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Digital Platform Regulation

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1 Overview

Digital technologies are fast transforming industries and businesses, changing the roles people, products, and platforms play in key economic sectors, including finance, transport, tourism, logistics, healthcare, education, agriculture, and many others.

Digital platforms have changed the economics of doing business across borders, bringing down the cost of international interactions and transactions. They create markets and user communities on a global scale, providing businesses with a huge base of potential customers and effective ways to reach them. The ability of small businesses to reach new markets supports economic growth everywhere; as demonstrated by increases in GDP and employment. Further, individuals participate in globalisation directly by using digital platforms to access information, to learn, find work, showcase their talent, and build social networks. They gain social benefits from e-government services, are financially included, make purchases online, benefit from online education, or are assisted by remote medical facilities.

This trend will continue to grow as the processing and analysis of ever-larger amounts of data becomes easier with increasingly sophisticated technology.

However, from a policy maker and regulator's point of view, the emergence of the digital economy – and digital platforms – changes the landscape. As industries, markets, and pricing strategies are transformed, the traditional industry-specific approach to policy setting will increasingly fail to enable expected economic growth and social development outcomes. How to advance financial inclusion without focusing on connectivity, social media, identity profiling? How to successfully advance *effective* universal education without consulting data analytics, behaviour profiling, content delivery, and collaborative communication?

Even more challenging is the job confronting the regulator, with the traditional risk management-oriented approach failing to deliver expected regulatory control or provide adequate consumer protection. Are Grab and Go-Jek taxi companies or are they software companies? Is Alipay a bank or non-bank financial institution, or is it a technology (or e-commerce) company?

Moreover, what is a 'monopoly' and what how should adequate market competition be assessed when platforms are often present in multiple sectors? Previously-dominant regulated companies have lost ground to a new wave of 'next generation' companies. Market definitions that were vital to regulators when identifying 'significant market power' are increasingly failing to work effectively.

These challenges are not unique to Indonesia. Given the complexities, the challenge of regulating the digital economy continues to be widely discussed and debated all around the world, and raises a number of questions:

- What is anti-competitive behaviour in a digital landscape?
- What is the role of the competition authority in assessing digital services? To encourage innovation, to control prices, to promote local services? And how then should they work with other agencies to make such assessments?
- How to understand *and measure* consumer welfare in a digital environment, and to what extent should this be the basis for competition and anti-trust measures?
- How to provide recourse for consumers (i.e., consumer protection) in an interconnected digital environment?

The adequacy of traditional regulatory responses, of anti-trust laws and competition policies, are increasingly being called into question. This policy brief examines digital platform issues, and what this could mean for competition policy; and how other economies are looking at these issues, and what some of the emerging practices are in relevant areas.

2 Key regulatory issues of the digital age

2.1 How do we define digital platforms?

A digital platform business is one that provides web access to a platform that serves two markets simultaneously:

- **Demand side:** those who are consumers, buyers, users, browsers; and
- **Supply side:** those who are providing the goods, services or information to the platform.

On the demand side, the business model may require a payment or subscription but very often access is 'free' in exchange for giving up some degree of personal data. This data is subsequently monetised by the platform which either sells it or uses it to offer targeted audiences to advertisers.

On the supply side, the platform captures much of the data about the businesses using the platform and their transactions and are often being accused of using it to advantage their own products and services.

2.2 How do platforms create uncertainty?

In the digital economy, business practices and models evolve very quickly – often much faster than regulatory processes. The rise of new platforms and services effectively reshapes existing markets and their competitive dynamics. A key challenge for regulators in the digital era is the fact that these shifts take place very quickly, and sometimes take shape in very subtle ways, manifesting themselves only once they have initiated complex, inter-connected regulatory urgencies. Growing and sustaining a budding digital ecosystem requires re-examining the effectiveness of existing regulatory mechanisms, and giving regulatory bodies the ability to nimbly and proactively address emerging issues.

The rise of shared-economy applications has facilitated the monetisation of day-to-day activities, turning all possible types of social interactions – eating, commuting, travelling – into just as many potential decentralised, disintermediated transactions. The example of Uber is often cited, but the impact is neither country-, company-, nor sector-specific.

Beyond the nature of digital companies, there is also the question of the services they offer. Some of them did not previously exist, and thus escape current regulatory archetypes. Others fall between regulatory gaps that were not necessarily considered as such before, and may thus require new, tailor-made measures.

In the case of Go-Jek, this leads regulators to ask themselves: should it be taxed and regulated like a taxi company, like a software company, or like an employment agency? Perhaps it should be regulated as all of these simultaneously? Or is it necessary to create a new tax category for companies that do a bit of everything? If that is the case, then what about its competitors, who may offer taxi services but not massage bookings? And what about more traditional companies, such as Blue Bird, who do not stray from their main activity but have launched proprietary digital applications to remain competitive and relevant? Should they now be re-classified as digital companies, or as something else? Should they too fall within new or multiple regulatory frameworks?

Generally speaking, there are several ways in which new business models create regulatory uncertainty:

1. **Dual- and multi-role of platforms**: Many digital services are by essence two-sided, allowing two user groups to benefit from a digital platform. For example, search engines are used both by individuals to find information and by advertisers to target potential consumers. Multi-sided

platforms, meanwhile, provide many types of services to many different user groups, blurring the line between user, customer, platform, and business. Facebook, for instance, holds a wealth of user data, which it leverages to provide paying customers with actionable marketing and advertising strategies. Businesses also pay Facebook to advertise to customers that best fit their market segment.

Dual- and multi-sided digital platforms are making many competition principles irrelevant or inapplicable, making it difficult for competition authorities to continue protecting consumers' interests. Multi-sided platform businesses such as Facebook, Google, and Amazon, who dominate several inter-related sectors at the same time, are increasingly scrutinised by antitrust authorities, but do not yet face systematic sanctions.

2. **Horizontal and vertical integration**: Vertical integration refers to a digital service provider acquiring businesses at multiple and different points of the supply chain. E-commerce giant Amazon, for instance, runs data warehouses, provides cloud services, hosts websites, intermediates payments, manages logistics, and owns a fleet of delivery vehicles, to name but a few of its e-commerce activities. Horizontal integration refers to businesses' unbridled expansion across sectors, having a hand in so many different types of activities that the company becomes almost difficult to avoid. Uber, Grab, and Go-Jek, for example, all started as ride-hailing applications, but have grown to provide food deliveries, courier services, mobile payments, and many other day-to-day services.

   Antitrust agencies are closely monitoring the potential anticompetitive effects of rapid, sweeping vertical and horizontal integration, namely the manner in which a single company owns both upstream and downstream processes. The search engine giant, Google, has over the last couple of years been reprimanded by regulators in the EU for displaying anticompetitive behaviour. In March 2019, the EU imposed a EUR1.49 billion (IDR23 trillion) fine on Google for hindering third-party rivals from displaying search ads between 2006 and 2016, impeding competitors from entering the market and thus violating EU's antitrust laws.

3. **Network effects**: Network effects arise when a product's value to one consumer increases when it is also consumed by others. The classic example is the telephone, which becomes an increasingly useful – and therefore valuable – object the more people have one. Indeed, there is no reason to own a telephone if there is no one to call on it. In the case of digital platforms, network effects appear as more consumers use and adopt a digital service; Google's search algorithm improves with a higher search volume, Facebook's social features work better the more friends share content, and Uber's ride-sharing application is strongest when there are more than enough drivers to meet demand.

   In theory, network effects are beneficial for consumers, as they provide a wide range of services that can be obtained on demand and at lower costs. But they can also contribute to the development of monopolies, as they can lead companies to use anti-competitive practices to dominate a market even when new and better technology is introduced. Such conducts can be very harmful for market competition, as they not only prevent the entry of potential rivals, they also give way to predatory pricing.

4. **'Free' services**: Business models centred around the zero-price provision of products are not new: media companies have long made radio, television, or even newspaper content available for free, funding their product through advertising revenues. In the digital economy, new zero-price markets have arisen with their own unique characteristics and vast scope; it has become almost impossible for a consumer not to use at least one free digital product or service throughout a typical day. From mobile gaming applications to social networks, all technology companies offer some form of zero-price product or service, usually designed to either build customer loyalty, acquire user data, gain free publicity, or even destabilise competitors.

The difficulty for regulators and competition authorities is the question of the nature of the transaction between user and free product/service provider, if there is one. If the nature of the transaction is difficult to assess, then it is likely that the relationship between business and consumer will also be hard to define, in turn making it difficult to apply the right regulatory measure or framework. In an environment in which products are unidentifiable and business models are ambiguous, it is easier for digital businesses to fall between regulatory gaps.

5. **Use and control of data**: Digital platforms and services rely on all types of data to be able to function properly. Whether they take place on an e-commerce platform or a food delivery application, digital transactions data needs to be transferred between users, customers, web merchants, payment system operators, card companies, and many other intermediaries. Despite this constant flow of data, the reality is that there remain many barriers and impediments to the fast and secure transit of data across people, platforms, and borders. The capacity to move large quantities of data seamlessly and rapidly across borders can thus undermine domestic regulatory standards in areas such as privacy and consumer protection.

As these challenges demonstrate, governments must adopt a more multi-faceted and more nuanced approach to regulation. They must ensure their competition and regulatory frameworks evolve along with market changes, providing a solid foundation for sustained competition, investment, and innovation that benefits consumers, businesses, and institutions alike.

2.3 How does this affect consumers?

Complex, inter-connected technologies introduce new risks, new twists on old risks, as well as unintended consequences. Systems can fail and undermine market stability; machines can make decisions with harmful, unintended consequences; and data – the lifeblood of the digital world – can be manipulated, misused, stolen or, because of its sheer volume and complexity, be used to disguise criminal behaviour.[1]

A recent report by the European Consumer Organisation (BEUC) highlights a number of areas in which digital technologies create major challenges for consumer protection the world over:[2]

1. **Lack of transparency**: One of the most common problems for consumers using online platforms is the lack of transparency and information on how a platform works and the nature of the services it provides – thus preventing consumers from assessing the real value of the service they are getting, as well as the underlying contractual relationship and economic trade-off that is taking place. Many consumers are not aware or are uncertain of their rights and responsibilities in consumer-to-consumer transactions or about who to turn to when something goes wrong. More transparency is also necessary with regards to pricing practices; search results on many platforms do not give the total price until it is difficult for a buyer to rescind an offer or a payment.
2. **Back-end opaqueness**: Algorithms – the backbone of digital platforms, power everything from product recommendations to sales opportunities. Yet they remain a mystery for consumers, in many cases by design. Rarely do platforms offer any information on the way offers are selected, ranked, or displayed on search engines, comparison sites, or online booking platforms. The OECD warns that businesses' increased reliance on algorithms and machine learning systems to improve pricing models, customise services, and predict market trends creates multiple risks for both economies and societies.[3] Indeed, such systems can make it easier for firms to achieve and

[1] Ernst & Young (2018) How can regulation keep up as technological innovation races ahead, www.ey.com/en_gl/banking-capital-markets/how-can-regulation-keep-up-as-technological-innovation-races-ahead
[2] Bureau Européen des Unions de Consommateurs (BEUC) (2018) Ensuring Consumer Protection in the Platform Economy, www.beuc.eu/publications/beuc-x-2018-080_ensuring_consumer_protection_in_the_platform_economy.pdf
[3] OECD (2017) Algorithms and Collusion: Competition Policy in the Digital Age, www.oecd.org/daf/competition/Algorithms-and-colllusion-competition-policy-in-the-digital-age.pdf

sustain collusion without any formal agreement or human interaction – essentially bypassing traditional antitrust principles and tools.

3. **Ambiguous responsibilities**: Where online platforms act as intermediaries between two or more parties, it is often unclear whether the platform is a party to the contract or who is legally considered a trader or acting on behalf of a trader. Online intermediaries often invoke the fact that they 'only host' certain services, limiting the possibilities for consumers to hold them accountable for questionable practices or processes. In this context, online platform providers have little to no incentive to ensure the correctness and validity of information provided on their platforms.
4. **Unfair terms and conditions**: Terms of use and privacy policies are often long and complex, written in an obscure legal jargon that is very hard for consumers to understand. Rather than explaining to users what the conditions are, these texts are drafted with the purpose of being a liability waiver for the company, to which consumers, most often blindly, agree to in order to be able to use the service. The shift towards mobile devices and the Internet of Things (IoT) only aggravates these concerns around terms and conditions, as it will become even more difficult for consumers to understand the extent and the ramifications of what they are agreeing to. In 2018, the Malaysian Communications and Multimedia Commission (MCMC) recommended a cautious approach in the pace and scope of IoT adoption and deployment, as a number of vulnerabilities remain, especially in terms of security and privacy for consumers.[4]
5. **Unsecure payments**: Many platforms provide online payment facilities, either for their own services or as an intermediary for suppliers of goods and services. Regulations exist to ensure payment services are safe, cost-efficient, user-friendly, and respectful of consumers' privacy. But the fact that most innovative digital payment mechanisms are provided by small financial technology (FinTech) companies that provide very new, niche services makes it difficult to ensure existing regulations are applied. Indeed, emerging technologies such as cryptocurrencies, blockchain, smart contracts, robo-advisors, peer-to-peer (P2P) lending, and initial coin offerings (ICOs) tend to fall within regulatory gaps; as the HKEX Group points out, this can result in the aggravation of existing risks, as well as the creation of new risks that are not covered by current legislation.[5]
6. **Unauthorised data usage**: The ubiquity of digital platforms in consumers' daily lives, combined with the rising sensitivity of the data they collect (social interactions, buying habits, personal preferences and interests, locations, personal schedules and plans, etc.) makes user data an extremely valuable asset. Users are constantly tracked, monitored, and profiled, many times without their knowledge or consent. Even more worrying for consumers, the fact that sharing data with third parties with little to no legal obligations to safeguard it has become a profitable business model. The EU's General Data Protection Regulation (GDPR), in application since May 2018, is already giving consumers more control over who collects their personal data and how it is used. Enforcing this regulation remains, however, a major challenge in practice, a reality that makes the creation of similarly sophisticated measures a daunting task for other markets.
7. **Inadequate identification**: Identification is an essential, yet often neglected, driver of the platform economy. It is a key pre-condition for legal and economic transactions to have any value, as it allows buyers, sellers, and intermediaries to establish a valid contractual relationship. And it is also the means through which consumers have any sort of recourse in case of breach of contract. Despite this importance, many platforms set very minimal identification requirements for

[4] Malaysian Communications and Multimedia Commission (MCMC) (2018) Regulatory Challenges of Internet of Things (IoT), www.skmm.gov.my/skmmgovmy/media/General/pdf/WHITE-PAPER-REGULATORY-CHALLENGES-OF-INTERNET-OF-THINGS-(IOT).pdf

[5] HKEX Group (2018) Financial Technology Applications and Related Regulatory Framework, www.hkex.com.hk/-/media/HKEX-Market/News/Research-Reports/HKEx-Research-Papers/2018/CCEO_Fintech_201810_e.pdf

registration and access (such as name and email address only), and usually do not adopt further measures to adequately verify the identity of their users (such as requiring official identity documents for confirmation). This situation is clearly problematic for consumers and must be amended through comprehensive regulation.

Governments of all economies, but particularly emerging economies, need to work on all of these fronts to ensure technological advancements are met with corresponding regulatory advancements. The main difficulty lies in making them strong enough to support sound business practices (i.e. protecting consumers' interests and citizens' rights) and flexible enough to enable disruptive business models (i.e. shaping a self-sustaining, virtuous circle of investment and innovation). It is equally crucial, given the pace of change, that regulatory measures designed and implemented today remain relevant and enforceable tomorrow.

2.4 How does this impact competition policy?

Digital platforms are as natural to a digital economy based upon Internet highways, as bricks and mortar businesses are to an analogue economy based upon air and sea ports, railways and roads. So are the growth of monopolies, but their consequences are structurally very different. As digital platforms become dominant, they exhibit stronger networking effects on *both sides of the market* by becoming monopolists, for example in search, and monopsonists, for example in e-commerce. They also move away from product and service pricing models and towards data-based models, selling the data or using it to charge advertisers for targeted audiences.

The issue for anti-trust or anti-monopoly policies has never been the fact of business dominance as such, but the abuse of market power. Mergers and acquisitions are judged in terms of the likelihood of reduced competition in a defined market. In this regard, regulators have two options:

- *ex-ante* presumption that market power will lead to abuse of power, in which case the merger or acquisition is either forbidden or re-structured; or
- *ex-post* assessment of whether abuse has occurred or not, and whether product and technology innovations and new entrants subsequent to the merger or acquisition have changed the market.

In the pre-digital economy, the balance of expert opinion was towards an *ex-post* stance, but sensible although not obligatory practice was for the parties involved to consult with the regulator before announcing a merger or acquisition, which in effect meant that an *ex-ante* judgement was possible.

Applying existing regulatory frameworks and models in the digital space requires judgement. The adequacy of traditional regulatory responses, of anti-trust laws and competition policies, are increasingly being called into question. Broadly, there are three positions:

- existing laws and regulations that focus exclusively on consumer welfare are sufficient;
- wider market considerations need to be taken into account when applying existing laws; and/or
- existing laws are not fit for purpose and need to be based upon a wider principle of public interest.

As an editorial in the Financial Times aptly put it:[6]

- Competition authorities should shift focus from the definition of markets to the realities of customer lock-in;

[6] Financial Times (2017) Competition authorities need a digital upgrade, https://www.ft.com/content/f6fe0f18-73d1-11e7-aca6-c6bd07df1a3c

- The interoperability of networks – which interconnect through the Internet – carrying Over-The-Top (OTT) apps and content will become increasingly an important focus, especially with the spread of the Internet-of-Things and sensor-directed edge networking; and
- The growing use of algorithmic pricing for digital services, such as taxi-hailing apps, erodes consumer surplus – the difference between higher prices consumers are willing to pay and lower prices they are required to pay. The analytical challenge posed by competition is that, like collusion, it produces similar prices for similar products and services in the marketplace. Digitalised OTT services and the use of algorithms make these distinctions more difficult for regulators to judge.

Box 1: Opinions on competition policy

Dominant digital platform businesses have been increasingly associated with changing the rules of the game. Not surprisingly this has given rise to a growing debate about whether anti-trust/anti-monopoly and competition laws and regulations from the pre-digital era remain fit for purpose. Opinions vary:

- The European Commission has stated: "There is no need to rethink the fundamental goals of competition law in light of the digital 'revolution'. Vigorous competition policy enforcement is still a powerful tool to serve the interest of consumers and the economy as a whole." [7]
- Whereas Lina Khan's work argues: "the current framework in antitrust – specifically its pegging competition to 'consumer welfare', defined as short-term price effects – is unequipped to capture the architecture of market power in the modern economy."[8]

Given that digital platforms serve, and possibly exploit, two sides of a market, both the consumers and the businesses suppliers, the European Commission paper suggests that the consumer welfare standard that is traditionally common to anti-trust judgements across the EU and in North America "encompasses all 'users' in a broad sense."

Lina Khan's paper argues that judgements should see enterprises that supply a service that has become essential to society in the same light as a public utility, so that in a digital economy dominated by platform businesses the consumer welfare standard should in effect become a public interest standard. The paper specifically argues that Amazon should not be awarded a pass on anti-competitive behaviour just because it is benefitting consumers. Amazon's control over a number of different parts of the economy has led to it amassing vast amounts of customer data, which in turn enables it to exert influence well beyond its market share.

The public utility argument was also laid out by Alfred Kahn in *The Economics of Regulation,* first published in 1988. It is a position fiercely opposed by the Chicago School which has been very much in the ascendant since the 1980s[9] and sees consumer welfare, but not business size, as the issue.

That view is in turn fiercely opposed by other economists such as Joseph Stiglitz who suggests that "consumer welfare standard has been shown to lead to a host of abuses", arguing that while a monopsonist can "drive down wages and producer prices, passing along some of the benefits to consumers, society as a whole and workers in particular are worse off".[10]

[7] European Commission (2019) Competition Policy for the Digital Era, http://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf
[8] Lina Khan (2017) Amazon's Antitrust Paradox, https://www.yalelawjournal.org/pdf/e.710.Khan.805_zuvfyyeh.pdf
[9] University of Chicago (2019) Reassessing the Chicago School of Antitrust Law, https://www.law.uchicago.edu/news/reassessing-chicago-school-antitrust-law
[10] The Nation (2017) America Has a Monopoly Problem – and it's Huge, https://www.thenation.com/article/america-has-a-monopoly-problem-and-its-huge/

The debates inevitably reflect different political, as well as juridical and economic principles, and there is no common view. Dina Srinivasan notes in her paper *The Antitrust Case Against Facebook,* in which she sees the need to review the way antitrust laws are applied, there is a growing argument, associated with what is known as the New Brandeis School, "that antitrust regulation should focus not only on consumer welfare but also the structure of markets to avoid mere concentrations of economic power."[11] As noted, the Chicago School would dissent and in 2019 the Head of the Department of Justice Antitrust Division publicly disagreed.[12]

2.4.1 Pre-digital monopolies

In pre-digital economies, unregulated monopolies have the effect of driving prices up, consumer choice down, wages down and stifling innovation. These are not inevitable outcomes. Well-governed monopolies can serve the social good, be innovative and bring the efficiencies of economies of scale (lower costs) and the benefits of economies of scope (wider choice).

Traditional mainstream economic theories of perfect and imperfect competition were used to explain these outcomes, and the theory of contestable markets was used to explain that within a monopoly some sectors were in principle 'contestable', meaning if profit margins were above the competitive 'norm' then new entrants would threaten to drive them down and this threat alone *could be sufficient* to force the monopoly to act competitively. If other sectors across the monopoly business were not contestable, then this either implied a 'natural monopoly' in which the optimum economies of scale (lowest marginal costs) outgrew the size of the market being served, or that the barriers to entry were too high – initial investment requirements (sunk costs) might be too great, or the task of winning customers away from the dominant company were stymied due to tie-in contracts or predatory (below cost) pricing, etc – to permit effective competition. In both cases there was a case for regulatory intervention.

An early example of this theory came in 1984, with the divestiture of the giant American telephone company, AT&T which was broken down into seven independent Regional Bell Operating companies, an international carrier, and the R&D unit, Bell Labs. But history had a lesson to teach. The economies of scale of long-distance infrastructure were lost in the divestiture, while the competitive entry of new carriers using wireless and mobile technologies into local markets was inhibited by the newly-created regional monopolies. Disruptive technologies undermined regulation but were also held back by that regulation.

2.4.2 Digital monopolies

The rise of digital monopolies has similarities with pre-digital monopolies, but also different drivers because the technologies are so different and therefore the business models (business economics) are so different. The similarities relate mostly to barriers of entry. The economies of scale and scope that companies like Facebook, Apple, Amazon, Netflix, Google (the FAANGs) and a few others have achieved create almost insurmountable barriers to entry, and although start-ups can identify new applications or content or modes of communication they easily fall prey to either being acquired by or having their product replicated under a different guise by the monopolist. Indeed, the aim of being acquired can be the motive of the start-up and of the venture capital supporting it. Being acquired can be a faster and less risky route than aiming to create a market.

[11] Dina Srinivasan (2019) The Antitrust Case Against Facebook: A Monopolist's Journey Towards Pervasive Surveillance in Spite of Consumers' Preference for Privacy, https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1139&context=bblj
[12] Orrick (2019) Agree to Disagree: Competition Authorities Differ on Approach to Digital Platforms, https://blogs.orrick.com/antitrust/2019/02/22/agree-to-disagree-competition-authorities-differ-on-approach-to-digital-platforms/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original

But the key distinguishing feature of these digital monopolies is the business platform they create. It enables them to play both sides of the market, bringing supply and demand together over the platform, offering them monopsony power over suppliers and monopoly power over buyers.

This is where traditional anti-trust regulators have difficulties, because the traditional metrics of judging market power is through the ability to manipulate prices. A platform business may typically charge a zero price to the consumer, for example, there is no charge for browsing the Web, for search, for chat and texting, for posting video, and often downloading or streamed content is available for free. The real 'price' paid by the consumer is to give up the most personal information, everything from demographics (age, ethnicity, nationality), location and movement, sexual orientation, contact lists, preferences in shopping, in music, political allegiance, state of health, and so on. This information is data to be monetized by the platform company, sold to commercial and even political organizations, used to charge advertisers who want targeted audiences, and used to position the products and services of the digital monopolist itself. *Data* is market power.

On the monopsonist side of the market, the platform company has mostly unhindered access to its suppliers' online customers and sales, has the power to discriminate between suppliers, and achieves what economists call asymmetric information. It knows more than either the suppliers or the customers, and can use algorithms to predict market trends, events and other strategic information. Digital platform businesses have more global market power than was ever possible in the pre-digital economies.

Concerns are now focusing upon whether there is a need for regulating the digital platform monopolies, especially where they are killing off or absorbing local competitors, and what should be their obligations be to pay taxes on transactions that originate or terminate locally.

3 Strategies to address these challenges

The regulation of digital economies has no clear-cut, linear trajectory. Unlike other phenomena, there are few, if any, models of governments that have been adequately and satisfactorily prepared to address the regulatory hurdles of the digital age. The absence of a 'blueprint' for success means there is no single way for governments to rise to the challenge. Whichever the approach or trajectory, governments all have the same goal: to build regulatory foundations that are strong enough to support unmovable institutional principles – protecting citizens' rights and consumers' interests in the face of unprecedented technological change – and flexible enough to enable disruptive business practices – allowing a self-sustaining, virtuous circle of investment and innovation to emerge.

3.1 How have other jurisdictions approached these issues?

3.1.1 European Union

The European Commission (EC) describes online platforms as platforms covering a wide range of activities including online marketplaces, social media and creative content outlets, application distribution platforms, price comparison websites, platforms for the collaborative economy as well as online general search engines.[13] They also share key characteristics including the use of ICT to facilitate interactions (including commercial transactions) between users, collection and use of data about these interactions, and network effects.[14] It is important to note that the EC has yet to reach a

[13] European Commission (2019) Online Platforms, https://ec.europa.eu/digital-single-market/en/online-platforms-digital-single-market
[14] European Commission (2019) Online Platforms, https://ec.europa.eu/digital-single-market/en/online-platforms-digital-single-market

consensus on a concise definition of digital platforms,[15] however by describing key characteristics – rather than a prescriptive list – the definition allows flexibility and adaptability as it is platform and business agnostic.

The European Union (EU) has taken a somewhat more assertive approach to companies such as Facebook, Google and Microsoft in recent years. In February 2019, the EU Council, Commission and Parliament reached agreement on new rules covering platform businesses designed to ban various unfair practices such as suspending business accounts without good cause, provide greater transparency, for example with respect to online rankings, new forms of dispute resolution, and enforcement powers that allow business associations to take platform companies to court.[16]

These new regulations follow the Commission's *Communication on Online Platforms*, published in 2016, which identified certain key areas where further efforts are needed.[17] The guiding policy principles pursued by the Commission are:

1. A level playing field for comparable digital services;
2. Ensuring that online platforms behave responsibly to protect core values;
3. Fostering trust, transparency and ensuring fairness;
4. Keeping markets open and non-discriminatory to foster a data-driven economy.

Box 2: EU addresses Internet dominance

When dominant players in the market engage in anti-competitive behaviour and predatory pricing, it becomes challenging for competitors to enter the market. This can especially hamper the growth of entrepreneurs and SMEs, who will likely not have the means and resources to adequately compete with larger firms. Such actions can stifle innovation by not only making the participation of new entrants more challenging and costly, but also by increasing the probability of failure if they are unable to withstand the sheer size of the dominant firms. Hence, antitrust laws must protect consumers from anti-competitive behaviour and enable businesses to continue innovating.

The search engine giant, Google, has over the last couple of years been reprimanded by regulators in the EU for allegedly displaying anti-competitive behaviour. Most recently, in March 2019, the EU imposed a EUR1.49 billion (IDR23 trillion) fine on Google for hindering third-party rivals from displaying search ads between 2006 and 2016.[18] Google was found to be "imposing anti-competitive contractual restrictions on third-party websites", which is a violation of EU's antitrust laws. As a result of this move, Google's competitors were unable to enter the market, giving website owners limited choices for selling advertising space, hampering healthy competition.

In 2018, the EU's competition authority placed a record EUR4.34 billion (IDR69 trillion) fine on Google for using its mobile operating system, Android, to similarly block rivals. As per the Competition Commissioner, Google worked with Android handset and tablet manufacturers to pre-install the Google Search app and its own web browser Chrome in exchange for offering access to its Play app store. This incident followed a fine of EUR 2.42 billion (IDR38 trillion) for keeping out rivals of shopping comparison websites.

Amazon, another technology giant whose business spans across a number of different industries, is also starting to come under the radar of regulators and policy makers. Until recently, Amazon

[15] Nctm, The EU and its Bid to Regulate Digital Platforms, https://www.nctm.it/wp-content/uploads/2017/08/20170831_Noseda_Articolo_Communications-Law-August-2017.pdf
[16] European Commission (2019) Digital Single Market: EU negotiators agree to set up new European rules to improve fairness of online platforms' trading practices, http://europa.eu/rapid/press-release_IP-19-1168_en.htm
[17] European Commission (2019), Online platforms, https://ec.europa.eu/digital-single-market/en/online-platforms-digital-single-market
[18] BBC (2019) Google hit with EUR1.5bn fine from EU over advertising, www.bbc.com/news/business-47639228

had largely escaped regulatory scrutiny because the heavy discounts and deals it offers were considered to be pro-consumer welfare.[19]

3.1.2 Australia

Following a similar background of disputes with Facebook and Google, especially over issues of data violations, Australia's Competition and Consumer Commission (ACCC) submitted a preliminary report on its Digital Platforms Inquiry[20] to the Australia Government Treasury in December 2018. Of note, the ACCC's consideration of digital platforms adopted a narrow scope and only included "digital search engines, social media platforms and other digital content aggregation platforms,"[21] and their impact on Australian news media and advertising.

Although current mergers and acquisitions law in Australia does not focus upon the size of a business, ACCC's recommendations suggest that the market power of Google and Facebook need to be managed, with three explicit recommendations:[22]

1. Consider the likelihood that a transaction could remove a potential competitor and the *amount and nature of data* that may be acquired in a transaction;
2. Early scrutiny of acquisitions undertaken by large digital platforms should occur; and
3. Restrictions on the default settings for installation of Internet browsers and search engines on computers, mobiles and tablet devices should be considered.

Further, the ACCC noted that current penalties[23] are insufficient and that a mandatory code for digital platforms should be established instead, allowing the sanctions to be meaningful and more effective at eliciting compliance.[24]

3.1.3 Japan

The Japanese Cabinet in 2018 set out to "establish basic principles for the development of regulations in response to the rise of platform businesses within the year."[25] By December 2018 the Ministry of Economy, Trade and Industry, the Japan Fair Trade Commission (JFTC), and the Ministry of Internal Affairs and Communications, introduced the *Fundamental Principles for Rule Making to Address the Rise of Platform Businesses*.

This was followed by a JFTC investigation into the transaction practices of digital platforms published in January 2019 as the *Survey Report Regarding Transactions in B2C E-Commerce (Overview).*[26]

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[19] The New York Times (2018) Amazon's Antitrust Antagonist Has a Breakthrough Idea, www.nytimes.com/2018/09/07/technology/monopoly-antitrust-lina-khan-amazon.html
[20] ACCC (2018) Digital Platforms Inquiry: Preliminary Report, https://www.accc.gov.au/system/files/ACCC%20Digital%20Platforms%20Inquiry%20-%20Preliminary%20Report.pdf
[21] ACCC (2018) Digital Platforms Inquiry: Issues Paper, https://www.accc.gov.au/system/files/DPI%20-%20Issues%20Paper%20-%20Vers%20for%20Release%20-%2025%20F.. %20%28006%29.pdf
[22] Gilbert and Tobin (2018) ACCC seeks new regulations to curb digital platforms, https://www.gtlaw.com.au/insights/accc-seeks-new-regulations-curb-digital-platforms
[23] For example, in the event a digital platform contravenes an industry standard registered under the Telecommunications Act 1997 Part 6, the Australia Communications and Media Authority (ACMA) may issue a formal warning, requiring the digital platform to pay civil penalties of up to AUD250,000 (IDR2.51bn) for each contravention, in accordance with Part 31 of the Telecommunications Act. Australian Government Federal Register of Legislation, Telecommunications Act 1997, https://www.legislation.gov.au/Details/C2017C00179
[24] ACCC (2018) Digital Platforms Inquiry: Preliminary Report, https://www.accc.gov.au/system/files/ACCC%20Digital%20Platforms%20Inquiry%20-%20Preliminary%20Report.pdf
[25] White & Case (2019) Japan Fair trade Commission's Report on the Actual Status of Consumer e-Commerce Transactions, https://www.whitecase.com/publications/alert/japan-fair-trade-commissions-report-actual-status-consumer-e-commerce
[26] Japan Fair Trade Commission (2019) Survey Report Regarding Transactions in B2C E-Commerce (Overview), https://www.jftc.go.jp/en/pressreleases/yearly-2019/April/190409_3.pdf

Based upon the survey results Japan is expected to identify areas where regulatory oversight is most needed.

3.1.4 The Republic of Korea

The Korea Fair Trade Commission (KFTC) was set up in 2017 very much with the protection of SMEs against unfair competition in mind, and specifically to prevent large conglomerates' abuse of economic power; guarantee fair competition opportunities for SMEs; promote innovation in competition; increase consumers' rights; and restore the KFTC's trust and improve its antitrust enforcement system.[27] Although there are no special provisions covering platform businesses, in 2018 the KFTC investigated Naver Corporation in relation to a suspected abuse of its dominant position by privileging NPay, its own payment system, through search results and its shopping site.[28]

3.1.5 Singapore

Singapore's Infocomm Media Development Authority (IMDA) describes digital platforms as those that create value by facilitating exchanges between two or more interdependent groups. Typically, such platforms aggregate ecosystems of end-users and producers (demand and supply) to transact with each other through technology. This enables increased information sharing, enhances collaboration, drives innovation in new products and services, and encourages growing network effects as more players join.[29]

Antitrust laws are administered by the Competition and Consumer Commission of Singapore (CCCS) and although there are no laws or regulations specific to digital platforms, the CCCS has commissioned numerous studies and acted in several cases. Notably, when Uber sold its Southeast Asian business to Grab, including the transfer of information and data on drivers and delivery partners. The CCCS concluded there would be a substantial lessening of competition and directed Grab to remove the exclusivity obligations on drivers and ensure that drivers and riders are free to choose their preferred platform.[30] Of note, one potentially complicating factor is that the Singapore Government invests through Temasek Holdings in several hi-tech platform companies.

Box 3: Competition policy concepts shifting: The case of Uber and Grab

Opening markets and encouraging competition can foster economic welfare and enable innovation.[31] Governments should thus focus on developing pro-competition regulations that do not hamper the market entry of new digital economy players and services. However, the emergence of platform-based business models is making the enforcement of effective – and fair – competition far more complex, given the network effects and economies of scale and scope in digital markets.[32] This is particularly true as these digital platforms begin to impact traditional sectors. The example of Uber and the ride-sharing services is often used to highlight the issues, but it is equally true across a host of sectors.

Traditional taxi services are generally highly regulated with fixed tariffs and taxi quotas, certification requirements, and vehicle inspections. By contrast, ride-sharing platforms not only tend to operate

[27] Global Competition Review (2018) Korea: Overview, https://globalcompetitionreview.com/insight/the-asia-pacific-antitrust-review-2018/1166758/korea-overview
[28] Herbert Smith Freehills (2018) The Digital World in Asia – New Opportunities and Challenges Amidst a New Antritrust Enforcement Horizon, https://www.herbertsmithfreehills.com/latest-thinking/the-digital-world-in-asia-new-opportunities-and-challenges-amidst-a-new-antitrust#Digital
[29] IMDA (2018) Digital Platforms, https://www.imda.gov.sg/digital-platforms
[30] Global Competition Review (2018) Cometition and Consumer Commission of Singapore, https://globalcompetitionreview.com/insight/e-commerce-competition-enforcement-guide/1177743/competition-and-consumer-commission-of-singapore
[31] World Bank, Markets and Competition Policy, www.worldbank.org/en/topic/competition-policy
[32] OECD (2017) The Digital Economy, Innovation and Competition, www.oecd.org/daf/competition/OECDwork-Digital-Economy-Innovation-Competition2017-web.pdf

outside of the same regulatory frameworks, it is often difficult to work out which framework should apply.[33] Is Grab or Go-Jek a taxi company? It doesn't own any vehicles. Indeed, this is true of many of the larger sharing company players: the largest 'taxi' company in the world owns no cars; the largest 'hotel' company in the world owns no inventory, and so on. The issue is not only how to regulate this particular service (be it ride-sharing, room-sharing, etc.), but how to regulate the platform when it begins branching out into offering other services, such as payments, insurance, hospitality, healthcare – as they do and will due to potential for economies of scale.

Recent developments in South East Asia concerning Uber and regional competitor Grab, are illustrative. In March 2018, Grab acquired Uber's operations in Southeast Asia, integrating its ride-sharing and food delivery businesses. What followed was a thorough review of the deal by competition watchdogs around the region.[34]

In Vietnam, the Ministry of Industry's Competition and Consumer Protection Department (CCPD) considered fining Grab for failing to inform them about their acquisition of Uber. CCPD's threshold for notification is 30-50 percent market share. In May 2018, the Competition and Consumer Commission of Singapore (CCCS) concluded that the deal was an infringement of competition laws and considered proposing fines.[35] In October 2018, Grab agreed to pay the SGD6.42 million (IDR66.9 billion) fine imposed by CCCS, while Uber has decided to appeal against the imposed penalty of SGD 6.58 million (IDR68.6 billion).[36] Uber is also arguing that the entry of Go-Jek, Indonesia's ride-sharing company, will address the issue of anti-competitiveness. Go-Jek is preparing to enter the Singapore market having recently launched its pre-registration portal for drivers.[37]

While there is widespread consensus that consumers benefit from the services offered by sharing economy players, there is also agreement that a level playing field needs to be established between traditional players and new entrants. As competition authorities debate how best to address these issues, they must ensure that over regulation does not inhibit market entry of new players, thereby hampering innovation.

3.1.6 India

With an aim to curb the huge discounts offered by large foreign companies such as Amazon and Walmart, India introduced a radical new rule that will prevent these companies from selling products from firms in which they have a 25% or higher stake (i.e., from affiliated companies).[38]

The new rules, which are introduced as foreign direct investment requirements and not under competition law, are designed to appease small traders and farmers who fear that US firms are making a backdoor entry into India's retail market.[39] According to the policy, 100% foreign direct

[33] OECD (2018) Taxi, ride-sourcing and ride-sharing services – Background Note by the Secretariat, https://one.oecd.org/document/DAF/COMP/WP2(2018)1/en/pdf
[34] TechCrunch (2018) Grab's acquisition of Uber Southeast Asia drives into problems, https://techcrunch.com/2018/04/24/grab-uber-deal-southeast-asia/
[35] Straits Times (2018) Watchdog finds Grab-Uber deal anti-competitive, proposes fines, measures to restore competition, www.straitstimes.com/singapore/transport/competition-watchdog-finds-grab-uber-deal-anti-competitive-lists-corrective
[36] Business Times (2018) Grab will pay S$6.42m anti-competition fine but Uber appealing Singapore watchdog's decision, www.businesstimes.com.sg/transport/grab-will-pay-s642m-anti-competition-fine-but-uber-appealing-singapore-watchdogs-decision
[37] Channel NewsAsia (2018) Go-Jek launches pre-registration portal for drivers in Singapore, www.channelnewsasia.com/news/singapore/go-jek-pre-registration-portal-drivers-singapore-10873608
[38] Reuters (2019) Walmart, Amazon scrambling to comply with India's new e-commerce rules, www.reuters.com/article/us-india-ecommerce/walmart-amazon-scrambling-to-comply-with-indias-new-e-commerce-rules-idUSKCN1PP1PN
[39] Nikkei (2019) Amazon and Flipkart race to adapt to India's new e-commerce rules, https://asia.nikkei.com/Business/Business-trends/Amazon-and-Flipkart-race-to-adapt-to-India-s-new-e-commerce-rules

investment (FDI) is allowed in marketplace e-commerce, however, it is not permitted in an inventory-based model.[40]

While some believe that the new regulations will level-the-playing-field for sellers and encourage fair competition, others are of the opinion that these policies will disadvantage consumers. The US-India Strategic Partnership Forum (USISPF) has highlighted that these changes, which were introduced without any consultation with relevant stakeholders, will hinder Indian sellers from competing effectively in the global online marketplace. The USISPF has also highlighted that investments by foreign firms (Amazon has invested USD5 billion (IDR70 trillion) in India and Walmart bought a 77% stake in Indian company Flipkart for USD16 billion (IDR225 trillion)) has led to job creation and that these regulations can have a negative impact on the growth of online retail in India.[41]

Other executives have also opined that "consumers will most likely bear the brunt of these changes," as the new rules lead to an increase in prices and a decrease in product availability and variety.[42] These regulations could also hurt Indian retailers in instances where foreign companies own a stake in these Indian entities. For instance, Amazon's investment arm has a stake in the Indian department store chain, Shopper's Stop, which could act as a roadblock for Shopper's Stop to sell its products on Amazon's marketplace.[43] Other entities, such as Cloudtail and Appario could also face similar restrictions, as Amazon owns a minority stake in their parent companies.

3.1.7 USA

Despite the strength of the market-led approach to remedying any harm that might arise from the dominance of digital platforms in the US, and a legal system that is imbued with a minimalist regulatory philosophy, much supported by an army of industry lobbyists, there is emerging a clear concern that anti-competitive market behaviour and misuse of sensitive data needs to be reviewed.

One sign is that given the size of the task, the US Department of Justice and the Federal Trade Commission (FTC) have agreed to divide up responsibilities for investigating Google and Apple, Facebook and Amazon.[44] Another is that ways to downsize or restrain the largest of the platform businesses is becoming part of the narrative on both sides of the political divide in the 2019 run-up to the political parties selecting their candidates for the next round of elections.

Among the options being floated are to restrict entry into certain markets only, such as regulated markets for the most monopolistic business components of the FAANGs, structurally separating off the platform business from the services business whereby the platforms would be required to offer equal and open access to business suppliers and customers alike, or to unwind some of the more contentious acquisitions that have resulted *ex-post facto* in monopoly market power. In all these cases, the legislative and legal processes would be complex, contentious and lengthy.

Box 4: Disbanding digital cartels

In 2015, the United States Department of Justice successfully prosecuted David Topkins for what could be characterised as algorithm-enhanced price-fixing. Topkins and his co-conspirators

[40] The Economic Times (2018) New e-commerce rules regressive, will harm consumers: USISPF, https://economictimes.indiatimes.com/industry/services/retail/new-e-commerce-rules-regressive-will-harm-consumers-usispf/articleshow/67287615.cms
[41] The Economic Times (2018) New e-commerce rules regressive, will harm consumers: USISPF, https://economictimes.indiatimes.com/industry/services/retail/new-e-commerce-rules-regressive-will-harm-consumers-usispf/articleshow/67287615.cms
[42] The National (2019) Modi's new e-commerce rules likely to hurt Indian consumers, www.thenational.ae/business/technology/modi-s-new-e-commerce-rules-likely-to-hurt-indian-consumers-1.808731
[43] Reuters (2019) Walmart, Amazon scrambling to comply with India's new e-commerce rules, www.reuters.com/article/us-india-ecommerce/walmart-amazon-scrambling-to-comply-with-indias-new-e-commerce-rules-idUSKCN1PP1PN
[44] CNN (2019) Google, Facebook and Apple could face US antitrust probes as regulators divide up tech territory, https://edition.cnn.com/2019/06/03/tech/facebook-google-amazon-antitrust-ftc/index.html

adopted specific pricing algorithms to coordinate prices for wall posters they sold through the Amazon Marketplace. In particular, Topkins and his co-conspirators wrote the computer code that instructed algorithm-based software to avoid price competition.[45]

As the OECD points out, such collusion practices are bound to gain in importance as algorithmic decision-making drives more and more business models.[46] An added difficulty is the fact that cartels are very difficult to detect. They can involve many firms in the industry and customers are rarely in a position to detect the existence of a cartel. Antitrust enforcers should be helped in their ability to detect cartels by various means and instruments, the most effective being leniency programmes. These programmes provide immunity or reduction in sanctions for cartel members that cooperate (or 'whistleblow') with competition enforcers. Leniency programmes have been adopted by most OECD countries and have been instrumental in increasing the success rate of the detection of cartels.

The best outcomes are secured by deterring firms from forming cartels in the first place. Strong sanctions are therefore a fundamental component of an effective antitrust enforcement policy against hard core cartels. An important supplement to fines against organisations for cartel conduct is sanctions against individuals for their participation in the conspiracy. These sanctions can take the form of substantial administrative fines or, in some countries, the criminal sanction of imprisonment. The prospect of incarceration can be a powerful deterrent for business people considering entering into a cartel agreement.

3.1.8 UK

A landmark case in 2018 at the Court of Civil Appeal found that Uber was an employer in terms of the law and was therefore subject to the responsibilities of an employer of taxi drivers. Uber had argued that it was only a technology company that enabled independent drivers to make use of its platform.[47] This ruling stands in contrast to a ruling in the US in April 2018 that declared Uber taxi drivers are independent freelancers and not employees under American law and thus ineligible for traditional benefits like overtime, minimum wage protections, and health insurance.[48]

4 Need for responsive, fit-for-purpose policy

Clearly, new business models are altering what it means to be buyer/seller, producer/consumer, employer/employee – effectively blurring, challenging, and even toppling traditional roles and responsibilities. This shift is already impacting key areas such as competition policies, labour laws, tax frameworks, and social security systems – and is likely to grow in intensity as healthcare providers, financial advisors, insurers, law firms, universities, and thousands of other sectors bring their services closer to users through boundary-bending platforms and applications.

This shift puts unprecedented pressure on regulators and policy-makers. From an institutional and administrative perspective, their roles remain unchanged; a competition authority oversees competition matters, a labour body monitors work- and employment-related issues, and so on. Yet the landscape in which they operate is fast evolving, no longer following strictly compartmentalised hierarchies.

[45] Arnold & Porter (2018) Pricing Algorithms: The Antitrust Implications, www.arnoldporter.com/en/perspectives/publications/2018/04/pricing-algorithms-the-antitrust-implications
[46] OECD (2019) Cartels and anti-competitive agreements, http://www.oecd.org/daf/competition/cartels
[47] Uber B.V & ors v Aslam & ors [2018] EWCA Civ 2748, https://www.judiciary.uk/wp-content/uploads/2018/12/uber-bv-ors-v-aslam-ors-judgment-19.12.18.pdf
[48] The Verge (2018) Uber drivers are freelancers, not employees, judge rules, https://www.theverge.com/2018/4/12/17231060/uber-drivers-freelancers-employees-judge-ruling

Go-Jek and the ecosystem of partners/competitors it inhabits create a number of challenges that require the attention of multiple institutions at once, creating confusion over “who should be regulating what”. In this context, regulatory efforts and initiatives are constantly at risk of overlapping or being duplicated, which can lead to an inefficient use of institutional resources, as well as less impactful regulations.

The assumption that regulations can be crafted slowly and deliberately, and then remain unchanged for long periods of time, is no longer relevant in dynamically competitive markets. As new business models and services emerge, regulatory and policy-making bodies are challenged with creating or modifying regulations, enforcing them, and communicating them to the public at an unprecedented pace. And they must do this while working within legacy frameworks and attempting to foster innovation.

4.1 Considerations for reframing policy

Policymakers and regulators who think they can apply old rules to new platforms will encounter both legal and practical difficulties. Just as in the dotcom era, the policy debate has become a fight over whether new enterprises should be regulated under the old regime or left unregulated, despite the problems of such artificially sharp divisions.

The oft-repeated mantra that law and regulation move more slowly than technology should not be the end of the discussion. The celebration of innovation also should not obscure that law exists to protect core societal values precisely because values generally do not change. Between ill-fitting legacy regulations and none at all, targeted compromise facilitated by the eager participation of a proactive government is the best strategy for navigating current and future challenges of the digital economy.[49]

In this new environment it is important to ask and ensure that regulation remains fit-for-purpose. This is because investment in new industries can be nullified by poorly designed or implemented regulation, the protection of incumbents, and the absence of complementary policies, for example, in relation to standards and data access.

Unintended distortions, such as changes to incentives to invest or innovate, or the introduction of barriers to adopting new business models, can be costly to the economy and it is these unintended costs that loom large when regulation is outdated or slow to catch up. In short, a failure to maintain fit-for-purpose regulation affects the ability of new firms to enter markets and for new technologies to diffuse throughout the economy.

There are many different philosophies and approaches towards the regulation of digital platforms, but what is essentially different from the pre-digital age are the circumstances. The structure of markets is different, the business models are different, while the role of data has become paramount.

Regulatory approaches do not grow out of nowhere, they are embedded in the legal frameworks of countries, but they can develop and adapt to new challenges. Probably the most universally acceptable way of doing so is the use the ‘red flag’ approach. If the behaviour or market outcomes of a digital platform business raises question marks over harm to consumers, to competitive markets or to the wider public interest, then there should be a presumption of regulatory investigation. Remedial action then becomes the next challenge, and the reality is that in the most developed economies this remains a learning process.

There are a number of considerations that Indonesia should take into account when regulating digital platforms, and particularly when looking to reframe competition policy:

[49] Wharton Public Policy Initiative (2017) Lessons for Policymakers and Regulators on the (Predictable) Future of the Digital Economy, https://publicpolicy.wharton.upenn.edu/issue-brief/v5n1.php

1. **Unintended consequences:** Attempts to 'level the playing field' through strict and prescriptive regulation of digital platforms will also restrict the benefits we receive as consumers (including reduced choice, as well as the passing on of additional costs to consumers), and may have a chilling effect on innovation.
2. **Whole-of-government approach:** Due to the cross-sectoral, and cross-jurisdictional, reach of digital platforms and digital technologies, regulation and policy making can no longer occur on a sector or agency basis (e.g., within silos), and continued communication between ministries and agencies is required in order to address cross-cutting issues and ensure fit-for-purpose policy.
3. **Clarity and certainty:** Competition authorities need to put in place rules that promote clarity and certainty for the market. These rules should be based on standards and international best practice, and act as guidelines or pointers for the market – rather than be an inflexible set of prescriptive rules that hamper innovation, and do not keep pace with technology or business models.
4. **Consider other regulation and policy frameworks:** Prior to overhauling a specific set of rules or regulation, such as competition policy, government as a whole also needs to consider whether amendments to other frameworks (such as data protection or telecommunications) may be better placed to address concerns (e.g., data breach notification requirements could be strengthened to address consumer concerns, as well as ensuring adequate consent or notification for the use of data, rather than overhauling or placing these requirements within competition policy).
5. **Industry self-regulation:** The use of an industry code of practice for digital platforms, instead of prescriptive regulation, will allow flexibility and adaptability, and ensure that appropriate and practical measures are put in place. This code of practice may best fit under a Communications Ministry (e.g., Kominfo), with input from relevant stakeholders such as the competition authority, KPPU.
6. **Strengthen competition policy for the digital age:** Competition law could be modernised to reflect the impact of digital platforms, including consideration of:[50] i) amending/adjusting merger control thresholds to include amount and nature of data in which the acquirer would have access to (e.g., this would catch acquisitions of small platforms with relatively little turnover, but have high value due to data) or would result in the removal of a potential competitor[51]; ii) require prior advance notice of acquisition or merger; iii) innovation suppressing conduct (such as scraping content, and suppressing or preventing access to data), and iv) ensuring concept of predatory pricing is more robust, and strictly police vertical integration.[52]
7. **Faster outcomes:** In the digital economy, business practices and models evolve very quickly – often much faster than regulatory processes. Investigations can take a long time, with remedies often coming after the fact (e.g., the Philippines Competition Commission asked Uber to continue operations after the deal with Grab, with Uber declining as it had already exited the market[53]). Although decision making should not be rushed, there is a need to increase the pace in which cases are processed. A two-stage process – in which complaints are initially examined and either rejected or formal proceedings commence within a certain time period, and then proceedings are wrapped up within a reasonable time period as well – may be beneficial in matching the pace of technology.

[50] Australian Competition and Consumer Commission (2018) Digital Platforms Inquiry: Preliminary Report, https://www.accc.gov.au/system/files/ACCC%20Digital%20Platforms%20Inquiry%20-%20Preliminary%20Report.pdf
[51] Lina Khan (2017) Amazon's Antitrust Paradox, https://www.yalelawjournal.org/pdf/e.710.Khan.805_zuvfyyeh.pdf
[52] Lina Khan (2017) Amazon's Antitrust Paradox, https://www.yalelawjournal.org/pdf/e.710.Khan.805_zuvfyyeh.pdf
[53] https://www.rappler.com/business/199625-philippine-competition-commission-uber-grab-separate-operations

8. **Use of interim measures:** As noted above, remedies are difficult to define and implement in digital cases and the use of interim measures may be beneficial and timely (e.g., Competition and Consumer Commission of Singapore struggled to impose appropriate remedies when evaluating the Uber and Grab deal[54]).
9. **Need for greater output of decisions**: Judgements or decisions provide guidance to new and existing players, provide a set of foundational principles, and generally improve knowledge of competition policy issues in the digital sphere. However, there are currently a lack of decisions guiding the market.[55]
10. **Subject matter expertise:** Competition authorities will need to understand the role of data, and its importance in mergers and acquisitions. Data science expertise will need to be engaged (e.g., the UK Competition and Markets Authority has noted its lack of data science expertise[56]).

[54] Competition and Consumer Commission of Singapore (2018) Uber/Grab merger: CCCS Issues Interim Measures Directions, https://www.cccs.gov.sg/media-and-consultation/newsroom/media-releases/uber-grab-imd-13-april-18
[55] Damien Geradin (2018) What should EU competition policy do to address concerns raised by the Digital Platforms' market power? https://www.competitionpolicyinternational.com/what-should-eu-competition-policy-do-to-address-the-concerns-raised-by-the-digital-platforms-market-power/
[56] UK Competition and Markets Authority (2018) CMA's new DaTA unit: exciting opportunities for data scientists, https://competitionandmarkets.blog.gov.uk/2018/10/24/cmas-new-data-unit-exciting-opportunities-for-data-scientists/


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