Asia Internet Coalition (AIC) Industry Submission on Digital Platform Subordinate Legislation, Round 3

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8 May 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 for Round 3 of the draft subordinate laws under The Royal Decree on The Operation of Digital Platform Service Businesses Subject to Notification Requirements, B.E. 2565 (2022).

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

1. Notification of the Electronic Transactions Development Agency re: the Criteria, Methods and Conditions for Notifying the Cessation of the Business Operation of Digital Platform Services B.E - *("Draft Business Cessation Notification")*
2. Notification of the Electronic Transactions Development Agency: The Form for Annual Notification of the Digital Platform Services Business Operation B.E - *("Draft Notification on the Annual Notification Form")*
3. Notification of the Electronic Transactions Development Agency: The Form for Notification Prior to Operating Digital Platform Services Business Subjected to Notification B.E - *("Draft Notification on the Prior Notification Form")*
4. Notification of the Electronic Transactions Commission re: the Criteria, Methods and Conditions for the Operator to Compensate or Remedy the Service User who Suffering Damage from Using the Service, or Other Activities Necessary to Protect the Service Users B.E - *("Draft Remedy Notification")*

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 Draft Notifications cuts across multiple policy areas and risks introducing overlapping regulations.

As such, we respectfully request ETDA to consider industry concerns and recommendations provided in the sections below when reviewing the draft notifications.

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,

Jeff Paine
Managing Director
Asia Internet Coalition (AIC)

ASIA INTERNET COALITION

Comments on the Notification of the Electronic Transactions Development Agency re: the Criteria, Methods and Conditions for Notifying the Cessation of the Business Operation of Digital Platform Services B.E. …
("Draft Business Cessation Notification")

The Draft Business Cessation Notification sets out the key terms that the operators must comply with before ceasing the operation of Digital Platform Services pursuant to Section 28 paragraph 1.

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.
Chapter 1 General Provisions	
4	Article 4 sets out that the following business operators are subject to business cessation notification requirements: • Business operators who are subject to prior notification requirements pursuant to Section 8 paragraph 1; • business operators who operate Digital Platform Services with the characteristics as set out in Section 8 paragraph 1 before the date that the Royal Decree become effective.
Chapter 2 Timeframe for business cessation notification	
5	Article 5 sets out the timeframe for business cessation notification to the ETDA as follows: • business operators who are subject to prior notification requirements pursuant to Section 8 paragraph 1 must notify the ETDA at least 60 days before the business cessation date; • business operators who are subject to terms and conditions notification requirements pursuant to Section 16 and business operators who are subject to specific requirements due to having high impact pursuant to Section 18 paragraph 2 must notify the ETDA at least 120 days before the business cessation date.
6	Article 6 sets out the timeframe for business cessation notification for business operators who operates Digital Platform Services with the characteristics as set out in Section 8 paragraph 1 before the date that the Royal Decree become effective, in the case where such operator wishes to cease the business within 1 year after the Royal Decree become effective, such operator must notify the ETDA at least 90 days before the business cessation date.
Chapter 3 Details of business cessation notification	

7	Article 7 sets out that the business cessation notification must contain the details set out in the notification form, and must be submitted via the business operation registration system or to the competent officer at the ETDA's office.
8	Article 8 sets out the following details to be included in the business cessation notification: • information about the person who wishes to cease the operation of the Digital Platform Service business (i.e., name-surname or entity name and application number, if any); • information about the Digital Platform Service (i.e., name of the Digital Platform Service and type of the Digital Platform Service to be ceased); • information about the cessation of the business operation (i.e., date of cessation, reasons of cessation, channel or method for notifying the cessation of the business operation to the service users, and coordinator and contact channels of the coordinator); and • other information and evidence, if any (i.e., **notification of cessation of business operation under other laws** and other information and evidence). **AIC recommendation** The requirement to notify "notification of cessation of business operation under other laws" would fall out of the scope of the main Royal Decree, as the operator would already be subject to cessation requirement under other laws. For instance, for the business operator that is required to commercial registration, they would be subject to specific rules and processes for business cessation under the Commercial Registration Act and the related regulator, which is a different law from the Royal Decree with different regulator. Accordingly, the operator should not be tasked with this additional obligation to notify the ETDA of its obligations under other laws. Further, it is out of the authority of the ETDA to request for the information under the laws other than the Royal Decree. In addition, this Article is not clear on the level of details to be provided, i.e., whether the operator must list out all of the cessation operation under other laws, or just the general details, or just merely the fact that the operator is subject to the requirement under other laws. Therefore, we suggest the removal of this specific obligation.
9	Article 9 sets out that where the person who wishes to cease the operation of the Digital Platform Service business is the business operator required to inform its service users of the terms and conditions (Section 16 of the Royal Decree) or operating the large-scale Digital Platform Services or Digital Platform Services with unique characteristics (Section 18 paragraph 2 of the Royal Decree), the following details shall be included in the business cessation notification: • operation plans and measures for taking care of the service users under the applicable notification; • the total number of service users and the number of service users in each category under the applicable notification;

	• number and types of all existing complaints; • current or recently amended terms and conditions; • date of service cessation, which shall not be less than 60 days but shall not exceed 90 days prior to the date of business cessation; and • representation that the business operator can comply with the operation plans and measures as submitted.
10	Article 10 sets out that the business operator shall submit to the ETDA the evidence of notification of the business cessation to its service users within 5 days from the date notified to the ETDA. In addition, where the person who wishes to cease the business operation is the business operator required to inform its service users of the terms and conditions (Section 16 of the Royal Decree) or operating the large-scale Digital Platform Services or Digital Platform Services with unique characteristics (Section 18 paragraph 2 of the Royal Decree), such business operator shall submit the evidence of notification to the service users of the date of service cessation and the operation plans and measures for taking care of the service users.
Chapter 4 Proceedings and details to be published for users regarding business cessation	
11	Article 11 sets out that the business operator shall notify the service users of the business cessation immediately after notifying the same to the ETDA and shall notify the following information simultaneously: • statement of business cessation at least in Thai language, which is easily intelligible and understandable and announced in easily accessible location; • procedure for taking care of the service users before the business cessation; • date of business cessation; • central channel for contacts and complaints of the ETDA and of the business operator; • the period in which the service users damaged from the business cessation can complain to the business operator or the ETDA, which shall not be less than half of the period expected to cease the business operation; • coordinator and contact channels of the coordinator; and • other information and evidence, if any. **AIC recommendation** Article 11(5) provides that the notification of business cessation to users must include the "period in which service users damaged from the business cessation can complain to the business operator or the ETDA, which shall not be less than half of the period expected to cease the business operation." We are of the view that this article is not clear, and that there is no practical benefit from the requirement that such period shall not be less than half of the period expected to cease the business operation. Therefore, we suggest that the ETDA should specify a rigid timeframe or otherwise remove this requirement.

	Furthermore, the period of users making a complaint to the ETDA should be specified and/or notified by the ETDA to users itself. The notification thereof should not be the obligation of the business operator.
12	Article 12 sets out that the business operator required to inform its service users of the terms and conditions (Section 16 of the Royal Decree) or operating the large-scale Digital Platform Services or Digital Platform Services with unique characteristics (Section 18 paragraph 2 of the Royal Decree) who wishes to cease the business operation shall also: • notify the date of service cessation to the service users; • notify the operations plans and measures for taking care of the service users to the service users under the applicable notification; • report the progress of operations under the plans and measures to the ETDA every 30-day period from the date of notification of business cessation until the operations are complete, and the ETDA no longer finds the service users damaged from the service. **AIC recommendation** Section 28 empowers the ETDA to prescribe the criteria, methods and conditions for notification of business cessation. Further, Section 28 paragraph 3 empowers the ETC to prescribe the criteria, methods and conditions for the operator to indemnify or remedy the users suffering damage from using the service, or other activities necessary to protect the service users for the purpose of the preparation of the plans and measures for business cessation.
Chapter 5 Rectification of the details of business cessation notification	
13	Article 13 sets out that where the documents submitted under Articles 8 and 9 are incorrect or incomplete, the competent official shall order rectification within a period of 15 days. If such period has lapsed, and the business operator has not rectified or has rectified but incorrectly, it shall be deemed that the business operator no longer wishes to notify the business cessation. In addition, where the person who wishes to cease the operation of the Digital Platform Service business is the business operator required to inform its service users of the terms and conditions (Section 16 of the Royal Decree) or operating the large-scale Digital Platform Services or Digital Platform Services with unique characteristics (Section 18 paragraph 2 of the Royal Decree), once the operations and the measures for taking care of the service users are rectified pursuant to orders given by the competent official, the rectified plans and measures shall be re-notified to the service users. In case where such rectification of documents would affect the date of business cessation or the date of service cessation, the new dates shall be notified to the ETDA and the service users promptly, and the rectification result shall be presented to the competent official under Article 10 accordingly.

	AIC recommendation Based on this Article 13, once the rectification period of 15 days has lapsed, it would be deemed that the business operator no longer wishes to notify the business cessation, and the procedure for business cessation has to be proceeded from the beginning. Accordingly, we suggest that it could be added that the business operator should be able to request for extension of the rectification period in the event of any unforeseen circumstances or with appropriate reason in order to enable some time for the business operator to complete the rectification.
Chapter 6 Issuance of receipt of business cessation	
14	Article 14 sets out that the competent official will issue a receipt of business cessation when it is found that: • the business operator has duly and completely complied with this notification; • for the business operator required to inform its service users of the terms and conditions (Section 16 of the Royal Decree) or operating the large-scale Digital Platform Services or Digital Platform Services with unique characteristics (Section 18 paragraph 2 of the Royal Decree) who has completed the operations under the plans and measures, the service users damaged from the service are no longer found; • for the business operator required to inform its service users of the terms and conditions (Section 16 of the Royal Decree) or operating the large-scale Digital Platform Services or Digital Platform Services with unique characteristics (Section 18 paragraph 2 of the Royal Decree) who has completed the operations under the plans and measures, but the service users damaged from the service are not satisfied, the ETDA has provided assistance thereto or has forwarded the complaints to other or relevant regulatory authority under applicable laws. Once the receipt of business cessation is issued, the provision of the Digital Platform Service shall be deemed ceased. **AIC recommendation** The term "not satisfied" by the service users may not be clear enough to be the deciding factor of whether the competent officer will issue the receipt of business cessation or not, as the satisfaction of each user in the event of disputes may not be the same and would be subjective to various interpretation. Furthermore, in the event where a business operator is not subject to any particular regulator, the requirement regarding the forwarding of "complaints to other or relevant regulatory authority under applicable laws" may not be applicable. Thus, the factors determining the issuance of receipt of business cessation may not be clear enough and may be too reliance on the competent officer's discretion.

	In addition, Article 14(2) provides that if "the service users damaged from the service are no longer found", the competent officer shall issue the receipt of business cessation, which is in line with Section 29 of the Royal Decree. However, Article 14(3) concerns the event where service users damaged from the service still exists. Therefore, Article 14(2) and Article 14(3) may contradict with each other. We suggest the revision of the wording Article 14(3) to be "unsatisfied service users shall not be deemed as service users damaged from the service under the Royal Decree if the ETDA has provided assistance thereto or if the business operator has completed the operations under the plans and measures."
15	Article 15 sets out that the ETDA shall announce the business cessation to the public via the channels under Section 14 of the Royal Decree.
Chapter 7 Miscellaneous	
16	Article 16 sets out that cessation of business operation of the Digital Platform Service subject to notification does not exempt the business operator from liabilities under other applicable laws. **AIC recommendation** This article is redundant with the obligations under other laws, in which operators are subjected to, and fall out of the scope of the Royal Decree. Even without this article, business operators are still subject to other applicable obligations under other applicable laws. Therefore, we suggest the removal of this article.

Comments on the Notification of the Electronic Transactions Development Agency re: the Form for Annual Notification of the Digital Platform Services Business Operation B.E. …
("Draft Notification on the Annual Notification Form")

The Draft Notification on the Annual Notification Form provides a form in which operators can submit their annual notification and changes to information relating to the operator, the Digital Platform Services, and local coordinator pursuant to Section 8 paragraph 4 and Section 15 of the Digital Platform Decree.

- **Do you agree with the Draft Notification on the Annual Notification Form for the methods in completing the form or to notify the details under Section 12?**

AIC recommendation

Details on Value of Transactions, Information of income of services: According to the main law, decree of digital platform services in Section 12 stipulates the service

providers to provide information about the digital platform service, some of which are required to be optional information, not mandatory such as value of transactions, gross income and ratio of income from providing the notified services in Thailand per all incomes from services in platform etc.

Therefore, we propose that the Forms attached to the draft notifications should specify that those information are optional to provide with ETDA in order to align with the sentence of the main law.

- **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.
4	Article 4 sets out that the annual notification of the details must be in accordance with the Annual Notification Form, and the form must be submitted via the business operation registration system or submitted to the competent officer at the ETDA's office. **AIC recommendation** Regarding Information on top five most common complaints: We would like to stress that complaints are not currently tracked or categorized by type of complaint, but can be searched via keyword searches or case reference number / tracking ID. We propose that the ETDA set out a list of keywords or types of complaints that require scrutiny, in order for us to be in a position to isolate the types of complaints that the ETDA would be concerned about.
5	Article 5 sets out that if the business operator change any details prescribed in Section 12(1), 12(2)(a)(b) and (c), and 12(5), such changes must be notified to the ETDA within 30 days after such changes in accordance with the Annual Notification Form, and the form must be submitted via the business operation registration system or submitted to the competent officer at ETDA's office. **AIC recommendation** The Royal Decree obligates digital platform service providers, which fall under the definition of "Digital Service Platform" in Section 5, to notify ETDA of the necessary information prior to or at the time of service, and also inform ETDA annually. However, the definition of Digital Service Platform under the Decree still causes uncertainty in interpreting which service businesses are subject to the decree. Most stakeholders always question that the unclear scope may cause ETDA officials to make inappropriate decisions by including certain categories of digital

	platforms that are beyond the scope of the law, and are expected to face legal challenges. We found that the Form for Notification Prior to Operating Digital Platform Service Business attached to **"Draft Notification on the Prior Notification Form"** and the Form for Annual Notification attached to **"Draft Notification on the Annual Notification Form"** requires the digital service providers to identify the type of their services, and ETDA has given examples of service types for the service providers to choose. However, we believe that the example types of service under the form do not reflect and align with the Section 5 definition of Digital Service Platform, which may lead to confusion for businesses. Thus, we propose that the Forms attached to both draft notifications are not necessary to provide examples of types of services because the nature of services is diverse and cannot be determined by choosing from ETDA's choices. The form should be left blank to allow the service providers to specify the type of service itself that will reflect the diversity and dynamics of platforms' business models.
6	Article 6 sets out that if the changes in Article 5 is a result from acquisition, transfer of business, merger, or changes to the rights and duty in the operation of the Digital Platform Services business and would substantially affect the users, which is not a cessation of operation, such changes must be notified to the ETDA in accordance with the Annual Notification Form, and the form must be submitted via the business operation registration system or submitted to the competent officer at the ETDA's office. **AIC recommendation** It is to be noted that Section 15 paragraph 2 of the Royal Decree already sets out that any changes as to the following information shall be notified to ETDA within 30 days of such changes Therefore, operators are already obligated to notify the changes of the abovementioned information, notwithstanding whether such changes are results from acquisition, transfer of business, merger, or changes to the rights and duty in the operation of the Digital Platform Services. Furthermore, this notification and the form do not require any information as to the acquisition, transfer of business, merger, or changes to the rights and duty in the operation of the Digital Platform Services business. Thus, this article may be deemed as redundant with Article 5 of this notification, and Section 15 paragraph 2 of the Royal Decree. Therefore, we suggest that this Article should be removed.

7	Article 7 sets out that the business operator pursuant to Section 8 paragraph 4 must notify the brief particulars in accordance with the Annual Notification Form for small or low impact Digital Platform Services, and the form must be submitted via the business operation registration system or submitted to the competent officer at the ETDA's office.
8	Article 8 sets out that if the business operator pursuant to Section 8 paragraph 4 wishes to cease the business operation, such operator must notify the ETDA at least 30 days in advance in accordance with the Annual Notification Form for small or low impact Digital Platform Services, and the form must be submitted via the business operation registration system or submitted to the competent officer at the ETDA's office. **AIC recommendation** Under the Royal Decree, business operator pursuant to Section 8 paragraph 4 (Digital Platform Services not meeting the income threshold or the AMAU threshold, and Digital Platform Services exempted by an ETC notification to not be subject to notification requirements) are not subject to performance under Chapter 2 (Rule for Operation of Digital Platform Services and Supervision). Thus, the Royal Decree provides that business operator pursuant to Section 8 paragraph 4 is not subject to business cessation notification requirement. Thus, this new requirement under Article 8 would be beyond the scope of the Royal Decree which is the main law. Per the general concept of hierarchy of law, the sub-regulation should not add more legal burden to the main Royal Decree which is of higher hierarchy. Therefore, we suggest that this article should be removed.
9	Article 9 sets out that government body that is not directly associated with commerce or is not a provision of service in a manner that mainly seeks profit pursuant to Section 4 (2) shall notify the ETDA in accordance with the Annual Notification Form, and the form must be submitted via the business operation registration system or submitted to the competent officer at ETDA's office.

Comments on the Notification of the Electronic Transactions Commission re: the Criteria, Methods and Conditions for the Operator to Compensate or Remedy the Service User who Suffering Damage from Using the Service, or Other Activities Necessary to Protect the Service Users B.E. ...
("Draft Remedy Notification")

The Draft Remedy Notification sets out the minimum requirements for the preparation of the plan and measures for cessation of Digital Platform Services pursuant to Section 28 paragraph 3 and Section 43 paragraph 2.

- **Do you agree whether the business cessation operational plan and the measures to handle users are appropriate? Are there any measures that should be prescribed?**

  AIC recommendation

  The measures should be generally prescribed and not too specific in order to suit different types of Digital Platform Services.

- **Do you agree with the timeframe of 15 days for the rectification of operational plan and the measures to handle users? Are there any problems or obstacles arising thereof.**

  AIC recommendation

  We note that once the period has lapsed, it would be deemed that the business operator no longer wishes to notify the business cessation, and the procedure for business cessation has to repeat from the beginning. Considering this, we suggest that the rectification period should be extendable in the event of any unforeseen circumstances or with appropriate reason.

- **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. However, under this notification, "business operator" only refers to the business operator required to inform its service users of the terms and conditions or operating the large-scale Digital Platform Services or Digital Platform Services with unique characteristics under Section 16 or Section 18 paragraph 2 of the Royal Decree.
4	Article 4 sets out that any business operator who wishes to cease the operation of the digital platform business shall prepare and comply with the operation plan

	regarding the business cessation and the measures for taking care of the service users in accordance with this notification.
5	Article 5 sets out that the operation plan for business cessation shall be prepared at least in Thai language, be easily intelligible and comprehensible, and shall consist of at least the following details: • measures and procedures for taking care of the service users prior to the cessation of business; • other measures as to be prescribed by the ETDA to mitigate effects as necessary according to the type or characteristic of the service; • timeframe for complying with the operation plan in each step. **AIC recommendation** Section 28 paragraph 3 of the Royal Decree only empowers the ETC to prescribe the criteria, methods and conditions for the Operator to indemnify or remedy the Service User suffering damage from using the service, or other activities necessary to protect the Service Users, which is the basis of this notification. The Royal Decree, however, does not provide the power to the ETDA to prescribe any other measures. In addition, it is not clear whether the measures to be prescribed by the ETDA would be issued as a general basis or as a case-by-case basis. Thus, we suggest that any measures to be prescribed by the ETDA should be clearly listed in this article and the draft should not empower the ETDA to prescribe any other measures which may be subject to less or no public scrutiny.
6	Article 6 sets out that measures and procedures for taking care of the service users prior to the cessation of business shall be inclusive of at least the following: • guideline for cessation of service for the benefits of compensation or remedy to the damaged parties; • measures for compensation or remedy to the service users affected from the service, which comprise at least: (a) process for payment or transfer of service fee or assets, etc. of the service users: (b) process for management of service user information under applicable laws; and (c) process for management of business information of the business users; • procedure for disputes management and channels for assistance to the service users, which comprise at least: (a) complaint management procedure; (b) channels for assistance; and (c) process for remedy and notification of operation results to the damaged service users; and • guideline for communications with service users and stakeholders. **AIC recommendation**

	Article 6(2)(b) concerns the management of user information under applicable laws. This could be redundant with the obligations under the Personal Data Protection Act (PDPA), and fall out of the scope of the Royal Decree. Further, the management of user's personal data would already be covered by the data subject's rights under the PDPA. Thus, we suggest the removal of this article. Additionally, Article 6(2)(c) does not provide the definition or the explanation as to the term "business information." Thus, we suggest that ETDA should provide an explanation or examples of this term.
7	Article 7 sets out that ETDA may prescribe any other additional measures to mitigate effects as necessary for the following Digital Platform Services: • large-scale Digital Platform Services or Digital Platform Services with unique characteristics under Section 18 paragraph 2 of the Royal Decree; or • Digital Platform Services of which the service users are damaged from the service, where such damage affects the public at large and the disputes cannot be resolved. **AIC recommendation** Section 28 paragraph 3 of the Royal Decree only empowers the ETC to prescribe the criteria, methods and conditions for the Operator to indemnify or remedy the Service User suffering damage from using the service, or other activities necessary to protect the Service Users, which is the basis of this notification. The Royal Decree, however, does not provide the power to ETDA to prescribe any other measures. In addition, it is not clear whether the measures to be prescribed by ETDA would be issued as a general basis or as a case-by-case basis. Thus, we suggest that any measures to be prescribed by the ETDA should be clearly listed in this article and the draft should not empower the ETDA to prescribe any additional measures which may be subject to less or no public scrutiny.
8	Article 8 sets out that the business operator shall prescribe timeframe for complying with the operation plan for business cessation under Articles 6 and 7, which shall be inclusive of at least the following: • timeframe for management of each measure under this notification; • guideline for report of progress and operation results under the operation plan for business cessation and measures and procedure for taking care of the service users to the ETDA, which shall comprise at least the following details: (i) progress and operation results under each step of the operation plan for business cessation and measures and procedure for taking care of the service users and (ii) results of dealing with complaints of the service users and number of the services users damaged from the service which increases or decreases at the date of report.