vietnam

In the Matter of	)
Draft Law Amending and Supplementing Certain Articles of Commercial Law, Competition Law, Foreign Trade Management Law, and Consumer Rights Protection Law	)

June 20, 2026

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INTRODUCTION

On January 21, 2026, the Ministry of Industry and Trade published the dossier for the Draft Law amending and supplementing a number of articles of the Law on Commerce, the Law on Competition, the Law on Foreign Trade Management, and the Law on Protection of Consumers' Rights (Draft Law). Earlier this month, the Ministry of Industry and Trade opened a consultation to collect opinions on the dossier for the Draft Law, which reflects a broad proposal to make significant changes across these key areas of the Vietnamese legal system.[1]

The Information Technology and Innovation Foundation (ITIF) is an independent, non-profit, and non-partisan think tank based in Washington, DC. ITIF's mission is to formulate, evaluate, and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress. The University of Pennsylvania has recognized ITIF as setting the global standard for excellence in science and technology policy, and as one of the overall "Top 40 U.S. Think Tanks."[2]

ITIF is grateful for the opportunity to provide comments to the Ministry of Industry and Trade on the Draft Law, particularly regarding several of the changes pertaining to the Vietnam Law on Competition (2018). In summary, while ITIF commends the Ministry of Industry and Trade for considering how its antitrust regime may be improved, it is concerned that several of the changes may ultimately harm—not help—consumers and innovation in Vietnam.

ITIF's comments proceed in five parts. First, ITIF discusses the Draft Law's proposed changes in Article 10 on the determination of market shares and combined market shares. Next, ITIF analyzes the Draft Law's amendments in Article 26 regarding the determination of substantial market power. Third, ITIF engages with the Draft Law's revisions regarding the crucial Article 27 and its prohibited abuses of a dominant position or monopoly position. Recommendations and a brief conclusion follow.

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[1] Ministry of Industry and Trade of the Socialist Republic of Vietnam, Collecting opinions on the dossier of the draft Law on Amending and Supplementing a Number of Articles on the Commercial Law, the Competition Law, the Law on Foreign Trade Management, and the Law on Protection of Consumer Rights (June 1, 2026), https://moit.gov.vn/du-thao-van-ban/lay-y-kien-doi-voi-ho-so-du-an-luat-sua-doi-bo-sung-mot-so-dieu-cua-luat-thuong-mai-luat-canh-tranh-luat-quan-ly-ngoai-t.html.

[2] James G. McGann, 2020 Global Go To Think Tank Index Report, Univ. of Pa. (2021), https://repository.upenn.edu/think_tanks/18 (last visited May 12, 2025).

ARTICLE 10

Article 10 sets forth several criteria that inform the determination of market share and combined market share, including the percentages of sales revenue, purchase revenue, volume sold, and volume purchased. The Draft Law would add several factors to this list that appear specific to determining market shares for relevant markets involving digital platforms. These include a factor that analyzes the percentage ratio between the number of buyers participating on a firm's digital platform and the total number of buyers participating on digital platforms, another that assesses the same for sellers on the digital platform, as well as factors that consider the percentage ratio between the number and value of transactions on the enterprise's digital platform and the total number and value of transactions on digital platforms respectively.

While ITIF does not object in principle to assessing the number of buyers or sellers in determining market shares, such a metric can be misleading if buyers and sellers use multiple digital platforms, which results in double counting, or purchase vastly different amounts of a given product: A firm that sells to ten buyers who spend ten times as much as one hundred buyers of another firm will have, holding the rest constant, the same market share as that other firm. Moreover, while defining a relevant market in the context of a digital platform can raise unique issues, such as the need to take into account both sides of the platform, the calculation of market shares in digital markets does not differ substantially from calculating market shares in non-digital contexts, making the Draft Law's inclusion of digital platform-specific factors unnecessary.

ARTICLE 26

Article 26 identifies a broad set of factors relevant to the determination of substantial market power, including market shares, financial strength, barriers to entry, and the ability to exclude rivals through control of distribution and important sources of supply. The Draft Law would supplement this list with several new factors, the majority of which are targeted at the assessment of substantial market power in digital markets. These include the ability to collect, accumulate, control, and exploit user data; the degree and scope of direct and indirect network effects on digital platforms; the degree of integration and linkage of products and services within an e-commerce ecosystem; and the ability to use algorithms, artificial intelligence (AI), or other digital technologies to coordinate or control transactions, prices, or user behavior.

ITIF has concerns about the new factors proposed by the Draft Law. First, while the type and degree of network effects can be relevant to the assessment of market power, these sorts of economies of scale and scope are hardly unique to digital platforms but are instead manifested throughout the economy. Moreover, although an e-commerce ecosystem—or indeed, any firm—with extensive vertical integration or complementary products may benefit from efficiencies, this does not mean that the firm enjoys substantial market power in any one relevant market; its rivals may enjoy comparable scope that negates any competitive advantage. Similarly, the ability of a firm to use algorithms, AI, or other digital technologies to coordinate is not grounds for generally inferring that it enjoys substantial market power, either individually or collectively, as these tools may also be used to disrupt coordination.[3]

[3] Joseph V. Coniglio, Testimony Before the H. Subcomm. on the Admin. State, Regul. Reform, & Antitrust of the H. Comm. on the Judiciary, 119th Cong. (2025) (written statement), https://itif.org/publications/2025/04/03/testimony-house-judiciary-committee-artificial-intelligence-trends-innovation-competition/.

ARTICLE 27

Article 27 details several different types of business conduct that constitute a prohibited abuse of a dominant position or abuse of a monopoly position, including predatory pricing, resale price maintenance, exclusive dealing, discrimination, and tying. The Draft Law would add to this list new restrictions that appear to be specific to behavior engaged in by digital platforms such as self-preferencing, unreasonable terms and conditions (including high prices), technological tying, exclusivity policies, limitations on users setting defaults, and data portability for business users specifically. It would also restrict the use of non-public data obtained on the firm's digital platform to assist it in competing with businesses that use its platform, such as when an e-commerce platform realizes that a market opportunity exists based on aggregated data showing that a certain product on its platform is selling well and, as a result, decides to introduce its own competing product of comparable quality at a lower price on the platform.

The new additions to Article 27 are likely to chill a significant amount of procompetitive practices in ways that ultimately harm Vietnamese consumers and innovation. To be sure, none of the prohibitions appear to be *per se* bans but instead require some showing—which should be made by the plaintiff—that the practices resulted in some actual or likely *prima facie* harm to users. However, the Draft Law does not make clear that companies may generally provide procompetitive justifications for their conduct to show that these benefits outweigh any initial consumer harms, which risks condemning conduct that is on balance procompetitive. Rather, the Draft Law provides only a narrow exception for cybersecurity and essential platform operations with respect to the prohibition relating to user defaults. In addition, the conduct prohibitions do not just include restrictions on behavior that is exclusionary, but also on exploitative behavior, like unreasonable pricing, that does not offend the competitive process but often itself spurs entry and dynamic competition.

RECOMMENDATIONS

For these reasons, ITIF respectfully offers the following recommendations for the Ministry of Industry and Trade to consider in connection with the Draft Law:

- **The Draft Law's platform-specific market share factors are flawed and unnecessary:** There is no need for special factors to calculate market shares in relevant markets that involve digital platforms, and merely counting the number of buyers or sellers that use a digital platform ignores the multi-homing dynamics that characterize many digital markets—leading to flawed market share assessments that will confound the overall competitive analysis.
- **The additions to Article 26 err in their attempt to capture digital market dynamics:** In its apparent attempt to account for the perceived uniqueness of digital markets, the Draft Law overlooks that not only are the economies of scale and scope that define network effects not all unique to digital markets, but also that a firm's greater scope, vertical integration, and ability to leverage AI and algorithms do not indicate that it enjoys substantial market power.
- **Article 27's new prohibitions will chill procompetitive behavior:** The lack of firms' ability to provide procompetitive justifications for common practices like self-preferencing—even if some showing of competitive harm is required—and the condemnation of exploitative behavior like excessive pricing, which does not involve exclusion or harm the competitive process, are likely to chill innovation and harm Vietnam's increasingly dynamic digital economy.

CONCLUSION

As ITIF explained last year in a letter to His Excellencies Tran Thanh Man and Pham Minh Chinh, the Draft Law is "contrary to Vietnam's goals of both fostering homegrown innovation and deepening its techno-economic partnership with the United States" and will likely result in "lower investment by U.S. digital firms in Vietnam, a less dynamic Vietnamese digital ecosystem, and overall greater Chinese techno-economic dominance in Southeast Asia."[4] Unfortunately, with respect to Articles 10, 26, and 27, the changes contemplated by the Draft Law—in what appears to be an attempt to better account for the features of digital markets—are, in general, likely to result in error costs because of both flawed market share assessments and false positives with respect to whether firms have and actually abuse a dominant or monopoly position.

Very truly yours,

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[4] Joseph V. Coniglio, Letter to the Prime Minister and National Assembly of Vietnam Regarding the Proposed Law on Digital Transformation (Oct. 12, 2025), https://itif.org/publications/2025/10/12/letter-regarding-vietnam-law-on-digital-transformation/.