

New Digital Law Implications for Thailand

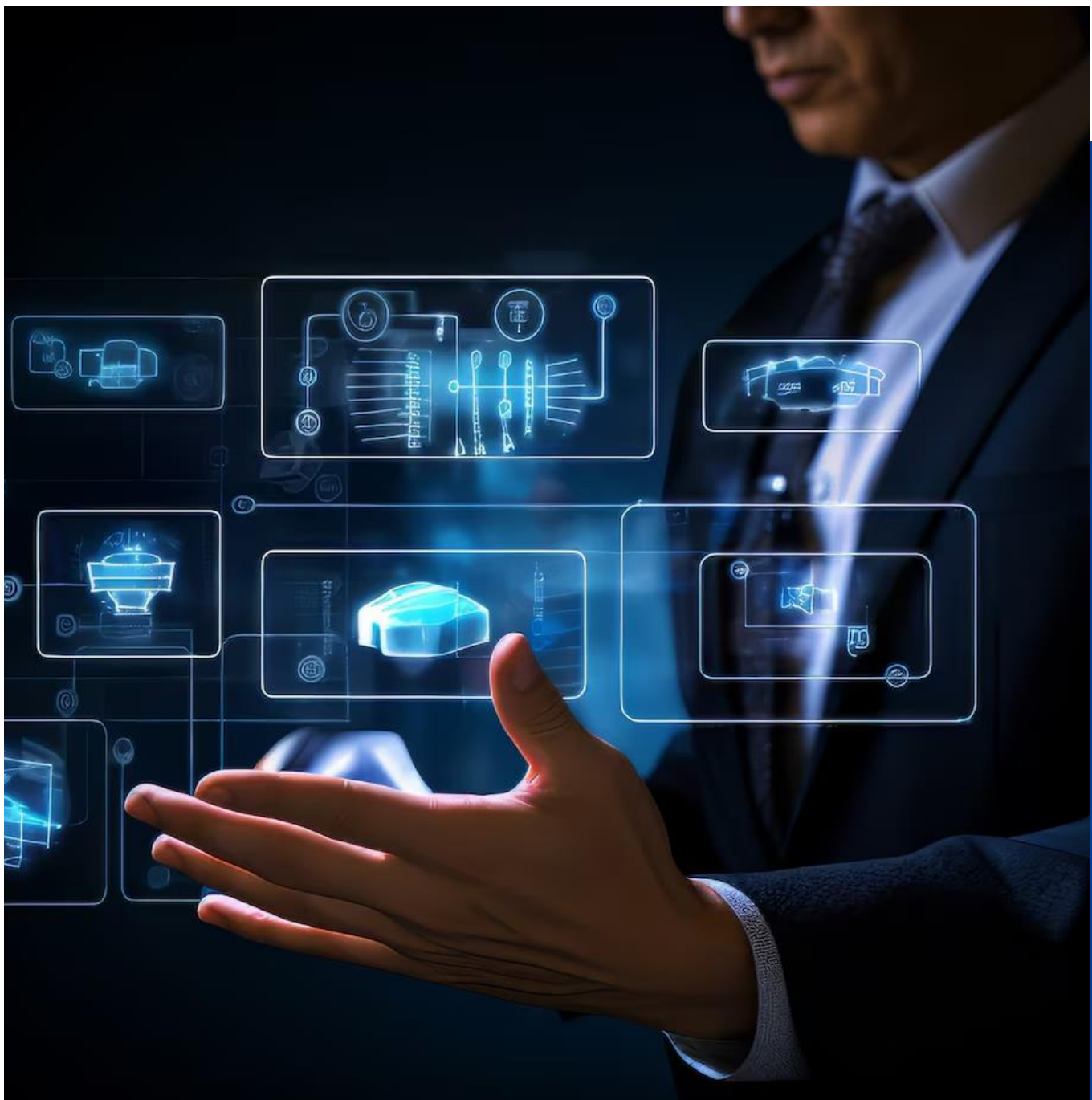


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Chapter 1

Introduction

1.1 Overview

The digital industry is a crucial and pervasive sector that has a profound impact on individuals, businesses, and societies worldwide. The digital industry plays a pivotal role in connecting people globally. The internet, social media, and communication technologies enable instant communication and information exchange across borders, fostering a more interconnected world.

Digital platforms, a technology-based environment that enables users to interact, exchange, and access a wide variety of services, information, and resources over the internet and not apply to Standalone Software, Single-Function Websites, for example, play a significant role in the global digital industry. Digital platforms serve as virtual meeting points, connecting entrepreneurs, businesses, and individuals across the world. The platform economy has become a significant driver of revenue and economic growth, impacting various key industries around the world.

The value of the global platform economy has been steadily increasing, and projections suggest substantial growth in the coming years. The total value of the global platform economy is expected to grow to approximately 335 billion US dollars by 2025.¹ Moreover, digital platforms will mediate more than 30% or around 60 trillion US dollars in global economic activity by 2025.² Revenue in the Platform as a Service market is projected to reach 143.30 billion US dollars in 2024 and expected to show an annual growth rate (CAGR 2024-2028) of 14.24%, resulting in a market volume of 244.10 billion US dollars by 2028.³

The rise of social media, e-commerce, social commerce, and digital platform services has transformed the way people shop, access information, and conduct business. Online platforms provide convenient and efficient avenues for facilitating trade and commerce beyond traditional business models.

The digital platform economy reduces transaction costs and increases efficiency, making it easier for consumers to access more options, more businesses, and more products and services. According to an empirical study on the value digital platforms create for small businesses, one of the advantages of digital platforms is to support the small business in their digital transformation, including developing trust between consumers and products which help small firms establish credibility in the market, helping them connect and communicate with customers, employees, and suppliers; creating new products and services; accessing new, cost-effective ways to market and sell their products; and driving operational

¹ <https://futurist.nida.ac.th/%E0%B9%80%E0%B8%A8%E0%B8%A3%E0%B8%A9%E0%B8%90%E0%B8%81%E0%B8%B4%E0%B8%88%E0%B9%81%E0%B8%9E%E0%B8%A5%E0%B8%95%E0%B8%9F%E0%B8%AD%E0%B8%A3%E0%B9%8C%E0%B8%A1-%E0%B9%81%E0%B8%A5%E0%B8%B0%E0%B9%81%E0%B8%9E/>

² <https://www.mckinsey.com/~media/McKinsey/Business%20Functions/McKinsey%20Digital/Our%20Insights/Digital%20McKinsey%20Insights%20Number%203/Digital-McKinsey-Insights-Issue-3-revised.ashx#:~:text=McKinsey%20experts%20believe%20that%20by,on%20which%20entire%20ecosystems%20run.https://>

³ <https://www.statista.com/outlook/tmo/public-cloud/platform-as-a-service/worldwide>

efficiencies.⁴ As small businesses advance in their digital transformation, they in turn contribute to job creation in their communities, develop new products and services that benefit the local economy; support non-profit organizations and community activities; provide employees with business training and skills to use in the local economy; and bring in money from outside their local economy.

As a result, many SMEs choose online platforms as a vital way to participate and earn benefits in the digital economy. Many stores open accounts on multiple platforms to cater to customer needs. Additionally, on platforms like Lazada and Shopee, there are sub-shops, including those operated by non-Thai entities, notably Chinese publishers.

Digital platforms are enablers of economic growth. It drives innovation, creates job opportunities, and contributes significantly to gross domestic product (GDP). Startups, small businesses, and established tech companies alike play a crucial role in driving economic development as part of an ecosystem of the digital economy.

The growing size and importance of digital platforms has led to increased attention and the need for regulatory supervision to ensure responsible practices, the protection of consumer rights and online safety of users, and to ensure potential risks are addressed. Additionally, there is a necessity to ensure fair competition in the sector as well. Where regulatory models already exist, models vary between countries, and in APAC the regulatory environment is fragmented and can vary from practices and standards in other markets.

The global nature of digital platforms requires careful consideration of legal frameworks and regulations to ensure responsible and ethical practices. Any new regulatory frameworks should aim to ensure platforms are making decisions about online content in a way that minimizes harm but also respects users' fundamental rights, including the right to free expression. They should also take into consideration existing legal regimes and rule of law frameworks. There should also be impact assessments of existing legal regimes. This would determine whether these laws and regulations are effective in driving the right investments by digital platforms before introducing any new regulatory frameworks. There should also be impact assessments of existing legal regimes to determine whether these laws and regulations are effective in driving the right investments by digital platforms before to inform the development of any new regulatory frameworks.

The European Union has introduced the Digital Market Act (DMA) and Digital Services Act (DSA). The DMA focuses on ex-ante regulation of certain digital services while the DSA aims to bring greater platform accountability, online user safety and completion of the digital single market.

When considering the application of EU models in other jurisdictions, it is essential to evaluate the necessity and compatibility of these laws with local legal, policy, and rule of law frameworks, as well as the cultural context. This is particularly important for Thailand, a significant developing economy on the verge of integrating into the global digital economy ecosystem.

⁴ Small Businesses and Digital Platforms Nishant Chadha, Viswanath Pingali & D. Daniel Sokol, <https://www.iima.ac.in/sites/default/files/2023-09/W.P.No.2023-09-01.pdf>

There are a number of factors to consider. For example, while these regulations aim to promote competition, protect users and consumers, and regulate online platforms, they may also present challenges and negative impacts, such as stifling innovation by imposing rigid rules on digital platforms. Regulation may impose significant compliance costs on businesses, especially smaller players, and create barriers to entry for new entrants in the digital market. It is also important to draw on experience in other markets to recognize the need to carefully define platforms and avoid overly broad policy and regulation that would be disproportionate or unnecessary for other services. To address these challenges and mitigate potential negative impacts, Thailand should first understand the impact of its existing legal regimes, such as the Royal Decree for Digital Platform Service Business, to gather evidence and inform the drafting of the Platform Economy Act.

This report will elaborate on EU and Thailand context for digital platform legislation, starting by providing an overview on DMA and DSA in EU, then Thailand's legal context will be discussed. Furthermore, this report will provide some guardrails for consideration of EU-inspired laws in Thailand. Finally, it will outline some policy best practices and recommendations for Thailand to further develop the policy to govern digital platforms in the future.

1.2 Objectives

- To analyze digital platforms/services in DMA and DSA perspective
- To analyze Thailand's regulatory experience and expertise for implementing DMA and DSA
- To provide views regarding the adoption of EU-Inspired Laws in Thailand
- To provide policy best practices and global discussions for digital platforms
- To discuss tech policymaking in Thailand through the analysis of global trends
- To analyze and provide recommendations for the Thai government regarding the digital policy, especially platform regulations.

1.3 Research Methodology

- 1.3.1 Literature review, especially on the EU and Thailand's legislation, global contexts for digital platform legislation, and Thailand digital industry context.
- 1.3.2 In-depth interview with the executive and senior executive level staff from the following Thai government agencies.

Table 1 In-depth interview with Thai government agencies

Agencies	Function
Trade Competition Commission of Thailand (TCCT)	Enforces the Trade Competition law to promote fair competition and prevent monopolistic practices. It monitors and regulates business conduct to ensure a level playing field in various industries, including the digital platform economy.
Ministry of Digital Economy and Society (MDES)	Oversees policies and regulations related to the digital economy and information technology. MDES is responsible for formulating strategies and frameworks that support digital transformation and innovation while ensuring the security and integrity of digital services.

Agencies	Function
Office of the Consumer Protection Board (OCPB)	Protects consumers' rights and interests in all sectors, including the digital platform economy. OCPB addresses consumer complaints, enforces consumer protection laws, and ensures that businesses comply with standards that safeguard consumer welfare.
Electronic Transactions Development Agency (ETDA)	Promotes and regulates electronic transactions by developing standards and guidelines for secure and efficient digital transactions, enhancing trust in e-commerce and other online activities. ETDA also oversees the implementation of the Royal Decree on the Operation of Digital Platform Service Businesses that are Subject to Prior Notification, B.E. 2565 (2022), which mandates that certain digital platform service businesses notify authorities before operating, ensuring regulatory compliance and promoting fair practices within the digital economy.
Department of Business Development (DBD)	Regulates business operations and promotes good corporate governance by overseeing business registrations, ensuring compliance with business laws, and fostering an environment conducive to fair and transparent business practices. Additionally, DBD promotes e-commerce business development by supporting digital transformation initiatives and providing resources and guidance to enhance the competitiveness of e-commerce enterprises in Thailand.
Digital Economy Promotion Agency (DEPA)	Promotes the growth and development of the digital economy. DEPA supports digital startups, innovation, and the adoption of digital technologies across various sectors, aiming to enhance the competitiveness of Thailand's digital industry.
Strategic Transformation Office (STO)	Implements strategic initiatives to drive digital transformation in government and private sectors by coordinating efforts to modernize infrastructure, enhance digital skills, and ensure the successful execution of digital policies and projects. Additionally, STO is responsible for drafting the principles for the Digital Platform Act, laying the groundwork for comprehensive regulations that govern digital platforms and promote fair competition and good governance.

The team also conducted interviews with the European Association for Business and Commerce Thailand (EABC), Google, META, X, Grab, LINE, Thailand E-commerce Association to obtain information about Thailand contexts in various perspectives including government, private sectors, policymakers, and law enforcers.

1.4 Expected Results

- In-depth information about DMA, DSA in EU, and digital legislation context in Thailand
- Suitable approaches in issuing measures to be used for digital platform supervision that is in line with Thailand's context and needs.

Chapter 2

DMA vs. DSA : Analysis for Digital Platforms/Services

This chapter introduces the EU's Digital Markets Act (DMA) and the Digital Services Act (DSA) and analyzes their impact on the business operations of digital platform service providers.

2.1 The Needs for Digital Industry Legislation

Digital services have played a crucial role in making our lives easier by providing a wide range of functionalities and conveniences. For example, we use them for communication, information access, social networking, entertainment, e-commerce, education, remote work, etc. These digital services collectively contribute to increased efficiency, connectivity, and convenience in various aspects of our daily lives.

As small and medium-sized enterprises (SMEs) progress in their journey of digital transformation, they become more involved in activities that bolster the local economy and community. These activities include purchasing goods and services from local businesses, innovating new products and services that enrich the local economy, supporting non-profit organizations and community initiatives, providing their employees with training and skills beneficial to the local economy, and attracting revenue from sources outside their immediate locality. Additionally, digital transformation enables SMEs to play a pivotal role in generating employment opportunities within their communities. As these businesses expand, their increased earnings contribute to a larger gross domestic product (GDP) for the local economy and generate higher tax revenues for local governments.

By the COVID-19 pandemic, the rise of the digital platform economy has been accelerated. It has created many opportunities but there are also challenges. Here are some main challenges associated with the impact of digital platforms in different sectors and which informed the development of EU policy:

E-commerce, the proliferation of certain platforms may raise considerations surrounding competition and market fairness. Additionally, the accessibility of digital marketplaces has the potential to introduce unauthorized or substandard goods, such as counterfeit products, which could undermine consumer confidence.

Ride-hailing and transportation, there exist ongoing debates regarding the classification of gig workers, including drivers, as either independent contractors or employees. This has sparked discussions regarding the rights and benefits afforded to these workers.

Digital payments, platforms encounter various challenges, including those pertaining to cybersecurity, fraud prevention, and safeguarding user financial data.

After engaging in a wide public consultation process, the European Parliament and Council adopted the European Commission's proposal to enact the Digital Markets Act (DMA) and the Digital Services Act (DSA) to modernize and regulate the digital space within the European Union (EU)

2.2 From Competition Law to DMA⁵

The decision to propose the DMA, according to the EU, is framed as a response to the perceived failures of antitrust enforcement in the digital sector. The practical experiences of the European ex-post competition enforcement authority have demonstrated a gap to address new anticompetitive conduct in digital markets. These problems include the difficulties associated with the market definition exercise (for the purposes of establishing market dominance), the problems associated with articulating coherent theories of harm to competition and the extremely long timeframes for competition law infringement cases to be investigated, decided and appealed against. It was only after many years of active competition law enforcement experience that a decision was taken by the EU to consider supplementary, ex-ante regulation in the form of the DMA.

The primary purpose of the Digital Markets Act is to ensure and maintain contestability in certain 'core platform services' and fairness in the relationship between digital platform providers, business users, and end-users. The DMA represents an ex-ante regulatory approach, meaning it focuses on establishing rules in advance rather than relying on ex-post enforcement. According to the EU, this approach allows for more proactive and timely regulation, addressing issues before they become entrenched. The regulatory approach of the DMA is targeted at specific undertakings, namely digital 'gatekeepers', acting as a gateway between business users and end users and includes a range of specific and prescriptive obligations which is apart from, in addition to, traditional competition law frameworks.

Notably, the DMA is ex-ante regulation and does not rely on economic evidence and concepts to the same extent as ex-post competition law does. Rather it establishes a rebuttable presumption that an individual platform service serves as an important gateway for business users to reach end users based on qualitative criteria.⁶ The DMA then sets out a process whereby providers of platform services may challenge a presumption using economic arguments to demonstrate that the service does not serve as such a gateway. While this is a shift compared to the role of economic reasoning in individual case assessments and the DMA is still a relatively new framework, a number of providers have used economic analysis to successfully rebut designations under the DMA. The thresholds for designation, while fixed in law for the time being, have proved contentious and continue to divide opinion among providers.

For designated platform services, the DMA introduces specific obligations and these raise certain challenges and costs to business owners and consumers, and regulators. Substantive, institutional, and procedural issues, such as excessive intervention in product designs, and the level of state intervention, require careful consideration.

⁵ <https://www.degruyter.com/document/doi/10.1515/econ-2022-0037/html?lang=en>

⁶ <https://www.degruyter.com/document/doi/10.1515/econ-2022-0037/html>

2.3 Digital Market Act (DMA) and Private Sector's Responses

The DMA is part of the EU's broader strategy to achieve the EU's Digital Single Market (DSM) and wider goals for the EU's digital economy as a whole, and it specifically focuses on ensuring fairness and market contestability within the EU with a view to harmonizing relevant rules to minimize fragmentation among EU Member States.

The key features of the Digital Markets Act (DMA) are:

- **Designation of Core Platform Services (CPS) as "gatekeepers":**

The DMA outlines quantitative and qualitative criteria for designating certain 'core platform services' as "gatekeepers":

- A firm has a significant impact on the European market:
It attained an annual Union turnover of EUR 7.5 billion or more, or a market capitalization of EUR 75 billion or more, while providing the same core platform service in at least three Member States.
- A firm provides a CPS that is an important gateway for business users to reach end users:
It served a core platform service to at least 45 million monthly active end users and 10,000 yearly active business users in the Union, adhering to specified metrics.
- A firm has an entrenched and durable position, or it is foreseeable that it will have it in the near future:
It must meet user number thresholds consistently over three financial years.

- **Obligations for designated Gatekeepers:**

Once designated as gatekeepers, platforms will be subject to specific obligations to ensure fairness and market contestability, both of which are the two main goals of the DMA.

- **Prohibition of Unfair Practices:**

The DMA prohibits certain unfair practices by gatekeepers, such as "self-preferencing" which means favoring their own services over competitors or leveraging user data in a way that hinders effective competition.

- **Interoperability:**

Gatekeepers may be required to enable greater interoperability and fostering a more open digital ecosystem.

- **Anti-Circumvention Measures:**

The DMA includes measures to prevent gatekeepers from circumventing the rules, ensuring that the intended objectives are effectively achieved.

- **Supervision and Enforcement:**

The DMA is solely enforced by the EU's competition regulator, along with the advice from the European Competition Network (ECN) to monitor and enforce compliance with the DMA. Penalties for non-compliance may include fines and structural remedies such as divestiture.

To date, the EU has designated 6 major tech companies as providing ‘core platform services’ that act as gatekeepers under the Digital Markets Act (DMA). The designation applies to a total of 22 core platform services provided by these undertakings, including the following:⁷

1. **Alphabet:** Google Search, Google Maps, Google Play, Google Shopping, Google Ads, Chrome, Android, YouTube
2. **Amazon:** Amazon Marketplace, Amazon Ads
3. **Apple:** App Store, Safari, iOS
4. **ByteDance:** TikTok
5. **Meta:** Facebook, Instagram, Facebook Marketplace, WhatsApp, Messenger
6. **Microsoft:** LinkedIn, Microsoft Windows

The following undertakings have responded in different ways to the DMA:

- **Amazon:**⁸

Amazon has made substantial efforts to audit its systems and implement mechanisms to adhere to the DMA. After identifying the relevant provisions applicable to its Store and Amazon Ads operations in the EU, Amazon developed the necessary compliance measures required by those obligations. This required significant investment in resources, including building technical solutions, modifying existing mechanisms, and reviewing and revising policies where needed. In some instances, this involved confirming that Amazon's existing approach already met or exceeded DMA requirements. Amazon also established robust internal compliance monitoring and governance reporting processes, including a specific compliance function for DMA-related matters.

Prior to launching new features, Amazon conducted user studies on key DMA requirements. The outcomes of these studies informed the final customer-facing aspects, aiding customers, advertising customers, and Sellers in navigating the experience and understanding its impacts. Looking forward, Amazon has various feedback mechanisms in place to gather input from stakeholders such as customers, Sellers, and advertising customers, enabling continuous improvement of compliance measures.

- **Apple:**

Under the DMA, Apple would be forced to offer alternative payment methods and alternative market places. Moreover, Apple will have to allow its customers to uninstall preloaded first-party apps from the iOS devices procured. Apple also should offer users a choice between Safari and other web browsers.

Since the DMA obligations have only come into force in March 2024, it is too early to tell if the extent of the operation of this novel regulatory framework will effectively accomplish its stated goals i.e., to bring market contestability and fairness.

⁷ https://en.wikipedia.org/wiki/Digital_Markets_Act

⁸ <https://www.aboutamazon.eu/news/policy/amazon-and-the-digital-markets-act>

The design and implementation of the DMA gives rise to three closely related concerns. Firstly, how it will operate alongside ex-post competition law enforcement. Secondly, the effects of greater compliance costs for undertakings impacted by the new rules. Thirdly, the effect of this additional layer of expensive regulatory compliance requirements on investment into new technology firms and future economic growth and entrepreneurship.

Box 1: Amazon case of an experience dealing with additional compliance requirements associated with the European legislations.⁹

After the effectivity of the law, Amazon has ensured compliance with the DMA law in the following ways:

- **Consent:**
In line with Article 5(2) of the DMA, two new consent prompts have been introduced. The Store Prompt pertains to the utilization of data between the Store and other Amazon services, while the Ads Prompt is concerned with the utilization of personal data from a particular Amazon service (or third parties) to customize ads on other services.
- **Data Portability:**
To comply with Article 6(9) of the DMA, Amazon has facilitated the integration of authorized third parties with its new Portability API. This allows these third parties to access customers' information as authorized. Customers also have the ability to download datasets and share them directly with third parties.
- **Access to Business User Data:**
To comply with Article 6(10) of the DMA, Amazon is providing additional datasets in its data offerings for business users in addition to the comprehensive data already shared with Sellers. These datasets can be accessed through Seller Central and the SP-API. The new "End User Data Access" API grants access to the personal data of customers who have given consent to share their information with these business users.
- **Access to Pricing and Performance Data for Advertising Customers:**
To comply with Articles 5(9), 5(10), and 6(8) of the DMA, Amazon has made the following adjustments:
 - More granularity in pricing reports to provide detailed information about fees paid by advertisers and received by publishers for ads displayed on third-party websites and apps.
 - Updated the measurement of advertising performance by introducing a new clean room. This clean room allows advertisers to independently verify the success and impact of their campaigns.

⁹ <https://www.aboutamazon.eu/news/policy/amazon-and-the-digital-markets-act>

2.4 Digital Services Act (DSA) and Private Sector's Responses

There is another digital legislation important to regulate the digital space in the EU, Digital Services Act (DSA). The DSA is a legislation put forth by the European Commission to update and modernize the legal framework governing digital services within the EU. The DSA is part of a broader initiative by the EU to create a comprehensive regulatory framework for the digital economy.

The goals and objectives of the DSA are very different from the DMA. While the DMA focuses on consumer harm deriving from unfair practices and market competitiveness, the DSA is focused on establishing a safer digital space for users, greater platform accountability as it relates to online content, revising the intermediary liability regime to include Good Samaritan protections, further harmonization of rules and processes for content regulation across the 27 EU member states.

Here are some Key aspects of the Digital Services Act (DSA):

- **Scope:**
The DSA covers a range of digital services, including online platforms, social media, search engines, and other online intermediaries.
- **Intermediary Liability:**
The DSA addresses the liability of digital intermediaries, establishing clear rules for each type on how to handle illegal content, ensuring a balance between freedom of expression and the need to prevent the dissemination of harmful content.
- **Transparency and Accountability:**
The proposal introduces measures to enhance transparency and accountability for categories of intermediaries, for example online platforms have requirements for clear terms of service, content moderation practices, and notice-and-action procedures for users.
- **User Rights and Safety:**
The DSA defines user rights and safety with respect to in scope services. The DSA protects freedom of expression, including freedom and pluralism of the media, by striking a delicate balance between creating rules to tackle illegal content and safeguarding freedom of expression and information online. This includes protection from government interference in people's freedom of expression and information.
- **Cooperation with Authorities:**
The DSA outlines mechanisms for cooperation between providers of in scope services and relevant national authorities to address issues such as illegal content, cybersecurity, and other risks associated with digital services.
- **Co-Regulation:**
The DSA sets out a co-regulatory framework where certain categories of service providers would play a role in developing and formulating codes of conduct. For example, online platforms address negative impacts regarding the viral spread of illegal content as well as manipulative and abusive activities via adopting the revised Code of Practice on disinformation as a code under the DSA.

- **Oversight:**

The DSA introduces a novel oversight framework whereby very large online platforms and very large online search engines are regulated directly by the European Commission and other in-scope services are regulated by a 'Digital Services Coordinator' (DSC) in their respective EU country of establishment. The DSA also creates a board to coordinate oversight comprising member state DSCs and the European Commission.

2.5 Very Large Online Platforms and Very Large Online Search Engines

The EU considers very large online platforms and very large online search engines as those with over 45 million monthly users in the EU. So far, the EU has designed 25 platforms and search engines that fall into that category, including the following:¹⁰

- **Very Large Online Platforms:**

(1) Alibaba AliExpress; (2) Amazon Store; (3) Apple App Store; (4) Pornhub; (5) Booking.com; (6) Google Play; (7) Google Maps; (8) Google Shopping; (9) YouTube; (10) Shein; (11) LinkedIn; (12) Facebook; (13) Instagram; (14) XNXX; (15) Pinterest; (16) Snapchat; (17) Stripchat; (18) TikTok; (19) X; (20) Temu; (21) XVideos; (22) Wikipedia; (23) Zalando

- **Very Large Online Search Engines**

(1) Google Search; (2) Bing

Many of these companies have already outlined the ways in which they're going to comply with the Digital Services Act (DSA). Here's a brief overview of the most notable ones:¹¹

- **Google:**

Google is proactively addressing some of the key aspects outlined in the DSA, specifically mentioning YouTube creators, has implemented a mechanism for creators to appeal video removals and restrictions. Google has expanded its Ads Transparency Center to meet the requirements outlined by the DSA. The company also has committed to expanding data access for researchers, allowing them to gather more information about how various Google services, including Google Search, YouTube, Google Maps, Google Play, and Shopping, operate in practice. The company has pledged to improve its transparency reporting and analyzing potential risks related to illegal content dissemination and potential risks to fundamental rights, public health, or civic discourse.

- **Meta:**

Meta, the parent company of Facebook and Instagram, has expanded its Ad Library, which currently compiles ads shown on its platforms. This expansion includes displaying and archiving all ads that target users in the EU while also including the parameters used to target ads and information about who was served the ad. In June 2023, Meta released a set of system cards detailing how its algorithm works across Facebook and Instagram. This release is part of Meta's broader initiative to

¹⁰ <https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-vloses>

¹¹ <https://www.theverge.com/23845672/eu-digital-services-act-explained>

increase transparency regarding its content recommendation algorithms. Meta also allows European users to view content chronologically on Reels, Stories, and Search on both Facebook and Instagram without subjecting users to the platforms' personalization engine.

- **TikTok:**

Users in the EU will have the option to disable TikTok's algorithm. When the algorithm is disabled, users will see content in their For You and Live feeds based on geographical locations rather than personalized interests. TikTok will enable users to view content chronologically in their Following and Friends feeds. For TikTok users aged 13 to 17 in Europe, the platform will stop showing personalized ads based on their activity within the app.

2.6 Timeline for Implementation of DMA and DSA¹²

For the Timeline for implementation, following the adoption of the Digital Markets Act (DMA) and the Digital Services Act (DSA) by the European Parliament and the Council of the European Union, both Acts entered into force in late 2022. The DMA entered into force on 1 November 2022. On 6 September 2023, the European Commission designated gatekeepers. March 6, 2024 was the deadline for complying with the DMA. On March 25, 2024, the European Commission opened 5 non-compliance investigations and these are ongoing.

For the DSA, it entered into force on 16 November 2022. It is directly applicable across the EU from 1 January 2024, or 15 months after their entry into force, whichever comes later. For online platforms, they must publish their number of active users by 17 February 2023. If the platform or a search engine has more than 45 million users, they will have 4 months to comply with the obligations of the DSA. EU Member States will have to appoint Digital Services Coordinators by 17 February 2024, when also platforms with less than 45 million active users have to comply with all the DSA rules.

2.7 Differences between DMA and DSA

Although the EU legislated both the DMA and the DSA around the same time, the DMA and the DSA are wholly separate, each having two distinctive and different pieces of legislation. Their policy goals, regulatory approaches, regulators responsible for and the way the laws are enforced are all very different from each other. These two laws were never intended to form part of one single piece of an omnibus law. There is no such precedent around the world.

¹² <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>

Table 2 Differences between DMA and DSA

	The Digital Market Act (DMA)	The Digital Services Act (DSA)
Focus and Objectives	Economic regulation that aims to address competition concerns, prevent anti-competitive practices, and ensure a level playing field for businesses. (Fairness and Contestability)	Focuses on updating the legal framework for a wide range of digital services, including online platforms, social media, search engines, and other intermediaries. It aims to establish clear and transparent rules for digital services, addressing issues such as content moderation, user rights, and the responsibilities of online platforms.
Applicability	Applies only to certain 'core platform services' that meet the criteria for being identified as "gatekeepers" based on their significant impact on the internal market and their strong economic position.	Applies to a broader spectrum of digital services, covering a wide range of online platforms, social networks, search engines, and other online intermediaries, with additional rules for very large online platforms and search engines with 45 million or more monthly active users in the EU.
Specific Obligations	Imposes specific obligations on designated gatekeepers, including prohibiting certain unfair practices and preventing anti-competitive behavior.	Introduces obligations on categories of services, for example rules for online platform related to transparency, content moderation, and user rights. It aims to establish clear rules for how digital services handle illegal content, protect user rights, and maintain transparency in their operations.
Approach to regulation	Adopts an ex-ante regulatory approach, meaning it imposes specific obligations on digital platforms before any potential harm occurs with the possibility of updating the obligations subsequently to keep them "up to date in order to address practices that limit the contestability of core platform service or are unfair in the same way as the practices addressed" in the DMA.	Takes a differentiated approach for in scope services, setting out general principles but specific systems and process-based obligations for online platforms.
Regulator	The European Commission is the sole enforcer of the DMA. A joint team in the Directorates-General for Competition (DG COMP) and Communications Networks, Content and Technology (DG CONNECT) is responsible for the implementation and enforcement of the DMA.	The European Commission is the primary regulator for very large online platforms and very large online search engines, while other platforms and search engines will be under the supervision of the Digital Services Coordinators of the Member States where they are established.

From Table 2 Differences between DMA and DSA, it can be seen that both Acts differ in many dimensions, including: Focus and Objectives, Applicability, Specific Obligations, and Approach to regulation. In the next chapter, Thailand's Regulatory Experience and context will be discussed to further comprehend about the appropriateness in adopting these legislations in Thailand territory

Chapter 3

Thailand Jurisdictions: Regulatory Experience and Context

This chapter provides an overview about digital regulations in Thailand and a framework to evaluate the options for future policy including the Digital Markets Act (DMA) and the Digital Services Act (DSA) in Thai context. This chapter also examines factors that may affect the enforcement of the legal framework in each jurisdiction.

3.1 Digital Regulations in Thailand

In Thailand, there are already numerous important laws regarding digital platform services which can be concluded in the Table 3 Laws regarding digital platform services enforced in Thailand.

Table 3 Laws regarding digital platform services enforced in Thailand ¹³

Laws/Guidelines	About
Electronic Transaction Act B.E. 2544 (2001) (Amended Edition)	The Electronic Transaction Act B.E. 2544 (2001) in Thailand regulates electronic transactions, recognizing their legal validity and facilitating electronic commerce. Identification and authentication of persons may be carried out through a digital identification and authentication system, with a mechanism to supervise relevant service business operators in order to ensure that the said system is reliable and secure.
Royal Decree on the Operation of Digital Platform Service Businesses That Are Subject to Prior Notification, B.E. 2565 (2022)	The Decree designates digital platform services as a service business that is subject to prior notification, prescribing rules for operation of digital platform service businesses and supervision with a view to protecting users of digital platform services, setting up a mechanism to facilitate cooperation among State agencies and information sharing between relevant agencies, and promoting and supporting digital platform service operators in implementing best practices or establishing appropriate mechanisms for self-regulation in line with the relevant laws.
Notification of the Electronic Transactions Development Agency No. DPS. 1/2566 Re: Criteria for Calculation of Retroactive Average Monthly Active Users in the Kingdom (AMAU)	The government issues a Notification prescribing the criteria for calculation of retroactive average monthly active users in the Kingdom (AMAU) in order to ascertain the characteristics of digital platform services that are subject to prior notification before commencing business operations, the information related to users that a person wishing to operate a digital platform service business is required to notify the Agency before commencing the business operation, and the annual notification of information, as well as the notification of cessation of the digital platform service business..

¹³ <https://www.etda.or.th/th/regulator/Digitalplatform/law.aspx>

Laws/Guidelines	About
Notification of the Electronic Transactions Commission Re: Characteristics of Digital Platform Services Required to Notify the Brief Details	This notification prescribes the characteristics of digital platform services required to notify the brief details.
Notification of the Electronic Transactions Development Agency No. DPS. 4/2566 Re: Details on the Publication of Notice of Terms and Conditions of Digital Platform Services for Users' knowledge	This notification prescribes details on the publication of notice of the terms and conditions of digital platform services for users' knowledge, for the purpose of promoting transparency and fairness in providing such services and for the purpose of complying with the Royal Decree on the Operation of Digital Platform Service Businesses That Are Subject to Prior Notification, B.E. 2565 (2022) by operators of digital platform service businesses.
Notification of the Electronic Transactions Development Agency No. DPS. 5/2566 Re: Terms and Conditions Reporting Form for Digital Platform Services	This notification prescribes terms and conditions reporting form for digital platform services to comply with the Royal Decree on the Operation of Digital Platform Service Businesses That Are Subject to Prior Notification, B.E. 2565 (2022).
Notification of the Electronic Transactions Commission Re: Rules, Procedures and Period for Notifying the Change of Terms and Conditions of Digital Platform Services	This notification prescribes rules, procedures and period for notifying the change of terms and conditions of digital platform services to users.
Notification of the Electronic Transactions Development Agency No. DPS. 6/2566 Re: Rules, Procedures and Conditions for Notifying the Cessation of Operations of Digital Platform Service Businesses	This notification prescribes rules, procedures and conditions for notifying the cessation of operations of digital platform service businesses, with Business Cessation Notification Form.
Notification of the Electronic Transactions Commission Re: Rules, Procedures and Conditions for Operators to Compensate or Remedy Users Who Have Been Injured from Using the Service or Other Matters Necessary to Protect Users	This notification prescribes suitable rules, procedures and conditions for operators under section 16 and section 18 paragraph two of the Royal Decree on the Operation of Digital Platform Service Businesses That Are Subject to Prior Notification, B.E. 2565 (2022) to compensate or remedy users who have been injured from using the service or other matters necessary to protect users for the purpose of compensating or remedying persons who have been injured from the operation of a digital platform service business prior to the issuance of the receipt of notification for the cessation of the operation of the digital platform service business.

Laws/Guidelines	About
Notification of the Electronic Transactions Development Agency No. DPS. 2/2566 Re: Forms for Prior Notification of the Operation of Digital Platform Service Businesses That Are Subject To Prior Notification Under Section 8 Paragraph One and Forms for Notifying Brief Details for Digital Platform Services Under Section 8 Paragraph Four	This notification prescribes forms for prior notification of the operation of digital platform service businesses that are subject to prior notification under section 8 paragraph one and forms for notifying brief details for digital platform services under section 8 paragraph four.
Notification of the Electronic Transactions Development Agency No. DPS. 3/2566 Re: Forms for Annual Notification of Information on the Operation of Digital Platform Service Businesses and Notification of Change to the Information	This notification prescribes prescribe forms for annual notification of information on the operation of digital platform service businesses and notification of change to the information.

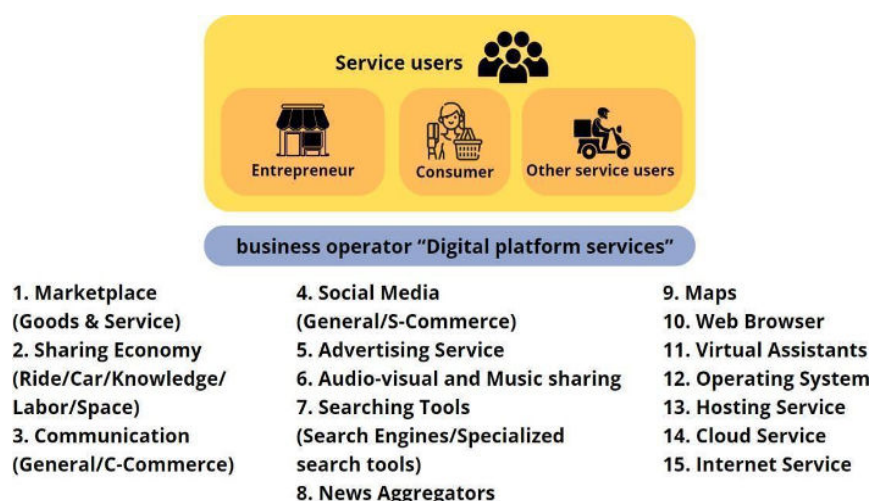
According to the Table 3 Laws regarding digital platform services enforced in Thailand, Royal Decree on the Operation of Digital Platform Service Businesses That Are Subject to Prior Notification, B.E. 2565 (2022) is a comprehensive regulation for the operation of online platform businesses in Thailand (“Royal Decree”). It has been introduced by the Thai government on 23 December 2022 and has come into effect as from 21 August 2023 governed by the Electronic Transactions Development Agency (ETDA). The focus of the Royal Decree is on promoting fairness and transparency in business practices regarding the terms and conditions of services, use of algorithmic processes, advertising practices, and complaint-handling by establishing rules and obligations for digital platforms. For the additional requirements and obligations for the digital platform services providers through subordinate laws (the “Notifications”), there are 9 Notifications in Phase 1 which have taken effect immediately simultaneously with the implementation date of the Royal Decree.

The Royal Decree has an impact on many different groups of digital platform service providers and users; such as entrepreneurs who sell goods or services through digital platform services, consumers who receive goods or services through digital platform services, and other service users who utilize digital platform services.¹⁴ The Type/Nature of business operator of digital platform services that must be subject to this law can be summarized below, in Figure 1 Type/Nature of digital platform services.¹⁵

¹⁴ <https://www.mdes.go.th/law/detail/>

¹⁵ Ministry of Digital Economy and Society

Figure 1 Type/Nature of digital platform services

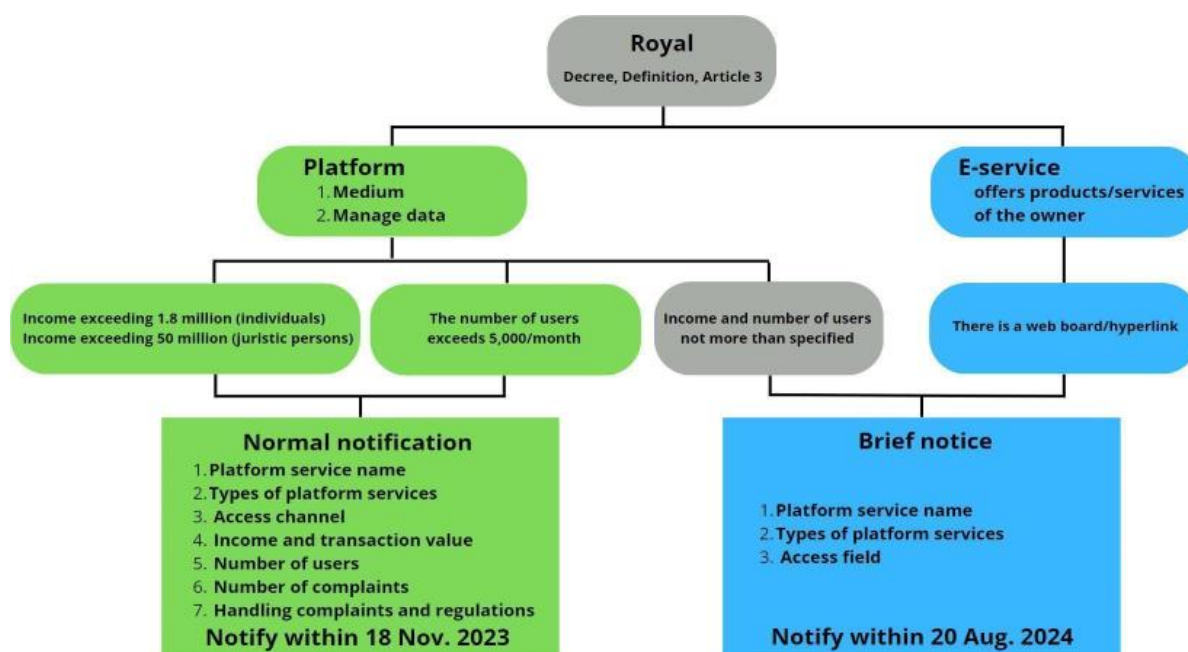


Here are Key features and objectives of the Royal Decree:¹⁶

- **Notification of Business Information (Article 8, 12):**

Providers of digital platform services will be required to notify the ETDA about their business operations. The information that is required to notify depends on the size, type, and impact of the platform. For example, the information could pertain to providers of digital platform services, information about the platform, information about service users, complaint-handling, terms and conditions of services, channels and processes for assistance and processing timeframe. The characteristics of digital platform services and information that is required to notify can be concluded as Figure 2 Notification of Business Information.¹⁷

Figure 2 Notification of Business Information



¹⁶ <https://www.eta.or.th/getattachment/Regulator/DigitalPlatform/law/Clean-Royal-Decree-on-DP-Corrected-1.pdf.aspx?lang=th-TH>

¹⁷ Ministry of Digital Economy and Society

The Timeline for compliance to notify the Electronic Transactions Development Agency (ETDA) can be concluded as Figure 3 Timeline for compliance to notify the ETDA.¹⁸

Figure 3 Timeline for compliance to notify the ETDA



According to the Figure 3 Timeline for compliance to notify the ETDA, “general platform” entails (1) a digital platform service with annual revenue from providing the digital platform service within the Kingdom exceeding 1.8 million baht in case the operator is a natural person, or exceeding 50 million baht if the operator is a juristic person; (2) a digital platform service with more than 5,000 monthly users, calculated from the average monthly usage in the past in accordance with the rules prescribed in the Notification of the Agency.

“Small/low-risk platform” entails (1) a digital platform service with annual revenue from providing the digital platform service within the Kingdom not exceeding 1.8 million baht in case the operator is a natural person, or not exceeding 50 million baht in case the operator is a juristic person; (2) a digital platform service with no more than 5 thousand monthly users, calculated from the average monthly usage in the past in accordance with the rules prescribed in the Notification of the Agency.

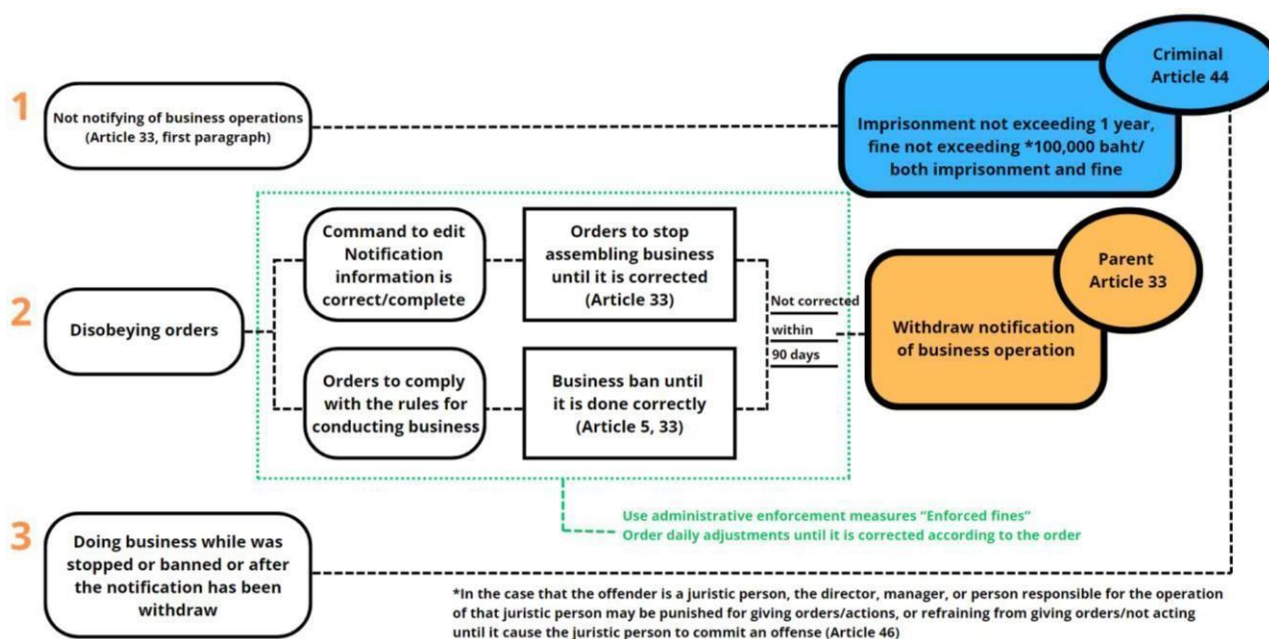
- **Foreign Platform Which Provides Services to Users Residing in Thailand (Article 10, 11):** The Royal Decree specifies several situations in which a foreign platform is considered to be providing services in Thailand. These foreign platforms will be required to notify the ETDA about their business operations and must have a coordinator in Thailand.
- **Disclosure of Information to Platform Service Users (Article 14, 17):** The necessary information will be published to the public transparently and completely for people to make decisions about using various platform services. For example, terms of service, suspension or discontinuance of service and service charge, the main factors of the algorithm or criteria that business operators use to rank or recommend products or services to users, etc.

¹⁸ <https://www.youtube.com/watch?v=jCJqHAoYpdY>

- **Protection of the Rights and Benefits of Service Users (Article 25):**
Providers of digital platform services are required to establish complaint handling, compensation and redress mechanisms to compensate or remedy users who have been injured from using the service or other matters necessary to protect users.
- **Promoting Fair Competition (Article 9):**
Both foreign and domestic providers of online platform services, which provide services to users residing in Thailand, are subject to the same regulatory measures according to the Royal Decree. This promotes transparency and fairness between digital platform providers.
- **Building Economic and Social Confidence:**
Users will gain confidence in using digital platform services knowing that they will be protected when problems arise from using services on digital platforms. Especially, foreign platforms that provide services to consumers in Thailand, this will cause digital platform service business operators to act more strictly within the framework of the law.

Failure to inform the ETDA about the functions of a digital platform service or not adhering to a suspension order from the ETDA can lead to criminal penalties of imprisonment for up to one year, a fine of up to 100,000 baht, or both. If the offending party is a corporate entity, its board members, managerial staff, and any other individuals accountable for the breach may also face penalties. Administrative penalties (Article 33) and criminal penalties (Article 44) under the Royal Decree can be concluded as Figure 4 Administrative penalties and criminal penalties.¹⁹

Figure 4 Administrative penalties and criminal penalties



¹⁹ Ministry of Digital Economy and Society

According to the Digital Services Act (DSA) and the Royal Decree, the differences between both laws can be concluded in Table 4 Differences between DSA and Royal Decree.

Table 4 Differences between DSA and Royal Decree

	The Digital Services Act (DSA)	The Royal Decree
Focus and Objectives	Focuses on updating the legal framework for a certain digital service, including online platforms, social media, search engines, and other intermediaries with rules adapted for each category. For example, it aims to establish clear and transparent rules for online platforms, addressing issues such as content moderation, user rights, and the responsibilities of online platforms.	Targets a wider range of providers under a very broad definition of 'digital platform services'. It aims to promote fairness and transparency in business practices regarding the terms and conditions of services, use of algorithmic processes, advertising practices, and complaint-handling by establishing rules and obligations for digital platforms.
Applicability	Applies to individually defined digital services, covering platforms, social networks, search engines, and specified online intermediaries; additional rules apply to very large online platforms and search engines with 45 million or more monthly active users in the EU.	Applies to in-scope digital platform services that provide services in Thailand or be considered to be providing services in Thailand in case of foreign platforms. They will be divided into groups in order to set appropriate service standards based on their revenue or number of platform service users.
Specific Obligations	Introduces specific obligations related to transparency, content moderation, and user rights. It aims to establish clear rules for how digital services handle illegal content, protect user rights, and maintain transparency in their operations.	Establishing rules for digital platform service businesses, ensuring user protection, fostering cooperation among state agencies, facilitating information sharing, and supporting operators in implementing best practices and self-regulation in accordance with relevant laws.
Approach to regulation	Takes an ex-post approach, setting out general principles and obligations for online intermediaries.	Adopts an ex-ante regulatory approach, meaning it imposes specific obligations on digital platforms before any potential harm occurs.

From Table 4 Differences between DSA and Royal Decree, it can be seen that both laws differ in many dimensions, including: Focus and Objectives, Applicability, Specific Obligations, and Approach to regulation.

However, some stakeholders have questioned whether existing laws adequately address the unique challenges and dynamics of the platform economy, and if they are effective at addressing specific policy issues and proportionate for the activities to which they apply. The rapid growth of digital platforms has likely outpaced the development of specific regulations tailored to this sector such as the influence of the big platforms, and the utilization of data. Moreover, existing laws may be fragmented, with different regulations applying to different actors and activities of the digital economy under the very broad umbrella of “digital platforms”. A comprehensive draft Platform Economy Act can consolidate these regulations into a single framework, providing clarity and coherence. A newly drafted Act designed specifically for this sector can be immediately usable, providing clear guidelines for both businesses and regulators.

3.2 Thailand’s Draft Platform Economy Act

The Urgent Reforms Committee of the Thai Law Reform Sub-Commission to Support the Digital Economy Society has prepared a “draft” of Platform Economy Act which incorporates features similar to the principles and contents of the DMA²⁰ and DSA, as well as elements of the Royal Decree on the Operation of Digital Platform Service Businesses That Are Subject to Prior Notification, B.E. 2565 (2022).²¹

Public hearings on the principles of the draft law were organised by the Strategic Transformation Office (STO) and the Ministry of Digital Economy and Society (MDES) and Electronic Transactions Development Agency (ETDA) between 1-31 May 2023 and the between 19 June 2023 - 3 July 2023, including a public hearing at a seminar in Bangkok on 19 June 2023. The results were summarized and a report analyzing the potential impacts of the draft law were sent to the Office of the Council of State (OCS) on 4 October 2023 for further drafting of the law.

The following 10 principles for the draft law are set out below:²²

1. Objectives and Scope of the Law

Establish clear objectives and targeted scope to ensure fair competition and consumer protection, with consistent supervision guidelines. Scope should be limited to digital activities where identified concerns occur and avoid collateral impacts on others.

2. Basic Duties of Relevant Groups of Business Operators

Clearly define relevant groups of operators and their respective basic duties, including compliance with regulations, transparency, and user problem reporting mechanisms.

3. Define Additional Duties of Every Group of Business Operators

Except that the intermediary service provider specifies a method or system that can be notified of wrongdoing or the use of illegal information, including the duty to delete and block access to such illegal information.

²⁰ <https://tdri.or.th/2023/11/platform-protect-digital-market-article/>

²¹ <https://tdri.or.th/2023/04/consumer-protection-in-the-digital-economy/>

²² <https://www.prd.go.th/th/content/page/index/id/96802>

- 4. Additional Duties of Business Operators Who are Platform Service Providers**
Clearly define “platform services providers” and outline additional duties for platform service providers to prevent wrongdoing and determine liability for negligence.
- 5. Additional Duties of Large Platform Providers**
Require large platforms to evaluate system risks, disclose technology testing results, and provide transparency on advertisement presentation.
- 6. Accreditation of Trusted Flagger**
The regulatory agency has the duty to recruit, inspect and certify whistleblowers as well as have the duty to update the list of whistleblowers on a regular basis.
- 7. Supervision of Contracts Between Platform Providers and Service Users**
Supervise contracts between platforms and users to ensure compliance with regulatory principles, with clear definitions for transportation service contracts.
- 8. Duties and Authority of Regulatory Agencies**
Designate the ETDA as the agency with supervisory authority in accordance with the principles of this proposed law.
- 9. Cooperation Between Relevant Agencies**
Establish principles for cooperation between agencies, including support for compliance and experimentation with new regulatory approaches.
- 10. Maintaining Fair Competition in the Platform Economy (Use an EX-ante Approach to control by specifying behaviors that should be done and behaviors that should not be done)**
Designate the Trade Competition Commission of Thailand (TCCT) to be the main regulatory agency in considering the announcement of criteria and list of gatekeeping platform providers, operating under Principle 9. (In practice and in the legislation, it is designated TCCT and ETDA will jointly work together.)

Compared to the 2022 Royal Decree, the draft Platform Economy Act has more comprehensive duties and regulations, such as duty to investigate illegal activities on the platform, working with whistleblowers, etc. This Act also includes some details that are different which, according to the Thailand Development Research Institute (TDRI), will help solve problems in consumer protection of current laws in various issues, such as:²³

- **Reducing Ambiguity and Loopholes:**
Help reduce ambiguity and loopholes in consumer protection laws by having a clear definition of platform business as an intermediary.
- **Enhancing Consumer Protection:**
Establish duties and practices for consumer protection that are more appropriate than current laws. It covers the platform's new risk behavior throughout the buying-selling and return cycle, such as Inappropriate Use of Personal Data or Unclear Changes in Terms of service.

²³ <https://tdri.or.th/2023/04/consumer-protection-in-the-digital-economy/>

- **Immunity from Liability with Conditions:**
Establish a framework for general immunity from liability for platforms with conditions that incentivize platforms to participate in proactive monitoring in order to block illegal actions from stores or seller-buyer, including measures to incentivize platforms to create identity verification systems, making tracking, mediation and consumer compensation easier. For the unidentified platform, the merchant may be sued as a co-offender.
- **User and Civil Society Participation:**
Promote the participation of service users and civil society to prevent perpetration. It requires service users to report perpetration by merchants to the platform and the platform must expedite action.
- **Integrated Platform Governance:**
Create platform governance integrated across agencies by setting up a committee to oversee the platform economy that consists of relevant ministers in a comprehensive manner in order to improve each area of the law to be consistent with the content of the new draft law.

There are 10 chapters in this draft Platform Economy Act. The definitions of the key terms under the draft Platform Economy Act are substantially similar to the definitions of the key terms under the Royal Decree. The draft Platform Economy Act excludes certain digital platform services that are already regulated by specific laws and ensure transparency and fairness, or adhere to operational standards no less stringent than those required in the draft Platform Economy Act. Nonetheless, the Electronic Transactions Development Agency (ETDA) retains the authority to request or connect with data related to exempted digital platform services from the relevant supervisory authorities. Here are key features of each chapter of the draft Platform Economy Act:

- **Chapter 1 Duty to Report Information relating to the Digital Platform Service (Article 8-11):**
 - Digital platform services with either (1) at least 100 million baht in annual revenue from providing services in Thailand before expenses, or (2) more than 10,000 monthly users in Thailand (calculated according to ETDA rules) must report their operations to the ETDA within 30 days of becoming aware that they meet either of these criteria.

The draft Platform Economy Act requires digital platform service providers to notify the ETDA of any changes to their name, type, or other relevant details, as well as any changes to the details of the local coordinator within 30 days of the change occurring. Additionally, these changes must be included in an annual report, which is due either 60 days from the end of each calendar year for individuals or from the end of each fiscal year for legal entities.
- **Chapter 2 General Duties (Article 12-14):**
 - The draft Platform Economy Act places responsibility on digital platform service providers for ensuring the lawfulness of the data belonging to their users, as well as any other data transmitted through their platforms, unless it can be proved or evidenced in court that the digital platform service only serves as an intermediary for data transmission and does not store the data, or that the digital platform service does not have access to the data.

- In cases of illegal data transmission through a digital platform service, the ETDA has the authority to order the blocking of data transmission by or to a user. If this order is not adhered to, the ETDA can petition the court to issue an order for data transmission blockage on the digital platform service.
 - Digital platform services which are not solely intermediaries for data transmission, or where the provider can access users' data or other transmitted data, must establish a system, mechanism, or procedure to allow individuals to report illegal acts or noncompliance. Upon receiving such a report, the digital platform service is required to take action by either deleting or blocking the illegal data. If the digital platform service determines that there is no illegal data or noncompliance, they must promptly report this finding to the ETDA.
 - Measures for the alleviation of injuries, compensation, and remediation must be in place.
- **Chapter 3 Specific Duties for Certain Types of Digital Platform Services (Article 15-26):**
Two categories of digital platform services with specific characteristics face additional obligations.

1. A "specific type of digital platform service" provides:

- Sending and receiving data of users and other persons;
- Storing data of users and other persons;
- Matching different categories of users to facilitate electronic transactions or for the benefit of selling and purchasing goods or services through the digital platform service.

These digital platform services have to inform users about relevant purchasing laws and risks, set up expiry date notifications for applicable products, prevent illegal use, report suspicious activities, establish identity verification, and provide annual transparency reports to the ETDA.

2. A "large digital platform service" is one that:

- Has over 1 billion baht in annual revenue (before expenses) from providing a digital platform service in Thailand;
- Has over 100,000 monthly users in Thailand
- Poses a high risk to Thailand's economy, social stability, or potential damage to the public.

Large digital platform service must annually assess risks with external experts, conduct IT audits, appoint a chief compliance officer for communication with authorities, disclose data processing methods, including goods/services ranking, and provide opt-out channels for advertisements, among other duties.

- **Chapter 4 Whistleblowers (Article 27-30):**

The ETDA is responsible for recruiting, evaluating, and certifying whistleblowers, publicly listing certified whistleblowers. Providers of specific digital platform service types or large digital platform services must cooperate with whistleblowers, providing channels for them to register accounts and engage in relevant processes.

- **Chapter 5 Supervision of an Agreement between a Digital Platform Service and a User (Article 31-33):**
Digital platform service providers are mandated to transparently disclose terms and conditions to users before and during service usage. This includes essential details like terms of service, conditions for service suspension or termination, and service fees.
- **Chapter 6 Dissolution of Business (Article 34-36):**
Digital platform service providers must inform the ETDA at least 60 days prior to the cessation date. Large digital platform services need to give 120 days' notice, including a plan for user care post-cessation. Cessation only occurs after receipt of notification acknowledgment from the competent official.
- **Chapter 7 Duties of the Agency (Article 39-40):**
The Agency acts as a coordinator for state agencies to enforce laws, focusing on consumer protection, fairness, and competition in the platform economy. It ensures actions are proportional to public interest and individual rights. Duties include issuing administrative orders, accessing operator information with notice, imposing fines, suspending services for safety, managing complaint channels, promoting good practices, and publishing an annual regulatory report.
- **Chapter 8 Supervision of Competition (Article 41-45):**
The ETDA and the Thailand Trade Competition Commission (TCCT) will work together to define criteria for identifying gatekeeping platforms, publishing it within 6 months of its implementation. They may also publish regulations on behaviors, service conditions, and other activities considered unfair exercises of gatekeeping platforms' business power.
- **Chapter 9 Platform Economy Commission (Article 46-52):**
The Platform Economy Commission, chaired by the Minister of Digital Economy and Society, oversees various state agencies and private entities involved in the platform economy. It advises and monitors enforcement, makes decisions on related issues, and fosters collaboration among stakeholders. Qualified members serve four-year terms and must meet specific criteria. Vacancies are filled within 30 days, and members may serve a maximum of two consecutive terms. Removal can occur due to various reasons, including misfeasance or resignation. Meetings require at least half of the members for a quorum, and decisions are made by majority vote.
- **Chapter 10 Regulatory Fine Measures (Article 53-57):**
 - Violations of specific Act sections lead to regulatory offenses with fines ranging from One hundred thousand to One million baht for breaches like Sections 9, 10, 12, 13, 14, 16, 17, 20, 22, 30, 31, 33, or Section 45(3).
 - Section 18 breaches incur fines equal to total Thai user revenue, not less than One million baht.
 - Breaches of Sections 22, 23, 32, or 34 result in fines up to Five hundred thousand baht.
 - Violations of Sections 25 or 44 incur fines from Two hundred thousand to Two million baht.

- Fines consider business size, revenue, user numbers, benefits gained, and impact severity.
- Continuous offenses incur daily fines, and failure to report increases penalties.

The legislative and contextual differences between the EU's Digital Market Act (DMA) and the Thai draft Platform Economy Act are summarised in the table below:

Table 5 Comparison between DMA and draft Platform Economy Act

	DMA	Draft Platform Economy Act	Difference
Duty to Report Information relating to the Digital Platform Service	Article 3: Requires online platforms that meet quantitative thresholds set by the DMA to notify the Commission within two months of meeting the thresholds. The notification needs to include details about their services, user base, data practices, and business activities. Threshold: (a) It attained an annual Union turnover of EUR 7.5 billion or more, or a market capitalization of EUR 75 billion or more, while providing the same core platform service in at least three Member States. (b) It served a core platform service to at least 45 million monthly active end users and 10,000 yearly active business users in the Union, adhering to specified metrics. (c) It consistently met the thresholds outlined in (b) over the past three financial years.	Article 8-10: Requires online platform that meet thresholds set by draft Platform Economy Act to notify the Agency within 30 days of meeting the thresholds. The notification needs to include details about platform providers, their services, user base, and business activities. Threshold: (a) It generates annual revenue exceeding one hundred million baht from providing the service within the Kingdom. (b) It has more than ten thousand monthly users, excluding those who work or use the service for their occupations, calculated based on average monthly usage according to the rules specified by the Agency's notification.	• Thresholds and Timing: The DMA sets three thresholds while the draft Platform Economy Act sets only two thresholds, also the notify time period is longer than the draft Platform Economy Act. • Reporting Entity: The DMA requires to notify the European Commission directly while the draft Platform Economy Act requires to notify the Agency specified within the legislation.

	DMA	Draft Platform Economy Act	Difference
Services subject to the regulation	The DMA provides a list of “Core Platform Services (CPS)” The regulator cannot unilaterally add additional CPS without going through the legislative process.	The draft Platform Economy Act did not provide a specific list of digital platform services that are subject to the regulation.	The draft Platform Economy Act is still not clear as to which digital platform services are subject to the regulation. This creates legal uncertainty for businesses and gives too much discretionary power to regulators.
Responsibilities of Digital Platform Service Providers/ Gatekeepers	Article 5-8: Theses Articles are likely to detail the specific obligations and duties imposed on gatekeepers. It outlines requirements related to interoperability, data portability, transparency, non-discrimination, access to data, and other aspects of gatekeeper behavior.	Article 12-14: Theses Articles outlines requirements related to the legality of the information, providing measures to alleviate injuries, and implementing systems for reporting illegal activities. Article 15-25: It also outlines the characteristics of digital platform service, which is deemed large digital platform services, and detail the additional duties aimed to ensure the safety, security compliance, and transparency of digital platform services.	The DMA places significant emphasis on addressing competition issues in the digital market, particularly concerning the behavior of dominant players (gatekeepers) and their impact on competition, innovation, and consumer welfare. While the draft Platform Economy Act may address competition concerns to some extent, its focus appears to be more broadly on legal compliance, safety, security, and transparency within the platform economy, including measures to combat illegal activities and ensure the integrity of digital platforms operating in Thailand.

	DMA	Draft Platform Economy Act	Difference
Enforcement and Regulatory Bodies	• European Commission Article 23-29: Main enforcement authority, adopting implementing Acts, conducting investigations, oversight role, monitoring DMA effectiveness and proposing amendments, imposing fines and sanctions. • The High-Level Group Articles 40: The European Commission adopted a decision to establish a High-Level Group on the DMA. The High-Level Group can provide the Commission with advice and expertise with the aim of ensuring that the DMA and other sectoral regulations applicable to gatekeepers are implemented in a coherent and complementary manner.	• ETDA (The Agency) Article 39-40: Issuing administrative orders, access to information and property, imposing fines, requesting court orders, complaint handling, promoting good practices, preparing and publicizing an annual report of its regulatory activities. • The Agency and TCCT Article 41-45: Issuing administrative orders, access to information and property, imposing fines, requesting court orders, complaint handling, promoting good practices, preparing and publicizing an annual report of its regulatory activities. • Platform Economy Commission Article 46-52: The duties and powers in overseeing the enforcement of regulations related to the platform economy, the qualifications of members, and the provision of meeting of the Commission.	The European Commission serves as the main enforcement authority under the DMA. While the primary enforcement authority in the draft Platform Economy Act is the ETDA, referred to as "The Agency" in the legislation. The DMA establishes a High-Level Group to advise the European Commission on the implementation of the DMA. While the draft Platform Economy Act mentions the TCCT as one of the entities involved in enforcement and regulatory activities alongside the Agency. The draft Platform Economy Act also establishes the Platform Economy Commission, this commission likely plays a role in coordinating and providing guidance on regulatory activities in the platform economy sector. This duplicative and complex governance structure can potentially cause double jeopardy issues.

	DMA	Draft Platform Economy Act	Difference
Regulatory Fine Measures	Articles 30: In case a gatekeeper does not comply with the obligations laid out in the DMA, the Commission can impose fines up to 10% of the company's total worldwide turnover, which can go up to 20% in case of repeated infringement. In case of systematic infringements, the Commission is also empowered to adopt additional remedies such as obliging a gatekeeper to sell a business or parts of it, or banning the gatekeeper from acquiring additional services related to the systemic non-compliance.	Articles 53-57: These Articles outlines the fines and penalties for regulatory offenses. The fine ranges from one hundred thousand baht up to more than one million baht. The determination of regulatory fines considers various factors such as business size (including revenue and number of users), benefits gained from the offense, and the severity of the impact or damage to the country, society, and the public. Additionally, if the offenses are committed repeatedly, a daily regulatory fine is imposed, representing 10% of the one-year retrospective average revenue.	The DMA imposes potentially higher fines for non-compliance with obligations and provides additional remedies for Systematic infringements. In contrast, the fines under the draft Platform Economy Act are lower and take into account various factors in determining the penalty. Additionally, the draft Platform Economy Act includes provisions for daily regulatory fines for repeated offenses, which is not explicitly present in the DMA.
Relationship between the DMA and the existing competition law	As mentioned in Recital 5, the justification for introducing the DMA is that, according to the EU, the existing competition law framework is too slow or not enough to address the current challenges. While the DMA is different and complementary to the existing EU competition laws (Recital 10 of the DMA), it remains to be seen how both laws will be interacting with each other.	The draft Platform Economy Act does not provide any explanation or justification as to why it is necessary (or desirable) to introduce a chapter on competition even though the TCCT is currently the legitimate agency responsible for enforcing the existing competition laws and regulations.	Unlike the EU, it is still not convincing why Thailand needs to introduce a new ex-ante form of legislation. The TCCT is actively address potential competition issues in the digital market sector, for example, by updating e-commerce guidelines. It is not clear from the draft law how the overlap between the new competition-related provisions and existing Thai competition laws will be managed.

	DMA	Draft Platform Economy Act	Difference
Enforcement	The European Commission is the sole enforcer of the DMA. A joint team in the Directorates-General for Competition (DG COMP) and Communications Networks, Content and Technology (DG CONNECT) is responsible for the implementation and enforcement of the DMA. ²⁴	Both the TCCT and ETDA jointly enforce the competition chapter of the draft Platform Economy Act	It is unprecedented that the authority to enforce competition is shared between the TCCT and the ETDA, while the TCCT is empowered to be the sole enforcer of Thai competition law.

From Table 5, it can be seen that there is substantial divergence between the EU and Thai legal frameworks. These differences include the Duty to Report Information relating to the Digital Platform Service, Services subject to the regulation, Responsibilities of Digital Platform Service Providers/Gatekeepers, Enforcement and Regulatory Bodies, Regulatory Fine Measures, Relationship between the DMA and the existing competition law, and Enforcement.

In the process of drafting this Act, the Electronic Transactions Development Agency (ETDA) is playing a role in supporting and providing information on the merits of existing rules, as well as identifying areas that need reinforcement. Additionally, ETDA is working towards self-regulation. However, there have been challenges, particularly regarding regulating inappropriate content and its impact on consumers. ETDA faces difficulties in contacting business operators in foreign countries, posing a challenge in terms of international cooperation. This means when the Royal Decree was issued, the community guidelines or code of conduct might not have been sufficient to oversee the overall use of services. If the draft Platform Economy Act is issued, it can nullify the Royal Decree as ETDA does not want to have two laws to regulate the same matter. However, significant overlaps will occur if the draft Platform Economy Act is enacted, most obviously in the introduction of new competition rules (Chapter 8) that will operate concurrently with existing Thai competition laws (Trade Competition Act 2017).

The Trade Competition Commission of Thailand (TCCT) will jointly enforce the competition-related provisions²⁵ of the draft Platform Economy Act with the ETDA when they come into force. The digital landscape presents additional complexities. These include the need to ensure that consumers will not be taken advantage of in the long run and that new innovations in the economy will occur. And any importation of foreign regulations should align with the Thai context.

²⁴ https://digital-markets-act.ec.europa.eu/index_en

²⁵ The TCCT is already empowered to enforce the Trade Competition Act B.E. 2560 (2017), a cross-sectoral law which prohibits the abuse of a dominant position (Section 50 of the Act), which includes conduct that involves “imposing unfair conditions on trading partners which limit” the service, production, purchase or sale of products or “suspending, reducing or limiting service provision, production, sale, delivery or import” of goods without justifiable reasons. It is not clear from the draft law how the overlap between the new competition-related provisions and existing Thai competition laws will be managed.

3.3 Addressing Local Concerns relating to the Business Operations of Digital Platforms serving Thai Consumers

The Platform Economy Act is also proposing to address platforms' responsibility for consumer protection. There's a suggestion from both government and private sectors that a specific law should be in place to define the duties of platforms in taking care of the stores operating on their platform. The definition of "platforms" is very broad, far broader than in other similar laws and encompasses many different business models, including those whose business is primarily ads or digital marketing. It is important to be specific about where problems of concern occur and target rules accordingly. There are highlighting challenges with shipping companies, particularly the lack of information about the seller, which can impede dispute resolution by difficulty in finding the seller's identity when contacting the shipping company.

According to the law enforcer and policy maker, there are challenges in regulating foreign platforms, especially when servers are located outside Thailand, such as in the case of online gambling. Initially governed by the Computer Crime Act, the emergence of tax-related concerns led to the establishment of the Electronic Transactions Development Agency (ETDA), introducing a law for platform registration to facilitate tax collection like the Royal Decree. The need for a responsible agent in Thailand is emphasized. Currently, the Digital Economy Promotion Agency (DEPA) is testing a platform in Thailand. There's a suggestion that for Thai entrepreneurs to compete globally, the government should play a proactive role. This involves providing gradual funding and support to entrepreneurs, with the aim of fostering their success. Once a Thai entrepreneur has established themselves, the government can consider removing regulations that initially supported their growth. However, it's crucial to consider the proposals under the Platform Economy Act, as well as potential challenges and implications of such changes on small businesses.

In the context of AI regulation in Thailand, there has been a shift in focus from immediately implementing AI laws to promoting the application of AI in the country. AI has already been studied and has concluded that Thailand is not yet ready to implement specific AI laws. There are other mechanisms that can be used before the issuance of the draft Platform Economy Act.

Trade fairness is identified as a foundational aspect of the law, with implications for other matters. Ensuring fairness in trade practices is considered a key priority, that can contribute to preventing monopoly power and fostering a more competitive and equitable marketplace. Importantly, there is discussion about the tax system that will be taken into consideration in balancing the effects of monopoly, such as increasing disclosure burdens, but it is still unclear. Addressing these issues is crucial for the effective regulation of digital trade. However, there is a concern about potential gaps in the law, especially in comparison to EU regulations.

The availability of human resources, including data analysts and computer scientists, is highlighted as a potential challenge in fully implementing the 10 principles for drafting law. Reforming existing structures may be necessary to address this issue. However, the slow pace of civil service reform is acknowledged, and there is a suggestion to involve third-party entities to expedite the process. This raises questions about the feasibility and effectiveness of such an approach. Moreover, the importance of committees, particularly private sector committees, is emphasized as a control mechanism in the law-making process. The role of committees in issuing sub-laws is seen as a crucial aspect of effective regulation.

3.4 Concerns from the Private Sector

The Thai private sector expresses concern about the complexity of laws in Thailand, particularly those that apply exclusively to Thai citizens and not foreigners, leading to discrimination. Currently, Thai entrepreneurs have to comply with a number of legislations. In some cases, the scope of these legislations does not include foreign entrepreneurs, increasing the burden for domestic businesses. The legislations that Thai entrepreneurs have to comply with are as follows:

1. The law regarding electronic commerce registration with the Department of Business Development (DBD), which verifies the identity of entrepreneurs operating online or through the internet and confirms that the business is operating legally. This applies to Thai entrepreneurs only, but foreigners are not required to register.
2. The Office of the Consumer Protection Board (OCPB)'s Direct Selling Registration Act was enacted to protect consumers from being put in a disadvantageous or unfair position. There is a problem with the interpretation of direct sales and online sales in the law: more than 1.8 million baht must be registered with OCPB (in addition to VAT registration). This law is applicable to Thai entrepreneurs, but foreigners selling in Thailand are not required to register.
3. There is also a law of the Department of Internal Trade (DIT) regarding price announcements before consumers purchase products which covers both offline and online to give consumers the opportunity to compare prices or service fees before deciding to purchase the product or use the service. This law is only applicable to Thai entrepreneurs, not applicable to foreigners.
4. Another law is the PDPA that will make digital trade fairer. This law was created to protect the information of people in the country to prevent the personal information of Thai people from being easily taken abroad. For example, LINE in Japan had a data leak of approximately 100,000 data. There is information on almost a thousand Japanese people, but information on remaining data could possibly include that of Thai data. This is something that Thai law must take seriously.

Examples include the electronic commerce registration law, consumer protection laws, and the Personal Data Protection Act (PDPA) as sometimes it is challenging to enforce and govern foreign companies under these acts, especially when identifying or pursuing cases against them. Drafting new laws aimed at regulating large players could indeed be a step towards creating a more level playing field, protecting small and medium companies of which most are local Thai companies. However, it's crucial to consider the existing legal framework, as well as potential challenges and implications of such changes.

It remains to be seen whether there is adequate enforcement of regulating digital platforms and if new mechanisms will be able to achieve the goal of protecting consumers and promoting fair competition.

At the same time, platform operators must be prepared to improve their data storage and management strategies to ensure that they comply with the law correctly and comprehensively.

3.5 Factors that may Affect the Enforcement of the Legal Framework in Each Jurisdiction

Lack of proper enforcement would impact the efficacy of the introduction of new platform obligations and rights for users. Some Factors that may affect the enforcement of legal framework both in the EU and Thailand:

1) Regulatory Authorities, which makes the enforcement go according to the plan. As for the EU, the enforcement of the Digital Markets Act (DMA) and the Digital Services Act (DSA) are carried out by the European Commission for designated gatekeepers and very large online platforms respectively but not by the same Directorate. In the case of the DMA, the enforcement power sits with the European Commission's DG Competition. Both Acts primarily concern very large online platforms. For other activities in the scope of the DSA, each member state shall appoint "Digital Services Coordinators"²⁶, who are to monitor the enforcement of the EU requirements with respect to in-scope companies established in their respective jurisdictions and work together in a joint committee to ensure that the enforcement of the provisions is practiced uniformly in order to implement the DSA. The Commission reported that the European Commission's new directorate should have 123 people working full-time by 2024. The team is set to include legal experts, data scientists and policy officers.²⁷ Additionally, there are plans to further ramp up recruitment in 2024 to staff a dedicated team within DG CONNECT (Directorate-General for Communications Networks, Content and Technology) with over 100 full-time staff.²⁸ As for Thailand, the Electronic Transactions Development Agency (ETDA) is responsible for overseeing the digital platform services business. The Agency has the authority to withdraw notification of digital platform service business operations in the event that the digital platform service business operator does not comply with the rules, procedures or conditions as specified by law. In the case of foreign platforms, a coordinating representative in Thailand or a "Point of Contact"²⁹ must be established in order to create clear channels for coordination and follow the rules of business practices in Thailand. Currently, the Trade Competition Commission of Thailand (TCCT) has more expertise in digital matters and works with the ETDA to respond to market dynamics. At present, Thailand may be able to expand its resources quickly, but integration should be able to push it forward.

2) Cooperation Agreements, in order to assist the enforcement of the DSA. As for the EU, the Commission also relies on a network of trusted flaggers, such as NGOs, hotlines or rightsholders, to ensure that the 'online platforms' category of providers comply with applicable DSA rules by reacting to the flagged illegal content as a priority. Moreover, DG CONNECT (Directorate-General for Communications Networks, Content and Technology) and the Joint Research Centre will establish a high-profile European Centre for Algorithmic Transparency. This new Centre will attract world-class scientific talent in data science and algorithms that will complement and assist the enforcement teams. Furthermore, the

²⁶ [https://www.swp-](https://www.swp-berlin.org/publications/products/arbeitspapiere/WP0121_Bendiek_Digital_Service_Act_and_Digital_Markets_Act.pdf)

berlin.org/publications/products/arbeitspapiere/WP0121_Bendiek_Digital_Service_Act_and_Digital_Markets_Act.pdf

²⁷ <https://www.euractiv.com/section/law-enforcement/news/challenges-mount-for-european-commissions-new-dsa-enforcement-team/>

²⁸ https://ec.europa.eu/commission/presscorner/detail/en/statement_22_4327

²⁹ https://www.etda.or.th/th/pr-news/DPS_Embassy.aspx

Commission was in negotiations with authorities in charge of digital regulation in the largest EU countries such as France, Germany, Italy, Spain, Poland, Ireland and the Netherlands to create the "European Board for Digital Services"³⁰, which will have a role in coordinating, defining guidelines, and contributing to the execution of the DSA throughout the European Union. As for Thailand, the Royal Decree stipulates that there should be a "joint committee between government agencies" which is a collaboration between government agencies such as ministry level agencies, departments level agencies, prosecutors level agencies, Trade Competition Commission of Thailand (TCCT), Securities and Exchange Commission, Thailand (SEC), Bank of Thailand, etc. to oversee the operation of digital platform service businesses efficiently and comprehensively in various dimensions.³¹ Cooperation between government agencies is extremely important for regulating digital platform service business operations. This is because the digital platform service business has a wide scope and affects many sectors. Cooperation between government agencies will enable more efficient and comprehensive supervision of digital platform service businesses.

³⁰ <https://www.euractiv.com/section/law-enforcement/news/challenges-mount-for-european-commissions-new-dsa-enforcement-team/>

³¹ <https://www.thnic.or.th/act-digital2565/>

Chapter 4

The Adoption of EU-Inspired Digital Laws in Thailand

This chapter provides arguments regarding the adoption of EU-inspired digital laws in such as Platform Economy Act in Thailand. It unpacks local circumstances and identifies specific issues that could impact the digital transformation in Thailand. This chapter also discusses how aligning with EU standards may benefit or pose challenges to the Thai digital ecosystem.

Thailand should study more examples of laws and policy initiatives regulating digital platforms and digital service businesses from various countries, rather than over-indexing on the EU's regulatory models. EU-inspired digital laws should not be used in their entirety in Thailand, without making adjustments to suit local circumstances and without a full and robust analysis on other available regulatory models that may be more suitable to Thailand, because:

1. There are already existing regulations in Thailand which overlap with the proposed Platform Economy Act.

1.1 Royal Decree on the Operation of Digital Platform Service Businesses That Are Subject to Prior Notification, B.E. 2565 (2022) under the Electronic Transactions Development Agency (ETDA). The Royal Decree has come into effect as from August 21, 2023, which is a comprehensive regulation for the operation of online platform businesses in Thailand. There are concerns regarding the redundancy or overlap of the proposed law. For instance, some regulatory measures and obligations of the DMA, such as eliminating unfair competition, and providing access to data are the same as the requirements of the Royal Decree. Likewise for the DSA, some regulatory measures and obligations, such as mechanisms for handling user complaints, and transparency of algorithms are the same as the requirements of the Royal Decree. The DSA and DMA aim to create a safer digital space, protect users' fundamental rights, and foster a fair and competitive digital market which goes in the same direction as the focus of the Royal Decree, promoting fairness and transparency. Therefore, there is no doubt that these laws overlap which add complexity to governance and enforcement of the law.

1.2 Thailand Competition Act administered by the Trade Competition Commission of Thailand (TCCT) and the proposed platform economy law. This Act aims to ensure fair competition in the market. Under this Act, the TCCT is empowered to undertake enforcement against anti-competitive practices by companies and publish guidelines. With the proposed draft Platform Economy Act, TCCT would have two laws and potentially be even more complicated, making work more difficult and creating confusion in operations. This may cause confusion among impacted companies in the industry, increasing costs which has a negative impact on various parties. The operation of the DMA in this regard should be carefully monitored.

1.3 Consumer Protection Act (No. 4) B.E. 2562 (2019) regulations by the Office of The Consumer Protection Board (OCPB). This Act aims to safeguard consumers from deceptive advertising practices including false claims, misleading information, or any form of advertisement that might mislead consumers about the nature, quality, or characteristics of goods and services, regardless of whether transactions occur electronically or through traditional means. There is a concern regarding the overlap of the DSA with this Act, that it limits the design of advertisements that are misleading or deceptive to consumers.

1.4 The overlap of the Computer Crime Act B.E. 2550 (2007) and the Copyright Act B.E. 2537 (1994) with the DSA. The Computer Crime Act addresses offenses related to computer systems, data, and online activities. It aims to provide legal measures to prevent and respond to unauthorized access to computer systems, data interference, and other computer-related activities that may be considered illegal. The Copyright Act aims to protect the rights of creators and encourage the development of arts, literature, and sciences by providing legal protection to the creators of original works. According to both Acts, the notice-and-takedown mechanism may be redundant with the DSA, that it provides requirements for content moderation practices, and notice-and-action procedures for users.

1.5 Personal Data Protection Act B.E. 2562 (2019) which was established in 2019 and several principles were drawn from the European Union's General Data Protection Regulation 2016/679 (GDPR). This Act governs the collection, use, disclosure, and processing of personal data to ensure that the processing of personal data is conducted fairly, transparently, and in accordance with individuals' rights. The duty of the notification of policy for protecting personal information of service users (privacy notice) according to this Act may be redundant with the requirement of business operators to provide details regarding data access in the proposed platform economy law.

As above, existing regulations in Thailand that may be redundant or overlap with the Draft Platform Economy Act can be concluded in Table 6 Existing regulations in Thailand vs. The Platform Economy Act.

Table 6 Existing regulations in Thailand vs. The Platform Economy Act

Existing regulations in Thailand	Content overlap with the Platform Economy Act
Royal Decree on the Operation of Digital Platform Service Businesses That Are Subject to Prior Notification, B.E. 2565 (2022)	Mechanisms for handling user complaints, and transparency of algorithms overlap with the Platform Economy Act.
Consumer Protection Act (No. 4) B.E. 2562 (2019)	The overlap of the Platform Economy Act with this Act, that it limits the design of advertisements that are misleading or deceptive to consumers.
Computer Crime Act B.E. 2550 (2007) and the Copyright Act B.E. 2537 (1994)	The notice-and-takedown mechanism may be redundant with the Platform Economy Act, that it provides requirements for content moderation practices, and notice-and-action procedures for users.
Personal Data Protection Act B.E. 2562 (2019)	The duty of the notification of policy for protecting personal information of service users (privacy notice) according to this Act may be redundant.

Overlapping regulations, such as the PDPA, TCA, and content control, can burden platforms with compliance challenges, potentially hindering business operations and innovation. When new digital regulations are introduced, there is a risk of overlapping with existing laws and regulations. It's important for lawmakers to conduct thorough reviews to identify any redundancies or conflicts with the current legal framework.

2. Thailand's digital economy is growing and need innovation and investment. And Thailand still has to face the middle-income trap.

Google, Temasek and Bain & Company release the 8th edition of the Southeast Asia Digital Economy Report (e-Conomy SEA 2023 Report - Reaching new heights: Navigating the path to profitable growth). This report states that Thailand's digital economy will have a Gross Merchandise Value (GMV) of up to 36 billion US dollars in 2023, making it the second largest in Southeast Asia, and is expected to reach approximately 50 billion US dollars in 2025.³²

E-commerce remains a key driver of Thailand's digital economy, accounting for 61% of total merchandise value in 2023. The e-commerce sector grew 10% from 2022 with total merchandise value reaching 22 billion US dollars and is expected to reach 30 billion US dollars in 2025 with a Compounded Annual Growth Rate (CAGR) of 16%.³³

However, Thailand's digital economy has structural challenges that must be confronted. One of these challenges is escaping the middle-income trap. Thailand is one of the countries stuck in the middle-income trap that has relied on heavy industries such as the combustion vehicle industry and tourism, key drivers of the country over the past decade. While Thai government has been active to the concern of middle-income trap since 2014, the EU has been among the high-income countries according to the Gross National Income (GNI) per capita.³⁴

Even though the digital economy is growing, there are concerns that EU-inspired laws like the Digital Markets Act (DMA) and the Digital Services Act (DSA) could have potential negative impacts on economic growth, in which:

- Critics argue that excessive regulations can stifle innovation, as they may create barriers for companies to enter the market and for existing players to introduce new products or services. The DMA imposes blanket prohibitions on practices, which can be deemed pro-competitive and pro-innovation as recognized by established competition economics and jurisprudence. For instance, one of the consequences of Article 5(1) of the DMA would be to restrict gatekeepers from providing vertically integrated products or services (which can be more efficient and welfare enhancing) despite its common occurrence and well-known benefits and efficiency in business, which often drives competition, innovation, and consumer benefits. Similarly, the DMA outright bans tying, bundling, and leveraging strategies, regardless of their positive impacts on competition and innovation. These rigid prohibitions, without properly assessing objective justifications, detrimentally affect consumers and most businesses operating around gatekeepers' ecosystems, benefiting from their services and products. Moreover, these prohibitions may create a potentially discriminatory chilling effect, leading non-gatekeeper platforms to perceive certain practices as potentially anticompetitive, even if the DMA does not impose restrictions on them. Consequently, the DMA's per se prohibitions could have far-reaching effects on the entire economy, as they may influence court decisions in traditional

³² <https://www.brandage.com/article/37128>

³³ <https://www.brandage.com/article/37128>

³⁴ <https://www.macrotrends.net/countries/EUU/european-union/gni-per-capita>

competition cases. As a result, the DMA is likely to incur significant opportunity costs, including hindered innovation, diminished consumer welfare, and restricted choices for consumers and businesses. These blanket prohibitions, not all of which are legal and economically justified, aim to address the "egregious nature of unfair practices." However, in practice, they may impede legitimate pro-competitive and pro-innovative behaviors ultimately at the expense of consumer welfare and innovation.³⁵

- Emerging technologies, such as generative AI, are often highlighted as areas where regulatory approaches need to be carefully crafted. Overly restrictive regulations may impede the development and deployment of cutting-edge technologies. Companies, due to the necessity of disclosing extensive information in order to adhere with the DSA like in Article 33 regarding transparency reporting obligations, may face the risk of information leaks. Consequently, this reluctance to expose sensitive data may lead to a hesitancy in adopting or creating new innovations within the market.
- Unsuitable regulations may deter investment in the industry due to the "crowding out effect", where overly restrictive regulations discourage expansion in the region. The absence of laws akin to the DMA and DSA in other ASEAN nations is a notable distinction. Were such legislation to be introduced within our jurisdiction, there are valid concerns regarding the potential repercussions. Primarily, the implementation of these laws could amplify regulatory burdens, posing challenges for businesses operating within our borders. This increased regulatory complexity might not only impede the agility of enterprises but also impose additional compliance costs, thereby potentially hindering their competitiveness on both domestic and regional scales. Moreover, the divergence in regulatory frameworks between our country and neighboring ASEAN nations could disrupt the harmonization efforts aimed at fostering regional integration and cooperation. Inconsistencies in regulatory environments may create barriers to cross-border trade and investment, undermining the development of seamless cross-border services and supply chains. This fragmentation could deter foreign investment and limit opportunities for local businesses to expand their operations beyond national borders. Additionally, the introduction of stringent regulations could stifle innovation and entrepreneurial initiatives, as businesses may become more cautious in navigating the complexities of compliance requirements. This, in turn, could impede the growth of the digital economy and limit the potential for technological advancements within our jurisdiction.
- Implementing the requirements of the DMA and DSA may result in substantial compliance costs for businesses. These costs, particularly for smaller companies, could divert resources away from investments in research, development, and business expansion. The increasing costs incurred by companies may be passed on to small businesses on the platform, and ultimately lead to the consumer, causing them to bear even more burden. Here are potential compliance costs associated with the DMA/DSA as an example:

³⁵ <https://itif.org/publications/2022/08/24/digital-markets-act-a-triumph-of-regulation-over-innovation/>

- **Legal and Regulatory Compliance:**
Companies subject to the DMA/DSA may incur not only the costs related to legal consultations, interpretations, but also astronomically significant costs, engineering hours, and additional resources to alter relevant product designs and internal processes to ensure that their operations align with the regulatory requirements.
- **Data Management and Reporting:**
Compliance with the DSA/DMA may necessitate the implementation of robust data management systems to collect, analyze, and report relevant information to regulatory authorities.
- **Internal Audits and Assessments:**
Regular internal audits and assessments may be required to ensure ongoing compliance with the DSA/DMA. Companies might need to allocate resources for internal compliance teams or engage external auditors.
- **Personnel Training:**
Training programs for employees may be necessary to educate staff on the DSA/DMA's provisions, compliance requirements, and any changes in business practices that may be required.
- **Technology Investments:**
Compliance with the DSA/DMA might necessitate technology investments to ensure that digital platforms have the necessary infrastructure to comply with regulatory obligations, such as interoperability requirements.
- **Legal and Regulatory Monitoring:**
Companies may need to invest in ongoing legal and regulatory monitoring to stay informed about updates, changes, and interpretations of the DSA/DMA.
- **Dispute Resolution and Legal Defense:**
In the event of disputes or legal challenges related to DSA/DMA compliance, companies may face legal costs associated with defending their positions.
- **Consumer Education and Communication:**
Depending on the nature of the business, companies might need to invest in consumer education and communication strategies to inform users about changes in services or data practices in compliance with the DSA/DMA.
- There's a concern that regulations designed for large platform companies may inadvertently create barriers for smaller enterprises if the definitions of in-scope services and quantitative thresholds are not clearly set out as in the DSA and DMA. If larger companies, such as Facebook or YouTube, face increased compliance costs due to regulations, they may pass on these costs to advertisers, users, or smaller businesses that rely on their platforms. This, in turn, can impact the affordability of advertising and the overall cost structure for smaller entities.

- As technology evolves and new issues arise, companies that meet the threshold may find themselves facing increasing burdens to meet compliance requirements and adapt to changing standards. For instance, complying with regulations related to these technologies can be complex and may require ongoing investment in expertise and infrastructure.
- As for the Royal Decree that required digital platform services providers to notify about their business operations, it can create burdens for those who have to comply with, such as:
 - **Preparing information:**
This can be time-consuming and require additional resources, especially if the Royal Decree demands a lot of detailed data.
 - **Reporting information:**
This can involve additional paperwork, electronic filing systems to learn, and potentially tight deadlines.
 - **Disclosing information:**
This might raise privacy concerns for businesses or individuals, and there could be costs associated with implementing new disclosure procedures.

It's important to note that designing regulatory frameworks is complex and involves balancing various interests, including consumer protection, competition, and innovation. Different countries may have unique economic structures, market dynamics, and cultural considerations that should be taken into account when designing regulatory frameworks.

To sum up, the ambition of the EU's DMA and DSA represent significant steps towards ensuring a fair, transparent, and competitive digital market that serves the interests of both businesses and consumers while upholding fundamental rights and values. However, in light of the concerns identified above, (1) There are already existing regulations in Thailand which overlap with the proposed Platform Economy Act, or (2) Thailand's digital economy is growing and need innovation and investment. And Thailand still has to face the middle-income trap as currently there are no significant regional platforms in the country, introducing legislation could potentially hinder companies on the verge of growth and expansion, as they may struggle with compliance costs and a risk that larger companies might transfer these costs to smaller businesses in the ecosystem, it is arguable that EU-inspired digital laws should not be used in Thailand to that extent. In the next chapter, we will talk about Policy Best Practices and Global Discussions for Digital Platforms.

Chapter 5

Good Policy Practices and Global Discussions for Digital Platforms

This chapter provides a global perspective on policy best practices for regulating digital platforms. This chapter also discusses self-regulatory approaches and potential pitfalls to be avoided, and highlights examples of successful regulatory frameworks and their impact on digital platforms globally.

5.1 UNESCO's Guidelines for the Governance of Digital Platforms

UNESCO's Guidelines for the Governance of Digital Platforms emphasize the importance of a multistakeholder approach to safeguarding freedom of expression and information while addressing challenges like misinformation and hate speech. Key principles include human rights- focused governance, inclusive processes, and adaptable regulatory systems. These guidelines, developed through extensive global consultation, provide a framework for crafting comprehensive regulatory frameworks for digital industries, as exemplified by their potential application in Thailand. By prioritizing human rights, inclusivity, and collaboration, such frameworks can foster a balanced and responsible digital environment while ensuring ongoing evaluation and adaptation.³⁶

5.2 Organization for Economic Co-operation and Development (OECD)

The Organization for Economic Co-operation and Development (OECD) is crucial in encouraging responsible behavior among Digital Service Providers (DSPs) in the digital realm:

- Initiatives like the Guidelines for Digital Service Providers, the OECD aims to guide DSPs in protecting children's rights, safety, and interests, particularly for those in disadvantaged groups.
- The guidelines emphasize safety-oriented design, age-appropriate access restrictions, transparent information provision, and measures for privacy and data protection.
- The OECD actively contributes to creating a digital environment that is responsible and child-friendly by influencing industry norms and practices.

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 be narrowly defined, directly address and improve the specific 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

³⁶ https://www.unesco.org/en/articles/guidelines-governance-digital-platforms?TSPD_101

5.3 Self-regulation in Digital platforms

Self-regulation in digital platforms faces numerous challenges and criticisms. While it offers potential benefits such as agility and responsiveness, it also poses significant pitfalls. Critics argue that self-regulation may be perceived as weak and insufficient, leading to concerns about transparency, inconsistent enforcement, conflicts of interest and a failure to address systemic issues adequately. Moreover, self-regulation may struggle to drive long-term policy changes, risking a return to previous practices once immediate pressures subside. Additionally, there's a concern that profit-driven platforms may prioritize business interests over societal well-being, challenging the alignment of self-regulation with public interests rather than corporate concerns. Balancing these concerns is crucial to ensure the effectiveness and legitimacy of self-regulatory mechanisms in digital platform governance.

In Thailand, self-regulation initiatives have been active for over a decade, led by entrepreneur-created associations like the Direct Selling Association. Supported by the Office of the Consumer Protection Board (OCPB), these initiatives have led to certification marks for compliant companies. The implementation of self-regulation has reduced complaints against member companies, showcasing its effectiveness in addressing consumer concerns. Collaboration between government agencies and these associations has streamlined efforts, facilitating quicker coordination to regulate practices.

The pros and cons of self-regulatory approaches for digital platforms. Applying this to Thailand, it's essential to consider the cultural, economic, and regulatory context of the country. Here are some points to consider regarding appropriate and inappropriate self-regulation in Thailand:

- **Appropriate Self-Regulation:**
 - Regulations should respect Thailand's cultural values and norms.
 - Quick responses to emerging issues specific to Thailand's digital landscape are crucial.
 - Collaboration with Thai regulatory bodies are necessary to align with national laws and policies.
 - Transparent mechanisms and regular reporting can build trust.
- **Inappropriate Self-Regulation:**
 - Global evidence makes clear that self-regulation has failed to date.
 - Efforts should not be perceived as weak; platforms must demonstrate accountability.
 - Lack of transparency and inconsistent enforcement can lead to distrust.
 - Short-term focus may neglect underlying problems; sustained commitment is essential.
 - Consumer benefits are vital, as is innovation and the opportunities for new business formation.
 - Balance between business interests and societal well-being is vital, with a focus on public interests over profit.

If self-regulation is to be implemented in Thailand, the following considerations should be taken into account:

- **Alignment with Legal Frameworks:**
Ensure seamless integration with existing laws to maintain regulatory harmony.
- **Government Oversight Mechanism:**
Establish robust oversight to prevent undue industry influence, fostering balance.
- **Public Education and Stakeholder Collaboration:**
Implement comprehensive education and collaborate with stakeholders for diverse perspectives.

Careful consideration of accountability, transparency, and alignment with public interests is essential for successful self-regulation of digital platforms in Thailand.

5.4 Case Study: USA

For digital platforms, diverse regulatory agencies operate in each country. It may be useful to explore examples from other countries, using the United States as a case study which is generally more market-driven and pro-innovative.

In the United States, the regulatory and enforcement landscape for digital platforms involves a mix of sector-specific regulations, antitrust laws, consumer protection, standard-setting, and self-regulation. Key agencies are the Federal Trade Commission (FTC), the Federal Communications Commission (FCC), NIST.

The Federal Trade Commission (FTC), in particular, plays a pivotal role in regulating platforms, protect consumers and competition in the digital age.³⁷ It focuses on issues like privacy protection, data transparency, consumer protection, and competition enforcement. The FTC enforces various antitrust and consumer protection laws across most industries, excluding certain sectors like banking and transportation where sector-specific rules and enforcement are in place.³⁸

Guided by Section 5(a) of the FTC Act, the FTC is empowered to investigate and prevent unfair methods of competition and deceptive acts affecting commerce, including:

- **Antitrust Enforcement:**
Investigating anti-competitive behavior, mergers, and monopolistic practices among digital platforms.
- **Privacy Protection:**
Ensuring digital platforms adequately protect user data and prevent deceptive data practices.

³⁷ McSweeney, Terrell. FTC 2.0: Keeping Pace with Online Platforms. Berkeley Technology Law Journal (2018, May); 32:1026-50

³⁸ <https://www.ftc.gov/news-events/media-resources/what-ftc-does>

- **Deceptive Business Practices:**
Addressing fraudulent activities and ensuring accurate information provision to consumers. U.S. policies regulating digital platforms play a crucial role in shaping the expansion of the digital industry and fostering innovation within it. The impact of these policies can be both positive and negative, influencing factors such as competition, investment, consumer protection, and technological advancement. Here are several ways in which the policies can affect the digital industry.
- **Competition and Market Dynamics:**
Antitrust measures can encourage a diverse ecosystem and influence market consolidation.
- **Consumer Protection and Privacy:**
Policies fostering trust can boost user adoption and industry growth.
- **Investor Confidence:**
Clear regulations attract investment crucial for technological development.
- **Regulatory Flexibility:**
Balance between consumer protection and innovation is essential.
- **Equitable Access:**
Policies promoting digital inclusion address disparities in technology access.

However, it's important to note that the regulatory landscape is constantly evolving, and challenges such as the fast-paced nature of technological advancements and the global nature of digital platforms can mean that rigid and prescriptive regulations like the DSA/DMA may not be effective in keeping up with the pace of innovation.

5.5 Progressive Wait-and-See Approach

The complex world of digital regulations, it's a global chess game, and the pieces are moving in unpredictable ways. Asia is the trendsetting maven, embracing a "Progressive Wait-and-See" stance towards the Digital Markets Act (DMA) like Taiwan and Singapore, a spectacle observed with keen interest. Meanwhile, Japan focuses on transparency within sector-specific digital realms like the mobile ecosystem and app stores, which Japan's parliament has passed a law with requirements for the mobile ecosystem and app stores in June 2024.³⁹ On this regulatory stage, Korea's bold self-regulation performance adds a unique twist, showcasing the dynamic diversity of approaches in the global pursuit of digital governance.

The effectiveness of this strategy depends on how well countries balance the need for caution with the imperative to foster innovation and competitiveness in their digital markets.

³⁹ https://www.theregister.com/2024/06/13/japan_smartphone_software_law/

In accordance with the 2023 ASEAN Leaders' Statement on the development of an ASEAN Digital Economy Framework Agreement, Thailand has committed to coordinating its regional efforts for digital transformation within the ASEAN community.⁴⁰ As part of this commitment, Thailand is obligated to formulate a comprehensive digital transformation strategy geared towards fostering an ASEAN Digital Economy, emphasizing a collaborative approach with fellow member states. The commitment also implies the necessity for Thailand to align with the ASEAN countries on a regional level before moving fast with controversial legislative initiative, reflecting a cooperative effort with other ASEAN nations. This approach acknowledges the shared challenges posed by e-commerce and ride-hailing platforms, which operate across multiple ASEAN member states and have given rise to socio-economic concerns. Recognizing the commonality of issues associated with these platforms, Thailand's commitment underscores the importance of a unified legal framework developed in cooperation with other ASEAN member states, rather than pursuing regulatory measures independently. In conclusion, the guidelines and regulatory examples underscore the importance of a balanced and inclusive approach to digital platform governance, prioritizing human rights, transparency, consumer protection, while minimizing duplication and confusion that may be created by overlapping regulations. In the next chapter, we will talk about Tech Policymaking in Thailand: Global Trends and Local Nuances.

⁴⁰ <https://asean.org/wp-content/uploads/2023/09/Leaders-Statement-DIGITAL-ECONOMY-FRAMEWORK-AGREEMENT.pdf>

Chapter 6

Tech Policymaking in Thailand: Global Trends and Local Nuances

This chapter induces a conversation around the considerations for tech policymaking in Thailand. This chapter also discusses how to balance global trends with local nuances in crafting effective regulations and explores ways to address concerns related to digital platforms while promoting innovation and economic growth.

The digital economy is increasingly characterized by competition between innovators, with successful companies building models around complementary products and services. The integration of various offerings aims to enhance efficiency, reduce prices, and improve overall consumer experiences. To address these challenges, a nuanced regulatory framework that considers the socio-economic, cultural, and legal context of each country becomes imperative.

6.1 Global Trends in Regulatory Frameworks for Digital Platforms

Global Trends in Regulatory Frameworks for Digital Platforms are as follows:

- **Data Protection and Privacy:**
Global trends emphasize the importance of robust data protection and privacy regulations. Ensure that regulations align with widely accepted principles. For data-sharing obligations outlined in the Digital Markets Act (DMA) to be effective, there needs to be a well-established and operational legal framework for data protection, which is the case for Thailand with PDPA.
- **Competition and Antitrust Laws:**
Addressing monopolistic practices and ensuring fair competition is a global concern. The existing competition laws and regulations are the foundation to address anti-competitive behavior, to establish a level-playing field, and foster innovation and competition, but they have been found insufficient to address the fast moving changes and other aspects of digital markets.
- **Content Moderation and User Safety:**
Global platforms often face challenges related to content moderation and user safety. Regulations should provide guidelines on moderating harmful content while respecting freedom of expression and cultural sensitivities.
- **Cybersecurity Standards:**
Global regulations should encourage digital platforms to adopt robust cybersecurity measures to protect user data and infrastructure from cyber threats.
- **Interoperability and Data Portability:**
Promoting interoperability and data portability enhances competition and allows users to have more control over their data while protecting a reasonable degree of security and safety. Regulations should encourage platforms to adopt open standards and facilitate data sharing.

The mentioned points highlight key areas of concern and focus when it comes to crafting effective regulatory measures for digital platforms on a worldwide scale. These trends reflect the growing importance of issues such as data protection, competition, content moderation, cybersecurity, and interoperability in the regulatory discourse surrounding digital platforms.

6.2 Local Nuances in Regulatory Frameworks for Digital Platforms

For local nuances, it focuses on the specific considerations and factors that must be taken into account when crafting regulatory frameworks for digital platforms at a local level. These considerations highlight the need for tailored and context-specific regulations that address the unique challenges and characteristics of each region or jurisdiction in the realm of digital platforms.

Local Nuances in Regulatory Frameworks for Digital Platforms are as follows:

- **Cultural Sensitivities:**
Local regulations should consider cultural nuances to ensure that they are acceptable and align with local values and norms. What might be deemed acceptable content in one culture may not be suitable in another.
- **Economic Impact:**
Consider the economic impact of regulations on local businesses and startups. Creating a level-playing field for both local champions and foreign companies and fostering innovation and growth is crucial.
- **Legal and Regulatory Framework:**
Adapt regulations that do not overlap or cause duplication with the existing legal and regulatory framework of each jurisdiction. This requires an understanding of local laws and governance structures, as well as a principle for evidence-based rulemaking.
- **Digital Literacy and Inclusion:**
Recognize differences in digital literacy levels and access to technology. Regulations should promote inclusivity and address any disparities that may exist.
- **Government Capacity:**
Consider the capacity of local governments to enforce and monitor regulations. Provide necessary resources and support to ensure effective implementation. New ex-ante laws are not self-executing and require substantial resources and expertise for monitoring and enforcing. More regulation does not lead to more innovation, nor does it modernize the regulatory framework for emerging sectors. It may be the opposite.
- **Sector-Specific Regulations:**
Certain regions may have specific industries or sectors that play a significant role in the digital landscape. Tailor regulations to effectively address unique challenges in these sectors.

6.3 Thailand context

A comprehensive overview of the challenges and perspectives associated with the digital industry in Thailand, specifically within the realms of e-commerce and digital platforms. The ensuing key points are derived from the various perspectives mentioned:

- **Legal and Regulatory Perspective:**
 - Legal challenges faced by e-commerce entrepreneurs, including registration requirements, such as the requirement for Thai entrepreneurs to register electronic commerce with the Department of Business Development (DBD) while foreigners are exempt.
 - Advocacy for legislation promoting fairness and equality, considering both short-term and long-term impacts.
 - The Digital Platforms Law and uncertainties surrounding its enforceability and jurisdiction.
 - Bureaucratic complexities leading to overlapping laws and coordination among regulators.
 - The Trade Competition Committee's role in enforcing or amending existing laws instead of creating new ones.
 - Challenges in enforcing the Personal Data Protection Act (PDPA) and reliance on European-style governance for innovation.
 - The need for a comprehensive approach to digital platform regulation, addressing issues of discrimination, enforcing fairness, and ensuring a level playing field.
- **Entrepreneurial and Business Perspective:**
 - Concerns about competition disparities and taxation issues between Thai and foreign entrepreneurs. The Thai government just released the new law collecting customs tax for small-value items from abroad. However, we are still doubtful about how the Thai government can effectively implement this new measure.
 - Imbalance in business structures and challenges faced by platforms such as platforms like Lazada and Shopee benefit from Chinese products but encounter obstacles when attempting to sell on Chinese platforms like Taobao or Tmall.
 - Support for exporting franchises and addressing weaknesses in international trade.
 - Emphasis on collaborations between the public and private sectors for economic progress, both domestically and internationally, as key drivers of progress in the digital economy.
 - Optimism about the future growth of Thailand's digital industry, particularly in digital services, healthtech, and travel tech.
 - Challenges related to fair competition and outdated laws in games and animation.
 - Initiatives for enhancing digital literacy and skill development.
- **Governance and Strategic Perspective:**
 - The role of the Digital Economy Promotion Agency (DEPA) in shaping policies for a favorable environment for digital innovation and entrepreneurship.
 - Thailand's strategic focus on developing a strong digital economy, recognizing technology's transformative potential for innovation, economic growth, and global competitiveness.

- Actively addressing challenges associated with cross-border trade, fostering growth, and promoting e-commerce domestically and internationally.
- The importance of a balanced approach in adopting European law for its speed and consideration of individual rights.

In conclusion, this chapter provides a thorough examination of the complexities in crafting tech policies for Thailand, emphasizing the crucial balance between global trends and local intricacies. It advocates for nuanced regulations that reflect the unique socio-economic, cultural, and legal aspects of each country while aligning with international standards. The discussion delves into challenges posed by dominant digital platforms, suggesting a shift in regulatory approaches and the adoption of new tools to enhance competition. It offers a comprehensive overview of legal, entrepreneurial, business, and strategic perspectives, underscoring the need for a strategic and tailored regulatory framework to address digital platform concerns effectively.

Chapter 7

Recommendation

7.1 Challenges

Regulating the digital platform economy in Thailand, like in many other countries, comes with its own set of challenges. Here are specific challenges that Thailand may encounter:

- What policy should Thailand have for regulating digital platforms or digital businesses in order to create fair competition, protect consumer welfare, and benefit government management?
- What policy should Thailand have in developing its long-term digital market competitiveness?

7.2 Legal Options

Addressing the regulation of digital platforms and businesses, as well as enhancing long-term digital policy competitiveness, requires a comprehensive and forward-thinking approach. Here are various options, each of which present their own set of advantages and challenges. The choice between them depends on the specific context, priorities, and desired outcomes for regulating the digital platform economy in Thailand:

- **Enhance Sector-Specific Laws:**
Given the diversity of the problems arising from the operation of digital platforms in different industry sectors, it may be more effective to make legislative amendments to sector-specific regulatory frameworks that address these concerns in a more targeted way. While some issues may cut across all digital platforms (e.g. data privacy and security), many others are more specialized and require enforcement authorities to have industry-specific expertise and familiarity with the other policy objectives that have to be balanced in those sectors.
- **Issue a New Cross-Sectoral Law:**
Issue a new law to update and specifically cover the digital space. This law will have harsher and more appropriate penalties for large platforms and repeal unrelated laws.
- **Wait-and-See to the Evaluate the Effectiveness of the Royal Decree and Other Laws:**
This approach prioritizes utilizing and strengthening existing legal frameworks like consumer protection, competition, and digital platform laws. By adapting these laws to the digital landscape, we can achieve regulatory goals without creating new burdens for businesses, particularly startups. This focus on efficiency saves time and resources compared to enacting entirely new legislation, while still fostering innovation in the domestic environment.
- **Focus on Soft/Flexible Laws:**
These can include guidelines, principles, declarations, resolutions, codes of conduct, and similar instruments. While soft/flexible laws don't carry the same legal weight as treaties or statutes, they can still influence behavior, shape norms, and guide practices.

7.3 Overall Innovation Policies

Regulating the digital platform economy will have a direct impact on Thailand's innovation policies, the pursuit of which involves distinct merits and trade-offs. Choosing which innovation policies to prioritize requires consideration of the specific goals and priorities of the government:

- **Focus on Promoting Free Competition:**
Focus on promoting free competition.
- **Focus on Protecting the Domestic Digital Industry:**
Focus on protecting and building the domestic digital industry to create digital security for Thailand by controlling and creating barriers for foreign businesses trying to conduct business within the country within the framework of international trade.

7.4 Recommendation

Starting from the premise that the socio-economic concerns associated with the rise of digital platforms discussed in this paper will persist, and perhaps become more aggravated over time with the continued growth of e-commerce, communications, social media and other platform-based service providers in Thailand, any regulatory response to address such concerns ought to be shaped by the following underlying considerations:

- The *necessity* for legal reform must be appropriately established, with proper reference to the specific inadequacies of existing legal and policy frameworks;
- The *scope* of any new laws must be calibrated as a proportionate response to the specific concerns identified within the industry contexts in which these digital platforms operate, so as not to introduce unnecessary additional compliance costs for business operators;
- The *content* of any new laws that are developed to regulate digital platforms must be sufficiently clear and transparent (to provide business operators with enough business certainty) and capable of effective enforcement by agencies with the necessarily experience and expertise.

From the options described above in 7.2, the more sensible ways forward would be to adopt the “Wait and See” or “Focus on Soft/Flexible Laws” approaches.

As for **Wait-and-See the Effectiveness of Royal Decree and Other laws**, this approach utilizes existing laws like consumer protection and competition regulations, adapting them to the digital landscape instead of creating new frameworks. It reduces burdens on businesses, especially startups, and allows for more flexibility and innovation. This wait-and-see approach prioritizes utilizing the existing Royal Decree and other legislations before potentially introducing further regulations. As the Digital Markets Act (DMA) is still in the implementation phase, it's uncertain how enforcement will ultimately take shape. It's not guaranteed that the DMA will seamlessly complement EU competition law enforcement; achieving the best synergy between the two frameworks will necessitate adjustments at both the national and EU levels. Over time, we will see how this evolves. However, it is evident that national authorities and especially courts will need to engage with the DMA.

As for **Focus on Soft/Flexible Laws**, soft/flexible laws allow for flexibility in addressing complex issues where rigid legal frameworks may not be suitable or feasible. It can adapt to changing circumstances and evolving norms more easily than hard law. While not legally binding, soft/flexible law instruments can still influence behavior and encourage voluntary compliance. They serve as a tool for encouraging best practices and promoting accountability, even in the absence of legal enforcement mechanisms. Moreover, soft/flexible laws allow for experimentation and innovation in addressing emerging challenges or testing new ideas. It provides a space for trying out new approaches before formalizing them into binding legal obligations.

Both approaches align with the goal of immediate and efficient management, reducing burdens on entrepreneurs, avoiding unnecessary expenditures, and providing space for innovation. However continuous engagement with stakeholders and regular evaluations can help refine and adapt the regulatory framework as the digital landscape evolves.

On the other hand, **Issue a New Cross-Sectoral Law** is a time-consuming process of drafting, debating, and passing new legislation that may take a significant amount of time. During this period, technological advancements and changes in the digital landscape could render the proposed laws outdated before they are even implemented. Delays in the legislative process can hinder the timely implementation of regulations, potentially allowing issues in the digital space to persist. Moreover, stakeholders, including businesses and industry associations, may resist new laws that they perceive as restrictive or burdensome. Strict regulatory requirements in a new law may disproportionately burden small businesses and startups that lack the resources to comply. This could hinder entrepreneurship and innovation within the digital sector. A new law might risk overregulating the digital industry, stifling creativity, and impeding the natural evolution of business models. Excessive regulations may discourage investment and limit the industry's growth potential. The digital landscape is dynamic and evolves rapidly. Crafting legislation that can adapt to emerging technologies and trends is challenging. Laws may become outdated quickly, requiring frequent updates to remain effective. For the enforcement, implementing and enforcing a new law requires effective regulatory mechanisms. Even though government resources are sufficient to enforce the law, the allocation of people may still not be efficient enough. This may lead to challenges in monitoring and enforcing compliance. Moreover, the introduction of a new law may create inconsistencies with existing legislation, leading to confusion and legal uncertainties. Harmonizing new regulations with the current legal framework is crucial for clarity and effectiveness.

As to which innovation policies should be prioritised, a **Focus on Promoting Free Competition** should guide Thailand's approach towards regulating its digital platform economy.

As for **Focus on Promoting Free Competition**, free competition encourages innovation as businesses strive to differentiate themselves and provide better products or services. It promotes a dynamic business environment that can lead to technological advancements. Moreover, an environment of free competition encourages the entry of new players and startups, fostering entrepreneurship and innovation. It allows for a diverse range of businesses to enter the market. Free competition allows resources to be allocated based on market demand and consumer preferences, leading to more efficient outcomes. Promotion of free competition helps prevent the concentration of power in a few large entities. It reduces the risk of monopolistic practices and encourages a more level playing field. A regulatory environment that promotes free competition is often attractive to foreign investors, encouraging international business partnerships and collaborations.

Promoting free competition is widely recognized as a cornerstone of market-oriented economies, contributing to economic growth, innovation, and consumer welfare. However, effective competition policy and regulation are essential to ensure fair play, prevent anti-competitive practices, and protect consumers.

On the other hand, **Focus on Protecting the Domestic Digital Industry**, strict protectionist policies may limit international collaboration and partnerships, hindering the exchange of ideas, technologies, and expertise. It could result in isolation from global industry developments. Protectionist measures might shield domestic businesses from competition, reducing the incentive for efficiency and innovation. Without external pressures, industries may become less competitive over time. Protectionist measures could lead to limited choices for consumers as domestic businesses may face less competition. Consumers might miss out on diverse and innovative products and services available globally. Protectionist policies can discourage foreign direct investment (FDI) as international businesses may face barriers to entry. This could limit capital inflow and potential economic benefits. Moreover, strict protectionist policies might provoke retaliatory measures from other countries, affecting international trade relations. It could lead to a less favorable global market for domestic industries.

7.5 Required Actions

In summary, the recommended way forward requires pursuit of the following specific steps:

- 1. Analyze and study the digital industry:**

Conduct a comprehensive analysis of the digital industry, including emerging trends, key players, and market dynamics. Identify the specific needs and challenges faced by entrepreneurs operating in the digital sector. Engage with industry experts, stakeholders, and entrepreneurs to gather insights and feedback.

- 2. Analyze existing laws:**

Conduct a thorough review of existing laws related to the digital industry and entrepreneurship. Identify obstacles, redundancies, and insufficiencies in current legal frameworks. Prioritize areas where legal reforms are necessary to facilitate the growth of the digital sector.

- 3. Integrated regulatory framework:**

Establish a task force or regulatory body with representation from relevant government departments, industry experts, and legal professionals. Collaborate across departments to issue integrated regulations that streamline and consolidate relevant laws. There should be a collaboration involving multiple parties in the creation of guidelines for each industry. Ensure coordination to prevent duplication and conflicts between different regulatory bodies.

- 4. Manage loopholes in law enforcement:**

Identify potential loopholes in the enforcement of laws against foreign entrepreneurs. Enhance collaboration between law enforcement agencies and relevant government departments to address and close these loopholes. Implement measures to strengthen the enforcement of laws without creating unnecessary barriers for foreign entrepreneurs.

Implementing these steps requires collaboration across government departments, industry players, and the public. A phased and adaptive approach will help address challenges while fostering a conducive environment for digital innovation and growth.

Appendix

Interview questions

1. What laws currently exist in Thailand to regulate major digital platform operators? (Provide a brief explanation)
2. What challenges are there in enforcing these laws?
3. Does the ministry have plans to issue additional laws to regulate digital operators in the future? If so, how?
4. How do you think the issuance of additional regulations will affect operators?
5. What are the strengths and weaknesses of Thailand's digital industry at present?
6. What opportunities and risks does Thailand's digital industry face in the future?
7. In formulating policies to regulate the digital industry, especially major operators, what are the steps and which stakeholders are involved?
8. Besides issuing regulations, are there any other approaches to regulating operators in the digital industry, such as a self-regulatory approach?
9. Has Thailand studied the regulatory models of other countries, such as the European Union, to use as a prototype for regulating the digital industry, especially major operators? How do they plan to apply these models in the country?
10. In your view, what are the potential benefits and drawbacks of adopting such regulations or approaches from abroad, particularly from the European Union, in the digital industry?
11. If foreign laws, especially those from the European Union, are adopted in Thailand, do you think the government agencies have sufficient resources to effectively enforce compliance among operators?

