ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION

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COMMENTS OF ITIF

Before the

Economic and Financial Committee of the National Assembly

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	)	Public Comment

September 19, 2026

CONTENTS

Introduction and Summary 2
Article 10 3
Article 26 3
Article 27 4
Recommendations 4
Conclusion 5

INTRODUCTION AND SUMMARY

On January 21, 2026, the Ministry of Industry and Trade (the Ministry) 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). In June, the Ministry opened a consultation to collect opinions on amendments to the Draft Law. Following this consultation, the Ministry submitted a revised version of the Draft Law at the 5th Session of the Standing Committee of the National Assembly on August 27.

The Information Technology and Innovation Foundation (ITIF) is an independent, non-profit, and nonpartisan 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."[1]

ITIF is grateful for the opportunity to provide comments to the Economic and Financial Committee of the National Assembly 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 for removing much of the digital platform-specific language from Articles 10, 26, and 27 that it objected to in the earlier version of the Draft Law, it remains concerned that de facto targeting of digital platforms persists in the present version.[2]

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. Second, ITIF analyzes the Draft Law's amendments in Article 26 regarding the determination of substantial market power. Third, ITIF engages with

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

[2] 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/duthao-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-tranhluat-quan-ly-ngoai-t.html.

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.

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 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 defining a relevant market in the context of platforms 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 10 no longer includes factors that analyze 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 or that assesses the same for sellers on the digital platform. ITIF welcomes this development because "such a metric can be misleading if buyers and sellers use multiple digital platforms, [resulting] 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."[3]

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; the degree of integration and linkage of products and services within an ecosystem; and advances in technology and technical infrastructure.

ITIF commends the inclusion of other factors alongside the number of customers and business users for determining whether a firm possesses substantial market power. ITIF also applauds the removal of the ability to use algorithms, artificial intelligence, and other digital technologies to coordinate or control transactions prices, prices and other user behavior as a factor relevant to the determination of substantial market power as well as the digital platform and e-commerce verbiage included in the earlier version of the Draft Law.

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[3] Joseph V. Coniglio, "Comments to Vietnam's Ministry of Industry and Trade Regarding the Draft Law Amending and Supplementing Competition Law," Information Technology and Innovation Foundation, June 20, 2026, 3, https://itif.org/publications/2026/06/20/comments-vietnams-ministry-industry-trade-draft-law-amending-supplementing-competition-law/.

Still, ITIF has concerns about the new factors proposed by the Draft Law. First, it is crucial to distinguish between efficiencies resulting from competition on the merits and those resulting from anticompetitive behavior. To the extent that the former translates to a firm having greater access to user data, network effects, greater product integration, and technological advances, these factors cannot be used to determine a firm possesses substantial market power without chilling incentives to innovate. Second, while these factors no longer single out digital platforms explicitly, they remain clearly engineered to find digital platforms possess substantial market power, opening the door to otherwise unindicated unilateral conduct investigations.

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 target legitimate behavior engaged in by digital platforms such as self-preferencing, technological tying, exclusivity policies, limitations on users setting defaults, and data portability. 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.

ITIF remains concerned that these additions to Article 27 are likely to chill a significant amount of overwhelmingly procompetitive practices, thereby harming Vietnamese consumer, small and medium-sized businesses (SMEs), and innovation.[4] Accordingly, ITIF strongly recommends the inclusion of procompetitive justifications, such as the recognition of core product features, recoupment of investments, deterrence of free-riding, and innovation considerations, the last of which ITIF applauded the Ministry for including in its recent draft amendments to Decree 35, as affirmative defenses in addition to the narrow cybersecurity and trade secrets exceptions.[5] Furthermore, while ITIF appreciates the attachment of an effects threshold to these prohibitions instead of arbitrary user or revenue thresholds or, worse still, *per se* bans, ITIF warns that the effects threshold, causing or potentially causing harm to customers or users, is overinclusive. Instead of narrowly targeting significant harm to the competitive process, the effects threshold extends to include potential harm to users—including business users—thereby protecting competitors instead of competition.

RECOMMENDATIONS

For these reasons, ITIF respectfully offers the following recommendations for the Economic and Financial Committee to consider in relation to the Draft Law:

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[4] Trelysa Long, "How Digital Services Empower SMEs and Start-Ups," Information Technology and Innovation Foundation, August 27, 2025, https://itif.org/publications/2025/08/27/how-digital-services-empower-smes-and-start-ups/.

[5] Joseph V. Coniglio, "Comments to Vietnam's Ministry of Industry and Trade Regarding Enforcement of Competition Law," Information Technology and Innovation Foundation, August 15, 2026, 3, https://itif.org/publications/2026/08/15/comments-vietnams-ministry-industry-trade-regarding-enforcement-of-competition-law/.

- **Remove the digital platform-specific language from Article 10**: Revise Article 10 to consider both sides of a platform when determining market shares but remove factors that apply specifically to digital platforms.

- **Revise Article 26 to distinguish between competitive and anticompetitive conduct**: Ensure that the factors considered under Article 26 do not presume that characteristics of digital markets are inherently anticompetitive and instead distinguish between market dynamics resulting from competition on the merits and those resulting from anticompetitive conduct.

- **Narrow Article 27's new prohibitions and allow procompetitive justifications**: Revise Article 27 to avoid prohibiting common business practices that do not jeopardize the competitive process, like self-preferencing, and allow firms to demonstrate procompetitive justifications for these practices.

CONCLUSION

ITIF applauds the Ministry for removing much of the digital-platform specific language from the earlier version of the Draft Law. This decision avoids de jure discrimination against digital platforms and the attendant market distortions: namely, discouraging investment and innovation in one of the most important technologies to economic growth and the productivity of small and medium-sized enterprises. Still, ITIF remains concerned that what remains in the proposed amendments, especially to Articles 26 and 27, may result in de facto discrimination against digital platforms, threatening to reduce investment and chill innovation in such an important market.

Thank you for your consideration.

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