

**Asia Internet Coalition (AIC) Industry Submission on Digital Platform Services
Subordinate Legislation (or Sub-Decrees), Round 2**

21 April 2023

To
Dr. Chaichana Mitrpant
Executive Director
Electronic Transactions Development Agency (ETDA)

The Asia Internet Coalition ("AIC") and its members would like to thank the Electronic Transaction Development Agency (ETDA) for the opportunity to submit our inputs on the recently released implementation of the Decree on the Supervision of Digital Platform Services, i.e., Digital Platform Services Subordinate Legislation (or Draft Sub-Decrees).

In the spirit of constructive collaboration with the Government's efforts, AIC seeks to put forth for your kind consideration key comments and recommendations regarding key provisions of the following Draft notifications:

- 1. Section A:** Draft Notification of the Electronic Transaction Development Agency re: the Details of the Terms and Conditions Notified to the Platform Users B.E. ... ("Draft Notification on Terms and Conditions Notification")
- 2. Section B:** Draft Notification of the Electronic Transaction Development Agency re: the Notification Form of the Terms and Conditions Announced to the Users B.E. ("Draft Form")
- 3. Section C:** Draft Notification of the Electronic Transaction Commission re: the Rules, Process, and Period for the Notification of the Terms and Conditions Changes to the Agency and Platform Users B.E. ("Draft Notification on Terms and Conditions Alteration")

We express our continued interest to participate in forthcoming industry consultations that define the sub-decrees on how specific clauses within the main decree should be implemented. AIC is aligned with the spirit of the decree and shares common goals with the Thai government in promoting fairness and transparency in the business environment, and enhancing national security, cybersecurity and consumer protection.

Before being able to progress in this area, there needs to be further in-depth analysis of the policy, economic, and regulatory implications of the development and availability of new services to consumers and businesses. The AIC looks forward to working closely with ETDA and the Thai government, as these Sub-Decrees cuts across multiple policy areas and risks introducing overlapping regulations.

As such, we respectfully request ETDA to consider industry concerns and recommendations provided in Section A, Section B and Section C of this submission, when reviewing the implementation of the Sub-Decrees.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact us directly at Secretariat@aicasia.org or +65 8739 1490. Importantly, we also look forward to offering our inputs and insights, directly through meetings and discussions with the ETDA and concerned stakeholders.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paine".

Jeff Paine
Managing Director
Asia Internet Coalition (AIC)

Detailed Comments and Recommendations

SECTION A: Asia Internet Coalition (AIC) Industry Comments on the Draft Notification of the Electronic Transaction Development Agency re: the Details of the Terms and Conditions Notified to the Platform Users B.E. ... ("Draft Notification on Terms and Conditions Notification")

The Draft Notification on Terms and Conditions Notification sets out the key terms and/or specific requirements to the digital platform service providers that must conform with its notification of the terms and conditions to users pursuant to Section 17 paragraph 2.

Please find below our comments to each question as available in the online public hearing channel.

- 1. Do you agree with the Draft Notification on Terms and Conditions Notification that Operators with the characteristics under Section 16 (1) who wish to terminate their services must provide written notification to the users not less than 30 days**

in advance? Whether there would be any problems/obstacles arising from such provision?

The provision under the current draft law provides that the notification must be made to users not less than 30 days in advance, with the exception of (1) compliance with laws or (2) repetitive violation or violation of a condition clearly designated as material, pursuant to Article 13 of the draft law.

We view that the 30 days minimum timeframe may put too much burden on platform as there may be certain circumstances that could fall outside the exceptions (for example, technical issues, obligation to comply with other laws, contractual obligations, etc.) or the continuation of providing services could adversely affect the Operator, users, or any third party. There are many cases where advance notice to the user would reduce the effectiveness of the operator's ability to tackle scams or bad actors, or may pose safety and security risks to other users, especially in cases where users repeatedly violate policies and post content that lead to egregious harms.

Each platform is different in nature and has its own terms and conditions applicable to them, especially with enforcement of policies according to user safety. Thus, we suggest that the provision should be amended to ensure the platform informs users in accordance with its terms and conditions, rather than mentioning the specific timeframe or process in the Notification.

2. Do you agree with the Draft Notification on Terms and Conditions Notification's use of the term "main factors in algorithm or criteria (main parameters)", or whether this should be emphasized in order to make it clear that the term means only the main factors or main parameters?

The Royal Decree uses the term “ปัจจัยหลักของอัลกอริทึมหรือของหลักเกณฑ์”, which is directly translated as “main factors in algorithm or criteria,” without any English term in parentheses. However, the draft notification added the English term “(main parameters)” after the original wording.

It is not clear whether the term “main parameters” in the parentheses is an emphasized term of the main factors binding in connection with “algorithm”, “criteria”, or both (i.e., main parameters means main factors (ปัจจัยหลัก)).

In addition, as the term “main parameter” is not referred to in the Royal Decree, the draft notification should not introduce a new term, which would impede the hierarchy of law legal concept and create further confusion to the Operators in complying with their obligations.

We suggest that the ETDA should focus on the emphasis or elaboration of the term “main factors in algorithm or criteria”, as provided for in the Royal Decree, and not introducing a new term without an appropriate explanation/definition/clarification.

3. Do you agree with the Draft Notification on Terms and Conditions Notification that the notification of the “main factors in algorithm or criteria (main parameters)” should be open-ended, e.g. notification of the first 5 factors or factors which consist of more than 50% of the applied factors, or other conditions that the Operator employs?

The current draft notification does not provide for the minimum requirements of the first 5 factors or 50% of the applied factors. Currently the draft notification provides that Operators must show their main factors in algorithm or criteria (main parameters), without the minimum requirements.

As the nature of the operation of each Digital Platform Services are different, including the differences in the nature of each algorithm or criteria, we suggest that the requirements for showing the main factors in algorithm or criteria (main parameters) should be open-ended to be self-determined by each platform operator, without the minimum requirements of the first 5 factors or more than 50% of the applied factors. This is because different platforms may have a wide range of determining factors in operating its business (with variations between big and small platforms) and prescribing a rigid percentage may create problems of level of competitiveness between various types of operators.

In addition, it would be difficult to determine whether what should be considered as the “first 5 factors”, as it is not clear how the factors would be sorted for each algorithm or criteria. Further, it is difficult for Operators to determine how the percentage of the applied factors would be accounted for in the event that the Operators use a complex algorithm. Therefore, open-ended self-determination by each platform operator would be suggested.

4. Comments on specific provisions

Article	Comments
3	Article 3 sets out the definitions to be used throughout the draft notification. Any terms already stipulated in the Royal Decree are adopted herein. Article 3 also introduces new definitions and terms, such as the definition for ranking, recommending, search engine, and review, and new term of corporate website user.

Article	Comments
	• The current definition of the term “Search Engine” does not explicitly rule out that the term does not include a search function within a platform. Thus, we suggest that the ETDA should made clear that the term does not refer to a search function within a platform that merely facilitates users in browsing the platform or searching specific content. • The term “Corporate Website User” is not clear whether it would include other Operators who provide other types of service which are not a website (e.g., an application on a mobile device). • The definition of the term “Ranking” and “Recommendation” are intertwined and could not be clearly differentiated. Therefore, we suggest that the term should be defined in a clearer manner. For example, the term "Recommendation" may be defined as the suggestion made by the Digital Platform Service to suggest specific products, services, advertisements, review or other content to the Service User based on such Service User's behavior or decisions using an automated system, whether fully or partially. • The current definition of the term “Review” only covers the review that is publicly communicated. However, as this term is only used in Article 17 as an example of a main factors in algorithm or criteria (main parameters), we have no further comments on this term. In any event, we may propose that the term "Review" should be defined as the information on the Service User's experience towards products, services or content received from the Operator or other Service Users which is publicly communicated on the Digital Platform Service.
4	Article 4 provides that the draft notification shall apply to the Operator with the characteristics under Section 16 of the Royal Decree. As the scope of application provided reflects the provisions of the Royal Decree, we have no further comments on this Article 4.
Chapter 1 - General provisions	
5	Article 5 provides that the Operator shall notify the applicable provisions in accordance with the details specified in the draft notification in the Terms and Conditions. Where any details in any chapter are not applicable, the Operator shall have to notify such inapplicability as well.

Article	Comments
	As this article requires all Operators to notify any inapplicability of any chapter, which puts more burden on the Operators, we suggest the removal of such requirement. In addition, such requirement would add more details to the Terms and Conditions, which impedes the principles set out in Article 6 that Terms and Conditions should be simple and comprehensible.
6	Article 6 provides that the Terms and Conditions must contain the following: (1) must be in Thai language; (2) must use simple and comprehensible language; (3) may use symbols or graphical elements; (4) users must be able to read, see or acknowledge easily; (5) must inform the sufficient information adequately to make a decision to use the service. The requirement under (5) may be redundant with requirement under (2), which already provides that the Terms and Conditions must be comprehensible. Further, "sufficient" information is subject to various interpretation and difficult to determine. By stipulating this requirement (5), Operators may have a difficult time determining the threshold for the adequate sufficient information due to various different in nature of each digital platform these days. Thus, we suggest that this requirement in Article 6(5) should be removed.
Chapter 2 - Conditions of provision, suspension or termination of service, and charging of service fees	
7	Article 7 provides that the Operator who provide differentiated treatment towards products, services or content of the Operator or the User which are offered on the platform must explain such differentiated treatment in its Terms and Conditions. The draft notification does not shed light on what the definition of the term “differentiated treatment”. Thus, we suggest that the ETDA should further clarify the purpose and definition of such a term under this Article so that the

Article	Comments
	Operators could be certain on what they need to comply with, as “differentiated treatment” could be subject to various interpretations in nature.
8	Article 8 provides that if the Operator provides differentiated treatment under Article 7, the Operator shall display the details covering the following: (1) the access to personal data or other data provided by the Users; (2) the ranking or other setting by the Operator which affects the Users in accessing products, services or content by other Users; (3) the service fee whether directly or indirectly; (4) the access to the use of the services, functions or other technical connections as well as the relevant conditions and fees. The requirement under (1) is redundant with the obligations under the Personal Data Protection Act (PDPA), and fall out of the scope of the Royal Decree. Further, the right to access under the PDPA is normally provided as a one-sided notice in digital platform's Privacy Policy where users terms are separately provided via Terms and Conditions of website/mobile apps. This redundancy will create duplication of compliance in practice to the operator which is unnecessary to meet the same legal objective. Thus, we suggest the removal of such requirement. It can also be noted that the term “ranking” (การจัดอันดับ) used in requirement (2) is not followed by the English accompanying term (ranking) as defined or used elsewhere. We suggest that the ETDA should be consistent with the usage of the term, so that Operator could be certain on whether the obligations under this subsection (2) refers to the term “ranking” as defined in Article 3 or not. In addition, this subsection (2) also introduces a new term “other settings of operation (setting)”, which is not defined or used anywhere else. Furthermore, subsection (4) also uses the term “technical connection” without any further description. Therefore, it is not clear whether what “technical connection” under this subsection means.

Article	Comments
	Thus, we suggest that the ETDA should remove the inconsistent/redundant terms as appropriated.
9	Article 9 provides that the Operator that allows advertisements on its Digital Platform Service must display images, symbols, or others that could express that the content is an advertisement and the channel or methods that the Users can verify such advertiser. The provision is not clear what is the purpose of the verification of the advertiser, whether it means the verification of the identity of the advertiser, or the verification of the advertisement, or the verification of the goods and services they advertise. It would impose a lot of burden and be impractical to Operator which may be beyond the objective of this draft law. Thailand also has another set of regulations, the Consumer Protection Act and related notifications/sub-regulations, which separately and already regulate advertisement issues. The regulator should instead set out the requirement to advertiser what information they should display and its contact.
10	Article 10 provides that the Operator must display the details regarding service fees, time period, channel, method and form of payment relating to the services. Referring to Article 10 of the draft T&C Regulation states that the digital platform service providers have to show the details regarding the fees, service charges or expenses including duration period of service which the service providers collect from the users. According to the main law, decree of digital platforms stipulate the definition of "users" as persons using digital platform services and shall include business operators and consumers. Article 10 therefore creates confusion and could be interpreted that the platform service providers have to show details about fees only if the fees are charged to both business operators and consumers on the platform. If ETDA's intention is to refer to the fees charged to either or both of the business operators or consumers, we propose the phrase in Article 10 to be revised to refer to the fees, service charges or expenses which the service providers collect from the business operators or consumers.
11	Article 11 provides that the Operator under Section 16(1) of the Royal Decree must display certain details in the Terms and Conditions, including (3) the

Article	Comments
	details on ancillary goods and services or complementary goods and service that are offered by the Operator or third party before the transaction is completed and (4) the details on the conditions that limit or prevent the Business User from offering the same products, services or content under the different conditions through other channels. It is not clear what is the difference between the term “ancillary” and “complementary” under subsection (3) this Article. Thus, we suggest that the ETDA should rephrase or elaborate this subsection to include “where feasible or practical”, otherwise it would be difficult for the platform operator to determine itself how to comply with this subjective term. Moreover, it would be grateful for our better understanding if ETDA provides examples of such clause. Furthermore, the requirement under (4) could be repetitive with the obligations under trade competition laws, which is out of scope of the Royal Decree. Further, these limitations could be deemed as business confidentiality, which could result in the loss of competitive edge or limit the ability for innovation among business models if they are required to display a rigid set of details.
12	Article 12 provides that if the Operator under Section 16(1) of the Royal Decree wishes to temporarily suspend providing service to certain Users, the Operator shall notify such Users in writing before or during the suspension, accompanying with the rationale. From the aforementioned Article, we have identified certain circumstances in which compliance with the requirement to notify users before or at the time of suspension may present practical challenges (e.g., in cases of when suspension is necessary to comply with laws or as a result of an official order pursuant to the law, such as the Computer Crime Act which empowers the court or other authorized officials to demand that service providers suspend or remove illegal content within a specified timeframe, depending on the nature of the offense). In some cases, the Computer Crime Act obligates a service provider to suspend or take down illegal contents within 24 hours from receiving the official request. Failure to comply with such request may result in imprisonment, fines or both. Due to the time constraint, the service provider may not be able to notify the affected user before or at the time of suspension. This, however, is not a deliberate action, but rather a necessary response to comply with other laws.

Article	Comments
	Therefore, we propose ETDA to add an exception to Article 12 to exempt situations where compliance with other laws or official request/order makes it impossible for the service provider to notify the user within the specified period.
13	Article 13 provides that if the Operator under Section 16(1) of the Royal Decree wishes to terminate ("ระงับ") providing service to certain Users, the Operator must provide written notification to the Users not less than 30 days in advance, accompanying with the rationale. However, such 30-day period shall not be applicable in the case of (1) compliance with laws or (2) repetitive violation or violation of a condition clearly designated as material. If the Operator provides the notification less than 30 days in advance, the termination shall be effective after 30 days from the notification date. The Thai term of “ระงับ” is more closely related to the English term of suspend or withhold. However, the draft notification accompanied the term “ระงับ” with the English term “terminate.” Thus, we suggest that the ETDA should choose a more appropriate term, so it is not cause any confusion with the operator who needs to practically comply with the law. As stipulated in the Question No. 1 above, the 30 days minimum timeframe may put too much burden on the platform. In addition, the platform would already have in place the provisions on the termination in its terms and conditions. Therefore, this Article 13 should be amended to only require the platform informs users in accordance with its terms and conditions Furthermore, the provision that the termination shall be effective after a set period after the notification date will fall out of the scope of the Royal Decree and the notification, as Section 17 of the Royal Decree only empowers the ETDA to prescribe the details of the minimum information to be put in the Terms and Conditions, and not the minimum contractual obligations between the Operators and the Users. Further, the scope of the Royal Decree should not be extended to govern any enforcement of contractual obligations of private parties which should be agreeable by both parties to the contract under the Thai general legal principal of freedom of contract. Thus, we suggest the removal of this provision.

Article	Comments
14	Article 14 provides that in the event of suspension under Article 12 or termination under Article 13, the Operator must display the options that the Users can explain the facts and rational through the complaint management system. The Operator must also display the details on the recovery of services status to the Users within the appropriate period and allow the Users to access personal data or other data that they have on the Digital Platform Service before the suspension or termination. The provision regarding the access to personal data is redundant with the obligations under the Personal Data Protection Act as mentioned above in Article 8, and fall out of the scope of the Royal Decree. Thus, we suggest the removal of such requirement. Furthermore, the requirement to display the recovery of services to Users in the event that the Users are terminated would be difficult to comply with. This would result in more burden for platform operators to keep record of terminated users and their related transactions just in case one day it needs to provide recovery of services back. Thus, we suggest the removal of such requirement.
15	Article 15 provides that the Operator under Section 16(1) of the Royal Decree must provide the details regarding User identification in the Terms and Conditions and must conform with the duties and the best practice as specified in Section 18, 19, 20, 21 and 32, as the case may be. The draft notification does not explicitly states the underlying regulation/laws of the Section 18, 19, 20, 21 and 32 referred to under this Article 15 (which we assume that they are from the Electronic Transactions Act/ETA). In other words, there is no specific law mentioned after such wording of Section 18, 19, 20, 21 and 32 (e.g. no specific mention that Section 18, 19, 20, 21 and 32 "<i>of the ETA</i>"). In addition, such requirements would fall out of scope of Section 17 of the Royal Decree. Moreover, the purpose of the Royal Decree is to regulate the provision of Digital Platform Services, and not digital ID. As there are criminal liabilities associated with the non-compliance of Royal Decree, the requirements to provide details in relation to digital ID would not be in line with the principle of hierarchy of law. Thus, we suggest the removal of this requirement.

Article	Comments
	As an alternative, the regulator could ask platforms to provide details regarding their procedures and processes for verification that are relevant to their business model. Businesses need to strike a balance between providing easy access for people to do their business, while maintaining authenticity. Mandating overly burden verification against a national ID may disincentive users to go online. Requiring online platforms that have designed their user models around ease of use to create new processes to collect and verify huge amounts of information legally, would be a huge administrative burden. Mandatory national ID verification is not only operationally not feasible, it also raises serious privacy concerns and will eventually increase the amount of personal information to be held by platforms. Finally, This is not in line with international best practices on data minimization and purpose limitation.
16	Article 16 provides that in the case where the Operator under Section 16(1) of the Royal Decree provides the satisfaction assessment or Users' review on its Digital Platform Service, the Operator must display the relevant details, such as the provisions on the compilation, filter and distribution. We have no further comment on this Article
Chapter 3 - Main factors in algorithm or criteria (main parameters) applied by the Operator to ranking or recommendation to users	
17	Article 17 provides that the Operator must display main factors in algorithm or criteria (main parameters) applied by the Operator to rankings or recommendations to users in connection with the listings, services, computer data, advertisements, satisfactory assessment and Users' review, or other content, and the rationale that such main parameters are important to rankings or recommendations compared to other parameters. However, displaying such main parameters shall not include disclosing algorithm. The obligation to disclose key algorithmic parameters used for the purpose of ranking, recommending and evaluating the satisfaction of goods or services to platform users may impose a burden on service providers to reluctantly disclose trade secret level information of their services. Although ETDA has previously contended that revealing of such main parameters does not equate to disclosing a service provider's algorithmic methodology of services that could cause exposure of trade secrets, it remains the case that these details represent a distinctive competitive edge for each company, and as such, are not typically

Article	Comments
	shared with other competitors or made public. Therefore, we respectfully request that ETDA reconsider these requirements, taking into account the potential impact on business operations as well as the competition between the service providers. We suggest that the ETDA should focus on the emphasis or elaboration of the term “main factors in algorithm or criteria”, as provided for in the Royal Decree as there are no concrete clarification for operator to comply to easily, and not introducing a new term without an appropriate explanation.
18	Article 18 provides that if remuneration, fees, other expenses and other money or assets, which are collected from a User, is part of the main parameters that may affect the rankings or the recommendations of listings, services, computer data, advertisements, satisfactory assessment and Users' review, or other content, the Operator must display the details about the consequences to the User. We note that the wording of “remuneration, fees, other expenses and other money or assets, which are collected from a User” are already stipulated as the definition of the term “service fee” under Article 3. Therefore, we suggest that the term “service fee” should be used in this article to avoid inconsistency and redundancy.
19	Article 19 provides that if the Search Engine Operator change the order of rankings or recommendations of certain specific website or removing any website due to a notice received from a third party, the Operator must display the options to the Corporate Website User to verify the content notified by such third party.
Chapter 4 - Access to and use of information acquired from the provision of the Digital Platform Service by the Operator or Service User	
20	Article 20 provides that the Operator must display the details regarding the access and use of personal data or other data which provided by the User for the purpose of using the Digital Platform Service or from the provision of service by the Operator, whether by technical or contractual use, including the collection of data after the service contract has ended.

Article	Comments
	The requirement under this article relating to personal data is redundant with the obligations under the Personal Data Protection Act as mentioned above in Article 8, and fall out of the scope of the Royal Decree. Thus, we suggest the removal of such requirement.
Chapter 5 - Help channel, complaint management process, and dispute resolution, as well as timeframes for such actions	
21	Article 21 provides that the Operator must display the details regarding the channel or the personnel who provides help service to the User who suffers damages from using the service and the internal complaint-handling system in accordance with the User's behavior and the timeframe for such actions. Section 17 of the Royal Decree uses the term complaint management process, and not an <i>internal</i> complaint-handling system. Thus, this requirement relating to the display of internal complaint-handling system falls out of the scope of Section 17. The operator should not be required to provide even its internal procedure, as it is internal in nature and should not be disclosed. Further, the draft notification should not impose more obligations to Operators apart from the existing obligations under the Royal Decree. Furthermore, platforms have their own complaint handling systems designed for effectiveness and efficiency according to their business model. For certain businesses, transactions are completed off-platform and the operators does not have visibility of the purchase and would not be positioned to address damages from a transaction that occurs off platform. Mandating all operators to display a rigid set of details assumes that all businesses are the same, and they approach complaint management in the same way, which does not allow them to experiment with the most effective measures. Thus, we suggest the removal of this requirement.
22	Article 22 provides that the details regarding the internal complaint-handling system under Article 21 that must be provided by the Operator must include at least (1) follow up on complaint handling results and (2) notification of the results of actions to each complainant. Section 17 of the Royal Decree uses the term complaint management process, and not an internal complaint-handling system. Thus, this requirement relating

Article	Comments
	to the display of internal complaint-handling system falls out of the scope of Section 17. The operator should not be required to provide even its internal procedure, as it is internal in nature and should not be disclosed. Further, the draft notification should not impose more obligations to Operators apart from the existing obligations under the Royal Decree. Thus, we suggest the removal of this requirement.
23	Article 23 provides that the Operator must notify the User of the internal complaint-handling system under Article 21 and display the details regarding the central complaint channel provided by the ETDA using the prescribed statement. While we are in agreement with ETDA that clearly informing the users of the complaint handling process is important, we assert that it would be more appropriate for ETDA to promote its own channel by itself, due to practical reasons. In the future, there is a possibility that ETDA may change the contact information of the channel, and such changes may inevitably create an unreasonable burden for the service providers to keep monitoring the contact information in order to avoid information gaps provided in the Terms and Conditions. Furthermore, the central complaint channel provided by the ETDA is not prescribed in Section 17 of the Royal Decree. The purpose of the requirement under Section 17 of the Royal Decree is to prescribe the complaint management process between the Users and the Operators, and not with the ETDA. The draft notification should not impose additional obligations to the Operators apart from the existing obligations under the Royal Decree. Thus, we suggest the removal of this requirement.
24	Article 24 provides that where the Operator provides the dispute resolution process by mediation or arbitration, the Operator must display the details regarding such process which may consist of the qualifications, the timeframe, results of the mediation or arbitration. In any event, such actions through the dispute resolution process must not affect the rights of the Business Users or Users to proceed with legal actions. The provision of “such actions through the dispute resolution process must not affect the rights of the Business Users or Users to proceed with legal actions” is not necessary and does not fall within the scope of the Royal Decree or Section 17 thereof. Any rights of the Users would already been provided by their

Article	Comments
	respective legal rights or contractual obligations as per normal business operation. Thus, we suggest the removal of this provision.
Chapter 6 - Rating of offering of goods, services, or contents which is appropriate for each group of Service Users.	
25	Article 25 provides that if the Operator provides rating of offering goods, services, or contents which is appropriate for each group of Service Users pursuant to a relevant law, the Operator must show the criteria and the consequences of such ratings. This Article 25 could be interpreted to include the rating obligations under other laws such as television broadcasting laws, which is beyond the scope of the Royal Decree. Even if there is a law requiring any sort of rating of goods, services, or contents, the provision relating to “a relevant law” ” is not necessary for this draft notification as it does not fall within the scope of the Royal Decree or Section 17 thereof, and any entity subject to an obligation under any specific law would already be obligated by such law. Thus, we suggest the removal of this provision. Otherwise, this should be limited to where the Operators voluntarily provides rating by themselves, and not by the relevant law.
26	Article 26 provides that the Operator must display the details or symbols regarding the rating of offering goods, services, or contents according to Article 25 to Users before or during the use of the service. Such details or symbols must be closed to the goods, services, or contents that receive ratings. Please refer to our comment regarding the obligations under the relevant law under Article 25 above.
Chapter 7 - Actions against goods, services, or contents which fall within the scope of illegality	
27	Article 27 provides that the Operator must display the details of policy, procedures, measures or tools that the Operator uses in connection with the illegal goods, services or content, including algorithm decision-making or human review. To be fair for business operators, we suggest that only obligating that "the Operator must display the details of policy, procedures, measures or tools that the Operator uses in connection with the illegal goods, services or content" would be sufficient. It would be difficult for operator to include "algorithm

Article	Comments
	decision-making or human review" too. We suggest that the revision should be revised to <i>"the Operator must display the details of policy, procedures, measures or tools that the Operator uses in connection with the illegal goods, services or content, to the extent possible"</i> only.
28	Article 28 provides that where the Operator has put in place the notice-and-action or notice-and-takedown mechanisms, the Operator must display the process of such actions which should contain at least the details about (1) the provision on the process that the Users are required to follow (e.g., must be in writing and representing that the statement is true); (2) details of the data required for the notice (e.g., contact details, explanations, URLs to the illegal content); (3) the channel for the User who receives the notice to file a counterclaim. This is redundant with other laws which already provided notice-takedown mechanism (i.e. the Computer Crime Act and the Copyright Act), where each specific law would have already provided for a minimum requirement of the details and processes to be carried out. This provision is not necessary for this draft notification as it does not fall within the scope of the Royal Decree or Section 17 (as the source of power to this draft law) thereof, and any entity subject to an obligation under any specific laws would already be obligated by other laws. Thus, we suggest the removal of this provision.
Do you agree whether there should be a Chapter 8 for other details apart from Chapter 1-7 or not?	
	We have no further comment on this.

SECTION B: Asia Internet Coalition (AIC) Industry Comments on the Draft Notification of the Electronic Transaction Development Agency re: the Notification Form of the Terms and Conditions Announced to the Users B.E. ("Draft Form")

The notification form ("Form") provides a checklist to be completed by the digital platform service providers. The digital platform service providers must self-check in the form whether its terms and conditions consist of the subjects required by the Draft Notification on Terms and Conditions Notification or not, and provide a pinpoint location to such terms (e.g., the clauses or the pages which contains such terms).

Please find below our comment to the question as available in the online public hearing channel.

Do you agree whether the format of the Draft Form is appropriate or not? Whether there would be any problems/obstacles arising from such provision?

The current draft is made as a pdf. file, with a signature page. We suggest that the form should also be made in a machine-readable/editable file (e.g., word doc) and downloadable by the public, since the notification under the Royal Decree could be conducted via electronic means.

In addition, the form provided pre-made texts relating to the Operator's consent to access the information relating to such Operators.

Section 12(6) of the Royal Decree provides that the notification of information for any Operator who wish to operate Digital Platform Services must consist of a consent by the Operator for ETDA to access the information notified by the Operator under Section 12(1) of the Royal Decree. For your reference, the information under Section 12(1) consists of the information of the Operator's name, identification number, address, fiscal period, contact channel. However, the requirement for consent is absent in Section 17 of the Royal Decree, which is the source of this Draft Form.

Therefore, as the provision relating to the Operator's consent to access its information is set out in Section 12 of the Royal Decree, and not Section 17 of the Royal Decree, this requirement falls outside the scope of Section 17 of the Royal Decree, we suggest the removal of this consent requirement.

SECTION C: Asia Internet Coalition (AIC) Industry Comments on Draft Notification of the Electronic Transaction Commission re: the Rules, Process, and Period for the Notification of the Terms and Conditions Changes to the Agency and Platform Users B.E. ("Draft Notification on Terms and Conditions Alteration")

The Draft Notification on Terms and Conditions Alteration sets out the general rules on how digital platform service providers shall notify *any alteration* to the terms and conditions to the ETDA and users of the platform.

Please find below our comments to each question as available in the online public hearing channel.

- 1. Do you agree with the draft Notification on Terms and Conditions Alteration that business Operator with the characteristics under Section 16 shall notify the alteration of the terms and conditions at least 15 days in advance prior to the effective date of such alteration? Whether there would be any problems/obstacles arising from such provision?**

We view that the 15 days minimum timeframe would be too long, since the nature of technology industry these days require rapid changes to win over other competitors. Sometimes, launching new features of technology platform would need the effectiveness to kick in right away, otherwise the features may be outdated. The stipulation of minimum timeframe of at least 15 days in advance prior to the effective date of such alteration would likely impede local competitiveness over other platforms who would not be subject to this law in the first place (i.e. the other competitors who can change features/change terms and conditions right away without having to wait 15 days first).

As each platform is different in nature and has its own terms and conditions applicable to them, we suggest that the provision should be amended to ensure the platform informs users in accordance with its terms and conditions, rather than mentioning the specific timeframe or process in the Notification.

- 2. Do you agree with the draft Notification on Terms and Conditions Alteration that business Operator with the characteristics under Section 16 shall notify the alteration of the terms and conditions on their Digital Platform Services in an area that the users can easily read, see, or acknowledge? Whether there would be any problems/obstacles arising from such provision? How long should the notification of alteration be shown?**

If the Users are constantly notified about any alteration to the terms and conditions of the Digital Platform Services, this could negatively affect the Users' experience/user journey. Thus, this requirements could negatively impact the competitiveness of platforms subject to this Royal Decree against other overseas platforms which would not be regulated under Thai law and are not under the requirement to notify every alteration.

Also, a "long period" of notification of alteration could have a detrimental effect on customer's journey or customer's experience, as this may obstruct the User's normal usage of the Digital Platform Services if shown for too long and end users these days have less tolerate level of waiting if there would be a minimum period of "how long" should the notification be shown until the end users can proceed further. Thus, we suggest that this minimum period should not be inserted in the draft law, as the

alteration of terms should be easily found in the revised terms and conditions section already of each digital platform.

Article	Comments
3	Article 3 sets out the definitions to be used throughout the draft notification. Any terms already stipulated in the Royal Decree are adopted herein. Therefore, we don't have comments more on this point, if it is the same definition as provided in the Royal Decree already. However, the new additional term “Corporate Website User” is not clear whether it would include other Operators who provide other types of service which are not a website (e.g., an application on a mobile device).
4	Article 4 provides that the draft notification shall apply to the Operator with the characteristics under Section 16 of the Royal Decree. As the scope of application provided under Article 4 reflects the provisions of the Royal Decree and add no new obligations, we have no further comments on this Article.
Chapter 1 - General provisions	
5	Article 5 provides that the Operator must notify the details of the Terms and Conditions that have been altered, the results of such alteration and the effective date to Users and the ETDA. The term alteration and especially the results of such alteration are too broad and vague. With the current language, "any" alteration/result of alteration to the Terms and Conditions would be subject to this requirement, even if such alteration is merely a minor change (e.g. such as misspelling) and the result does not materially affect the Users. Thus, we suggest that the ETDA should scope down the obligation under this Article 5. Again, we would like to respectfully point out to ETDA that if the requirement to notify all any alteration to the Terms and Conditions persists, this would majorly affect the Users’ experience and the Digital Platform Services’ abilities to compete with each other or to compete with some competitor platforms who are not subject to Thai law.

Article	Comments
6	Article 6 provides that the Operator must not enforce the altered Terms and Conditions to negatively impact any rights of the Users, unless otherwise stipulated by laws or benefit Users. However, Section 17 of the Royal Decree (which is the source of this draft law) only empowers the ETDA to prescribe the rules, procedures, and timeframe of notification of alteration, but not the minimum contractual obligations or legal obligations between the Operators and the Users. Therefore, Article 6 would be beyond the power of ETDA granted by Section 17 of the Royal Decree. Further, the scope of the Royal Decree should not be extended to govern any enforcement of contractual obligations of private parties which should be agreeable by both parties to the contract under the Thai general legal principal of freedom of contract. Thus, we suggest the removal of this provision.
Chapter 2 - Notification to Users	
7	Article 7 provides that the Operator shall notify the relevant Users of their rights to stop using the service or terminate the contract with the Operator before the altered Terms and Conditions become effective, including the procedures and the results from exercising or not exercising such rights. The “results from not exercising such rights [to terminate the contract with the Operator]” would have the same application as the term “results from such alteration” under Article 5. In other words, although Article 7 and Article 5 are not exactly similar, there are some wordings of “results from not exercising such rights [to terminate the contract with the Operator]” in Article 7 which would be the same with some wordings of “results of the alteration” in Article 5. Thus, we suggest the removal of this repeated requirement to avoid redundancy.
8	Article 8 provides that the Operator shall notify on the Digital Platform Service in the prominent position which the Users would be able to easily read, see or acknowledge or through the channel where the User has notified or provided during the service registration process. There should be no minimal period of showing the notification of alteration, as the alteration of terms should be easily found in the revised terms and conditions section already of each digital platform. Having minimum period, e.g. showing for 3-4 seconds may interrupt end users and cause annoyance to user journey driving any end users to other competitors' platform instead.

Article	Comments
9	Article 9 provides that the Operator shall notify the alteration to Terms and Conditions at least 15 days before the altered Terms and Conditions become effective by considering the appropriateness, the characteristics, the scope and the possible consequences to the relevant Users. If such alteration involves technical or commercial improvements, the Operator must notify the Users in a longer period. If the Operator provides the notification less than 15 days in advance, the alteration shall be effective after 15 days from the notification date, except in the case of (1) compliance with laws; (2) fix the service problems; or (3) reducing burden or increasing benefits for Users. Section 17 of the Royal Decree (as a source of this draft law) only empowers the ETDA to prescribe the rules, procedures, and timeframe of notification of alteration, but not the effectiveness of the alteration or the effective date of alteration. Further, the scope of the Royal Decree should not be extended to govern any enforcement of contractual obligations of private parties which should be agreeable by both parties to the contract under the Thai general legal principal of freedom of contract. Thus, we suggest the removal of this provision.
Chapter 3 - Notification to the ETDA	
10	Article 10 provides that the Operator shall notify the alteration to the ETDA in accordance with the form for notifying the alteration of the Terms and Conditions as provided herein. The notification shall be made at least 15 days before the altered Terms and Conditions become effective. However, in the case of Article 9, the Operator may notify the the ETDA less than 15 days in advance. We note that there is no form attached with this draft notification. Thus, we suggest that the form should be made publicly available for comments/more public hearing prior to the finalization of the draft sub-regulations.