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Vietnam's New Draft Decree on Competition: Key Changes to Merger Control Rules

On 5 August 2026, the Vietnam Competition Commission ("**VCC**") published for public consultation a draft decree (the "**Draft Decree**") intended to replace Decree No. 35/2020/ND-CP detailing certain provisions of the Law on Competition ("**Decree 35**"). In addition to the Draft Decree itself, the consultation dossier includes a Comparative and Explanatory Note prepared by the Ministry of Industry and Trade (the "**Explanatory Note**"), which sets out the policy rationale underlying the proposed amendments.

Set out below are some of the key proposed changes relating to Vietnam's merger control regime.

1. New Concepts and Expanded Scope

1.1. Other Forms of Economic Concentration

Consistent with the Law on Competition,[1] the Draft Decree expressly introduces a number of "other forms of economic concentration" that are not specifically addressed under Article 29 of the Law on Competition or Decree 35. In particular, the Draft Decree recognizes the following additional forms of economic concentration:[2]

- **Joint control:** an arrangement under which two or more enterprises agree to jointly decide certain material matters relating to another enterprise, including the appointment or removal of key management, amendments to its charter, or material business decisions, where no single enterprise may make those decisions independently.
- **Establishment of a common management body**: an arrangement under which two or more enterprises establish, or take equivalent measures to establish, a common management body (as discussed below).
- **Acquisition of control through non-equity means**: an arrangement under which an enterprise acquires the right to decide such material matters in respect of another enterprise through contractual arrangements or other means that do not involve the acquisition of equity or assets.

These additions would broaden the scope of transactions potentially caught by Vietnam's merger control regime, particularly by expressly capturing joint control arrangements and acquisitions of control achieved without an equity or asset transfer.

[1] Law on Competition, Article 29.1(dd).

[2] Draft Decree, Article 19.

1.2. Definition of "Management Body"

For the purposes of determining merger notification thresholds and calculating market share, the Draft Decree retains the existing concept of an organizationally and financially affiliated group of enterprises ("**affiliated group of enterprises**"). Broadly, this means a group of enterprises that are under the common control or influence of one or more enterprises within the group, or that have a common management body.

Decree 35, however, does not define what constitutes a "management body". According to the Explanatory Note, this has created practical difficulties for both the competition authority and enterprises in determining whether enterprises have a common management body.

The Draft Decree seeks to address this by defining a "management body" to include, among others:[3]

- a person who owns more than 50% of the charter capital or more than 50% of the voting shares of the enterprise;
- a person who has the right to own or use more than 50% of the assets of the enterprise in whole or in a particular business line of the enterprise;
- a person who manages the enterprise under the law on enterprises; or
- a person or group of persons who has the right to decide on one of the following matters of enterprises: implementing resolutions and decisions of the Members' Council or Board of Directors; deciding on matters relating to the day-to-day business operations of the enterprise; or implementing the business plan and investment plan of the enterprise.

The new definition should provide greater clarity in determining whether enterprises form part of the same affiliated group for merger control purposes.

1.3. Relevant Product Market

The Draft Decree proposes two notable changes to the determination of the relevant product market. [4]

First, it expressly extends the terminology to "products", in addition to goods and services. According to the Explanatory Note, this is intended to accommodate offerings that may not fit neatly within traditional concepts of goods or services, including digital information products and AI-generated outputs.

Second, the Draft Decree adds "other relevant competitive factors", including quality, as a basis for assessing substitutability, alongside the existing criteria of characteristics, intended use and price. This is particularly relevant to zero-price products and services, where price may not provide a meaningful basis for assessing substitutability.

1.4. Relevant Geographic Market

The Draft Decree also updates the rules for defining the relevant geographic market, with a particular focus on digital markets. In particular:[5]

- The concept is expanded beyond a physical "geographic area" to include a broader "spatial scope", allowing competitive conditions in digital or virtual environments to be taken into account.
- Customer and user access to products, goods or services in adjacent geographic areas or other spatial scopes is introduced as an additional factor in delineating market boundaries. This is particularly relevant to digital markets, where products and services may be accessed across geographic borders without the same physical constraints that apply in traditional markets.
- The Draft Decree clarifies that the relevant geographic market may be determined by reference to **some**, rather than necessarily all, of the prescribed factors, depending on the characteristics of the relevant market and transaction.

[3] Draft Decree, Article 2.3.
[4] Draft Decree, Article 4.
[5] Draft Decree, Article 7.

According to the Explanatory Note, these amendments are intended to provide the VCC with greater flexibility to identify the factors most relevant to each case, while avoiding the need to assess factors that may have little or no relevance to the market under review.

1.5. Enterprise Market Share

The Draft Decree introduces several changes to the methodology for determining an enterprise's market share on the relevant market. In particular:[6]

- Market share may be determined by using **one or more** of the methods prescribed under the Law on Competition, depending on the characteristics and nature of the relevant market. This gives the VCC greater flexibility to combine different methodologies where a single method may not adequately reflect an enterprise's competitive position;
- The Draft Decree provides more detailed definitions of key metrics used in market share calculations, including **purchase turnover**, **sales revenue** and **transaction value**. Of particular relevance to digital platforms, "transaction value" includes the total value of transactions in products, goods or services conducted through a platform provided by the enterprise.
- For enterprises that have operated for less than one fiscal year, the relevant market share data – including revenue, turnover, transaction volume and transaction value — is measured from the commencement of operations up to the date on which market share is determined.

2. Higher Notification Thresholds

2.1. Doubling Financial Thresholds

The Draft Decree proposes a significant increase in the general merger notification thresholds:[7]

- The total asset and total revenue/purchase volume thresholds are doubled from VND 3,000 billion to VND 6,000 billion;
- The transaction value threshold is doubled from VND 1,000 billion to VND 2,000 billion;
- The combined market share threshold remains unchanged at 20%.

The revised thresholds above are consistent with the temporary thresholds introduced by Resolution No. 66.18/2026/NQ-CP, effective until 28 February 2027.

According to the Explanatory Note, the VCC estimates that, had the proposed thresholds applied in 2025, the number of merger notifications would have fallen to approximately 167, representing a reduction of around 39% compared with the actual filing volume that year.

2.2. Reclassification of Securities Companies

The Draft Decree would also change the notification thresholds applicable to securities companies.[8]

Under Decree 35, securities companies are grouped with credit institutions and insurance enterprises and are subject to sector-specific thresholds. The Draft Decree removes securities companies from this category and instead subjects them to the general enterprise thresholds. The thresholds applicable to credit institutions and insurance enterprises remain unchanged.

The Explanatory Note explains that as securities companies generally have significantly smaller equity bases than credit institutions and insurance enterprises, continuing to apply the same thresholds to securities companies as to credit institutions and insurance enterprises may not adequately reflect the smaller capital scale of this group. Accordingly, securities companies should instead be made subject to the general enterprise thresholds, which may lead to more notifiable economic concentrations among securities companies.

[6] Draft Decree, Article 9.
[7] Draft Decree, Article 21.1.
[8] Draft Decree, Article 21.

3. New Exemptions from the Notification Requirement

A notable addition is the introduction of four categories of economic concentrations that would be exempt from the merger notification requirement:[9]

- The acquiring, consolidating or merging enterprise already directly or indirectly holds more than 50% of the voting capital of the target enterprise prior to the transaction.
- The enterprises participating in the transaction (including mergers, consolidations, acquisitions, joint ventures and other forms of economic concentration as discussed in Section 1.1 above) are all directly or indirectly owned as to more than 50% of the voting capital by the same enterprise.
- The enterprises intending to establish a joint venture directly or indirectly hold more than 50% of each other's voting capital (Note: Based on informal discussions with a representative of the drafting body, it appears that this exemption may extend to situations where only one enterprise holds more than 50% of the voting capital of the other, without reciprocal ownership. Nevertheless, this position should be verified against the final wording of the Draft Decree and any accompanying implementing regulations once they are issued).
- Economic concentration has been approved or decided by the Prime Minister in accordance with the law.

According to the Explanatory Note, the first three categories principally cover intra-group transactions that do not alter market structure or concentration levels. The proposed exemptions are intended to reduce unnecessary administrative burdens and conserve resources for both enterprises and the VCC.

4. Changes to the Merger Notification Review Process

4.1. New Rules for Preliminary Assessment (Phase 1)

The Draft Decree introduces an additional basis on which a transaction may be cleared at the preliminary assessment stage.

A transaction may be cleared without proceeding to the formal assessment stage where (i) the parties do not compete in the same relevant market (no horizontal overlap); (ii) the parties do not operate at different levels of the same production, distribution or supply chain (no vertical relationship); and (iii) their businesses are not inputs to, or complementary to, each other.[10]

This provides an express route to preliminary clearance for transactions with no horizontal, vertical or complementary relationship.

The Draft Decree also changes the treatment of transactions involving both horizontal and vertical or complementary relationships.

Under Decree 35, a transaction could potentially obtain preliminary clearance by satisfying either the applicable horizontal test or the vertical test. Under the Draft Decree, where the parties have both a horizontal relationship and a vertical or complementary relationship, the transaction must satisfy **both** the relevant horizontal clearance test and the vertical clearance test in order to be cleared at Phase 1.[11]

4.2. Modification or Termination of Conditional Clearance Measures[12]

The Draft Decree introduces a new mechanism allowing enterprises subject to a conditional clearance decision to request the VCC to modify, partially terminate or fully terminate the conditions imposed.

Such a request may be made where:

- A change in applicable law makes the conditions impracticable or no longer appropriate;

[9] Draft Decree, Article 20.
[10] Draft Decree, Article 24.2(dd).
[11] Draft Decree, Article 24.3.
[12] Draft Decree, Articles 25.5 and 25.6.

- the enterprise's market share on the relevant market remains below 20% for two consecutive years following the year in which the transaction was implemented; or
- The sum of squared market shares of enterprises on the relevant market has been below 1,800 for two consecutive years following the year in which economic concentration was implemented.

The VCC must respond within 60 days from receipt of the request.

This mechanism should provide greater flexibility where market conditions or the legal framework has changed materially after conditional clearance was granted.

4.3. Consultation with Third Parties[13]

The Draft Decree introduces a specific timeframe for responses to consultation requests issued by the VCC. An agency, organization or individual consulted by the VCC must provide a written response within 10 working days from receipt of the VCC's request.

Key takeaway

Overall, the Draft Decree would reduce the filing burden for many transactions through higher notification thresholds and new exemptions, while at the same time broadening the substantive reach of Vietnam's merger control regime through new forms of economic concentration and updated rules.

As regards the expected timeline for enactment, the VCC has indicated that the Draft Decree is scheduled to be submitted to the Government by the end of October 2026.[14]

Need Advice?

*For more information on the matters discussed in this update, please contact: our Partner **Thang Huynh**, Regional Competition Counsel **David Fruitman** and Senior Legal Advisor **Minh Anh Tran**.*

[13] Draft Decree, Article 28.
[14] https://vcc.gov.vn/default.aspx?page=news&do=detail&category_id=e0904ba0-4694-4595-9f66-dc2df621842a&id=6a2799d9-6e3d-4e20-b97b-aef8acb7ddec, accessed on 24 September 2026.