

**Asia Internet Coalition (AIC) Industry Submission on
Notification of the Electronic Transaction Commission re: Criteria for Impact Assessment
of Business Operation of Digital Platform Services B.E. ...
("Draft Impact Assessment Notification"), Round 4**

28 June 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 4 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 notification:

- ***Notification of the Electronic Transaction Commission re: Criteria for Impact Assessment of Business Operation of Digital Platform Services B.E. ...
("Draft Impact Assessment Notification")***

The Draft Impact Assessment Notification sets out the criteria for impact assessment of business operation of digital platform services in order to determine whether a digital platform service would be deemed as a digital platform service with unique characteristics under Section 18(2) ("**high-impact digital platform services**") of the Digital Platform Decree.

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

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)

Detailed Comments on Specific Provisions

Article	Comments and Recommendations (in Blue)
2	The Impact Assessment Notification shall be effective on 20 August 2023. The Digital Platform Decree would become effective on 20 August 2023. Therefore, the ETDA intended for the Impact Assessment Notification to be effective at the same time as the Digital Platform Decree. This will, theoretically, allow the ETDA to designate high-impact digital platform services immediately upon the effective date of the Digital Platform Decree (i.e. 20 August 2023). AIC recommendation: We suggest that the effective date of this Draft Impact Assessment Notification should be set for a period <u>of one year after the issuance</u>-so that the business operator who anticipated that they could fall under the criteria of high-impact digital platform services could have sufficient time to prepare for compliance. The postponement will give the business operators time to prepare their internal processes and ease the financial and operational

	burden shouldered during global economic slowdown and uncertainty ahead for Thai economy.
3	Article 3 sets out the criteria for high-impact digital platform services. Any digital platform service having at least one of the following characteristics (see Articles 3(1) to (4) below) shall be considered as meeting the criteria of having unique characteristics and having high-impact to the financial security and commercial risks, reliability and acceptance of electronic data system, or potential damage to the general public (i.e. high-impact digital platform services). AIC recommendation: It is important for the regulator to acknowledge that online 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 "high-impact" should not be overly generic, as it may not adequately serve the purpose in a regulatory context. Consequently, we recommend that the criteria be implemented with caution, avoiding excessive breadth and considering the different business models of platforms. The requirements and responsibilities should be proportional to the nature of each platform and should not put too much burden on the platforms to follow and operate. Implementing overly broad regulations will pose significant challenges for Thailand's digital economy including SMEs who rely on free services to access the digital economy. Such regulations would not align with the country's objectives of improving the ease of doing business and attracting investments.
3 (1)	Digital platform services with transaction value of over THB 100,000,000 (around USD 2,874,000) per annum. [Note: we understand that this is one of the entry that must be submitted in the prior notification form pursuant to Section 12(2)(d) of the Digital Platform Decree and annual notification form pursuant to Section 15 of the Digital Platform Decree.] AIC recommendation: As the ETDA did not yet provide clarity on how the term "transaction value" would be calculated, we suggest that ETDA should specify that "transaction value" should be based

	on the same number in the form to be submitted to ETDA for consistency. In this regard, we suggest clarifying the term "transaction value" as the revenue based on the amount actually paid by the end customer specifically for the purchase of products or services on the digital platform service as submitted in the prior notification form (only if the transaction and the payment are completed on the platforms). Moreover, we suggest that, once the transaction value has decreased to less than THB 100,000,000, the ETDA should remove the digital platform services from being designated as high-impact digital platform services. Nevertheless, the “transaction value” is questionable due to lack of clarity regarding the accounting or economic principles upon which the ETDA bases its determination of whether a service will be considered for high-impact digital platform services. Therefore, we would like ETDA to provide further clarification regarding the principles and sources that ETDA used to determine the threshold amount. We believe that high transaction value alone should not automatically categorize a service as a high-impact digital platform service, but instead, we urge ETDA to consider additional perspectives, as well.
3(2)	Digital platform services where the business operator: (i) do not register commercial registration with the Department of Business Development; <u>and</u> (ii) have business users <u>in Thailand</u> for more than one-third of all the business users on such platform. AIC recommendation: We ask for further clarification regarding the specific definition of the business operators who have not registered their commercial registration with the Department of Business Development (DBD). We suggest that the ETDA provides specific examples to illustrate this, particularly in the context of offshore digital platform services that operate in Thailand without having a registered local office with the DBD. The current wording is broad and open to various interpretations, hence the necessity for greater clarity in defining the scope with examples that fall within this category.
3(3)	Digital platform services where the business operator: (i) do not register commercial registration with the Department of Business Development; <u>and</u> (ii) have users <u>in Thailand</u> for more than five percent, but not over ten percent of the total number of citizens in Thailand.

	AIC recommendation: Same comment as above in 3(2).
3(4)	Digital platform services having the characteristics where users may act freely, which could affect the general public in the form of the following messages or actions: (a) message or action which is illegal; (b) message or action which could be anticipated to cause negative effect to fundamental human rights, human dignity, respect to privacy and family life, personal data protection, freedom of speech, independence of all form of press, discrimination, and importance of consumer protection; (c) message or action which affect children’s rights, which may cause damage to the mind, reputation, or other children’s benefit, or to wrongfully seek benefit for the user or other person; (d) message or action which could be anticipated to cause negative effect to a person’s gender, or relating to sexual violence, including message or action to incite violence, hatred, bias, and despal of a person. AIC recommendation: We suggest that the ETDA should provide clarification on how the term “users may act freely” means, as the current wording of the obligation is broad and can be subject to different interpretations. Further, with the broadness of the language in conditions (a) - (d), especially on the usage of the term “anticipated” in some conditions, ETDA may have a very broad determination/discretion of what would fall foul under conditions (a) - (d) above to be deemed as high-impact platform. We suggest that the term "anticipated" should not be used in the criteria whether under this Draft Impact Assessment Notification or any future draft laws under ETDA's consideration/pipeline, and other broad or ambiguous terms should be narrowed down. There is a concern regarding the redundancy or overlap of the proposed criteria with existing legislation. It is important to classify all digital platforms as having a low impact on the public in relation to the types of content listed in this criteria, 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 the content as specified in conditions (a) - (d) (e.g., the Computer Crime Act B.E. 2550 (2007), the Consumer Protection Act B.E. 2522 (1979), the Personal Data Protection Act B.E. 2562 (2019), the Child Protection Act B.E. 2546 (2003), the Thai Penal Code, etc.) that can be applied to regulate digital platforms, eliminating the need for new laws. The overlap would impose significant burdens on business operators.

Government agencies have different duties and authorities to oversee certain regime based on the different specialty fields of law and issue the relevant regulations. The prescription of the characteristics that could be subject to separate regulatory regimes under the responsibility of other government agencies or authorities could create potential conflict with other pre-existing regulations that can be used to regulate digital platforms as well.

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 and bad actors and harmful online content. 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.

In view of the above, we strongly suggest the removal of this Article 3(4), including the conditions (a) - (d) due to redundancy of the possible overlapping of existing laws and power of existing regulators under other laws which would violate the Thailand's Constitution B.E. 2560 (2017). That is, Thailand's Constitution specifies that the state should introduce laws only to the extent of necessity, and repeal or revise laws that are no longer necessary or unsuitable to the circumstances, or are obstacles to livelihoods or engagement in occupations, without delay, so as to abstain from the imposition of burdens upon the public. In addition, the law development should be in conformity with universal standards and increase competitive of the country, not to reduce competitiveness of general digital platform services in Thailand.