

## Comments of the International Center for Law & Economics

*Vietnam Ministry of Industry and Trade Proposed Amendments to Law No. 23/2018/QH14 (Competition Law)*

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## I. Introduction

The International Center for Law & Economics (ICLE) welcomes the opportunity to comment on the public consultation initiated by the Ministry of Industry and Trade (MOIT) of the Socialist Republic of Vietnam on proposed amendments to Law No. 23/2018/QH14 of June 12, 2018, on Competition (Competition Law).<sup>1</sup> Vietnam has emerged as one of Southeast Asia's most dynamic and fast-growing digital economies, supported by a regulatory approach that has balanced legal certainty with the flexibility needed for technological experimentation.<sup>2</sup>

The current drafting process, informed by Resolutions No. 57-NQ/TW and No. 68-NQ/TW, aims to strengthen the legal framework for the digital economy. The proposed introduction of prescriptive, *ex ante* prohibitions targeting digital platforms in Article 27 nonetheless risks reversing this successful trajectory. These provisions draw heavily on regulatory models from the European Union and the United Kingdom that have already produced significant shortcomings and unintended consequences.<sup>3</sup>

The proposed amendments focus on what MOIT characterizes as the abuse of dominant or monopolistic positions by digital platforms.<sup>4</sup> This approach assumes that existing competition law cannot adequately address features of digital markets, such as network effects and data advantages, or that these features inherently signal competitive harm rather than efficient competition. A law & economics perspective points in the opposite direction. Digital markets typically exhibit dynamic rivalry, in which firms compete to displace one another through innovation rather than merely to protect static market positions. As explained below, prohibitions on practices such as self-preferencing, tying, and mandated data access are likely to reduce consumer welfare, deter innovation, and weaken the security of Vietnamese users.

## II. Ex Ante Platform Regulation Conflicts with Vietnam's Dynamic Market Reality

The Party's guidance on lawmaking, particularly Resolution No. 66-NQ/TW on reforming legislation to meet national development needs, emphasizes that legal frameworks must closely reflect real-world conditions and remain grounded in Vietnam's specific economic and institutional

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<sup>1</sup> Ministry of Industry & Trade (Viet.), *Policy Dossier for the Draft Law Amending and Supplementing Several Articles of Law No. 23/2018/QH14 of June 12, 2018, on Competition (Competition Law)* (Jan. 21, 2026), <https://moit.gov.vn/du-thao-van-ban/ho-so-chinh-sach-du-an-luat-sua-du-an-luat-sua-doi-bo-sung-mot-so-dieu-cua-luat-thuong-mai-luat-can-h-tranh-luat-quan-ly.html> [hereinafter "Public Consultation"]. Our comments were based primarily on the proposed statutory text available in the Download section, File No. 5, of the above link for the Public Consultation.

<sup>2</sup> Lazar Radic, *Comments of the International Center for Law & Economics: Vietnam's Draft Law on Digital Transformation—A Road to Hell Paved with Good Intentions*, INT'L CTR. FOR L. & ECON. (Oct. 20, 2025), <https://laweconcenter.org/wp-content/uploads/2025/10/Vietnam-open-letter.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> Public Consultation, *supra* note 1.

context.<sup>5</sup> The MOIT’s proposal nonetheless closely tracks the European Union’s Digital Markets Act (DMA) and the United Kingdom’s Digital Markets, Competition and Consumers Act (DMCCA). These regimes mark a decisive departure from effects-based competition analysis focused on consumer welfare toward a more formalistic, “fairness”-oriented approach that prioritizes the protection of competitors over the competitive process itself. They also reflect political, institutional, and geopolitical priorities specific to the EU and the UK—rather than neutral economic principles—that Vietnam may not share and need not import.

Claims that digital markets require *ex ante* intervention rest on a static view of competition. Conventional antitrust analysis often treats stable market shares as evidence of durable market power. In digital ecosystems, however, stable shares more often reflect the temporary rewards of successful innovation than insulation from competitive pressure.<sup>6</sup> The constant risk of displacement by superior technologies or business models pushes even leading firms to invest continuously in research and development. Prescriptive and rigid rules in such environments risk locking business models in place and suppressing the dynamic rivalry that enables new entrants to challenge incumbents.

The MOIT’s emphasis on the “intermediary” role of digital platforms further signals concern about so-called bottleneck or gatekeeper power.<sup>7</sup> This framing overlooks the “Host’s Dilemma,” under which platforms must strike a careful balance between openness to third-party complementors and sufficient control to preserve security, quality, and commercial viability. When platforms succeed by offering integrated features, user demand typically reflects that success. Mandated unbundling or enforced neutrality may therefore compel firms with strategic market positions to degrade valued products and services, ultimately harming the consumers the regulation seeks to protect.

### III. Self-Preferencing Is Not Presumptively Anticompetitive

Article 27(2)(a) of the MOIT’s proposal would prohibit “self-preferential treatment,” under which a platform prioritizes its own products or services through rankings, algorithms, or technical design choices.<sup>8</sup> Framed this way, the proposal effectively adopts what ICLE scholars describe as a *vertical-discrimination presumption*—the view that vertical integration, or closely related conduct, is inherently suspect and presumptively anticompetitive absent compelling justification.<sup>9</sup>

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<sup>5</sup> To Lam, *Institutional and Legal Breakthroughs Are Needed for the Country to Thrive*, VIET BAO (May 4, 2025), <https://vietbao.vn/en/tong-bi-thu-to-lam-dot-pha-the-che-phap-luat-de-dat-nuoc-vuon-minh-540884.html>.

<sup>6</sup> See generally NICOLAS PETIT, *BIG TECH AND THE DIGITAL ECONOMY: THE MOLIGOPOLY SCENARIO* (2020).

<sup>7</sup> These concepts originate from European-style regulation (e.g., the Digital Markets Act). See Giuseppe Colangelo, *DMA Begins*, 11 J. ANTITRUST ENF’T 116 (2023).

<sup>8</sup> Public Consultation, *supra* note 1.

<sup>9</sup> Geoffrey A. Manne, *Against the Vertical Discrimination Presumption*, CONCURRENCES No. 2-2020, art. no. 94267 (May 1, 2020).

This presumption conflicts with established insights from industrial organization economics. Firms often engage in vertical integration and related forms of self-preferencing to improve efficiency, reduce transaction costs, enhance product quality, enable new functionality, or support cross-subsidies that expand output. Self-preferencing can, in limited circumstances, raise competitive concerns. A categorical prohibition, by contrast, would likely condemn a broad range of conduct that benefits consumers, while doing little to address the narrower set of practices that could plausibly increase quality-adjusted prices or deter innovation.

### A. The Host's Dilemma and Dynamic Platform Design

Much of the intuition behind self-preferencing bans reflects what Jonathan Barnett describes as the “host’s dilemma.”<sup>10</sup> Complementors may grow dependent on a platform’s rules, distribution, and ranking systems, while the platform retains discretion to redesign its environment in ways that favor its own offerings. This dynamic is not unique to digital markets. It arises whenever firms invest under uncertainty, particularly when those investments tie closely to a specific relationship or distribution channel. Transaction-cost economics describes this condition as *asset specificity*: when investments carry greater value within a particular relationship than outside it, the risk of opportunism rises and governance mechanisms—such as contracts, integration, reputational constraints, or tailored rules—play a central role.<sup>11</sup>

Firms often manage these risks through contracts. In more arm’s-length relationships—e.g., a website that optimizes for search traffic—parties may not negotiate bespoke terms that guarantee stable rankings or interfaces. In those settings, the relevant baseline is not a right to neutrality but an expectation that platform design will evolve over time. Blanket non-discrimination mandates that freeze platform design to protect complementors can introduce their own distortions, including encouraging inefficient overinvestment in business models tailored to static platform rules, rather than to consumer value.<sup>12</sup>

Self-preferencing also commonly reflects standard integration and product-design choices. Coordinating complementary services within a single technical stack can reduce latency, improve reliability, and enable features that loose interoperability cannot easily deliver.<sup>13</sup> In cloud and data-intensive environments, performance often depends on data locality and tightly coupled scheduling. Rules that require “neutrality” by restricting integration can therefore degrade service quality and increase costs.<sup>14</sup> The central point is not that every integration choice is harmless, but that many

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<sup>10</sup> Jonathan M. Barnett, *The Host’s Dilemma: Strategic Forfeiture in Platform Markets for Informational Goods*, 124 HARV. L. REV. 1861 (2011).

<sup>11</sup> Oliver E. Williamson, *Transaction-Cost Economics: The Governance of Contractual Relations*, 22 J.L. & ECON. 233 (1979).

<sup>12</sup> See, e.g., Manne, *supra* note 9.

<sup>13</sup> Brian Albrecht & Geoffrey A. Manne, *Self-Preferencing Isn’t a Sin. It’s Often the Way Competition Works.*, TRUTH ON THE MARKET (Aug. 20, 2025).

<sup>14</sup> *Id.*

reflect product improvements and cost reductions that competition policy should hesitate to prohibit categorically.

### **B. Self-Preferencing Frequently Benefits Consumers**

Claims that self-preferencing is typically harmful find little support in the empirical literature. Across a range of platform settings, downstream entry or preferential placement of first-party offerings often coincides with market expansion, greater user awareness, and increased innovation by complementors—outcomes that conflict with a presumption of systematic foreclosure.

Empirical studies illustrate this pattern. Zhuoxin Li and Ashish Agarwal find that Facebook’s integration of Instagram increased demand not only for Instagram itself, but also for photography apps more broadly.<sup>15</sup> The integration raised awareness and expanded the market in ways that benefited independent developers alongside the platform owner. Jens Foerderer *et al.* similarly show that Google’s entry into photography apps with Google Photos on Android increased user attention and overall demand for photography apps, followed by greater complementor innovation and entry into adjacent categories.<sup>16</sup> Evidence from video-game console ecosystems points in the same direction: strong first-party titles often expand a platform’s installed base, increasing the potential market for third-party developers even when those developers also compete with first-party games.<sup>17</sup>

More recent experimental evidence from e-commerce reinforces these findings. Chiara Farronato, Andrey Fradkin, and Alexander MacKay conduct a field experiment that hides Amazon-owned private-label brands from shoppers and simulates counterfactual equilibria.<sup>18</sup> In the product categories they study, removing Amazon brands reduces consumer surplus by 5.5% in the short run. Only a small share of that loss reflects higher prices by other sellers; most of the welfare reduction stems from lost variety and diminished consumer valuation of private-label options.<sup>19</sup> Notably, the authors also find that attempts to “correct” potential self-preferencing by demoting private labels in search rankings do not generate consumer-surplus gains.<sup>20</sup>

Taken together, this evidence cautions strongly against treating self-preferencing as presumptively harmful. The empirical record instead shows that welfare effects depend on context and often prove positive—precisely the pattern that supports an effects-based approach, rather than a blanket ban.

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<sup>15</sup> Zhuoxin Li & Ashish Agarwal, *Platform Integration and Demand Spillovers in Complementary Markets: Evidence from Facebook’s Integration of Instagram*, 63 *MGMT. SCI.* 3438 (2017).

<sup>16</sup> Jens Foerderer *et al.*, *Does Platform Owner’s Entry Crowd Out Innovation? Evidence from Google Photos*, 29 *INFO. SYS. RES.* 444 (2018).

<sup>17</sup> Carmelo Cennamo, Hakan Ozalp & Tobias Kretschmer, *Platform Architecture and Quality Trade-offs of Multihoming Complements*, 29 *INFO. SYS. RES.* 461 (2018).

<sup>18</sup> Chiara Farronato, Andrey Fradkin & Alexander MacKay, *Vertical Integration and Consumer Choice: Evidence from a Field Experiment*, Nat’l Bureau of Econ. Research Working Paper No. 34135 (Aug. 2025).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

### C. Scale and Coordination Drive Platform Performance

The MOIT’s focus on platform “operating mechanisms” as a basis for intervention risks confusing sources of consumer value with evidence of competitive harm. Many practices that may appear to be “influence” or “steering” reflect scale economies and coordinated investment—the same efficiencies that vertical integration often delivers. The broader empirical literature on vertical integration consistently shows that integration can reduce transaction costs and improve performance, especially where coordination and quality assurance matter.<sup>21</sup>

These effects carry particular weight in platform markets. Integrated logistics, standardized fulfillment, and unified quality-control systems can produce faster delivery, more reliable service, and lower per-transaction costs at scale. Fragmented providers cannot easily replicate these outcomes without similar coordination.<sup>22</sup> Treating such efficiencies as suspect simply because they disadvantage less efficient rivals risks shifting competition policy toward protecting competitors rather than consumers. A more coherent standard would examine whether a specific practice plausibly raises quality-adjusted prices, reduces output, or forecloses efficient entry. It also would require evidence on those effects before condemning integration or preferential design choices.

## IV. Technical Critique of Vietnam’s Proposed Article 27 Amendments

Proposed supplemental Article 27(2) introduces five separate clauses, subparagraphs (a) through (e), to regulate the conduct of dominant digital platforms. Each clause warrants careful scrutiny under the error-cost framework<sup>23</sup> because several risk prohibiting conduct that lacks clear evidence of harm and, in some cases, has demonstrated pro-competitive effects.<sup>24</sup> Where conduct produces ambiguous or context-dependent outcomes, competition law’s case-by-case analysis offers a more reliable and proportionate approach than rigid regulatory mandates.

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<sup>21</sup> Francine Lafontaine & Margaret Slade, *Vertical Integration and Firm Boundaries: The Evidence*, 45 J. ECON. LITERATURE 629 (2007).

<sup>22</sup> See, e.g., Sam Bowman & Geoffrey A. Manne, *Platform Self-Preferencing Can Be Good for Consumers and Even Competitors*, TRUTH ON THE MARKET (Mar. 4, 2021).

<sup>23</sup> “The objective of the error-cost framework is to ensure that regulatory rules, enforcement decisions, and judicial outcomes minimize the expected cost of (1) erroneous condemnation and deterrence of beneficial conduct (‘false positives,’ or ‘Type I errors’); (2) erroneous allowance and under-deterrence of harmful conduct (‘false negatives,’ or ‘Type II errors’); and (3) the costs of administering the system (including the cost of making and enforcing rules and judicial decisions, the costs of obtaining and evaluating information and evidence relevant to decision-making, and the costs of compliance).” Geoffrey A. Manne, *Error Costs in Digital Markets*, in THE GAI REPORT ON THE DIGITAL ECONOMY 34 (2020).

<sup>24</sup> See, *infra*, Section III.B. Most practices the proposal would ban are vertical restraints—agreements or other constraints between firms at different levels of the production chain—and therefore warrant analysis under a rule-of-reason framework. See Jonathan Barnett, *Does the European Union’s Digital Markets Act Provide an Appropriate Model for Maintaining Competition in California’s Innovation Economy?* 15 (report commissioned by the Chamber of Progress, Dec. 2023), <http://www.clrc.ca.gov/pub/2024/MM24-05.pdf>.

## A. Clause (a): Self-Preferencing Through Ranking, Algorithms, or Technical Specifications

A prohibition on prioritizing a platform's own products or services through rankings, algorithms, or technical design choices overlooks that product design itself is a central dimension of competition. In digital markets, "self-preferencing" often allows platforms to integrate services in ways that improve performance and usability.<sup>25</sup> E.g., when a search engine displays a map directly in response to a restaurant query, it favors its own mapping service, but it also delivers faster, more useful results than a list of links to third-party sites. Treating such design choices as inherently suspect risks harming consumers by forcing platforms to abandon efficient and value-enhancing product improvements.<sup>26</sup>

The MOIT's proposal also suggests that self-preferencing through pricing algorithms produces negative competitive effects. The economic literature does not support that conclusion. In a comprehensive review, economists Emilie Feyler and Veronica Postal observe that:

There is no consensus from the economic literature on whether procompetitive benefits or possible anticompetitive considerations prevail in the context of self preferencing algorithms used by digital platforms. Nor is there a consensus on the welfare effects of a policy intervention to correct bias in algorithmic recommendations. Determining the net impact of self-preferencing algorithms on competition and consumer welfare requires individualized analysis accounting for the workings of specific algorithms, competitive context, and market environment.<sup>27</sup>

Vietnam's proposal further cites "technical specifications" as a potential basis for discriminatory conduct. This approach raises serious risks, as it could compel levels of technical interoperability that undermine system integrity and security.<sup>28</sup> In mobile ecosystems, Apple's decision to keep iMessage proprietary constitutes a form of self-preferencing, yet it supports a tightly integrated and secure user experience that many consumers deliberately choose over more open alternatives.<sup>29</sup> Mandating access to technical specifications without regard to security, branding, or system design

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<sup>25</sup> Manne, *supra* note 23, at 38-39.

<sup>26</sup> See, *infra*, Section VI regarding Google's downstream effects on users following implementation of the DMA's prohibition on self-preferencing.

<sup>27</sup> Emilie Feyler & Veronica Postal, *Can Self-Preferencing Algorithms Be Pro-Competitive?*, CPI ANTITRUST CHRON. 5 (June 2023), <https://www.competitionpolicyinternational.com/wp-content/uploads/2023/06/5-can-selfpreferencing-algorithms-be-pro-competitive-emilie-feyler-veronica-postal.pdf>.

<sup>28</sup> Mikołaj Barcentewicz, *The Digital Markets Act Shouldn't Mandate Radical Interoperability*, TRUTH ON THE MARKET (May 19, 2021), <https://truthonthemarket.com/2021/05/19/the-digital-markets-act-shouldnt-mandate-radical-interoperability>.

<sup>29</sup> Geoffrey A. Manne, Dirk Auer & Mário A. Zuñiga, *Comments of the International Center for Law & Economics on CMA's Proposal to Designate Apple and Google with Strategic Market Status*, INT'L CTR. FOR L. & ECON. (Aug. 20, 2025), <https://laweconcenter.org/resources/icle-comments-to-uk-cma-on-sms-designations-for-mobile-ecosystems>.

would encourage homogenization and erode the product differentiation that drives competition and innovation.<sup>30</sup>

### **B. Clause (b): ‘Unreasonable’ Terms and Transaction Conditions**

The draft would prohibit platforms from “imposing unreasonable terms and conditions” related to pricing, payment methods, warranties, or other contractual provisions. The concept of “unreasonable” lacks clear economic grounding and introduces significant legal uncertainty for regulated firms. As ICLE has noted in the context of European competition policy, standards based on “fairness” or “reasonableness” resist principled definition and risk functioning as open-ended licenses for discretionary regulatory intervention.<sup>31</sup>

Legal tests built on concepts such as “good faith” or “fair dealing” create persistent uncertainty for market participants. A digital platform that charges a 30% commission to fund app-store security, curation, and infrastructure may view that price as efficient and pro-consumer. A regulator could nonetheless deem it “unreasonable” under an undefined standard. Requiring platforms to defend routine commercial terms against a regulator’s subjective view of fairness would, in effect, transform Vietnam’s competition enforcer into a price-setting authority. That uncertainty would likely deter foreign platforms from introducing new features or business models in Vietnam, given the risk of retrospective findings of “unreasonableness.”

### **C. Clause (c): Tying and Forced Service Registration**

The prohibition on “imposing or forcing users to register, use, or maintain one or more additional services” targets tying and bundling practices.<sup>32</sup> In digital markets, however, firms often compete through bundles, and consumers frequently benefit from integrated offerings that reduce transaction costs and user friction.

The MOIT draft does not distinguish between coercive tying that can foreclose rivals and efficiency-enhancing bundling that benefits consumers. In many settings, integration serves technical and security functions rather than exclusionary aims. For example, allowing third-party applications to run in the background without native mobile operating-system controls can materially reduce battery life and weaken data-privacy protections. Mandating unbundling in such cases would degrade device performance and user experience. ICLE’s research on the U.K. Competition and Markets Authority’s mobile-ecosystem inquiry further indicates that users who remain within bundled

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<sup>30</sup> *Id.*

<sup>31</sup> Giuseppe Colangelo, *Fairness and Ambiguity in EU Competition Policy*, INT’L CTR. FOR L. & ECON. (ICLE White Paper No. 2023-02-15), <https://laweconcenter.org/resources/fairness-and-ambiguity-in-eu-competition-policy>.

<sup>32</sup> Public Consultation, *supra* note 1.

ecosystems typically do so because they value the integrated experience, not because platforms lock them in.<sup>33</sup>

#### **D. Clause (d): Multi-Homing and Switching Barriers**

The draft seeks to prevent practices that limit business users' ability to access alternative platforms. Although the MOIT frames this concern in terms of "lock-in," evidence from global markets shows that multi-homing is the norm rather than the exception. Enterprise customers routinely operate across AWS, Microsoft Azure, and Google Cloud. Developers commonly build for both iOS and Android.<sup>34</sup>

Tools that facilitate data portability and app switching signal active competition, not monopoly power. Firms with durable market power rarely invest in mechanisms that make exit easier; competitors do. Vietnam should therefore approach interoperability mandates with caution. Requirements that push platforms toward a single, homogenized model risk eliminating the diversity of platform approaches—e.g., Apple's curated ecosystem alongside Google's more open model—that gives Vietnamese consumers meaningful choice and drives innovation.

#### **E. Clause (e): Mandatory Data Access and Fees**

The final proposed clause addresses refusals to provide, or the imposition of allegedly unreasonable conditions or fees for, access to data generated by business users.<sup>35</sup> This provision raises particularly complex technical issues because it intersects directly with data protection, intellectual-property rights, and cybersecurity.

ICLE's analysis of the European Union's Digital Markets Act indicates that mandated data access can function as a persistent "live wire" into user accounts.<sup>36</sup> Continuous or real-time access can allow third parties—including potentially malicious actors—to extract communications, media, or location data without further user involvement.<sup>37</sup> Vietnam's draft does not include adequate safeguards to prevent these risks in the pursuit of increased "contestability."

Mandated data sharing can also weaken investment incentives. Platforms invest heavily in collecting, cleaning, and structuring data so it can support secure services and advanced analytics.<sup>38</sup> Broad access

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<sup>33</sup> Geoffrey A. Manne, Dirk Auer & Mário A. Zuñiga, *Comments of the International Center for Law & Economics on CMA's Proposal to Designate Apple and Google with Strategic Market Status*, INT'L CTR. FOR L. & ECON. (Aug. 20, 2025), <https://laweconcenter.org/resources/icle-comments-to-uk-cma-on-sms-designations-for-mobile-ecosystems>.

<sup>34</sup> Sami Hyrynsalmi, Arho Suominen & Matti Mäntymäki, *The Influence of Developer Multi-Homing on Competition Between Software Ecosystems*, 111 J. SYST. SOFTW. 119 (2016).

<sup>35</sup> Public Consultation, *supra* note 1.

<sup>36</sup> Mikołaj Barczentewicz, *ICLE Comments on the Interplay Between DMA and GDPR*, INT'L CTR. FOR L. & ECON. (Dec. 4, 2025), <https://laweconcenter.org/resources/icle-comments-on-the-interplay-between-dma-and-gdpr>.

<sup>37</sup> *Id.*

<sup>38</sup> Nathalie Jorzik, Paula J. Kirchhof & Frank Mueller-Langer, *Industrial Data Sharing and Data Readiness: A Law and Economics Perspective*, 57 EUR. J. L. & ECON. 181 (2024).

obligations risk discouraging these investments by forcing firms to share the results of costly data-preparation efforts without clear limits or compensation

## V. The Costs and Risks of Importing *Ex Ante* Digital Regulation

Vietnam’s proposed amendments align with a broader international shift toward *ex ante* regulation of digital platforms. The EU’s DMA, the UK’s DMCCA, and Germany’s Section 19a regime illustrate this approach, alongside ongoing legislative efforts or debates in jurisdictions such as India, South Korea, Japan, and Brazil.<sup>39</sup>

These frameworks often appear as “best practices” or evidence of global convergence on digital regulation. Closer examination of their implementation, however, reveals significant economic risks, unmet policy objectives, and material geopolitical implications. By adopting this model, Vietnam risks importing an untested and highly contested regulatory framework that may shield less efficient competitors, rather than target demonstrable consumer harm or well-defined market failures.

### A. Geopolitical Risks of Targeting Global Digital Platforms

Digital platform regulations, even when not designed to do so, tend to fall disproportionately on U.S.-based companies and therefore carry meaningful geopolitical risk. Critics have characterized the DMA as a politicized instrument—even as a “non-tariff attack,”<sup>40</sup> aimed at constraining U.S. technological leadership.<sup>41</sup> Of the seven gatekeepers designated by the European Commission, five are U.S. companies: Alphabet, Amazon, Apple, Meta, and Microsoft.<sup>42</sup> Regardless of intent, *ex ante* digital regulation in practice places the greatest compliance burdens on American firms, creating nontrivial geopolitical exposure.

The geopolitical context has shifted sharply following policy changes adopted by the Trump administration in 2025. The U.S. government no longer treats foreign digital regulations as purely domestic policy choices. It now frames them as discriminatory measures—described as “unfair taxes” or “overseas extortion”—directed at U.S. companies. In February 2025, President Donald Trump signed an executive order directing the Office of the U.S. Trade Representative to continue

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<sup>39</sup> Geoffrey A. Manne *et al.*, *ICLE Comments to the U.K. Competition & Markets Authority on SMS Designations for Mobile Ecosystems*, INT’L CTR. FOR L. & ECON. (Aug. 20, 2025), <https://laweconcenter.org/resources/icle-comments-to-uk-cma-on-sms-designations-for-mobile-ecosystems>.

<sup>40</sup> Robert D. Atkinson, *Letter to the Trump Administration Regarding Non-Tariff Attacks on U.S. Tech Firms and Industries*, INFO. TECH. & INNOVATION FOUND. (July 2, 2025), <https://itif.org/publications/2025/07/02/letter-regarding-non-tariff-attacks-on-ustech-firms-and-industries>.

<sup>41</sup> Mikołaj Barcentewicz, *The Digital Markets Act as an EU Digital Tax: When Compliance Costs Dwarf Regulatory Estimates*, TRUTH ON THE MARKET (July 8, 2025), <https://laweconcenter.org/resources/the-digital-markets-act-as-an-eu-digital-tax-when-compliance-costs-dwarf-regulatory-estimates>.

<sup>42</sup> European Comm’n, *Gatekeepers*, [https://digital-markets-act.ec.europa.eu/gatekeepers\\_en](https://digital-markets-act.ec.europa.eu/gatekeepers_en) (last visited Jan. 27, 2026).

investigations into digital services taxes and to consider responsive measures, including tariffs, against foreign penalties or regulatory actions deemed discriminatory or disproportionate.<sup>43</sup>

Senior U.S. officials have reinforced this stance. Vice President J.D. Vance has publicly warned U.S. allies against expansive regulation of artificial intelligence and digital platforms, explicitly criticizing the DMA, the Digital Services Act (DSA), and the General Data Protection Regulation (GDPR). Speaking at the AI Action Summit in Paris in February 2025, Vance described European-style digital regulation as an innovation deterrent that the United States would not accept.<sup>44</sup>

These geopolitical risks are no longer theoretical. In December 2025, Secretary of State Marco Rubio announced visa restrictions on five European individuals, including a former EU commissioner, whom the U.S. State Department linked to the development and enforcement of the DSA.<sup>45</sup> Rubio described the targeted officials as “agents of the global censorship-industrial complex” who had pressured U.S. platforms and harmed American firms. Whatever the merits of this action, it signals a U.S. willingness to respond not only through trade measures but also by imposing personal consequences on foreign regulators associated with laws perceived as adverse to U.S. interests.

Basic law & economics principles counsel that regulation is justified only when expected benefits exceed expected costs. In the current geopolitical environment—especially given the more confrontational posture of the U.S. administration—these macroeconomic and diplomatic risks warrant careful consideration in any serious cost-benefit assessment of Vietnam’s proposed digital competition amendments.

## **B. Regulatory Drag and the EU’s Digital Productivity Gap**

The Draghi Report observes that “the productivity gap between the U.S. and the EU is largely explained by the tech sector.”<sup>46</sup> The United States has fostered an environment of permissionless innovation, while Europe has layered on dense regulatory constraints.<sup>47</sup> The outcome is visible: Europe has produced no counterparts to Google, Apple, or Amazon.

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<sup>43</sup> The White House, *Defending American Companies and Innovators from Overseas Extortion and Unfair Fines and Penalties*, Presidential Actions (Feb. 21, 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/defending-american-companies-and-innovators-from-overseas-extortion-and-unfair-fines-and-penalties>.

<sup>44</sup> Siladitya Ray, *JD Vance Knocks EU’s Regulation of U.S. Tech Giants: “America Cannot Accept That”*, FORBES (Feb. 11, 2025), <https://www.forbes.com/sites/siladityaray/2025/02/11/jd-vance-knocks-eus-regulation-of-us-tech-giants-america-cannot-accept-that>.

<sup>45</sup> Kim Marcrae, *U.S. Sanctions Former EU Official Over Digital-Content Law*, WALL ST. J. (Dec. 24, 2025), <https://www.wsj.com/world/europe/u-s-sanctions-former-eu-official-over-digital-content-law-c41f574c>.

<sup>46</sup> Mario Draghi, *The Future of European Competitiveness – Part A: A Competitiveness Strategy for Europe 5* (European Comm’n Sept. 2024), [https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961\\_en?filename=The%20future%20of%20European%20competitiveness%20%20A%20competitiveness%20strategy%20for%20Europe.pdf](https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en?filename=The%20future%20of%20European%20competitiveness%20%20A%20competitiveness%20strategy%20for%20Europe.pdf).

<sup>47</sup> *Id.* at 6 (“The problem is not that Europe lacks ideas or ambition. We have many talented researchers and entrepreneurs filing patents. But innovation is blocked at the next stage: we are failing to translate innovation into commercialisation, and innovative companies that want to scale up in Europe are hindered at every stage by inconsistent and restrictive regulations”).

The Digital Markets Act has also reshaped products in ways that reduce consumer welfare. To comply with the DMA, Google altered the integration of Google Maps into Google Search in the EU. European users now see a static thumbnail with limited functionality rather than a fully interactive map, creating a slower and more fragmented experience that requires additional, unintuitive steps to complete routine tasks.<sup>48</sup> The same negative effect is visible regarding search results for flights and hotels, where additional, counter-intuitive steps were added due to DMA's prohibition of "self-preferencing." Similar degradation appears in flight and hotel search results, where the DMA's restrictions on self-preferencing have reduced integration and usability.<sup>49</sup>

Regulatory uncertainty under the DMA has also delayed the rollout of advanced AI features in Europe and imposed what functions as an "innovation tax" on designated gatekeepers. When firms face unpredictable compliance obligations and potential fines tied to global turnover, they rationally delay, narrow, or geo-fence product launches. This "regulatory chill" lowers the expected value of experimentation and raises the option value of waiting. The practical cost of regulation thus extends beyond compliance spending to include foregone or postponed product improvements for local users.

Recent examples illustrate this pattern. Apple paused the release of Apple Intelligence in the EU amid concerns that DMA interoperability requirements could force design changes that weaken device security.<sup>50</sup> Meta delayed the launch of Threads in the EU for several months, citing uncertainty over DMA limits on combining user data across services such as Instagram and Threads, and redesigned the product to comply.<sup>51</sup> Google has similarly reported that DMA-related reengineering and documentation burdens can delay EU launches—particularly AI-driven search features and integrated modules—by up to a year.<sup>52</sup> These delays reinforce a broader pattern of digital lag in Europe relative to markets such as the United States.

Vietnam's digital transformation depends on rapid adoption and deployment of advanced technologies developed worldwide. Prescriptive rules that degrade consumer experience, lock business models in place, and deter experimentation would slow that transformation. Countries seeking sustained economic growth should avoid regulatory approaches that substitute rigidity for innovation and evidence-based competition policy.

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<sup>48</sup> *Impact of the Digital Markets Act (DMA) on Consumers Across the European Union: Results from a Survey with 5,000 Consumers*, NEXTRADE GRP. (Sept. 2025), <https://www.nexttradegroupllc.com/impact-of-the-dma-on-eu-consumers>.

<sup>49</sup> *Id.*

<sup>50</sup> Akshaya Asokan, *Apple to Delay AI Rollout in Europe*, BANKINFOSECURITY (June 21, 2024).

<sup>51</sup> Eglė Markevičiūtė, *Consumer Waiting Game: Why Do Tech Products Launch Later in Europe?*, EURONEWS (Sept. 26, 2025), <https://www.euronews.com/next/2025/09/26/consumer-waiting-game-why-do-tech-products-launch-later-in-europe>.

<sup>52</sup> Cynthia Kroet, *Google's AI Feature on Hold in Most EU Member States Due to "Strict Rules"*, EURONEWS (Apr. 1, 2025), <https://www.euronews.com/next/2025/04/01/googles-ai-feature-on-hold-in-most-eu-member-states-due-to-strict-rules>.

### C. Lessons from the UK's DMCC

Observers sometimes describe the U.K.'s Digital Markets, Competition and Consumers Act (DMCC) as a more flexible form of *ex ante* regulation.<sup>53</sup> The U.K.'s experience in 2025 nonetheless highlights the political and institutional instability that discretionary regimes can create.<sup>54</sup>

In response to economic stagnation, the U.K. government applied sustained political pressure on regulators to adopt an explicit “pro-growth” mandate. Prime Minister Keir Starmer publicly emphasized that regulators must place economic growth at the center of their decision-making,<sup>55</sup> and the government required agencies to commit to measurable actions that support business confidence and investment.<sup>56</sup> In parallel, the Competition and Markets Authority (CMA) introduced a package of institutional and procedural reforms—branded as the “4 Ps” of pace, predictability, proportionality, and process. These reforms included changes to merger-review timelines, clearer jurisdictional thresholds, and a new mergers charter designed to align regulatory practice with the government’s growth objectives.<sup>57</sup>

The government’s strategic guidance also stressed accountability, predictability, and collaboration with industry, and urged regulators to exercise new DMCC powers with “particular care,” especially in fast-moving technology markets. This episode shows that even in the United Kingdom—a jurisdiction with relatively strong legal and administrative institutions—*ex ante* digital regimes remain politically fragile and subject to rapid recalibration.

Vietnam’s institutional environment is less insulated from these pressures. Broad, discretionary platform rules therefore carry a heightened risk of unintended consequences, including innovation drag, rising compliance costs, weaker consumer outcomes, and slower productivity growth. Regulatory modesty—through narrowly tailored, evidence-based intervention—offers a more durable and prudent path than ambitious, early-stage, and untested regulatory frameworks.

## VI. The Risks of Imposing a *De Facto* Duty to Deal in Data

The MOIT proposal would prohibit dominant digital platforms from “abusing business user data,” including by “refusing to provide or imposing unreasonable conditions or fees” on access to data generated through legitimate business activities on the platform. As discussed in Section IV.B, this

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<sup>53</sup> Mario Zúñiga, *Parsing Brazil's 'More Flexible' Approach to Digital Markets*, TRUTH ON THE MARKET (Feb. 5, 2025), <https://truthonthemarket.com/2025/02/05/parsing-brazils-more-flexible-approach-to-digital-markets>.

<sup>54</sup> Dario Oliveira Neto, *Lessons from the UK for Brazil's Digital Market Strategy*, TRUTH ON THE MARKET (July 22, 2025), <https://truthonthemarket.com/2025/07/22/lessons-from-the-uk-for-brazils-digital-market-strategy>.

<sup>55</sup> Alistair Smout, *UK Pledges Regulatory Overhaul to Try to Win Over Investors*, REUTERS (Oct. 14, 2024), <https://www.reuters.com/world/uk/uk-promises-regulation-overhaul-bid-court-wary-investors-2024-10-13>.

<sup>56</sup> HM Treasury, *New Approach to Ensure Regulators and Regulation Support Growth* (Oct. 22, 2025), <https://www.gov.uk/government/publications/a-new-approach-to-ensure-regulators-and-regulation-support-growth/new-approach-to-ensure-regulators-and-regulation-support-growth.html>.

<sup>57</sup> *Id.*

provision grants Vietnam's competition authority broad remedial discretion. Enforcement could therefore result in mandatory data sharing or interoperability obligations that risk harming consumers rather than promoting competition.<sup>58</sup>

The proposal also creates a serious risk of regulatory overlap with the Law on Digital Transformation (LODT).<sup>59</sup> The LODT establishes a sector-specific framework for regulating digital platforms, including rules governing data access and portability for designated “dominant platforms.”<sup>60</sup> If MOIT adopts the proposed amendments, platforms could face parallel investigations and sanctions for the same conduct under two separate legal regimes administered by different authorities. As Giuseppe Colangelo has explained in the context of the DMA, overlapping enforcement without clear boundaries breeds fragmentation and legal uncertainty.<sup>61</sup> When a specialized regime already governs conduct such as data access, layering competition-law remedies on top undermines the coherence and effectiveness of that framework.

This duplication creates more than procedural inefficiency. It imposes substantive compliance burdens that can chill investment and innovation. A platform could comply fully with the LODT's data-access requirements and still face competition-law liability for allegedly “unreasonable” conditions under the Competition Law. That regulatory fog makes compliance unpredictable and deters long-term investment. MOIT should therefore remove these platform-specific data provisions and rely on existing competition-law tools to address demonstrable exclusionary conduct on a case-by-case basis. Policymakers should also subject the LODT's data-access provisions to a regulatory impact assessment after implementation.<sup>62</sup>

The proposed amendments also risk imposing a *de facto* duty to deal in data, premised on the assumption that data generated on a platform functions as a public good, rather than as a proprietary asset created through substantial investment. In practice, the value of business-user data often derives from a platform's aggregation, analytics, and security capabilities. Mandating access to data “generated from business activities” raises fundamental questions about ownership and scope.<sup>63</sup> *E.g.*,

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<sup>58</sup> See Competition Law ch. IX, art. 110(4).

<sup>59</sup> Law No. 148/2025/QH15 (Dec. 11, 2025) (Viet.) (effective July 1, 2026).

<sup>60</sup> See Huu Tuan Nguyen & Alex Do, *Vietnam's Draft Digital Transformation Law Proposes “Far-Reaching” Paradigm for Digital Platforms*, IAPP (Sept. 17, 2025), <https://connectontech.bakermckenzie.com/vietnam-vietnams-draft-digital-transformation-law-proposes-far-reaching-paradigm-for-digital-platforms>; see also Lazar Radic, *ICLE Comments on Vietnam's Law on Digital Transformation*, INT'L CTR. FOR L. & ECON. (Oct. 20, 2025), <https://laweconcenter.org/resources/icle-comments-on-vietnams-digital-transformation-bill>.

<sup>61</sup> Giuseppe Colangelo, *The Digital Markets Act and EU Antitrust Enforcement: Double & Triple Jeopardy*, ICLE White Paper (Mar 23, 2022), <https://laweconcenter.org/resources/the-digital-markets-act-and-eu-antitrust-enforcement-double-triple-jeopardy>

<sup>62</sup> Ongoing monitoring and evaluation are core regulatory best practices. They improve regulatory quality and provide an essential check on the exercise of regulatory power. See OECD, *Regulatory Impact Assessment 29* (2020), [https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/02/regulatory-impact-assessment\\_Obf78a03/7a9638cb-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/02/regulatory-impact-assessment_Obf78a03/7a9638cb-en.pdf).

<sup>63</sup> See Geoffrey A. Manne & Dirk Auer, *Antitrust Dystopia and Antitrust Nostalgia: Alarmist Theories of Harm in Digital Markets and Their Origins*, 28 GEO. MASON L. REV. 1279, 1351 (2021). (“The challenge for firms in data-reliant industries is multidimensional. Not only must they acquire data (and this is not merely a matter of ‘data network effects’), but just as

when a user enters payment information for an in-app purchase, that data reflects the platform’s payment infrastructure as much as the developer’s activity.

Forcing platforms to share such data for free or under regulated “reasonable” fees would institutionalize free riding. Business users would have incentives to rely on the platform’s infrastructure instead of investing in their own data capabilities.<sup>64</sup> Platforms, in turn, would reduce investment in data collection, cleaning, and security if competitors can immediately appropriate the results. That outcome would undermine innovation and conflict with Vietnam’s broader digital-transformation goals.

The vague prohibition on “unreasonable conditions” also threatens privacy and cybersecurity. Platforms often restrict third-party data access to protect users and preserve system integrity. Broad access mandates—backed by antitrust liability—expand attack surfaces and create new risks. Strong privacy and security protections represent valued product features,<sup>65</sup> not pretexts for exclusion.<sup>66</sup> Forcing platforms to interoperate with numerous third parties that lack robust safeguards increases the likelihood of breaches and system failures.<sup>67</sup>

Recent experience illustrates these risks. In July 2024, a faulty software update from CrowdStrike triggered one of the largest Windows outages on record, disrupting airports, hospitals, and other critical services worldwide.<sup>68</sup> That incident followed longstanding European Commission requirements that Microsoft grant third-party security vendors privileged system access. Competition intervention increased supplier access, but it also amplified systemic risk. By contrast, Apple limits

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importantly they must also develop the expertise to analyze this data, draw useful insights from it, and turn these insights into successful products. In doing so, acquiring the *right* data and getting the best out of a firm’s engineers is at least as important as controlling a large amount of data or engineering expertise... Under this light, the resounding success of certain technology platforms appears to be down to their respective ‘dynamic capabilities’ rather than the operation of positive feedback loops.”)

<sup>64</sup> Brian Allbrecht & Dirk Auer, *Free Riding in Mobile Ecosystems*, INT’L CTR. FOR L. & ECON. (Dec. 2, 2025), <https://laweconcenter.org/resources/free-riding-in-mobile-ecosystems>.

<sup>65</sup> In *Epic Games, Inc. v. Apple Inc.*, the 9th U.S. Circuit Court of Appeals recognized that security and privacy play a decisive role in consumer choice. The court noted that 50% to 62% of iPhone users and 76% to 89% of iPad users worldwide consider security and privacy important when purchasing a device. Even Epic’s CEO testified that he chose an iPhone over an Android device in part because it offers “better security and privacy.” The district court further found that Apple’s creation of a “trusted app environment” leads users to make greater use of their devices. See *Epic Games, Inc. v. Apple Inc.*, No. 25-2935, 53 (9th Cir. 2025).

<sup>66</sup> See Margrethe Vestager, *A Whack-a-Mole Approach to Big Tech Won’t Do, Says Europe’s Antitrust Chief*, ECONOMIST (June 4, 2024), <https://www.economist.com/by-invitation/2024/06/04/a-whack-a-mole-approach-to-big-tech-wont-do-says-europes-antitrust-chief> (arguing that “asking platforms to open up their ecosystem, for instance, does not mean they have to compromise the security of their service”).

<sup>67</sup> See Mikołaj Barcentewicz, *Does the DMA Let Gatekeepers Protect Data Privacy and Security?*, TRUTH ON THE MARKET (Apr. 4, 2024), <https://truthonthemarket.com/2024/04/04/does-the-dma-let-gatekeepers-protect-data-privacy-and-security>; Mario Zúñiga, *The EU Is Determined to Tear Down Apple’s ‘Walled Garden’*, TRUTH ON THE MARKET (May 6, 2025), <https://truthonthemarket.com/2025/05/06/the-eu-is-determined-to-tear-down-apples-walled-garden>.

<sup>68</sup> Bobby Allyn, Brian Mann, Bill Chappell & Fatima Al-Kassab, *What We Know About the Computer Update Glitch Disrupting Systems Around the World*, NAT’L PUB. RADIO (July 19, 2024), <https://www.npr.org/2024/07/19/gsl-12222/microsoft-outage-banks-airlines-broadcasters>.

kernel access precisely to preserve security and reliability. Vietnam should approach data-access mandates with similar caution, particularly where consumer trust, privacy, and cybersecurity are at stake.<sup>69</sup>

## VII. Conclusion: Innovation-Friendly Competition Policy for Vietnam

Vietnam has strong reasons to foster its digital economy through targeted and agile measures rather than by importing an untested regulatory model whose costs already appear in other jurisdictions. The Law on Digital Transformation and proposed amendments to the Competition Law should place consumer welfare and innovation ahead of concerns about redistributing profits among competitors.

Vietnam should therefore maintain an effects-based competition policy grounded in the following principles:

- **Prioritize Consumer Welfare:** Distinguish conduct that disadvantages rivals because of superior products from conduct that harms consumers by restricting choice or raising quality-adjusted prices.
- **Respect Platform Autonomy:** Recognize that firms design their platforms and face the strongest incentives to deliver services that users value.
- **Adopt Evidence-Based Standards:** Avoid vague concepts such as “unreasonable” or “fair.” Base enforcement on economic analysis, empirical evidence, and industry-specific conditions.
- **Favor Light-Touch Remedies:** Prefer targeted cease-and-desist orders over prescriptive mandates that force product redesign and risk stifling innovation.
- **Protect Privacy and Security:** Ensure that competition interventions do not weaken data protection or create new “live wire” vulnerabilities for users.

Regulation should remain a measure of last resort, applied only where markets demonstrably fail. By maintaining a clear, predictable, and proportionate regulatory framework, Vietnam can continue to attract investment and promote dynamic competition that supports long-term growth and digital transformation. This approach reflects not only sound economics but also strategic foresight: innovation flourishes where rules provide clarity and restraint, not where regulation becomes a blunt tool for market engineering.

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<sup>69</sup> Jowi Morales, *Microsoft's EU Agreement Means It Will Be Hard to Avoid CrowdStrike-Like Calamities in the Future*, TOM'S HARDWARE (July 22, 2024), <https://www.tomshardware.com/software/windows/microsofts-eu-agreement-means-it-will-be-hard-to-avoid-crowdstrike-like-calamities-in-the-future>.