International Center for Law & Economics

Comments of the International Center for Law & Economics

Vietnam Ministry of Industry and Trade Draft Decree Replacing Decree No. 75/2019/NĐ-CP on Sanctioning Administrative Violations in the Field of Competition

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I. Introduction

The International Center for Law & Economics (ICLE) welcomes the opportunity to comment on the Ministry of Industry and Trade's (MOIT) draft decree replacing Decree No. 75/2019/NĐ-CP on sanctioning administrative violations in the field of competition (the Draft Decree).[1] These comments build on ICLE's Feb. 2, 2026, and June 16, 2026, submissions on the draft law amending the Competition Law (the Draft Law) and should be read together with those submissions.[2]

The Draft Decree establishes the sanctions framework for the Draft Law. It sets fines, remedies, aggravating and mitigating factors, and the method for calculating illicit profit. It also restates the elements of the new platform-related abuses of dominance and unfair competition offenses.

In our June submission, we urged MOIT to keep the standards governing liability in primary legislation. The Draft Decree now partly defines those standards and fully defines their consequences. How MOIT will prove, remedy, and penalize the new abuses therefore matters as much as how the Draft Law describes them.

The remaining comments proceed in four parts. Section II identifies reforms MOIT should preserve. Section III explains why the conduct targeted by the new abuses does not warrant presumptive condemnation. Section IV proposes specific changes to the elements required to establish liability, remedies, fines, profit disgorgement (the recovery of profits from unlawful conduct), the new unfair competition offenses, and liability for facilitating violations. Section V sets out our recommendations.

II. Reforms MOIT Should Retain

Several changes in the Draft Decree reflect sound policy that reduces the risk and cost of enforcement errors. MOIT should retain them in the final text

Abolition of forced restructuring. The Draft Decree removes the remedy requiring a dominant or monopoly firm to restructure (Article 3(3)(c) of Decree No. 75/2019/NĐ-CP and the corresponding points in the abuse provisions). MOIT's explanatory note offers sound reasons for this change. Restructuring intrudes deeply on property rights and corporate governance; affects employees, shareholders, and creditors; and has lacked a workable procedure. Behavioral remedies—orders governing a firm's conduct—can address exclusionary effects with far less risk. This change reflects

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[1] Ministry of Indus. & Trade (Viet.), *Comparison and Explanatory Table of the Draft Decree Replacing Decree No. 75/2019/NĐ-CP on Sanctioning Administrative Violations in the Field of Competition* (Sept. 26, 2026), https://vibonline.com.vn/du_thao/du-thao-nghi-dinh-thay-quy-dinh-ve-xu-phat-vi-pham-hanh-chinh-trong-linh-vuc-canh-tranh. Article references refer to the Draft Decree unless otherwise stated.

[2] Dirk Auer, Dario Oliveira Neto, Lazar Radic, Selcukhan Ünekbas & Mario A. Zúñiga, *Comments of the International Center for Law & Economics: Vietnam Ministry of Industry and Trade Proposed Amendments to Law No. 23/2018/QH14 (Competition Law)* (Int'l Ctr. for L. & Econ., Feb. 2, 2026) [hereinafter Auer *et al.*, *February Comments*]; Dirk Auer & Lazar Radic, *Comments of the International Center for Law & Economics: Vietnam Ministry of Industry and Trade Draft Law Amending Law No. 23/2018/QH14 (Competition Law)* (Int'l Ctr. for L. & Econ., June 16, 2026) [hereinafter Auer & Radic, *June Comments*].

the principle stated in both of ICLE's earlier submissions that targeted cease-and-desist orders are preferable to prescriptive or structural intervention.

Removal of ill-suited supplementary penalties. The Draft Decree removes license suspensions, confiscation of exhibits and instruments, and revocation of business registration. As MOIT observes, competition violations arise from commercial decisions, rather than physical instruments. Revoking a firm's registration in addition to imposing high fines and disgorgement would be disproportionate and deter investment.

Proportionate treatment of procedural merger violations. Failing to notify a concentration or implementing it before clearance constitutes a procedural breach. The Draft Decree replaces turnover-based fines for these breaches with a fixed range of 1 billion to 2 billion Vietnamese dong (VND) (Article 22). It reserves turnover-based fines for prohibited concentrations and breaches of clearance conditions (Articles 20 and 21). This graduated approach matches the severity of the sanction to the severity of the harm. Section IV.A proposes applying the same logic to the new platform abuses.

Legal certainty. The five-year limitation period (Article 7), clearer allocation of sanctioning authority (Articles 38–40), and separation of competition procedure from general administrative procedure (Article 42) improve predictability. So do the three-year cap on the disgorgement period and the exclusion of disgorgement where the firm earned no profit (Article 8(2) and (8)).

Effects qualifiers and carve-outs. The foreclosure and harm requirements in Article 12(1)(g)–(k), and the exceptions for data protection, trade secrets, and cybersecurity in points (h) and (i), are welcome. Section IV.A explains how MOIT should complete these provisions.

III. Assess Competitive Effects and Protect Investment Incentives

Article 12(1)(g)–(k) identifies four practices as abuses of dominance: favoring the firm's own or affiliated products, restricting users' ability to switch, refusing or conditioning users' access to their transaction data, and using nonpublic data generated by users or business partners to compete with them. Article 13(1)(a) extends all four to dominant firms, whose dominance the Competition Law can presume at a 30% market share.

These practices require careful, case-by-case analysis. The Draft Decree's foreclosure and harm requirements are welcome, but a complete effects test must also account for efficiencies and consumer benefits. Evidence on vertical integration and self-preferencing supports that approach, especially because the provisions reach ordinary business practices beyond digital platforms. Several provisions would also compel firms to share assets or provide access to rivals, raising concerns about investment incentives. Liability standards and sanctions should reflect these competing effects.

A. Weigh Competitive Harms Against Benefits

The Draft Decree requires a showing of foreclosure—conduct that restricts rivals' access to markets—and harm for each new category of abuse. We welcome that choice. A complete effects test, however, must also weigh harms against benefits. As drafted, Article 12(1) asks whether conduct has adverse effects but gives the firm no opportunity to show that efficiencies outweigh those effects. Combined with an undefined "likely" standard and near-automatic maximum fines, this approach risks treating much beneficial conduct as unlawful. The evidence must establish that these practices harm competition often enough to justify a test that disregards their benefits.

Competition law reserves *per se* treatment—automatic condemnation without examining competitive effects—for conduct that always or almost always harms competition. That principle led the U.S. Supreme Court to assess vertical restraints—or restrictions between firms at different levels of a supply chain—under the rule of reason in *Continental T.V. v. GTE Sylvania* and *Leegin*.[3] The rule of reason weighs a practice's competitive harms and benefits. The Court of Justice of the European Union likewise required proof of exclusionary effects in *Intel* and, specifically for self-preferencing, in *Google Shopping*.[4]

To be clear, these practices can harm competition. But the evidence does not establish that they do so reliably enough to justify treating them as suspect by default.

B. Self-Preferencing Often Benefits Consumers

Self-preferencing—favoring a firm's own products or services—is a form of vertical integration. The empirical literature finds that vertical integration usually lowers costs and improves quality.[5] Studies of platforms point in the same direction. ICLE's February submission reviewed this evidence in detail, including studies of Facebook's integration of Instagram; Google Photos; console ecosystems; and an Amazon field experiment. In that experiment, hiding Amazon's private-label products reduced consumer surplus—the value consumers receive above what they pay—by 5.5%, while demoting those products in rankings produced no gain.[6]

Some studies find harm in particular settings. Those findings underscore that effects depend on context and support case-by-case analysis.

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[3] *Cont'l T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36 (1977); *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007).

[4] Case C-413/14 P, *Intel Corp. v. Comm'n*, ECLI:EU:C:2017:632 (Sept. 6, 2017); Case C-48/22 P, *Google LLC & Alphabet Inc. v. Comm'n (Google Shopping)*, ECLI:EU:C:2024:726 (Sept. 10, 2024).

[5] Francine Lafontaine & Margaret Slade, *Vertical Integration and Firm Boundaries: The Evidence*, 45 J. ECON. LITERATURE 629 (2007); James C. Cooper, Luke M. Froeb, Dan O'Brien & Michael G. Vita, *Vertical Antitrust Policy as a Problem of Inference*, 23 INT'L J. INDUS. ORG. 639 (2005).

[6] Auer *et al.*, *February Comments*, *supra* note 2, at 5–6 (discussing, among other studies, Chiara Farronato, Andrey Fradkin & Alexander MacKay, *Vertical Integration and Consumer Choice: Evidence from a Field Experiment* (Nat'l Bureau of Econ. Rsch., Working Paper No. 34135, 2025)).

Article 12's breadth raises the stakes, as the provision extends beyond digital platforms. Under the Competition Law, a firm is presumed dominant when it holds a 30% share of a relevant market. Groups of firms can also be collectively dominant, even when each holds well below 30%.

Article 12(1)(g) would therefore apply to a supermarket chain favoring its own brands, a hospital group directing patients to its own laboratory, or a manufacturer supplying an affiliated distributor on better terms. Economies depend on these ordinary forms of vertical integration.

C. Compelled Access Can Weaken Investment Incentives

Three of the four practices would effectively impose a duty to deal—an obligation to provide access to rivals. Point (h) limits a firm's control over switching and portability, or users' ability to move their data between services. Point (i) requires access to data on terms that are not "unreasonable." Point (g), read with the "other measures" remedy discussed in Section IV.B, could require access to technical specifications or interfaces.

Competition law has long treated forced sharing as exceptional. In *Bronner*, the Court of Justice of the European Union required that access be indispensable, that refusal eliminate all effective competition, and that no objective justification exist.[7] The General Court applied a version of that test to interoperability—the ability of systems to work together—in *Microsoft*.[8]

In *Android Auto*, the Court held that *Bronner*'s indispensability condition does not apply where a dominant firm developed a platform to host third parties rather than solely for its own use.[9] European Union competition scholars have criticized the judgment for abandoning the premise, shared by *Magill* and *Bronner*, that indispensability protects investment incentives. They also warn that the judgment leaves firms unable to determine in advance whether their platforms still qualify for *Bronner*'s protection.[10]

U.S. law takes an even more skeptical view of compelled access, as *Trinko* illustrates.[11] The economic rationale is straightforward. Mandated access lowers the return on the investment that created the asset and encourages rivals to rely on the incumbent's infrastructure rather than build their own.

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[7] Case C-7/97, *Oscar Bronner GmbH & Co. KG v. Mediaprint*, ECLI:EU:C:1998:569, ¶¶ 38–41 (Nov. 26, 1998).

[8] Case T-201/04, *Microsoft Corp. v. Comm'n*, ECLI:EU:T:2007:289 (Sept. 17, 2007).

[9] Case C-233/23, *Alphabet Inc. v. Autorità Garante della Concorrenza e del Mercato (Android Auto)*, ECLI:EU:C:2025:110, ¶¶ 49, 52 (Feb. 25, 2025), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62023CJ0233.

[10] Pablo Ibáñez Colomo, *Case C-233/23, Android Auto (II): How the Judgment Departs from Magill/IMS Health (and Bronner)*, CHILLIN'COMPETITION (Mar. 12, 2025), https://chillingcompetition.com/2025/03/12/case-c-233-23-android-auto-ii-how-the-judgment-departs-from-magill-ims-health-and-bronner; David Fåhraeus & Giulio Preti, *A Landmark Judgment in the Refusal to Deal Doctrine: Android Auto (Case C-233/23) and Bronner's Future in Digital Platform Markets*, 11 EUR. PAPERS 195, § 9.2 (2026).

[11] *Verizon Commc'ns Inc. v. Law Offs. of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004).

Points (h) and (i) contain none of these safeguards. Dominance, which the law can presume at a 30% market share, together with "unreasonable conditions," would suffice to trigger the access obligation.

IV. Clarify Liability and Ensure Proportionate Enforcement

The Draft Decree should pair clear liability standards with proportionate remedies and sanctions. The following subsections recommend consistent proof of foreclosure and consumer harm, workable justifications, and safeguards for compelled access. They also propose limits on remedial discretion, fines calibrated to harm and legal certainty, and disgorgement confined to profits caused by the infringement. Finally, they recommend narrowing unfair competition and facilitation liability, preventing duplicate sanctions, and coordinating enforcement with Vietnam's related regulatory frameworks.

A. Clarify Liability Standards and Safeguards

The effects qualifiers in Article 12(1) provide a sound starting point, but the drafting leaves three gaps. MOIT should close them in the Draft Decree where the Draft Law permits, and amend the Draft Law where necessary. The catch-all provision also needs narrowing.

First, use a consistent standard of harm. Point (h) covers conduct that causes or is likely to cause harm to customers. Points (g), (i), and (k) cover only harm the conduct has caused. The text also separates foreclosure and harm with a semicolon, leaving unclear whether the authority must prove both.

Every item should use the same formula. The competition authority should bear the burden of proving, on the evidence, that the conduct forecloses or is likely to foreclose rivals that are at least as efficient, **and** that it significantly harms or is likely to harm consumers through higher quality-adjusted prices, lower output, or reduced innovation. Quality-adjusted prices account for differences in product quality. Harm to a less efficient competitor should be insufficient. "Likely" should mean more probable than not. The authority should have to establish both foreclosure and consumer harm.

Second, provide a general justification. The Draft Decree lacks broad, workable grounds for justifying the listed practices. Its only express exceptions concern data protection, trade secrets, and cybersecurity in points (h) and (i), and it offers no guidance on how the authority should assess them. Firms engage in these practices for many other legitimate reasons, including product quality, reliability, fraud prevention, cost recovery, and the integration of complementary features.

MOIT should expressly allow firms to justify conduct that is objectively necessary or whose efficiencies outweigh its restrictive effects. Once the firm raises that justification, the authority should bear the burden of rebutting it. If MOIT concludes that the Draft Law leaves no room for such a justification, the Draft Decree should, at minimum, treat demonstrated efficiencies as a mitigating factor under Article 6(1).

Third, add safeguards for access duties. For points (h) and (i), and any application of point (g) that would require access to interfaces or specifications, liability should require proof that access is indispensable for rivals to compete and that refusal would eliminate effective competition in the relevant market, in line with *Bronner*. Any access order should allow the firm to recover its costs and protect its users' security.

Finally, narrow the catch-all in point (l). Point (l) sanctions any abuse of dominance "prohibited under other laws." As ICLE noted in its June submission, this cross-reference makes liability depend on statutes outside competition law, including the Law on Digital Transformation, without an effects test. The Competition Law should expressly list any additional prohibited conduct and subject it to the same standard as the other items.

B. Limit Remedies to Necessary, Proportionate Measures

The Draft Decree's move toward behavioral remedies is welcome. Two provisions nonetheless reintroduce the discretion that removing forced restructuring was meant to eliminate.

The "other measures" remedy. Article 12(2)(d) allows the authority to require "other measures where necessary" to remedy the restrictive effects of self-preferencing, switching restrictions, data access refusals, data use, and several other abuses. Article 13(2)(d) applies the same power to every abuse of a monopoly position, and Article 36(3)(b) extends it to facilitation. The text places no limits on these measures.

This clause could produce interoperability mandates, compelled data sharing, or product redesign orders. ICLE has documented the costs of such obligations in the European Union, including degraded search features and delayed product launches. We also described their security risks as a persistent "live wire" into user accounts. An open-ended remedy undermines the predictability the Draft Decree otherwise improves.

MOIT should replace the "other measures" clause with an exhaustive list of remedies. Each remedy should be necessary and proportionate to the harm found, and the authority should choose the least restrictive effective option. Access, interoperability, or data-sharing remedies should be available only where the conditions in Section IV.A are met. The decision should specify terms protecting security and allowing cost recovery. Firms should also have an opportunity to propose commitments addressing the authority's concerns before it imposes a remedy.

Price control. Articles 12(2)(c) and 13(2)(c) allow the authority to place a dominant or monopoly firm's buying prices, selling prices, or other trading conditions "under the control of the competent state authority." Ongoing price supervision turns a competition authority into a price regulator—a concern ICLE raised in June about the "unreasonable terms" prohibition.

If MOIT retains this remedy, it should limit its use to proven exploitative pricing in markets with high, durable barriers to entry. Any price-control order should have a defined duration, undergo periodic review, and explain why a cease-and-desist order would be insufficient.

C. Calibrate Fines to Harm and Legal Certainty

Articles 5 and 6 would produce severe fines for the new abuses almost automatically. That approach is ill-suited to conduct whose competitive effects the evidence shows to be ambiguous.

The midpoint rule and new aggravating factors. Article 5(9), which carries over Article 4(8) of Decree No. 75/2019/NĐ-CP unchanged, starts an abuse fine at the midpoint of the 1%–10% range, or 5.5% of turnover in the relevant market. One aggravating factor raises the fine above the midpoint, up to 7.75%. Two or more require the 10% maximum.

The Draft Decree replaces the existing, unquantified aggravating factor for large-scale violations (Article 5(2)(e) of Decree No. 75/2019/NĐ-CP) with three quantified factors in Article 6(2). They apply when the conduct involves at least 30% of the relevant market (point (h)), the value of the products concerned reaches VND 10 billion (point (i)), or the conduct lasts more than one year (point (k)).

These thresholds will be met in nearly every abuse case. Because the law presumes dominance at a 30% market share, point (h) effectively repeats an element of the offense. A firm large enough to be dominant will almost always exceed VND 10 billion in affected sales, and most exclusionary conduct lasts more than a year before an investigation concludes. A dominant firm found to have engaged in self-preferencing for more than a year would therefore face the 10% maximum by default, before the authority assesses the actual harm.

MOIT should make three changes. First, exclude abuse of dominance or monopoly from point (h), because treating an element of the offense as an aggravating factor counts the same fact twice. Second, set point (i)'s value threshold relative to the relevant market's size or the firm's turnover. Third, allow the authority to depart downward from the midpoint where the established harm is limited.

A graduated approach to new abuses. The Draft Decree already distinguishes procedural merger breaches from substantive violations. The same logic should apply to conduct that becomes unlawful for the first time. Article 12(1)(g)–(k) creates new legal standards whose boundaries firms and the authority cannot yet predict. Heavy fines under uncertain standards deter potentially lawful conduct—a particularly costly enforcement error in innovative markets.

For a defined transition period, a first finding under these provisions should lead to a cease-and-desist order or warning. Fines should apply only if the firm continues the conduct after the decision. At minimum, Article 6(1) should list reasonable reliance on the pre-amendment law as a mitigating factor.

Tenfold increases in fine levels. The Draft Decree substantially raises several fixed monetary fine ranges and maximums. It increases the maximum for "other" violations from VND 200 million to VND 2 billion and the fallback range for firms with zero turnover from VND 100 million–200 million to VND 1 billion–2 billion.

Monetary caps and ranges may improve predictability, but a tenfold increase requires justification based on the conduct's seriousness, the need for deterrence, and the risk of overdeterrence. MOIT should ensure that actual fines remain proportionate to intent, material competitive harm, and the violation's substantive or procedural nature. The authority should retain discretion to impose lower fines where the conduct caused no material harm, involved uncertain legal standards, or the firm promptly remedied it.

Removal of the criminal-law ceiling. Article 5(1) removes the requirement that administrative fines for cartels and abuse remain below the lowest criminal fine. ICLE does not oppose aligning the Draft Decree with the Draft Law. Removing this ceiling nevertheless raises the stakes of the concerns above and strengthens the case for calibrating fines to proven harm.

D. Limit Disgorgement to Profits Caused by the Infringement

Articles 8 and 9 provide welcome structure for confiscating illicit profit, which previously lacked a stated calculation method. Their formula, however, would systematically overstate the gain attributable to an infringement.

Measure profit against lawful conduct. Article 9(1) defines illicit profit as the money received from the infringing conduct minus the direct costs of generating it. Under Article 9(2), that money includes all revenue from sales in the relevant market connected to the conduct during the infringement period. This formula treats the entire margin on affected sales as illicit.

But a firm found to have favored its own products would have sold most of those products anyway. Only the additional profit caused by the infringement is illicit. The correct measure is the difference between the profit the firm actually earned and what it would have earned had it complied with the law. Economists and courts use this comparison to quantify overcharges and lost profits in damages actions. It should apply here as well.

Allow deductions for common and indirect costs. Article 9(3) and (4) exclude costs that are not directly tied to producing and distributing the affected products. For many firms, particularly digital platforms, most costs are common or fixed. They include research and development, infrastructure, security, and operating the platform as a whole. Excluding these costs treats the return on those investments as unlawful gain. The Draft Decree should allow firms to allocate common and indirect costs to the affected products using recognized accounting methods.

Require reasoned estimates that firms can challenge. Article 9(5) and (6) allow the authority to estimate profit when a firm's records are incomplete. Some estimation power is necessary. The authority should state its assumptions, use conservative values where data are uncertain, and allow the firm to challenge the estimate before the decision becomes final.

Credit disgorgement against the fine. A firm may face a fine of up to 10% of relevant turnover alongside confiscation of its profit. When the authority imposes both for the same conduct, it should

credit the amount disgorged against the fine or account for it when setting the fine. Otherwise, the firm faces two penalties for the same gain.

E. Narrow Unfair Competition Liability

The Draft Decree sets sanctions for three new unfair competition offenses created by the Draft Law. These offenses apply to firms of any size. All three raise concerns.

Abuse of distribution rights (Article 29). Article 29 imposes fines of VND 300 million–450 million for refusing to grant distribution or sales rights, granting them on unreasonable conditions, revoking or declining to renew them, or treating similarly situated distributors differently, in each case "without good reason."

These are ordinary decisions about organizing distribution. Manufacturers select, terminate, and differentiate among distributors to protect quality, reward performance, prevent free riding on promotional investment, and maintain brand standards. When a supplier lacks market power, a distributor that loses its rights can turn to competing suppliers, and any dispute belongs in contract law. Condemning these decisions without regard to market power treats vertical restraints as suspect, contrary to the evidence discussed in Section III. It also unnecessarily interferes with freedom of contract.

MOIT should delete Article 29. If it retains the provision, liability should require that the supplier hold significant market power or that the distributor depend economically on it, and that the conduct harm competition in the downstream market—the market in which the distributor operates. The Draft Decree should also list legitimate reasons for these decisions, including performance, quality and safety standards, brand protection, compliance, and reorganization of the supplier's distribution network.

Confusing signs (Article 30). Article 30 sanctions the use of confusing signs and indications. Trademark, unfair competition, advertising, and consumer protection rules already address this conduct. Parallel sanctions under the Draft Decree risk duplicative enforcement and overdeterrence.

Liability should require proof that the sign is likely to cause material confusion among an appreciable number of consumers and that the conduct materially affects competition. Similarity alone should be insufficient. The aggravating factor for conduct that reaches many customers online should depend on the scale and seriousness of the harm. Online activity or a large audience should not automatically trigger it.

Deceptive interface design (Article 31). Article 31 targets "dark patterns"—interface designs that mislead or manipulate users. It covers false scarcity or urgency signals, interfaces that highlight one option and obscure others, wording that places "psychological pressure" on customers, and unnecessary cancellation steps. Deceptive design can harm consumers, but the provision has three problems.

1. **Vague standards.** Almost every interface highlights some options over others, and sales messages seek to persuade. Without a materiality test, the authority could sanction a highlighted "recommended plan" or a reminder that a sale ends soon.
2. **Overlap with consumer protection law.** The same omnibus law amends the Consumer Protection Law, which already governs consumer-facing sales practices. Parallel liability under two statutes, enforced by different bodies, creates the risk of duplicate sanctions that ICLE identified in June concerning the Law on Digital Transformation.
3. **Automatic aggravation.** Article 31(2) doubles the fine when conduct occurs in an electronic environment or on a digital platform. Because the offense itself concerns websites, applications, and electronic interfaces, the doubled range of VND 600 million–900 million will apply in every case. Article 30 contains a similar doubling for confusing signs that reach many customers online.

Liability under Article 31 should require proof that the design is likely to cause an average customer to make a decision they would not otherwise have made, a standard familiar from unfair commercial practices law. The authority should coordinate enforcement with consumer protection authorities, and an express rule should prevent sanctions under both regimes for the same conduct. Aggravation should depend on the scale of harm.

Where the alleged harm concerns consumer deception, the consumer protection regime should ordinarily provide the primary enforcement route. Competition-law sanctions should require a material effect on competitive conditions, such as foreclosure of rivals or harm to the competitive process.

F. Limit Facilitation Liability and Coordinate Enforcement

Facilitation (Article 36). Article 36 sanctions organizing, coercing, encouraging, or assisting a firm to engage in a prohibited practice. It raises the fine for assisting a restrictive practice to VND 500 million–1 billion, up from VND 30 million–50 million under Decree No. 75/2019/NĐ-CP.

We welcome the requirement that assistance be intentional, which partly addresses ICLE's June concerns about the "aiding" provision in Article 8 of the Draft Law. The provision still lacks a materiality requirement. Software developers, data providers, consultants, and trade associations routinely supply services that clients could misuse. Liability should require proof that the assistance substantially contributed to the infringement and exclude the ordinary provision of generally available goods and services. MOIT should also replace Article 36(3)(b)'s "other measures" remedy as proposed in Section IV.B.

Overlap with the Law on Digital Transformation. As ICLE explained in both earlier submissions, the Law on Digital Transformation (Law No. 148/2025/QH15) already regulates data access and portability for designated dominant platforms. Article 12(1)(h) and (i) would sanction closely related conduct under a separate regime that a different authority enforces.

The Draft Decree should expressly protect conduct that complies with the Law on Digital Transformation's data-access and portability obligations from sanctions under points (h) and (i). It should also prevent sanctions under both regimes for the same conduct.

Coordination with the decree on market power. MOIT is also preparing a decree to replace Decree No. 35/2020/NĐ-CP, detailing market definition and market-share calculations under Articles 9 and 10 of the Competition Law. Its treatment of digital indicators of market power will determine how many firms fall within the provisions discussed above.

For the reasons given in ICLE's June submission, user numbers, data, network effects, and ecosystem integration should inform an effects-based inquiry. These indicators should serve as evidence within that inquiry, without creating presumptions of market power.

V. Conclusion and Recommendations

The Draft Decree makes meaningful progress. It removes disproportionate, unworkable sanctions, calibrates merger penalties to the seriousness of the breach, and attaches effects requirements to the new platform-related abuses. The remaining weaknesses concern both liability and its consequences. Incomplete effects tests, open-ended remedies, near-automatic maximum fines, and overstated illicit profits risk deterring conduct that benefits consumers.

MOIT should preserve these reforms while ensuring that enforcement accounts for competitive benefits, protects investment incentives, and provides predictable standards across digital and traditional markets. We recommend that MOIT:

1. Preserve the abolition of forced restructuring and supplementary penalties, fixed fines for procedural merger violations, the limitation period, and the three-year cap on disgorgement.
2. Require the authority to prove both actual or likely foreclosure of rivals that are at least as efficient and significant actual or likely consumer harm under Article 12(1)(g)–(k). Define "likely" as more probable than not, and narrow point (l)'s catch-all.
3. Allow firms to justify objectively necessary conduct or conduct whose efficiencies outweigh its restrictive effects, with the authority bearing the burden of rebuttal. At minimum, recognize demonstrated efficiencies as a mitigating factor.
4. Condition access-based liability under points (g), (h), and (i) on indispensability and the elimination of effective competition, with safeguards for security and cost recovery.
5. Replace the "other measures" remedies in Articles 12(2)(d), 13(2)(d) and 36(3)(b) with an exhaustive list of necessary, proportionate remedies. Allow firms to propose commitments, and confine price control to proven exploitative pricing in markets with high, durable entry barriers, subject to time limits and review.
6. Remove aggravating factors that duplicate elements of an offense, scale monetary thresholds appropriately, and preserve discretion to impose lower fines for limited harm. During a transition period, use warnings or cease-and-desist orders for first findings under the new abuse

categories, reserving fines for continued conduct. Recognize reasonable reliance on prior law as a mitigating factor.

7. Limit illicit profit to the additional profit caused by the infringement, allow common and indirect cost allocations, require reasoned estimates that firms can challenge, and credit disgorgement against fines or account for it when setting them.
8. Delete Article 29 or require significant supplier market power or distributor dependence, together with downstream competitive harm. Require material confusion and competitive harm under Article 30. Add a materiality test and harm-based aggravation to Article 31, coordinate consumer protection enforcement, and prevent duplicate sanctions.
9. Require a a substantial contribution to establish facilitation liability and exclude ordinary provision of generally available goods and services. Protect conduct that complies with the Law on Digital Transformation's access and portability obligations, prevent duplicate sanctions, and coordinate with the forthcoming market-power decree.

These changes would help Vietnam address demonstrable competitive harm while preserving the integration, investment, and product design that benefit Vietnamese consumers.