

CURRENT PRACTICES IN ENFORCING LAWS AGAINST ABUSE OF A DOMINANT POSITION

Nguyen Xuan Thang^{1*}

^{1*} Nguyen Tat Thanh University, Ho Chi Minh city, Vietnam

* **Correspondence:** Nguyen Xuan Thang

*The authors declare
that no funding was
received for this work.*



Received: 01-December-2025

Accepted: 10-January-2026

Published: 21-January-2026

Copyright © 2026, Authors retain copyright. Licensed under the Creative Commons Attribution 4.0 International License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

<https://creativecommons.org/licenses/by/4.0/> (CC BY 4.0 deed)

This article is published by **MSI Publishers** in **MSI Journal of Arts, Law and Justice (MSIJALJ)**

ISSN 3049-0839 (Online)

The journal is managed and published by MSI Publishers

Volume: 3, Issue: 1 (January-2026)

ABSTRACT: In a market economy, enterprises are free to enter into contractual relationships, and transactions involving enterprises holding a monopoly position occur frequently. In order to help contracting parties better understand competition law when entering into contracts with enterprises in a monopoly position, this article analyzes the legal provisions governing the abuse of a monopoly position. Specifically, it focuses on the act of abusing a monopoly position to unilaterally amend or terminate an already concluded contract without legitimate reasons. On that basis, the article identifies the relevant legal grounds and competition law regulations, highlights existing shortcomings, and proposes recommendations and solutions to further improve the current legal framework.

Keywords: *competition, monopoly position, abuse of monopoly position, unilateral amendment or termination of contracts*

1. Introduction

In a market economy, competition is regarded as a fundamental mechanism for allocating resources efficiently, promoting innovation, and protecting consumer welfare. However, when competition is distorted or eliminated, particularly through

monopoly power, the market may fail to function properly, leading to economic inefficiencies and legal injustice. According to the *Vietnamese Dictionary*, monopoly refers to “the exclusive privilege of being held by a single entity.” In legal and economic terms, monopoly may thus be understood as a market structure in which only one individual or organization supplies a particular product or service, while all potential competitors are excluded.

From an economic perspective, David W. Pearce emphasizes that monopoly power grants an enterprise absolute control over market conditions, particularly pricing. He notes that when a firm holds a monopoly position, it gains the ability to influence or even determine the market price of goods or services, independent of competitive pressure. This capacity to control prices reflects the core characteristic of monopoly power namely, the absence of competitive constraints (Pham Phuong Thao, 2021).

Vietnamese competition law has institutionalized this understanding. Article 25 of the 2018 Law on Competition stipulates that an enterprise is deemed to hold a monopoly position if there is no other enterprise competing in the supply of the goods or services that the enterprise conducts business in within the relevant market (National Assembly, 2018). This statutory definition confirms that monopoly status is not merely a matter of market share, but rather the complete absence of competition.

In contrast, the Law on Competition 2018 distinguishes monopoly from market dominance. Article 24 provides that an enterprise or group of enterprises may hold a dominant market position if they possess significant market power or collectively engage in conduct that restricts competition (National Assembly, 2018). From an economic standpoint, sustained abuse of a dominant position may gradually eliminate competitors, thereby transforming market dominance into monopoly. This evolutionary process has been widely discussed in Vietnamese competition law scholarship (Dao Ngoc Bau, 2022).

Internationally, the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices and the UNCTAD Model Law on Competition define the abuse of dominant or monopoly positions as conduct that restricts competition by preventing market entry or unduly limiting competitive

pressure. Vietnamese scholars have consistently relied on these principles as a theoretical foundation for domestic competition law (University of Economics and Law, 2010; Pham Phuong Thao, 2021).

From these definitions, two important conclusions emerge. First, both abuse of dominance and abuse of monopoly constitute anti-competitive conduct. Second, monopoly is often the ultimate outcome of abusive dominant conduct, as sustained exclusionary practices may drive all competitors out of the market, leaving a single enterprise in control (Dao Ngoc Bau, 2022).

Among the various manifestations of monopoly abuse, the act of *abusing a monopoly position to unilaterally amend or terminate a concluded contract without legitimate reasons* presents particularly complex legal challenges. This conduct lies at the intersection of competition law and civil law, raising difficult questions regarding legal classification, jurisdiction, and enforcement mechanisms (Pham Phuong Thao, 2021).

Under Vietnamese civil law, a contract is defined as an agreement between parties on the establishment, modification, or termination of civil rights and obligations (National Assembly, 2015). This definition underscores the principle of contractual autonomy and equality between parties. However, when one party holds monopoly power, contractual freedom may become illusory, as the weaker party may be compelled to accept unfavorable contractual changes to avoid economic harm.

In such circumstances, unilateral contract amendment or termination by a monopolistic enterprise may constitute coercion rather than genuine consent. The 2015 Civil Code recognizes that civil transactions established under threat or coercion are invalid, defining coercion as intentional conduct that forces a party to act in order to avoid harm to life, health, reputation, or property (National Assembly, 2015).

Furthermore, Clause 2, Article 131 of the Civil Code provides that invalid civil transactions must be annulled, and the parties must restore the original state and return what they have received. However, when coercion arises from anti-competitive conduct, civil remedies alone may be insufficient. In such cases,

competition authorities must first establish the existence of anti-competitive behavior through formal procedures under the Law on Competition 2018, before courts can rely on such findings to declare contracts invalid (National Assembly, 2018).

2. Certain Shortcomings in the Law Concerning the Abuse of a Monopoly Position to Unilaterally Amend or Terminate Concluded Contracts Without Legitimate Reasons

Although the Law on Competition 2018 and its implementing regulations have established a formal legal framework for regulating anti-competitive conduct, practice shows that the framework remains inadequate in addressing abuses of monopoly power manifested through unilateral contractual interference. In particular, the act of abusing a monopoly position to unilaterally amend or terminate concluded contracts without legitimate reasons reveals not only normative gaps but also structural and procedural weaknesses in enforcement. These shortcomings significantly undermine the protective function of competition law and weaken its ability to safeguard economically dependent enterprises (Pham Phuong Thao, 2021; Dao Ngoc Bau, 2022; Whish & Bailey, 2021).

From a comparative and theoretical perspective, abuse of monopoly power is widely recognized as one of the most complex forms of competition infringement, as it often disguises itself through formally lawful conduct such as pricing decisions, contractual clauses, or termination rights (Geradin, 2010; Motta, 2004). The Vietnamese legal framework reflects many of these challenges.

2.1. Difficulties in Identifying the Subject of Monopoly Abuse

The Law on Competition 2018 provides relatively clear criteria for identifying enterprises and groups of enterprises holding a dominant market position, relying on market share thresholds and the concept of significant market power (National Assembly, 2018). Articles 24 and 26 allow competition authorities to assess dominance through both quantitative and qualitative indicators, consistent with international competition law approaches.

However, a critical gap exists with respect to the identification of a group of enterprises holding a monopoly position. Article 25 of the Law defines monopoly

position as a market situation in which no competing enterprise exists in the relevant market, yet the provision implicitly presumes that monopoly power is exercised by a single enterprise. It does not expressly regulate cases in which multiple legally independent enterprises collectively eliminate competition through coordinated or parallel conduct. Economic theory demonstrates that monopoly power may arise not only from single-firm dominance but also from collective market foreclosure. Enterprises supplying homogeneous or highly substitutable goods may engage in tacit collusion, strategic alliances, or parallel exclusionary practices without entering into explicit agreements, thereby achieving de facto monopoly control (Motta, 2004; Whish & Bailey, 2021). When such coordination results in the absence of effective competition, the market outcome is indistinguishable from a traditional monopoly.

The absence of explicit statutory recognition of collective monopoly power creates uncertainty in enforcement and legal qualification. Competition authorities may hesitate between applying rules on abuse of dominance, prohibited agreements, or monopoly abuse, leading to inconsistent interpretation and enforcement outcomes. This ambiguity weakens legal predictability and creates opportunities for strategic exploitation by powerful enterprises (Dao Ngoc Bau, 2022; Geradin, 2010).

2.2. Difficulties in Identifying the Nature of the Conduct

A second major shortcoming lies in distinguishing legitimate civil law conduct from anti-competitive abuse. Under Vietnamese civil law, unilateral amendment or termination of contracts may be lawful if permitted by contractual terms or statutory provisions. Such rights are generally justified by the principles of freedom of contract and party autonomy (National Assembly, 2015)

However, competition law scholarship emphasizes that contractual freedom loses its normative justification in contexts of severe power imbalance. When one party holds monopoly power, contractual consent may be merely formal, while substantive bargaining equality is absent. In such cases, unilateral contract termination or modification may function as a mechanism of economic coercion rather than a legitimate contractual right (Whish & Bailey, 2021; Hovenkamp, 2011).

This tension creates serious difficulties for enforcement authorities. If unilateral contractual conduct is assessed solely under civil law, exclusionary practices may be legitimized. Conversely, overly aggressive competition law intervention may undermine legal certainty and commercial autonomy. Determining the boundary between lawful contractual behavior and anti-competitive abuse requires careful assessment of market structure, economic dependence, and exclusionary effects, elements that are insufficiently articulated in current Vietnamese regulations (Pham Phuong Thao, 2021)

Moreover, enforcement mechanisms rely heavily on complaints from injured enterprises. Empirical and theoretical studies indicate that firms dependent on monopolists are often reluctant to complain due to fear of retaliation, loss of access to essential inputs, or termination of long-term commercial relationships (Geradin, 2010; Dao Ngoc Bau, 2022). Contractual penalty clauses, confidentiality obligations, and information asymmetry further discourage reporting. As a result, many instances of monopoly abuse remain undetected, significantly weakening enforcement effectiveness (Pham Phuong Thao, 2021).

2.3. Difficulties in Sanctioning and Remediating Violations

With respect to sanctions and remedies, Decree No. 75/2019/NĐ-CP provides administrative measures aimed primarily at restoring the pre-violation state, such as removal of unfavorable contractual conditions, restoration of amended or terminated contracts, and reinstatement of original transactions. This restorative orientation reflects a policy preference for corrective justice and market normalization, consistent with modern competition enforcement principles (Whish & Bailey, 2021).

However, the effectiveness of these measures is severely constrained by procedural duration and economic reality. Competition investigations and adjudication processes are often lengthy, involving complex evidentiary assessments and multi-stage decision-making. During this period, injured enterprises may experience escalating financial losses, loss of customers, and irreversible damage to business viability (Pham Phuong Thao, 2021; Motta, 2004).

Crucially, restorative remedies presuppose the continued existence of the injured enterprise. If the enterprise is driven into bankruptcy or forced to cease operations as a direct consequence of monopoly abuse, restoration of contractual relations becomes legally and practically impossible. In such cases, administrative remedies fail to provide effective redress, undermining both the corrective and deterrent objectives of competition law (Dao Ngoc Bau, 2022; Hovenkamp, 2011).

This structural limitation creates perverse incentives for monopolistic enterprises to delay proceedings strategically, anticipating that prolonged enforcement timelines may eliminate weaker competitors before remedies can be applied. As a result, sanctions lose their deterrent effect, and competition law enforcement risks becoming reactive rather than preventive (Pham Phuong Thao, 2021; Geradin, 2010).

3. Recommendations and Solutions to Address Shortcomings Related to the Abuse of a Monopoly Position to Unilaterally Amend or Terminate Concluded Contracts Without Legitimate Reasons

Based on the legal grounds and arguments presented in the preceding sections, it is evident that existing legal gaps and regulatory barriers have weakened the effectiveness of the Law on Competition and related legal instruments in addressing the abuse of a monopoly position. When victim enterprises face the risk of being pushed to the brink of bankruptcy before justice can be enforced, legal sanctions appear unable to fully realize their intended function. In light of this concerning reality, the author proposes several solutions aimed at fostering a healthy competitive environment. Accordingly, the following section focuses on recommendations to improve the legal framework and to ensure that the legitimate rights and interests of weaker parties are protected in a timely and effective manner.

First, supplementing the concept of a “group of enterprises holding a monopoly position” into the 2018 Law on Competition

A review of the 2018 Law on Competition shows that the abuse of a dominant market position may be committed by an “enterprise” or a “group of enterprises” possessing significant market power, and that such market power, over time, may lead to monopoly. However, while the Law provides definitions of “enterprise” and

“group of enterprises” in relation to the abuse of a dominant market position, it does not contain any provision addressing a “group of enterprises holding a monopoly position.”

Therefore, it is necessary to amend and supplement the 2018 Law on Competition to clarify the concept of a “group of enterprises holding a monopoly position.” It could be stipulated that a group of enterprises, even in the absence of a formal agreement, which acts in a coordinated manner and exhibits signs of linkage leading to complete control over a particular good or service in the relevant market (i.e., where no competitors remain), shall be deemed to hold a monopoly position and be subject to regulations governing the abuse of a monopoly position. This amendment would help fill the legal gap identified by the author.

Second, clarifying the determination of the act of “abusing a monopoly position to unilaterally amend or terminate a concluded contract without legitimate reasons”

When examining a case showing signs of competition restriction or a civil dispute, it is essential to carefully assess whether the conduct in question constitutes a civil act or an act intended to restrict competition. To resolve this ambiguity, the author recommends that the Government issue detailed guiding decrees on specific anti-competitive practices in general, and on the act of “abusing a monopoly position to unilaterally amend or terminate a concluded contract without legitimate reasons” in particular. This conduct is especially prone to misinterpretation, which may lead competent authorities or adjudicating bodies to make incorrect assessments, thereby undermining fairness for injured parties.

Specifically, such guidance should clearly identify the indicators, subjects, and characteristics of the act of abusing a monopoly position to unilaterally amend or terminate contracts without legitimate reasons. It should also address exceptional cases in which, although certain indicators, subjects, or characteristics are not fully present, the conduct nonetheless constitutes an act of abusing a monopoly position to restrict competition.

Third, supplementing provisions on compensation for damages in cases where enterprises suffer losses or bankruptcy due to the abuse of a monopoly position

Through in-depth research into anti-competitive practices, particularly the act of “abusing a monopoly position to unilaterally amend or terminate a concluded contract without legitimate reasons,” the author identifies significant shortcomings in regulations on administrative sanctions and remedial measures.

Specifically, Decree No. 75/2019/NĐ-CP provides for remedial measures applicable to this conduct, with the aim of protecting the lawful rights and interests of affected enterprises and ensuring fairness in the conclusion and performance of contracts. However, in practice, the enforcement and handling of violations related to this conduct face major challenges. Under current legal procedures, a prerequisite for applying remedial measures is that the injured enterprise must still exist and continue operating. In cases where the affected enterprise has been driven to bankruptcy or has ceased operations as a direct consequence of the abuse of a monopoly position, the enforcement of measures such as restoring contracts or reinstating the original situation becomes infeasible.

To address this shortcoming, the author proposes supplementing provisions on compensation for damages based on the losses suffered, including bankruptcy, caused by the abuse of a monopoly position in cases where the injured enterprise can no longer operate or where restoration of the original situation is impossible. The level of compensation may be determined based on actual damages incurred, including lost profits, costs arising from unlawful amendment or termination of contracts, and a percentage of the injured party’s revenue. Such provisions would ensure that the rights and interests of injured parties are compensated even when they cannot continue operating, while also enhancing the deterrent effect against enterprises that seek to eliminate weaker competitors through unfair competition practices.

4. Conclusion

Through this article, the author has clarified the concepts of monopoly and abuse of a monopoly position, particularly the act of abusing a monopoly position to unilaterally amend or terminate a concluded contract without legitimate reasons. The article has also identified the shortcomings and difficulties faced by the legal system

and the competition law framework in addressing this conduct. It is the author's hope that this study will help readers gain a deeper understanding of the abuse of a monopoly position, specifically the unilateral amendment or termination of contracts without legitimate reasons while highlighting existing legal obstacles and proposing solutions to improve the current legal framework.

REFERENCES

1. *Decree No. 75/2019/NĐ-CP on Administrative Sanctions for Violations in the Field of Competition.*
2. Atiyah, P. S. (1986). *The Rise and Fall of Freedom of Contract.* Oxford University Press.
3. Dao Ngoc Bau, PhD. (2022). *Improving the Law on Handling Administrative Violations in the Field of Competition.* State and Law Publishing House.
4. Geradin, D. (2010). *Competition Law and Economics.* Oxford University Press.
5. Hovenkamp, H. (2011). *Federal Antitrust Policy: The Law of Competition and Its Practice.* West Academic.
6. Motta, M. (2004). *Competition Policy: Theory and Practice.* Cambridge University Press.
7. National Assembly (2013). *The Constitution of the Socialist Republic of Vietnam.*
8. National Assembly (2015). *Civil Code, Law No. 91/2015/QH13.*
9. National Assembly (2018). *Law on Competition, Law No. 23/2018/QH14.*
10. Pham Phuong Thao (2021). *Law on the Handling of Anti-Competitive Practices in Vietnam.* Doctoral Dissertation in Law, Hanoi Law University.
11. Whish, R., & Bailey, D. (2021). *Competition Law* (10th ed.). Oxford University Press.