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**Asia Internet Coalition (AIC) Industry Submission on Thailand Platform Economy Act, 2024**

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**26 April 2024**

**To**

**Dr. Chaichana Mitrpant**

**Executive Director, Electronic Transactions Development Agency (ETDA)**

On behalf of the [Asia Internet Coalition](#) (AIC), we extend our warm greetings to the Ministry of Digital Economy and Society (MDES) and express our gratitude for the opportunity to provide feedback on the upcoming Platform Economy Act (PEA). As an introduction, the AIC is an industry association of leading Internet and technology companies that promotes the understanding and resolution of Internet policy issues in the Asia Pacific region. Our mission is to represent the Internet industry, and participate in and promote stakeholder dialogue between the public and private sectors, sharing best practices and ideas on Internet technology and the digital economy.

First and foremost, the AIC would like to commend the Thai government for its proactive efforts to safeguard the interests of users of digital platforms through the introduction of the Platform Economy Act. We recognize the importance of establishing a regulatory framework that enhances transparency and consumer protection in the rapidly evolving digital landscape. We welcome provisions within the proposed legislation that aim to improve the transparency of terms and conditions (T&C) governing the use of digital services. Clarity and transparency in T&C are crucial for fostering trust and empowering users to make informed decisions.

However, as stakeholders deeply invested in the growth and vibrancy of the Thai digital economy, the AIC is also mindful of the potential unintended consequences that certain regulatory requirements may pose. While well-intentioned, some provisions of the Platform Economy Act may inadvertently create barriers to innovation and hinder the growth of digital businesses, particularly for micro, small, and medium-sized enterprises (MSMEs) operating within the ecosystem.

Therefore, the AIC respectfully suggests that the Thai government consider adopting a calibrated approach to the implementation of the Platform Economy Act as to not cause redundancy and overlapping with existing regulation in Thailand. Instead of immediately resorting to regulatory mandates, we propose exploring alternative mechanisms, such as industry guidelines or regulatory sandboxes, as initial steps. These non-regulatory levers can provide a flexible and collaborative environment for experimentation and learning, allowing for the identification of best practices without imposing undue burdens on industry players.

In the **appendix** attached to this letter, you will find detailed comments and recommendations from the AIC regarding specific provisions of the Platform Economy Act. We hope that these insights will be valuable in shaping the final form of the legislation, ensuring that it strikes the right balance between promoting innovation and safeguarding consumer interests.

Thank you for your attention to this matter, and we look forward to the opportunity to contribute to the development of a comprehensive and balanced regulatory framework in Thailand. Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact our Secretariat Mr. Sarthak Luthra at [Secretariat@aicasia.org](mailto:Secretariat@aicasia.org) or at +65 8739 1490.

Thank you,



Sincerely,

**Jeff Paine**  
**Managing Director**  
**Asia Internet Coalition (AIC)**

#### **APPENDIX: Detailed Comments and Recommendations**

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**1. The AIC is broadly supportive of Thai government efforts to protect consumer / stakeholder interests.**

AIC is supportive of the Thai government's intent to protect consumer interests and stakeholders in the broader marketplace. Some proposed requirements for service providers are timely and welcomed, as we believe they will lead to increased safety, transparency and thus user protection. These include:

- i. Section 31: Announcing T&Cs transparently
- ii. Section 13: Establishing channels for providing assistance to users who have been harmed by using a digital platform service
- iii. Section 14: Providing channels to report actions that may be illegal or inconsistent with service term
- iv. Section 19: Establishing a system for verifying user identities when using a service for the first time
- v. Section 23: Establishing plans for operations in times of crisis

**2. However, we are concerned about the potential negative impacts of other requirements on service providers and broader stakeholders.**

- a. We note that the PEA has taken references from the ex-ante regulatory framework in the European Union (EU). However, care must be taken in the introduction of these regulations in Thailand, to mitigate potential negative downstream effects that impact services providers and other stakeholders (users, MSMEs). Due to the nascent state of Thailand's digital economy, overly stringent regulations could inadvertently dampen innovation and investment in digital platforms in Thailand, and ultimately limit consumers' choices. These could include:

**i. Impacts on platforms' competitive advantage and/or reputational risks arising from:**

- Mandating the Release of sensitive information, such as:
  - a. [From Section 31] Algorithm modeling logic
  - b. [From Section 31] Reasons for suspensions
  - c. [From Section 22] Statistics on receiving complaints and resolving disputes
  - d. [From Section 22] Mechanisms, systems, or methods used for inspecting and managing data

**ii. Escalation of Costs and Resources in Business Operations:**

- Detailed compliance requirements tend to increase operational costs (e.g., burden compliance for small platforms, trusted flagger channel, public consultation). Burdensome Ex-ante regulation introduces a multitude of additional expensive processes, potentially diminishing the competitiveness of the firms operating in Thailand.
- For instance, Section 12 imposes the obligation on digital platform services to guarantee the legality of information transmitted through their platform. Given the vast volume of data on social media platforms, monitoring all posts and comments in real-time becomes an impractical task. Furthermore, the proposed provision raises concerns regarding the potential infringement of privacy in the transmission of information among users, particularly in cases where the service in question necessitates a high level of confidentiality, such as interpersonal message exchanges. Implementation of this provision may lead to conflicts with the existing Terms of Use or Privacy Policy established by the service provider. Furthermore, demonstrating access and visibility through intermediary proof or evidence is deemed impractical.
- Section 17 requires digital platform services to establish a notification system to users regarding the expiration date of products and services on the platform. Implementing such a system would demand substantial resources and may contradict the government's policy on promoting ease of doing business. It would be more practical to require platform services to inform sellers about providing expiration dates.

- Section 18 states that Platforms have the duty to check and monitor to ensure that its digital platform is not used as a channel for the commission of an offense. This could also cause excessive increase in resources and costs to the businesses.
- On Section 19, given that there is a cost associated with each authentication process, an explicit guidance on the authentication required for each subsequent usage is imperative.
- Section 25, which mandates large platform services to engage external IT auditors for yearly penetration tests, cyber drills, and crisis recovery exercises, would impose a substantial burden on platforms.
- Section 30, demanding specific platform services to establish a channel with appointed trust flaggers or investigate cases derived from such trusted flaggers, introduces potential cost and resource burdens for platforms. Robust measures are needed to address instances of over-flagging, where content is reported excessively or unjustly, to prevent unnecessary investigations and disruptions in platform operations.
  - a. In addition to this, by normal process, the complaints system is already in place where voluntary or good-willing users can report the wrongdoings transmitted through the platform. Trusted flagger is unnecessary to be implemented. Moreover, this poses a reputational and financial risk toward the platform operator if trusted flagger decides to impose any illegal and immoral conduct toward the operator.
- Section 32 stipulates that revisions to the T&C of large digital platform service providers under Section 24 must undergo user consultation with an open period of at least 15 days. This requirement may result in delays in adapting to market needs and regulatory changes. Extensive user feedback could complicate revisions, potentially burdening platform operators and impeding their agility and competitiveness.
- A [macro economic study](#) in 2020 from a Brussels-based think tank ECIPE calculated the economic impact of shifting from ex-post to ex-ante regime in the online services sector. The study estimated a loss of about €85 billion in GDP in the form of reduced consumer welfare, reduced productivity and chilling effects on innovation and investment.

### iii. Impact on MSMEs:

- For informal MSMEs in Thailand, digital platforms are imperative tools for tapping into a larger market beyond their immediate physical locality
- Stringent regulations that constrain the financial viability of digital platforms (through increased compliance costs and/or loss of

competitiveness) may result in MSMEs that depend on them being unable to sustain their business, due to:

- a. Platforms passing on increased costs to MSMEs, resulting in erosion of the latter's margins
- b. Platforms downsizing or exiting, resulting in smaller consumer bases for MSMEs that lose access to existing and/or potential markets offered by the platform(s)

**iv. Impact to Broader Economy:**

- The downsizing/exits of both MSMEs and digital platforms due to lack of financial viability will also deter new players from entering the market, and could set in motion a vicious cycle that limits investment and innovation.
- Workers may lose their jobs and consumers will be left with fewer choices.
- Ultimately, this could lead to a drag on growth of the broader economy.

**v. Threats to investment opportunities in the digital economy:**

- Stringent regulatory framework of the draft PEA tends to decrease investment opportunities in Thailand. The draft model introduces comprehensive regulatory requirements, and complying with these regulations would necessitate financial burdens and operational adjustments. This could deter potential investors from entering or expanding their business to the Thai digital market.
- Section 24 mandates additional duties for large platforms and Section 42 empowers the ETDA and the TCCT to designate gatekeeping platforms. In addition to those additional duties and gatekeeping platform designation, the Draft Act imposes relatively large fines. These will certainly discourage future large investments in the platform business domestically, even though it may justify proportionate penalties based on business size.
  - a. In section 24(1), the law should provide clearer process and procedures for platforms to follow. Without that, this might negatively affect the marketplace platform who receives a huge load of GMV and collects marginal commission percentage as their revenue.
  - b. The criteria under Section 24(2) are not practical to the real world and would affect MSME and startups who are exponentially growing. The law should set a higher threshold of MAU that better reflects the Thai population and smartphone penetration rate.
- On the requirement for Chief Compliance Officer in Section 25(3), the AIC's understanding is that this Section is based on the SEC and BOT

regulation who governs the business conduct through Compliance officers. However, the positional title might be different in any other industries. Such provision should not put the Chief Compliance Officer directly.

- Section 57 poses substantial risks to businesses, opening several loopholes for the regulator to unfairly penalize large platforms without appropriate criteria in place. For instance, it allows the fines to be calculated from both direct and indirect wrongdoings and considers the degree of harm to the country and society, making it difficult to precisely justify the imposed penalties. This lack of clarity may result in arbitrary and disproportionate sanctions, hampering the growth of large platforms within the regulatory framework. Put in another way, the draft PEA imposes unreasonably large fines for non-compliance, even in cases of unintentional wrongdoing. This could potentially make Thai local platforms risk-averse in expanding their businesses and introducing new innovations to the Thai digital realm.
- Inadequate stakeholder consultation - Currently, the draft PEA contemplates the TCCT and ETDA jointly designate gatekeeping platforms without requiring the regulators to do public consultation. The listing process of gatekeeping platforms lacks proper consultation of important stakeholders such as industry experts, academics, and consumer advocacy groups. In Japan, for example, The Act on Improving Transparency and Fairness of Specified Digital Platforms (TFDPA) stipulates that the designation of “specified digital platform providers” (akin to gatekeepers) must undergo a comprehensive review process. This process involves soliciting inputs from academics, users, and relevant stakeholders to discuss challenges and foster mutual understanding. The review is conducted based on the current situation of platform operation.

#### **vi. Impact on Digital Economy Growth and Innovation:**

- Section 44(1) of this draft PEA restricts gatekeeping platforms' ability to use user-related data “regardless of whether consent has been obtained”. This could paralyze platform businesses as it severely restricts combination or cross-use of user data “regardless” of whether consent has been obtained.
- The PEA should not contain any data provision. The important reasons are as follows:
  - a. Data protection laws are better designed to address data-related risks to individuals.
  - b. Data protection laws are informed by several decades of experience.
  - c. Ex ante restrictions data use are inconsistent with existing data protection laws.
  - d. Ex ante obligations may increase risk to individuals.

- It is important to note that Ex ante restrictions on data combinations and cross-app use do not increase individual autonomy or privacy. But they do reduce the value of platforms to users, degrade user experiences, and hinder innovation. In addition, Value to users (and hence market popularity) is not derived from data accumulation, because data is not the most important driver of quality or choice for consumers.
- Specifically, data combinations and cross use improve user experiences. Restricting them undermines consumer choice. If Marketplace didn't allow data to be used with Buy and Sell Groups or with News Feed, user experiences would be poorer. Besides making products worse, these restrictions make products unsafe. We and others in the industry use data across services to improve safety and integrity.

**3. Broad powers granted to the regulators:** Under this draft Act, the provision of part VII expands the authority of the ETDA to be able to coordinate with other government agencies for law enforcement. In addition, ETDA can appoint any competent officials who have additional power to access the information or computer system, imposing fines, request court order to close the platform, submit the complaint made through their complaint channel to the responsible authorities.

- a. Providing regulators with the power, without a counterbalancing and proportionate measure, could be disproportionate and could potentially lead to misuse/abuse, especially when compared to existing laws.
  - i. The Criminal Procedure Code ("CPC") requires that a search warrant be obtained prior to any searches. A search without a warrant is only available under strict exceptions under the CPC, and could only be issued by the power of a competent court.
  - ii. The Computer Crime Act (CCA) requires that competent officials must obtain permission from competent court prior to exercising certain powers, including access to computer systems
- b. Existing laws already provide for mechanisms if there is a reasonable cause to believe that an illegal act has been committed. Introducing a new legislation with parallel or repetitive powers may create regulatory uncertainty and will impact the industry and business environment
  - i. The CPC allows inquiry officer to issue subpoenas or obtain search warrants
  - ii. The CCA allows competent officers to request data from or inquire related service providers, including the access to computer systems with court order.
- c. Access to information and computer systems should only be possible with the court's order to prevent abuse of the law.

- d. Also, a business operator subject to this part is obligated to monitor its platform from being used for illegal activities. Any probable illegal activities shall be promptly notified to the ETDA. The business operator shall also provide assistance in access to necessary information to the ETDA and relevant enforcement authorities. Non-compliance with this obligation is punishable by regulatory fines (Pinai Fines). The term “illegal activities” is too broad. As a result, this ambiguity can negatively affect human rights. In addition, business operators could be obligated to assist in providing access to user information. This is because the assistant to provide access to users’ information could be deemed as a measure by the authorities.

#### **4. Due Process rights and procedural safeguards:**

- a. This draft regulation lacks procedural safeguards that ensures due process rights for companies and users are respected. It does not set out clear processes through which affected parties can be heard during an investigation, or a process for appeal to an independent body against legal removal notices. The regulation should provide individuals and companies an opportunity to be heard or appeal when a legal removal notice is issued.
  - i. For example, The draft Act requires platform operators under Part III to work with accredited trusted flaggers. The draft Act provides expansive and unchecked powers to Trust flaggers. Trust flaggers could be anybody that is certified by the ETDA to flag illegal activities. There is a possibility that trusted flaggers may also inaccurately flag illegal content. However, the draft Act does not provide for any mechanism to change or revoke the trusted flaggers in the case where trusted flaggers provide inaccurate or impartial flagging of contents. There is no clarification about the scope of what trusted flaggers can report. By saying any illegal activities can be too broad. Also, trusted Flaggers may entail a risk of institutional bias against freedom of expression as well. There are no clear duties of trusted flaggers.
- b. There are also legal loopholes in the draft PEA that may lead to uncertainty when operating the law in practice. These may create confusion among industry players and hinder productivity in the growth of Thai digital economy. There is an obligation to prepare a crisis plan and measures. The crisis plan and measure must be reviewed at least once a year and always be published on the DPSs. However, there is no definition as to what would be considered a "crisis." Without a clear definition of a "crisis", it could be subject to various interpretations and it can create more problems on how to identify and manage a crisis. It is also unclear whether the DPS’s existing plan and measures would suffice for compliance with this section of the draft law or not.

#### **5. Lack of evidence to say whether the Royal Decree that was recently enacted succeeds or fails:**

The Royal Decree on the operation of digital platforms was enacted recently. It is too early to say whether this Royal Decree succeeds or fails. To date, there is no research conducted on how the effectiveness of this decree is. However, the regulator is in the process of drafting



the new law to replace and repeal the current law. This decreases the confidence from the business sectors since most of the Asian countries are still sitting on the fence, deliberating on how digital economies should be regulated and whether ex-ante rules are the solution or even warranted.

Specifically, most countries in Asia are actually taking a wait-and-see approach to see how this untested DMA experiment will work. For instance, Taiwan and Singapore are taking a wait-and-see approach carefully observing international developments.

Japan has adopted a co-regulatory approach based on a transparency model. Japan's co-regulation model enables the technology firms and the regulators to sit together and craft codes of conduct or guiding principles that are not as prescriptive as those of Europe's ex-ante rules. It is advantageous for regulators to sit with companies, which understand their businesses the best, express their concerns, and guide them into coming up with solutions.

## 6. Redundancy with existing regulation:

The authority and compliance outlined in the Draft PEA duplicate certain existing regulations, imposing additional costs and wasting industry bandwidth on compliance:

- **Redundancy with the Computer Crime Act (CCA):** Section 12 and 14 of the Draft PEA grants ETDA authority to moderate content and penalize platforms, mirroring the authority of competent officers under the CCA. This may confuse platforms regarding compliance priorities, leading to overspending on bandwidth and resources to comply with both laws
- **Redundancy with Trade Competition Act, B.E. 2017 (TCA):** The entire Chapter 8 should be deleted from the PEA. Despite the presence of the Thailand Competition Act as an existing regulation on competition, Chapter 8 (Competition Supervision) of the Draft PEA prescribes numerous ex-ante measures for 'gatekeeping' platforms to comply with. This is highly controversial and is likely to cause unnecessary redundancy in competition regulations. The existing competition law framework is sufficient to deal with competition issues and applies an ex-post approach which is more appropriate given the absence of apparent, clear and demonstrated harm to competition.
  - Specifically, the PEA proposes that the TCCT shares its enforcement power with ETDA. However, the TCCT has been a longstanding authority in charge of competition matters and has expertise in regulating competition-related matters in Thailand. As these matters are vigorously regulated by the TCCT already, there is absolutely no need for an additional regulation on the same. Having one authority regulating one area of law that requires specific expertise, like competition law, is practical and appropriate. In this case, the TCCT alone should be the prime authority in this area. As mentioned, the TCCT already has the necessary powers under the scope of the current

Competition Act 2017, including the power to issue subordinate regulation for specific sectors. As the TCA contains a provision which excludes the application of the TCA where there is a sector-specific regulation on competition, the existence of the PEA could also undermine the regulatory powers of the TCCT as it is unclear if the application of the TCA would be excluded with respect to gatekeeping platforms if the PEA were to be enacted with this Chapter 8 on competition. Further, even if this entire competition law part is removed from the PEA, ETDA can still rely on other parts of the Act on collaboration between governmental agencies. Finally, having to comply with both the Competition Act 2017 and this Draft Act can be burdensome to business operators.

- **Conflict with Privacy Law:** Section 44(1) restricts gatekeeping platforms' ability to use user-related data “regardless of whether consent has been obtained”. This restriction is overlapping with the current Thailand Personal Data Protection Act B.E.2562 (2019), and disproportionately limits the freedom of operating business. This causes confusion and uncertainty to business operators.

## Recommendations

We strongly recommend Thailand to use a **wait-and-see approach** and further assess the impact of ex-ante regulatory framework, and avoid a ‘one size fits all’ approach. In addition, Thailand enacted the Royal Decree on the operation of digital platforms recently, which questions the need for PEA. It should be better to gather and consider more evidence from research before proceeding with the draft Platform Economy Law, as well as the notification of high impact platforms under the Royal Decree.

In addition, competition-related matters are sufficiently regulated under the current Trade Competition Act, B.E. 2560 (2017) through the adoption of an ex-post approach. The addition of chapter 8 may altogether exclude gatekeeping platforms from the purview of the existing Competition Act.

Pro-innovation regulatory approach would be beneficial to Thailand largely due to foreign investment opportunities, economic growth, and current difficult economic conditions. If the Thai government enacts European regulations in the Thai digital economy ecosystem, there is a possibility that large platforms may relocate investment and knowledge transfer to neighboring countries with softer regulations and industry-friendly environments, such as Singapore, rather than Thailand.

It should be noted that best practice regulatory principles, in line with those articulated by bodies such as the Organization for Economic Cooperation and Development (OECD), suggest that new regulation should be:

- Evidence-based - New regulations should be based on evidence of a clear and genuine risk to be addressed, and regulatory impact assessment remains key.
- Necessary - New regulations should not be inconsistent, duplicative or overlapping with existing regulations, i.e. there is a gap in the existing regulatory frameworks.
- Fit-for-purpose - Regulatory proposals should directly address and improve the clear and genuine risk that is identified.
- Proportionate, with minimal additional costs - In the case of digital platforms, if the significant benefits provided to consumers and small businesses are not properly accounted for upfront, the ultimate impact of regulation may be a reduction in the benefits to Thai businesses, consumers and the wider community.

Besides that, regulation should have Flexibility which Digital platforms need to have flexibility to shift tactics in real-time in order to meet both evolving threats online and provide flexibility to iterate, improve. It is important to understand the capabilities and limitations of technical architecture and allow companies the flexibility to innovate and respond in a way that best matches their risk profiles, technical limitations, and available resources.

Therefore, we urge the relevant agencies to consider a calibrated approach in the introduction of the PEA, by first exploring non-regulatory levers. This will give policymakers time to:

- understand and assess the full impact of these levers and other existing regulations (e.g. ETDA Royal Decree, competition law -as stated above) in Thailand;
- observe and learn how other jurisdictions approach this topic;
- study the potential impacts that additional requirements could have on the viability of digital platforms and the broader economy.

The levers that we urge the Thai government to consider are:

1. Supporting the industry in self-regulating itself at the start, by allowing the industry to propose a set of guidelines or co-developing industry-wide antitrust risk assessment frameworks and codes of conduct with the private sector.
  - a. Examples include the provision of general guidelines to prevent certain harms, such as lack of transparency on use of consumer data, which can be tailored to the unique circumstances of individual platforms.
2. Launching regulatory sandboxes to pilot and test the impact of a range of regulations in a controlled environment (e.g. for a limited period of time or for selected sectors) This will help to avoid any unintended consequences of enshrined regulations on a large scale, and provide space for wide-ranging learnings and scale up only when appropriate.