

Asia Internet Coalition (AIC) Submission on Drafting the Platform Economy Law, Thailand

16 June 2023

To the
Office of the Permanent Secretary for Digital Economy and Society
Government of Thailand

The Asia Internet Coalition (“AIC”) and its members would like to thank the Thai Government and the **Office of the Permanent Secretary for Digital Economy and Society** for the opportunity to submit our inputs on the [Public Hearing](#) regarding Draft Principles on **Platform Economy Law**. In the spirit of constructive collaboration with the Government’s efforts, AIC seeks to put forth for your kind consideration key comments and recommendations, which are provided below:

Issues and recommendations:

1. Clarification regarding the legislative powers to issue the Platform Economy Law

According to the principles of law, the legislation of any laws must be carried out through the main law that grants authority the power to enact new legislation. Therefore, we would like to request clarification regarding the specific legal basis that empowers the authority to promulgate the proposed Platform Economy Law, as there is currently no available information from the authority on this matter.

2. Clarification regarding the need for Platform Economy Law

While some European countries are considering or have platform laws, there are increasingly questions about the: (1) the cost to administer these kinds of regulations; and (2) impact of these regulations on innovation, competition, and consumer welfare. Platform-style regulations were created within the European context taking into account their economy, political and legal systems and that the European Union already enjoys many of the benefits of an established digital economy. The Thai economy and context is very different. The benefits that Thai consumers and businesses enjoy from digital services are only just being experienced and the investments required to promote a digital economy are only starting to be made. For this reason, we believe it is important to consider: (1) whether this form of stringent and detailed regulation is likely to benefit Thailand; and (2) whether the regulation sufficiently takes into account Thailand’s unique context. Increasingly, ASEAN

regulators are looking to balance overseas developments by taking into account the local dynamics and needs. For example, the Taiwan Fair Trading Commission's March 2023 "White Paper on Competition Policy in the Digital Economy" cautions that (p109):

"In other words, any transplantation of foreign precedents or regulations must be adapted with Taiwan's unique economic circumstances in mind, and transplantation must be undertaken carefully and with more local empirical analysis"

Across ASEAN countries, what is becoming evident is that many governments are taking a cautious approach to platform regulation. For example, Singapore has consistently taken a balanced approach and has not proposed a platform law. In mid-2022 the South Korean government announced it would work on self-regulatory codes with digital businesses. Neither Malaysia nor Indonesia have taken a strong stance in favor of platform regulation.

3. Concerns regarding the definition of digital platforms in the proposed law have been raised

We are concerned about the scope of the digital platform definition that will be established in the proposed law. If the definition of digital platform governed by this law is overly broad, it may categorize a significant number of platforms as digital platform service operators, even when it is unnecessary to do so. It is important to acknowledge that online platforms, such as social media or intermediary service platforms, vary in nature. Some platforms are exclusively meant for communication purposes, while others focus solely on e-commerce. Some platforms may combine both functionalities and so on. Therefore, any regulatory intervention must account for the diversity and dynamism of platforms' business models. Digital platforms operate with diverse and dynamic business models, offering distinct services, operating in different markets, and monetizing their services in various ways. Hence, the definition of "Digital Platform" in the proposed law should not be overly generic, as it may not adequately serve the purpose in a regulatory context.

Consequently, we recommend that the regulations avoid excessive breadth and consider the different business models of platforms. The requirements and responsibilities should be proportional to the nature of each platform.

4. Impact on the transition to a digital economy

Overly broad and stringer regulations like that proposed that are not targeted to specific issues will pose significant challenges for: (1) a countries transition to a digital economy; and (2) the growth and development of local tech start-ups.

Digital businesses (whether social media or e-commerce) through their in-country investment, employment, and training are key pillars supporting Thailand's transition to a digital economy and help to facilitate the transformation of 'traditional' SMEs into the digital realm. However, transitioning a traditional economy to a digital economy heavily relies on the legal and economic certainty provided by well-defined and know regulatory regime. New platform regulations leading to shifting and uncertain rules undermines the certainty required to facilitate investment and may cause significant damage to a countries digital growth ambitions. For example, it can reduce the incentives for large digital businesses to locally invest, train or employ.

Further, imposing regulations at this juncture of Thailand's transition to a digital economy could have a negative cooling effect on local innovation impacting tech start-ups and small platforms with growth ambitions. The lack of regulator certainty leads to and causes investor hesitation which means reduced investment preventing tech start-ups having the capital to develop new innovative services.

These negative outcomes would not align with the country's objectives of improving the ease of doing business and attracting investments in Thailand.

5. Redundancy or overlapping with other laws

There is a concern regarding the redundancy or overlap of the proposed law with existing legislation. It is important to classify all digital platforms as having a low impact on the public, and regulations should be implemented on an exceptional basis. This approach can help narrow down effective regulatory measures while avoiding impractical or burdensome requirements. Currently, there are already laws and government agencies related to technology, the digital economy, and consumer protection that can be applied to regulate digital platforms, eliminating the need for new laws. For instance, the Decree on digital service platforms, which requires notification and is governed by the Electronic Transactions Development Agency (ETDA), already exists to regulate online platform services. The proposed requirements of the Platform Economy Law overlap with the obligations set forth in the decree, which can impose significant burdens on business operators.

Furthermore, there are existing regulations by the Office of Trade Competition (OTCC) that oversee fair trade competition among business operators and regulations by the Office of Consumer Protection Board (OCPB) that focus on consumer protection. With multiple government agencies involved in regulating specific aspects of businesses, there is a potential for confusion and a lack of clear division of responsibilities. Moreover, the regulatory approaches currently in place struggle to keep up with the rapid pace of technological advancements. This makes it challenging

for government agencies to respond to evolving risks. Technology evolves faster than the legislative process, rendering laws potentially outdated or redundant by the time they are implemented. Defining fair laws in such a redundant context becomes difficult.

Therefore, it is essential to highlight that the principles outlined in the Platform Economy Law overlap with existing government policies regulating digital platforms. These overlaps in coverage can create confusion for businesses. Consequently, if the new platform economy law is enacted, it is expected that it would eventually replace the Decree governed by ETDA, as having a single main law governing digital platforms would be more appropriate for regulatory purposes.

At this stage of the proposed law, we strongly urge evidence-based policymaking such as further official industry consultations and a market study further official industry consultations regarding the necessity and desirability of the law, as well as the form of the law. Subsequent rounds of public hearings should be conducted, considering that the principles of law are currently in a very preliminary stage and require extensive inputs from the industry to ensure comprehensive consultation.

6. Impact on the Thai economy

The principles of law refer to the DMA and the DSA as international standards. However, there is no global consensus that such ex ante laws are necessary or these are the right path forward. Even in Europe there are concerns about the economic and social costs of such ex ante rules. In fact, many other countries are taking a wait and see approach and observe the effectiveness of these laws. Any transplantation of foreign regulations must be adapted with each country's unique economic circumstances in mind, and transplantation must be undertaken carefully and with more local empirical analysis.

We express our continued interest to participate in forthcoming industry consultations on the Platform Economy Law. However, 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. Specifically:

- The potential impact of such regulation should be carefully assessed and balanced against the objective of transitioning the economy to a digital economy.
- Regulations is not cost free. European regulators have found they “short-staffed” in their capacity to implement regulations and their governments are having to allocate very large sums of additional government funding to their regulators instead of investing in other programs. The costs of the proposed regulations should be quantified.

As Taiwan's recent "[White Paper on Competition Policy in the Digital Economy](#)" observes viewpoints on platform regulation diverges internationally and there is no clear consensus worldwide about the form or need for regulation. This is borne out by the fact that many ASEAN countries are taking a cautious approach to platform regulation and assessing carefully the unique characteristics of each country's economy, position and legal framework to determine whether such regulations will benefit their economies.

The AIC looks forward to working closely with Ministry of Digital Economy and Society (MDES), the Council of State (COS), ETDA and the Thai government, as the Platform Economy Law cuts across multiple policy areas and risks introducing overlapping regulations.

As such, we respectfully request the Thai Government to consider industry concerns and recommendations provided above when working on drafting of the Law.

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 industry meetings and discussions.

Thank you for your time and consideration.

Sincerely,



Jeff Paine
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Asia Internet Coalition (AIC)