CCIA Comments in Response to the Vietnam Ministry of Industry and Trade's Draft Amendment to the Law on Competition

The Computer & Communications Industry Association (CCIA)[1] welcomes the opportunity to submit comments in response to the Vietnam Ministry of Industry and Trade's new draft amendment to the Law on Competition ("Draft Amendment"). These comments build on CCIA's June 22, 2026 submission in response to the Vietnam Competition and Consumer Authority's (VCC) Draft Amendment.[2]

CCIA welcomes the removal of customer and user counts as a separate market-share metric in Article 10. User scale remains a factor under Article 26, alongside other potential indicators of market power. These provisions should be applied in light of actual competitive constraints, without treating popularity or scale alone as proof of durable market power. Our comments below focus on our remaining concerns with Article 27(1)(g)-(k). CCIA recommends two important safeguards for the new Article 27 prohibitions: (1) requiring proof of significant harm to the competitive process; and (2) providing an express opportunity to demonstrate objective justification or countervailing efficiencies. These necessary safeguards would help distinguish exclusionary conduct from competition that improves products and benefits consumers.

1. Require Showing Significant Harm to the Competitive Process

CCIA recommends that the new Article 27 provisions expressly require the VCC to establish that the identified conduct causes, or is likely to cause, significant harm to the competitive process in a relevant market. This approach should preserve intervention against likely harm without requiring the authority to wait until that harm has occurred.

Although the new amendments address entry or expansion impediments and actual or potential harm to customers and users, they do not clearly require an assessment of the significance of the alleged harm to competition. A disadvantage to an individual business, or a theoretical possibility of harm, should not alone establish an abuse. Consistent with established

[1] CCIA is an international, not-for-profit trade association representing a broad cross-section of technology and communications firms. For over fifty years, CCIA has promoted open markets, open systems, and open networks. The Association advocates for sound competition policy and antitrust enforcement. CCIA members employ more than 1.6 million workers, invest more than $100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit www.ccianet.org.

[2] CCIA, *CCIA Comments on Draft Vietnam Competition Law Amendment* (Jun. 22, 2026), https://ccianet.org/library/ccia-comments-on-draft-vietnam-competition-law-amendment/.

principles of competition law, the relevant inquiry should be whether the challenged conduct harms the competitive process, rather than whether it causes injury to an individual competitor.[3]

Australia provides a useful legislative example. Section 46 of its Competition and Consumer Act prohibits conduct by a business with substantial market power that has the purpose, effect, or likely effect of substantially lessening competition. The Australian Competition and Consumer Commission also recognizes that practices such as tying and bundling can benefit consumers, while their competitive effects depend on the circumstances. These points support a contextual inquiry rather than treating a commercial practice's form as conclusive.

The assessment should explain the mechanism of harm, the scope and duration of the conduct, and the competitive constraints facing the enterprise. Relevant evidence may include entry and expansion opportunities, customers' ability to switch or use multiple services, and likely effects on prices, quality, choice, or innovation. A reasoned analysis of these factors would provide a clearer basis for enforcement than an inference drawn solely from a rival's loss of business or a possible adverse consequence.

2. Provide an Express Justification and Efficiencies Framework

The amendments should also expressly allow enterprises to substantiate objective justifications and procompetitive efficiencies. CCIA welcomes the exception in Article 27(1)(i) for data access, retrieval, or sharing that would affect personal data protection, trade secrets, or cybersecurity, in accordance with the law. That exception addresses an important concern, but its provision-specific scope does not provide a general framework for evaluating justifications under the other new prohibitions.

Comparative case law offers a workable distinction. In *Post Danmark I*, the Court of Justice of the European Union recognized that a dominant enterprise may demonstrate either that its conduct is objectively necessary or that efficiencies counterbalance its exclusionary effects and benefit consumers.[4] These conditions provide a substantive basis for assessing a defense rather than accepting an unsupported assertion of benefits. CCIA recommends incorporating

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[3] ICN, *Unilateral Conduct Workbook*, Ch. 2, ¶¶ 25–27 https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/07/UCWG_UCW_Ch2.pdf; OECD, *Economic Analysis and Evidence in Abuse Cases*, DAF/COMP/GF(2021)6, ¶¶ 1, 3-5, 8-10 (2021, revised Mar. 2022), https://one.oecd.org/document/DAF/COMP/GF(2021)6/En/pdf.

[4] Post Danmark, ECLI:EU:C:2012:172, para 40-42, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62010CJ0209. For efficiencies, the Court required a connection between the conduct and the gains, necessity to achieve those gains, counteraction of negative effects, and preservation of effective competition.

both conditions into Article 27. For objective justification, an enterprise should be able to show that a restriction is necessary and proportionate to a legitimate objective, such as protecting security, privacy, or service integrity.[5]

For efficiencies, an enterprise should identify verifiable benefits attributable to the conduct, explain why the restriction is necessary to achieve them, and demonstrate that those benefits counterbalance the identified competitive harm and benefit consumers without eliminating effective competition. Innovation and improvements in customer experience should be relevant only when substantiated, rather than treated as self-proving justifications. Evidence should address the nature, likelihood, and expected timing of the benefits. The enterprise should substantiate the efficiency justification it relies on, while the VCC should remain responsible for establishing the elements of the alleged infringement. Decisions should address material evidence submitted by the enterprise and explain why a claimed justification succeeds or fails. Express statutory recognition of these safeguards, supported by implementation guidance, would make Article 27 more predictable while preserving effective enforcement against conduct that harms competition.

3. Revise the Self-Preferencing and Data Provisions

CCIA reiterates its concerns regarding the draft amendment's restrictions on common and often procompetitive beneficial or at least benign business practices such as self-preferencing.[6] Favoring an enterprise's own products or services is common across both digital and traditional markets and can benefit consumers through lower prices and improved offerings.[7] Economic literature finds that self-preferencing can have procompetitive benefits, such as reducing prices by eliminating double marginalization.[8] Further studies indicate that prohibiting self-preferencing could lead to higher prices or reduced platform attractiveness.[9]

Article 27 should therefore distinguish conduct that excludes competition from legitimate product integration and differentiation. Preferential treatment alone should not establish an infringement; the assessment should apply the competitive-harm requirement and justification framework described above.

[5] The assessment should consider whether reasonably practicable, less restrictive alternatives would achieve that objective. Invoking security or privacy should not automatically resolve the inquiry; the enterprise should explain the risk and how the restriction addresses it.
[6] CCIA Comments, *supra* note 2, at 11-12.
[7] *Id.*
[8] CCIA, *A New Digital Competition Regime: Insights into Economic Risks* (Feb. 27, 2025), at 6 https://ccianet.org/research/reports/a-new-digital-competition-regime-insights-into-economic-risks/.
[9] *Id.*

CCIA is likewise concerned that mandatory data access and sharing can create risks to privacy, cybersecurity, and intellectual property.[10] Mandated data access to users' sensitive on-device data by third-party apps could enable malicious actors to exploit different kinds of data, including: (i) device fingerprinting and user profiling; (ii) data exfiltration; (iii) user interface spoofing and phishing; (iv) spyware capabilities; and (v) audio capture risks from voice-activations. This could increase users' security risks and expose them to unwanted surveillance, fraud, malware, and abuse by malicious actors.

The exemption in Article 27(1)(i) for personal data protection, trade secrets, and cybersecurity is a welcome change, but the provision should also clearly allow for necessary and proportionate safeguards against unauthorized disclosure or misuse.[11] Implementation guidance should clarify the data covered and the circumstances in which access conditions are considered unreasonable. These clarifications would help preserve legitimate protections while allowing intervention against restrictions shown to harm competition.

4. Conclusion

CCIA thanks the VCC for inviting input on this proposal and looks forward to continuing to engage in this important discussion.

[10] CCIA Comments, *supra* note 2, at 12.
[11] *Id.*