

VIETNAM'S MERGER CONTROL REFORM: PROPOSED CHANGES BUSINESSES AND DEALMAKERS SHOULD WATCH

NGOC LUONG TRINH AND TRUC TA, VILAF

Key takeaways

- The Draft Amendments propose several notable changes to Vietnam's merger control regime, including clarification of the scope of "*other forms of economic concentration*"; exemptions from merger control filing requirements for acquisitions where the acquirer already directly or indirectly controls the target enterprise and for transactions between enterprises under common ownership; additional criteria for determining the market share of digital platform businesses; and a mechanism for terminating part or all of the conditions attached to a conditional approval of an economic concentration. Collectively, these changes indicate a more targeted merger control regime that seeks to focus regulatory scrutiny on transactions with potential competition concerns while reducing compliance burdens for transactions that do not result in a substantive change of control.
- The Draft Amendments also introduce a five-year limitation period for imposing administrative sanctions in the competition sector. Read together with the enhanced sanctioning framework under Government's Decree No. 102/2026/ND-CP, these developments underscore the importance of assessing merger control filing obligations at an early stage of transaction planning and maintaining appropriate supporting documentation for that assessment.

- While the Draft Amendments remain under consideration, they provide useful insight into the intended evolution of Vietnam's merger control regime. Businesses should continue to monitor the legislative process and consider the potential implications for transaction structuring, merger control analysis and compliance planning. Within the scope of this article, we focus only on updating and analyzing certain notable changes reflected in the current version of the Draft Amendments. We will continue to track the progress of the Draft Amendments and the issuance of the implementing regulations, and will keep clients informed of any material developments.

1. Background

Following the issuance of the Government's Resolution No. 66.18/2026/NQ-CP ("**Resolution 66.18**"), which took effect on 1 July 2026 and amended several provisions relating to economic concentration, including the thresholds triggering merger control filings and the applicable filing dossier, the Ministry of Industry and Trade has submitted to the Ministry of Justice, for appraisal, a draft law amending and supplementing a number of laws, including the Law on Competition, together with a draft decree amending and replacing Government's Decree No. 35/2020/ND-CP (collectively, the "**Draft Amendments**").

2. Clarification of the scope of "Other forms of economic concentration"

The Draft Amendments clarify the scope of "*other forms of economic concentration*", in addition to the four forms of economic concentration currently recognised under the Law on Competition, namely merger, consolidation, acquisition and joint venture.

Specifically, the Draft Amendments identify two categories of transactions that may constitute "*other forms of economic concentration*": (i) arrangements under which two or more enterprises jointly participate in decision-making following the transaction, but none of them has independent decision-making authority over the enterprise's critical matters; and (ii) agreement(s) resulting in two or more enterprises sharing a common management body.

From a practical perspective, the proposed amendments indicate that the assessment of merger control filing obligations will increasingly focus on the substantive governance arrangements following the transaction, rather than solely on its legal form. Accordingly, where a transaction provides for a common management body, enterprises should assess whether that body will exercise decision-making authority over the executive management functions specified in the Draft Amendments, including the implementation of board resolutions, the conduct of the enterprise's day-to-day business operations, and the implementation of its business and investment plans. Such arrangements may cause the transaction to fall within the scope of "*other forms of economic concentration*" and trigger merger control filing obligations.

3. Cases exempted from merger control filing requirements

The Draft Amendments exempt three categories of transactions from the merger control filing requirements: (i) consolidations, mergers or acquisitions where the acquirer already directly or indirectly holds more than 50% of the voting capital of the target enterprise; (ii) transactions between enterprises under the common ownership of the same enterprise holding more than 50% of their voting capital; and (iii) economic concentrations implemented pursuant to the approval of the Government, the Prime Minister or another competent authority in accordance with law.

These exemptions reflect the principle that merger control filings should not be required where a transaction does not result in a substantive change in control. In particular, the exemptions for transactions where the acquiring enterprise already controls the target enterprise and for transactions between enterprises under common ownership further clarify the intended scope of the merger control filing regime.

From a practical perspective, these exemptions provide greater clarity for enterprises in assessing merger control filing obligations, particularly in relation to transactions involving ownership increases by an existing controlling shareholder and intra-group restructuring transactions. This approach is also broadly consistent with merger control practice in some jurisdictions, where transactions that do not result in a substantive change in control are generally exempt from filing requirements. Nevertheless, enterprises should continue to carefully assess the ownership and control structure before and after the transaction to determine whether the relevant exemption conditions are satisfied, particularly where the transaction involves indirect ownership through multiple tiers of enterprises or multiple investors.

4. Enterprises operating digital platforms

The Draft Amendments introduce additional criteria for determining the market share of enterprises operating digital platforms. This represents a notable departure from the traditional approach, under which market share is determined primarily based on revenue or the volume of goods or services purchased or sold. The proposed changes recognise that, in the digital economy, these conventional metrics may not always accurately reflect the scale or market position of platform-based businesses.

Accordingly, for enterprises operating digital platforms, market share may be determined based on one or more indicators, including the number of buyers, the number of sellers, the number of transactions or the total value of transactions conducted on the platform over a monthly, quarterly or annual period. These additional criteria reflect the characteristics of digital platform business models, where an enterprise's scale and market power may not be fully captured by revenue alone, particularly in the case of multi-sided platforms or business models that provide services free of charge to one group of users while generating revenue from another.

From an enforcement perspective, these additional criteria may enable the competition authority to undertake a more comprehensive assessment of an enterprise's market position and the potential impact of the proposed economic concentration on competition in digital markets.

From a compliance perspective, enterprises operating digital platforms should note that the assessment of merger control filing obligations and the merger review process may require operational data specific to the platform, in addition to traditional financial information. Accordingly, enterprises should consider whether they have appropriate systems in place to collect and retain data such as the number of users, the number and value of transactions conducted on the platform, as such information may be relevant in assessing merger control filing obligations and preparing the filing dossier.

5. Conditional economic concentrations

Under the current merger control regime, an economic concentration may be approved subject to conditions where the National Competition Commission considers such conditions necessary to address competition concerns arising from the transaction. However, the current legislation does not provide a mechanism for the subsequent termination or modification of those conditions following the grant of a conditional approval. Consequently, enterprises may remain subject to conditions that have become unnecessary or no longer appropriate due to subsequent changes in the legal or market environment.

To address this gap, the Draft Amendments introduce a mechanism under which the National Competition Commission may terminate part or all of the conditions attached to a conditional approval in certain circumstances. These include: (i) where changes in law render the enterprise unable to perform the conditions; or (ii) where the enterprise maintains a market share of less than 20% in the relevant market for two consecutive years following the year in which the economic concentration was implemented.

From a practical perspective, the proposed mechanism recognises that the competition concerns underlying a conditional approval may evolve over time. It provides a legal basis for the National Competition Commission to reassess whether the conditions attached to a conditional approval should continue to apply in light of subsequent legal or market developments. This may provide enterprises with greater flexibility where the original rationale for imposing the conditions no longer exists.

Nevertheless, the Draft Amendments leave a number of important implementation issues open. In particular, they do not clarify whether an enterprise may proactively request the termination of conditions attached to a conditional approval, nor do they specify the applicable procedures, dossier requirements or assessment criteria. The practical effectiveness of the proposed mechanism will therefore depend on further guidance addressing these issues.

6. Limitation period for handling economic concentration violations

The Draft Amendments introduce a limitation period of five (05) years for the imposition of administrative sanctions in the competition sector. This development should be considered together with Government's Decree No. 102/2026/ND-CP ("**Decree 102**"), which took effect on 20 May 2026 and amended the sanctioning framework for certain administrative violations in the competition sector previously provided under Government's Decree No. 75/2019/ND-CP.

Under Decree 102, a failure to make a merger control filing where required may result in a fine of up to VND2,000,000,000 for each enterprise participating in the economic concentration, provided that the fine does not exceed 5% of the violating enterprise's total turnover in the relevant market during the financial year immediately preceding the year in which the violation was committed.

From a practical perspective, the introduction of a five (05)-year limitation period, together with the revised sanctioning framework under Decree 102, underscore the importance of assessing merger control filing obligations at an early stage of transaction structuring, particularly for M&A, restructuring and investment transactions involving complex ownership or governance structures. Enterprises should also retain appropriate supporting analyses and documentation as the basis for such assessment, which may be relevant in the event the transaction is subsequently reviewed by the competition authority.

FOR MORE INFORMATION PLEASE CONTACT:



NGOC LUONG TRINH
Partner
luongngoc@vilaf.com.vn



TRUC TA
Supervising Associate
truc.ta@vilaf.com.vn

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