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Digital Competition Policy: Can ASEAN Learn from the EU?

By Jose Miguelito Enriquez

SYNOPSIS

Digital competition has become one of the most hotly contested and consequential policy areas in global digital regulation, as demonstrated by recent developments in the European Union. As ASEAN mulls its own regulation, how can it learn from Europe's experience?

COMMENTARY

When [Apple](#) announced on 21 June 2024 that it was delaying the implementation of updated software features across their operating systems (OS) in the European Union over what it called “regulatory uncertainties”, it immediately sparked debate over the EU’s digital regulatory regime.

Specifically, many questions revolved around whether the announcement demonstrated that the balance between enabling competition, on the one hand, and fostering creativity and innovation, on the other, in Europe’s digital antitrust law – the Digital Markets Act (DMA) – has become too lopsided in favour of competition, that it has curtailed innovation and consequently compromised European customers’ experience.

Apple, which [the EU has already found to be DMA-noncompliant](#) for its restrictive policies in its App Store, is not the only tech firm required to comply with the DMA. All five of the so-called “MAMAA” companies (Microsoft, Apple, Meta/Facebook, Alphabet/Google, and Amazon) along with TikTok’s parent company ByteDance have been designated as [gatekeepers](#) under the DMA, which is defined as a company that “provides a core digital service” such as app marketplaces, web browsers, and search engines.

Firms designated as gatekeepers will have certain obligations under the DMA, including enabling the interoperability of their digital services across different providers under specific conditions. Of these firms, [Meta and Alphabet](#) are, like Apple, under similar investigations over alleged anti-competitive and other DMA-noncompliant practices.

The Limits of the Brussels Effect

In her 2019 book "[The Brussels Effect](#)", Anu Bradford argued that Europe has been able to become a leading global regulatory power by imposing obligations on firms that are voluntarily converted into global standards out of those firms' desire for more efficient global operations.

Bradford further argued that no other piece of European legislation has had a more profound global impact on the digital political economy than the General Data Protection Regulations (GDPR), which set the global standard by which multinational corporations collect, store, and process personal data. It also sets a global benchmark by which the rest of the world's data protection laws are compared.

However, we could be seeing the limits of the Brussels Effect in the tech industry with the DMA. Instead of voluntarily adopting interoperability as a principle of their global platforms, many large tech companies have pushed back against the DMA by [defending their business models](#) amidst the EU's enforcement actions. This has placed other markets and governments including those in Southeast Asia, home to multiple "[Super Apps](#)" that offer a variety of services in a single platform, in a delicate position.

Some [policy experts in the region](#) have warned that adopting the EU approach to digital competition may constrict the digital economy's growth trajectory. Apple's decision to delay the deployment of new software over Europe's antitrust enforcement will inevitably give more credence to this argument. However, while the industry's response to proposed regulations should be considered, it should not completely deter governments from regulating digital competition.

How Should ASEAN Weigh the Trade-off?

ASEAN's policymakers will need to grapple with the trade-off between giving startups a fair playing field in the digital economy and allowing the major firms to tightly integrate the multiple digital services that they offer.

These firms' unfettered years-long pursuit of service integration may have worsened the tech industry's antitrust problem because it sacrifices interoperability and consumer choice. For example, independent software developers have complained for years that OS providers have engaged in anticompetitive behaviour called [sherlocking](#), where they build similar versions of these independent developers' software and incorporate them into their own OS.

Sherlocking enables large companies to crowd out their smaller competitors effortlessly because they can easily scale the development and deployment of new services and features, sometimes at no additional cost to customers. Because of their

wide profit margins, major tech firms can easily cut losses that could be insurmountable for smaller developer studios, who will need to charge users per download or offer a subscription service to keep their business afloat. This year alone, Apple's new OS releases could potentially wipe out nearly [US\\$400 million in revenue](#) for developers whose apps have been sherlocked.

This is why one of the goals of the EU DMA – promoting interoperability between service providers – is crucial for Southeast Asia's digital startups, as it creates space for them to grow in the cutthroat industry and gives consumers more options to define their own optimal digital experience. At the same time, the growth of the digital economy becomes more financially sustainable as the windfall will not be concentrated on a few corporations but will be enjoyed by as many firms as possible.

A robust competition regime that enables startups to thrive is crucial for the region to mint more tech “unicorns” with billion-dollar valuations. Many of the region's successful unicorns across different sectors, such as e-commerce, fintech, and ridesharing, [started as innovative startups](#).

However, ASEAN governments also need to realise that antitrust law is not meant to be a panacea for a vibrant and competitive digital economy. There are other barriers to entry for those aspiring to enter the market, including talent development, digital infrastructure, and financing. Government support to overcome these barriers will be critical, but large firms can also step up by partnering with startups and providing them with the necessary resources to develop innovative applications.

Conclusion

As ASEAN contemplates its own direction in digital competition through the Digital Economy Framework Agreement (DEFA), members should not be driven solely by an aversion to the EU's approach over concerns on how major industry players will respond, as the digital marketplace as it stands today will be disrupted by any form of competition regulation.

While there are incentives to place antitrust guardrails in the digital economy, merely copying the DMA is not the answer for ASEAN. Our regional economic growth is largely driven by Super Apps and unicorns, which are largely absent in Europe's digital ecosystem.

Hence, vesting obligations into OS providers, web browsers, or search engines may not be compatible with the region's needs. Instead, competition policies that enable fair access to app platforms, restrict excessive lock-in between vendors and applications, and prevent unfair pricing mechanisms due to market dominance would be more in step with the unique features and opportunities in Southeast Asia's digital economy.

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