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REDEFINING MERGER CONTROL REGIME IN RESPOND TO AN EVER-EVOLVING DIGITAL ECONOMY

In recent years, Vietnam has witnessed the dynamic growth of its digital economy. Alongside this rapid expansion, competitive practices have evolved significantly, becoming increasingly complex and, in some cases, extending beyond the scope of the current legal framework.

These developments necessitate a revision of Vietnam's merger control regulations to effectively capture the unique characteristics of digital markets, ensuring alignment with the digital economy era and the evolving international standards.

Recently, the Ministry of Industry and Trade has proposed to the Government a project to amend, among other legislations, the Law on Competition (the "**Project**"). Among the proposed changes, the revisions concerning economic concentration, or commonly known as merger control, represent a key focus of the Project.

Proposed revisions to forms of economic concentration

Pursuant to the current Law on Competition, merger control regime captures the following economic concentration forms: (i) merger; (ii) consolidation; (iii) acquisition; (iv) joint venture; and (v) other forms as prescribed by law.

While this classification reflects traditional M&A structures, modern transactions involving big data, digital platforms, or data-driven enterprises, which could still give rise to actual or potential competition-restricting effects in the Vietnamese market, may fall outside the conventional regime.

For example, as per the applicable regulations, an **acquisition** means a transaction in which one company buys enough shares or assets of a target company to control or dominate that target company or one of the target company's business sectors. However, in practice, an acquirer may buy unique algorithms or datasets for the purpose of discontinuing product development. In can be



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seen that, in respect of the digital market, such acquisitions may not necessarily result in control over the target's operations but may still undermine competitive dynamics.

To address this gap, the Project proposes further clarifying the forms of economic concentration, with the aim of capturing transactions which have, or are likely to have, competition-restricting effects. Specific solutions, which will be further introduced by the Government later on, are expected to broaden the scope of merger control to encompass non-traditional transactions in the digital economy.

Proposed revisions to filing thresholds

Under the current Law on Competition, merger filing thresholds are currently determined based on the following criteria: (i) total assets value; (ii) total turnover; (iii) transaction value; and (iv) combined market share.

In practice, these traditional indicators may not fully capture the competitive significance of digital market players. E.g., many digital economic ecosystems consist of multiple business components and constituent platforms; many such digital platforms operate under asset-light models; as a component platform within the ecosystem, they have very limited tangible assets and just provide free-of-charge services and/or data-driven strategies, and hence may not directly generate revenue; however, they help strengthen and generate profits for the ecosystem as a whole. As a result, with respect to transactions on acquiring such component digital platforms, thresholds based solely on assets value or turnover may fail to fully reflect their actual market influence.

Similarly, the current method for determining combined market share is largely based on sales

and purchase metrics, which are well-suited to conventional product or service markets. However, in digital markets, market power is often derived from factors such as network effects, scale of user base, control over data, number of transactions, or platform reach.

Moreover, the market has recently witnessed the emergence of “killer acquisitions”, whereby tech giants acquire young, innovative and small start-ups. Such acquisitions are often undertaken with the purpose of discontinuing the target's innovation project and preempting potential future competition. Although certain of these transactions may give rise to anti-competitive effects, they often escape scrutiny by competition authorities as they do not meet the applicable notification thresholds.

Accordingly, the Project emphasizes a clear need to revise the current merger filing thresholds with a focus more on the underlying nature of the transaction and economic power in addition to financial thresholds. With respect to combined market share, the proposed amendments envisage additional methodologies tailored to digital platforms, e.g. incorporating indicators such as the number of users, suppliers, transactions, and platform reach.

Conclusion

As Vietnam continues to integrate into the global digital economy, the evolution of its merger control regime reflects a broader effort to safeguard fair competition in increasingly data-driven and innovation-led markets. The proposed Competition Law amendments mark a critical step towards establishing a modernized regulatory framework capable of addressing emerging competitive dynamics in the digital age.

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