

The Role of Competition Law and Policy in Supporting ASEAN e-Commerce

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Abstract

E-Commerce plays an increasingly significant role in the way ASEAN consumers purchase goods and services and will continue to be a key front for ASEAN economic integration, especially in the face of the COVID-19 pandemic. Against a backdrop of multiple measures taken by ASEAN leaders to promote intra-ASEAN e-Commerce trade, digital trade in the region might be simultaneously facilitated and impeded by regional market developments that impact the competitive landscape in which online merchants operate. For instance, super apps that make it easier for individuals to transact in a range of different products and services through a common digital platform have brought about tangible benefits to ASEAN consumers, who stand to reap further benefits down the road as cross-border e-Commerce expands across ASEAN. However, the sheer size and scale of some of these super apps invites antitrust scrutiny in relation to the degree of market power they wield and their impact on competition. Antitrust concerns may arise because of the impact of such platforms on the contestability of these markets and interoperability with competitors. E-Commerce platforms that engage in misleading price practices could prevent consumers from making informed purchasing decisions, which might then impede the ability of honest rival businesses to compete with such errant market players on a level playing field and retard the development of e-Commerce markets. Competition authorities can play a role in addressing these concerns. They can deploy competition law and policy as a regulatory tool against conduct that has an adverse effect on market contestability, interoperability, transparency, and the development of a vibrant digital ecosystem. Examples of such measures include the CCCS's enforcement against the Grab/Uber merger in 2018 and investigation into the food delivery sector in 2016 to safeguard market contestability. CCCS also worked with a payment service provider to remove restrictions that prevented

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merchants from accepting other payment cards on common payment terminals and has developed a set of guidelines on price transparency to educate suppliers on when pricing practices may be potentially misleading, so that such practices can be reduced over time, thereby enabling consumers to shop confidently online. ASEAN competition authorities have also cooperated among themselves to achieve effective competition enforcement in their respective jurisdictions. For example, CCCS cooperated with competition authorities in Malaysia, Philippines and Vietnam on the Grab/Uber merger, where agencies shared non-confidential information and worked with other ASEAN competition authorities to develop a competition assessment framework for the e-Commerce sector. As nurturing a regional ecosystem that is conducive to ASEAN e-Commerce growth requires Member States to understand the impact of their respective governmental actions on competition and market access, national competition authorities can also play the advisory role to other government agencies in evaluating the impact of their policies on e-Commerce to avoid any unintended negative consequences on competition. Recognizing how empowering consumers with greater control over their data can support the growth of digital economy and trade, CCCS partnered with Singapore's Personal Data Protection Commission to study how data portability might be facilitated to support the digital economy.

I. e-Commerce IN ASEAN

ASEAN² consumers are increasingly turning to their smart phones and mobile apps to engage in e-Commerce transactions, whether for transport, food delivery, e-payments or shopping. In Southeast Asia, the tremendous growth of cross-border e-Commerce has the potential to facilitate regional economic integration and economic growth within the ASEAN Economic Community (“AEC”). ASEAN has the third largest population in the world with 650 million people, and a Gross Domestic Product that is the fifth largest in the world at US\$3.0 trillion in 2018.³ The region which has a large and growing middle class with over 360 million internet users,⁴ has seen its internet economy grow to US\$100 billion in 2019 and is expected to reach US\$300 billion in 2025.⁵

For all ASEAN economies, the digital economy can unlock the potential of SMEs across the region as it affords an unprecedented opportunity for even the smallest enterprises to access consumers in many markets throughout the AEC, allowing them to expand their reach across national boundaries to offer their goods and services

² The Association of Southeast Asian Nations (ASEAN), which was established in 1967, is comprised of ten Member States, namely Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam.

³ The ASEAN Secretariat: “ASEAN Key Figures 2019,” October 2019.

⁴ Google, Temasek, Bain & Company: “e-Conomy SEA 2019,” October 2019.

⁵ Google, Temasek, Bain & Company: “e-Conomy SEA 2019,” October 2019.

in neighboring territories. For example, businesses hoping to sell to consumers outside of their home markets to consumers in other parts of ASEAN no longer need to set up physical retail stores in these markets. This enables businesses to expand into foreign markets more quickly to tap on business growth opportunities. The cost savings could then be passed on to ASEAN consumers that could also benefit from having access to a wider range of products and services from vendors in the region with greater convenience. The COVID-19 pandemic has further highlighted the strategic commercial importance of cross-border e-Commerce. As many traditional brick-and-mortar businesses have been greatly affected by the COVID-19 related restrictions on business operations and physical activities, e-Commerce has helped retailers diversify their sales channels and revenue streams. For example, businesses that list their products on multiple e-marketplaces to sell to consumers overseas may be able to make up for the loss of domestic sales. Even when the COVID-19 pandemic abates and restrictions are eased, the role of e-Commerce in strengthening business resilience and supporting economic recovery across ASEAN is likely to stay. Therefore, if ASEAN governments continue to support and harness digital connectivity, and ASEAN businesses continue to move towards greater levels of digitalization in their operations, the pay-offs will be significant.⁶

Recognizing the importance of cross-border e-Commerce, ASEAN has taken various significant steps to realize the potential of ASEAN e-Commerce trade, including the e-ASEAN Framework Agreement⁷ adopted by the ASEAN leaders in 2000. These efforts have resulted in encouraging signs such as the entry of, and investments by, large and sophisticated foreign e-Commerce players such as Amazon and Alibaba into the region. Successful e-Commerce platforms operating across ASEAN today include Tokopedia⁸ from Indonesia and Lazada⁹ from Singapore. These online marketplaces have provided businesses the means to reach new consumers, both within their home countries and beyond. ASEAN Member States (“AMs”) have continued to step up their efforts quickly to facilitate the creation of a more conducive regulatory environment for the growth of e-Commerce. Singapore, for instance, pushed for the roll-out of an e-Commerce agreement between the AMs to develop an innovation

6 Channel NewsAsia (CNA) article dated March 2, 2018: Singapore to push for ASEAN e-Commerce agreement, innovation network.

7 The objectives of the e-ASEAN Framework Agreement are to: (a) promote cooperation to develop, strengthen and enhance the competitiveness of the information and communications technology (ICT) sector in ASEAN; (b) promote cooperation to reduce the digital divide within individual ASEAN Member States and among ASEAN Member States; (c) promote cooperation between the public and private sectors in realizing e-ASEAN; and (d) promote the liberalization of trade in ICT products, ICT services and investments to support the e-ASEAN initiative. More information about the agreement can be accessed via https://asean.org/?static_post=e-asean-framework-agreement.

8 Please refer to www.tokopedia.com.

9 Please refer to Lazada.sg.

network to benefit businesses¹⁰ when they expand across Southeast Asia, building on the e-ASEAN Framework Agreement to develop an ASEAN Agreement on e-Commerce¹¹ that had sought to advance e-Commerce trade rules, lower barriers to entry and build greater digital connectivity to facilitate e-Commerce flows in the region.¹² AMSs have also committed to the AEC Blueprint 2025, which has called for strategic measures such as harmonized consumer rights and the establishment of protection laws and a comprehensive framework on personal data protection to be put in place.¹³ One of the objectives of the AEC Blueprint, set out in [27](iv), is for the AMSs to “[e]stablish regional cooperation arrangements on competition policy and law by establishing competition enforcement cooperation agreements to effectively deal with cross-border commercial transactions.”

While some progress has been made in developing the ASEAN e-Commerce landscape in recent years, there is still substantial potential for greater e-Commerce adoption in the region. Obstacles to foreign market access,¹⁴ as well as the lack of

10 The agreement encourages paperless trading between businesses and governments, which can generate more rapid and efficient transactions in ASEAN. In addition, businesses can access and move data across borders more easily, subject to appropriate safeguards. The agreement also helps to bolster the trust and confidence of ASEAN consumers in e-Commerce and drive adoption, which will enable ASEAN businesses to grow domestically, regionally and globally.

11 The ASEAN Agreement on e-Commerce was signed by economic ministers from ASEAN on November 12, 2018. Apart from aiming to facilitate cross-border e-Commerce transactions, the pact will look to foster an environment of trust and confidence in the use of e-Commerce and aims to deepen cooperation among ASEAN Member States so as to spur the use of e-Commerce as a way of driving regional economic growth. More information of the ASEAN Agreement on e-Commerce can be accessed via <https://www.channelnewsasia.com/news/business/asean-economic-ministers-ink-first-e-commerce-agreement-10920610>.

12 Description of the ASEAN Agreement on e-Commerce taken from the keynote address by the Minister for Trade and Industry, at the Asia Business First Forum 2018 on March 28, 2018. Keynote address can be accessed via <https://www.mti.gov.sg/te-IN/Newsroom/Speeches/2018/03/Speech-by-Minister-Iswaran-at-the-Asia-Business-First-Forum-2018>.

13 Two of the strategic measures to be included in the ASEAN Agreement on e-Commerce described in the ASEAN Economic Community Blueprint 2025 (refer to page 24, para 53 of the blueprint) is to put in place an “Harmonised consumer rights and protection laws” and “Coherent and comprehensive framework for personal data protection. The Blueprint can be accessed via https://www.asean.org/storage/2016/03/AECBP_2025r_FINAL.pdf.

14 Lack of foreign market access was cited as a cross border challenge for e-Commerce in ASEAN the EDB report titled “e-Commerce in ASEAN: Seizing opportunities and navigating challenges.” Report can be accessed via <https://www.edb.gov.sg/en/news-and-events/insights/innovation/e-commerce-in-asean-seizing-opportunities-and-navigating-challenges.html>.

interoperable payment¹⁵ and digital services,¹⁶ can be a challenge for firms looking to capitalize on cross-border e-Commerce opportunities. In addition, the evolution of e-Commerce platforms has led to the emergence of interconnections between previously unrelated markets and industries. For example, the rise of multi-market e-Commerce applications (“super” apps) that make it easier for consumers to transact in different product and service markets through a common digital platform have the potential to simultaneously impede and to facilitate cross-border e-Commerce transactions. The sheer size and scale of some of these super apps invites antitrust scrutiny in relation to the degree of market power they wield over the different participants they interact with in the multi-sided markets they operate. Antitrust concerns might also arise in relation to the impact of such entities on the contestability of these markets to existing or potential competitors.

II. POTENTIAL OPPORTUNITIES AND CHALLENGES FOR ASEAN e-Commerce

Super apps first emerged in China and took the country by storm, with Chinese companies such as Meituan, Alipay and WeChat leveraging on the high recurring usage of their platforms to consolidate many types of services onto a common application platform. Meituan grew from a F&B group buying app to a super app that offers many different services such as catering, on-demand delivery, car-hailing, hotel and travel booking and movie ticketing.¹⁷ Alipay leveraged on its high volume of payment transactions to incentivize the use of other services within the app itself. The most prominent example is perhaps WeChat, which started as a mobile messaging app but has branched out into building infrastructures for other apps to build on top of their app to facilitate e-Commerce transactions. Once in the WeChat eco-system, one can make cashless payments in stores, hail a cab, order food and pay utility bills, among other functions using WeChat’s payment service – WeChat Pay.

15 Keynote by Jacqueline Loh of the Monetary Authority of Singapore at the June 26, 2018 Central Bank Payments Conference mentioned how it is important to aim for interoperability and efficiency beyond domestic systems as “more businesses find ways to deliver goods and services overseas, payments will also need to keep up.” It also noted that although cross-border linkages offer huge benefits in important areas such as trade and tourism, implementing them is an up-hill task. This suggests that interoperability of payment services across borders is an existing challenge. Keynote speech can be accessed via <https://www.mas.gov.sg/news/speeches/2018/epayments-in-asia>.

16 One of the strategic action plans under the ASEAN Economic Community Blueprint 2025 (refer to page 24, para 53 of the blueprint) is to put in place a “inter-operable, mutually recognised, secure, reliable and user friendly e-identification and authorisation scheme.” This suggests that interoperability of digital services is still an existing challenge which ASEAN is trying to resolve. The Blueprint can be accessed via https://www.asean.org/storage/2016/03/AECBP_2025r_FINAL.pdf.

17 Please refer to <https://about.meituan.com/en/about> for more information.

We see similar promising developments in Southeast Asia with specific on-demand service providers leveraging on the user data they have accumulated to expand their presence across various verticals. Both Indonesia's GoJek¹⁸ and Singapore-based Grab¹⁹ started as ride-hailing platforms, but swiftly expanded to offer other services including their respective payment services, with the latter recently announcing its collaboration with the SingTel Group (a provider of infocomm technology services) to bid for a digital banking license in Singapore. While GoJek's digital payment service, Go-Pay,²⁰ and Grab's equivalent of that, GrabPay,²¹ do not currently allow cross-border payment transactions, there is potential for these super apps to allow for such developments and facilitate cross-border e-Commerce moving forward. A partnership between Grab and Fave²² allows Fave to use GrabPay credits in Singapore and Ma-

18 GoJek was founded in 2010 with providing solutions to Jakarta's ever-present traffic problems in mind, GoJek started as a call center with a fleet of only 20 motorcycle-taxi drivers. With the principle of using technology to improve the lives of users, the GoJek app was launched in January 2015 for users in Indonesia to provide motorbike ride-sharing (GoRide), delivery (GoSend), and shopping (GoMart) services. Today, GoJek has transformed into a "super app": a one-stop platform with more than 20 services, connecting users with over 2 million registered driver-partners, 400,000 GoFood merchants, and 60,000 GoLife service providers – with a total of more than 130 million total downloads across the region. More information about GoJek can be accessed via <https://www.gojek.com/sg/about/>.

19 Grab began as a taxi-hailing app in 2012 and is now Southeast Asia's leading super app, which provides highly-used daily services such as ride-hailing, food delivery, payments, and more. In Singapore, Grab provides hotel booking, movie tickets booking, trip planning and video streaming services among others. An overview of the services provided by Grab can be accessed via <https://engineering.grab.com/grab-everyday-super-app>.

20 Go-Pay was officially launched in April 2016 as an e-wallet service in Indonesia. According to an article by Financial Times dated December 2019 titled "Fintech: the rise of the Asian 'super app'," Go-Pay is used in 370 cities across Indonesia. Go-Pay is a mobile wallet to pay for both in-store purchases and services on the GoJek app such as GoJek rides and deliveries. Users can also use Go-Pay for peer-to-peer fund transfers. More information on Go-Pay can be accessed via <https://blog.gojekengineering.com/easier-payments-with-gopay-2de099aabe0> and <https://kr-asia.com/features-and-functions-of-go-pay-vs-ovo-side-by-side>.

21 GrabPay is a mobile wallet to pay both for in-store purchases and services on the Grab app such as Grab rides and GrabFood deliveries. Users can also use Grabpay for instant and free peer-to-peer fund transfers. More information on GrabPay can be accessed via <https://www.grab.com/sg/pay/>.

22 Fave - formerly Groupon Singapore, is a deals platform which provides discounted offers in Singapore, Malaysia and Indonesia in a single, convenient mobile app. More information about Fave can be accessed via <https://www.myfave.com/>.

laysia.²³ In 2018, Grab announced plans to offer instant remittance service to allow Grab users to send money instantly and securely to other countries.²⁴ The potential to develop interoperable ASEAN e-wallets could significantly reduce payment friction related to intra-ASEAN tourism and business travel. Currently, GrabPay Wallet users in Singapore are already able to send money from their Singapore GrabPay Wallet to another GrabPay Wallet in the Philippines without incurring transfer fees.²⁵ Such interoperable real-time regional payment systems will expand and enhance cross border e-Commerce opportunities for consumers, especially the large segment of unbanked citizens and small businesses in ASEAN,²⁶ to access products and services across ASEAN. An example of interoperability of payment services is the linkage be-

23 Under the tie-up which started in October 2018, GrabPay mobile wallet was added to Fave's platform, enabling Fave's customers to spend their GrabPay credits at restaurants and retailers on the Fave network. Users can spend their credits across multiple Fave categories - from food and beverage to beauty, massage, fitness, travel and attractions - and get discounts and cashback. More information on the strategic tie-up between Fave and Grab can be accessed via <https://www.straitstimes.com/business/companies-markets/grab-fave-in-strategic-tie-up-to-boost-growth-across-asean>.

24 More information on Grab's plans to offer instant remittance services for Grab users can be accessed via <https://www.straitstimes.com/business/banking/grabpay-wallets-to-offer-instant-remittance-overseas-from-early-2019>.

25 More information about the Grab remittance services for Singapore and Philippines users can be accessed via <https://www.grab.com/sg/pay/remittance/>.

26 According to an article titled "How Grab is transforming finance and payments in Southeast Asia" by TECHINASIA published in August 2019, 73 percent of the ASEAN population remains unbanked. More information on the article can be accessed here <https://www.techinasia.com/grab-transforming-finance-payments-southeast-asia>.

tween Singapore's PayNow²⁷ and Thailand's PromptPay.²⁸ This linkage allows someone in Singapore to send money to another person in Thailand, and vice versa, using just their contact numbers at any time of the day. Businesses and consumers clearly benefit from the availability of this cross-border cashless payment service.

Interoperable regional payment services for unbanked consumers and businesses benefit both brick-and-mortar retailers and e-Commerce retailers. While consumers are already able to make e-Commerce transactions via credit cards and online payment systems such as PayPal, transactions using these payment methods require e-Commerce retailers to integrate and maintain the necessary electronic payment infrastructure that can support such payment methods in their online business platforms and may incur additional transaction fees for offering these payment methods. However, setting up such an online store with a functional payment gateway can be challenging, time-consuming and expensive for small retailers that do not have the expertise. Even with e-Commerce website builders that offer online retailers a suite of services including payments, marketing, shipping and customer engagement tools to simplify the process of running an online store for small retailers, these retailers would still need to pay for these services and spend time on copywriting and go through a se-

27 PayNow is a peer-to-peer funds transfer service available to retail customers of nine participating banks in Singapore – Bank of China Singapore branch, Citibank Singapore Limited, DBS Bank Limited/Post Office Savings Bank, Hongkong and Shanghai Banking Corporation Limited, Industrial and Commercial Bank of China Limited, Maybank Singapore Ltd, Oversea-Chinese Banking Corporation Limited, Standard Chartered Bank (Singapore) Limited and United Overseas Bank Ltd. PayNow offers an enhanced funds transfer experience that enables retail customers of the nine participating banks to send and receive Singapore Dollar funds from one bank to another in Singapore by using just their mobile number or Singapore national registration identity card number or foreign identification number, almost instantly. The sender no longer needs to know the recipient's bank and account number when transferring money via PayNow. PayNow, launched on July 10, 2017 is provided free to retail customers and is available 24/7, 365 days. PayNow has also been extended beyond retail customers to corporates, businesses, Singapore Government agencies, associations and societies through PayNow Corporate of participating banks. More information about PayNow can be accessed via <https://www.abs.org.sg/consumer-banking/pay-now>.

28 Thailand's national money transfer and e-payment system PromptPay, is a service that enables Thai citizens to easily receive and transfer funds, using their Citizen ID or mobile phone number instead of a bank account number, via electronic channels – namely internet banking, mobile banking and automated teller machines. Foreigners can use their passport as an identification document and register for PromptPay, connecting only to their mobile phone number with their preferred account. PromptPay was launched in January 2017. More information on PromptPay can be accessed via <https://www.bangkokbank.com/en/Personal/Digital-Banking/PromptPay> and <https://www.bangkokpost.com/learning/learning-news/1261237/promptpay-a-big-success>.

ries of processes to link the payment systems to their online store.²⁹ While retailers can outsource such work to web companies, the costs involved may not be an amount that small retailers with very thin profit margins are willing or able to pay. With interoperable payment services that connect national money transfer systems, small retailers can showcase their products on any online platform, such as internet forum pages and social media sites that may not offer payment system integration, and transact with customers separately without the hassle of building an online store and incurring additional transaction fees.

The speed at which super apps have expanded their offerings has brought about benefits to our society and there remains potential for them to do more, especially with respect to cross-border e-Commerce. It could thus be difficult to imagine a day when the very super apps that have provided us with these benefits could produce harmful outcomes instead. However, lessons should always be drawn from the plethora of examples of similarly innovative offline businesses abusing their respective dominant market positions by preventing rivals from competing on the merits and offering consumers competing products previously not available on the market. Just like their non-digital counterparts, businesses that operate super apps are, in principle, capable of leveraging on a dominant market position to harm competition in various different markets if they engage in exclusionary conduct, such as by preventing merchants from using other apps, platforms or payment systems.

III. THE ROLE OF COMPETITION LAW AND POLICY

While super apps may, at present, have been received with enthusiasm by consumers who benefit from their wide array of features, should we nevertheless be concerned that they might eventually dominate the e-Commerce landscape to such an extent that they might impair competition in the digital marketplace? For example, a super app that has a dominant position in one market may offer its consumers bundled discounts (discounts for using the same app for more than one type of service) in order to encourage its users in this market to also use its app for other services in different markets. If the super app successfully attracts a large enough number of such consumers to use the super app for services in other markets due to the bundled

29 For example, online business owners who wish to link their PayPal account to their bank account would have to wait for PayPal to send two small deposits to their bank account and subsequently check the bank account statement and enter the two amounts of the deposits on their PayPal account. For online business owners who wish to link their PayPal accounts to their credit card accounts would have to wait for PayPal to charge 3 Singapore Dollars to their bank account and send a 4-digit PayPal code to them. Subsequently, the user would have to check his or her card statement for the code and enter it on their PayPal account. These steps do not include those that an online business owner may need to undertake to ensure that the relevant coding or necessary steps are taken to integrate the PayPal payment facility with the e-Commerce website to process online orders and/or refunds.

discounts, the resultant “network effects” may compel businesses in other markets to use that super app to access their consumers. If other apps without the market power are unable to replicate such strategies, would businesses ultimately be forced to list on these dominant platforms or to use their payment services exclusively? Should competition law regard a business’s pursuit of strategic measures to magnify the indirect network effects associated with the multi-sided markets they operate within as abusive conduct? For example, super apps that utilize such exclusionary conduct to sustain their dominance after driving out competitors may, subsequently be able to charge higher fees from businesses and consumers that transact on their platforms, raising the cost of cross-border trade for everyone. Without facing robust competition, owners of super apps may not be incentivized to engage in continuous product innovation unless the legal and regulatory environment ensures market remains contestable, systems remain open and interoperable, and pricing practices remain transparent. The absence of new competitors could also deprive the market of a pool of innovators that could have been able to provide innovative solutions that address challenges of regional e-Commerce development, such as in the area of cross-border payment and cross-border logistics. The resulting harm to competition and the welfare of society might end up outweighing the benefits that such services have bestowed upon us thus far. Fortunately, we are not entirely defenseless against these scenarios, though there may be some debate over whether pre-emptive measures should be taken or if actions can be taken only after harm has actually materialized. Legal and regulatory mechanisms can be deployed to facilitate market contestability, interoperability and transparency.

This is where competition law and policy can play a role. Competition policy and law can deter and rectify anticompetitive behavior that might jeopardize market contestability. In 2018, the acquisition of Uber by Grab showed how quickly a merger of online players could be completed and made irreversible. On March 26, 2018, Grab and Uber announced and completed the sale of Uber’s Southeast Asia business to Grab in consideration of Uber holding a 27.5 percent stake in Grab, and began the transfer of the acquired assets immediately. On March 27, 2018, the Competition and Consumer Commission of Singapore (“CCCS”) commenced an investigation into the transaction which constitutes a merger under the Competition Act and found that the merger had led to a substantial lessening of competition in the provision of ride-hailing platform services in Singapore. Specifically, CCCS’s investigation³⁰ found that the merger had removed Grab’s closest competitor in ride-hailing platform services, allowing Grab to increase its prices after removing its closest competitor, the effects of which were reinforced by the imposition of exclusivity arrangements that hampered potential competitors from achieving an operational scale necessary to compete

30 CCCS issued its infringement decision against Grab and Uber in relation to the sale of Uber’s Southeast Asian business to Grab for a 27.5 percent stake in Grab on September 24, 2018.

effectively against Grab.³¹ Besides penalizing the merger parties for the irreversible harm³² to competition between ride-hailing platforms, the CCCS also imposed directions on the parties to restore market contestability. These directions included stopping exclusive arrangements to keep the market open and encourage new entry.³³ The market saw the entry of GoJek a few months later.³⁴ In another example to safeguard market contestability, the CCCS investigated an online food ordering and delivery services provider for its exclusive arrangements with restaurants which prevented the restaurants from using other providers' services in 2016. Although CCCS did not take enforcement action³⁵ as competition has not been harmed in that case and the online food delivery industry was found to be vibrant with new entrants competing aggressively with market shares changing significantly, it cautioned market players that exclusive arrangement could be problematic in the future if competition was harmed after dominance was achieved; businesses were encouraged to compete on merit so as to achieve a more vibrant market with more choices for restaurants and consumers, instead of relying on exclusive dealing practices.³⁶ The industry has since grown tremendously. In addition, CCCS launched an investigation in September 2019 to look into concerns over the practice of online delivery providers in relation to the rental of kitchens to F&B outlets, including the use of exclusive agreements by online delivery providers (which also operate shared kitchen premises that they lease out to food and beverage operators) to prevent tenants of their shared kitchens from using the online food delivery services of their landlords' rivals, as well as the refusal of delivery service providers to offer their services to F&B outlets that were tenants of shared kitchens

31 Grab had imposed exclusivity obligations on taxi companies, car rental partners, and some of its drivers.

32 More information on CCCS's investigation can be accessed via https://www.cccs.gov.sg/public-register-and-consultation/public-consultation-items/uber-grab-merger?type=public_register.

33 More information on the directions and financial penalties imposed by CCCS on Grab and Uber can be accessed via <https://www.cccs.gov.sg/media-and-consultation/newsroom/media-releases/grab-uber-id-24-sept-18>.

34 More information on GoJek's entry can be accessed via <https://www.gojek.com/sg/blog/gojek-extends-beta-phase-to-all-consumers-in-singapore/>.

35 While competition law in Singapore does not *per se* prohibit businesses from achieving market power or striving towards it, businesses with a dominant market position are prohibited from preventing their competitors from competing effectively or shutting them out of the market through exclusive business practices such as exclusive agreements with their suppliers or customers. If such conduct is found to harm competition, CCCS can take enforcement action.

36 More information on CCCS's investigation into the online food delivery industry in 2016 can be accessed via <https://www.cccs.gov.sg/media-and-consultation/newsroom/media-releases/investigation-of-online-food-delivery-industry>.

run or owned by their competitors.³⁷ While no enforcement action was taken by CCCS, it should be noted that these online food delivery providers who also operated shared kitchen premises started supplying their online food delivery services to tenants of competing shared kitchens after the commencement of CCCS's investigations. As a result, food and beverage operators operating out of non-affiliated virtual kitchens now have access to multiple online food delivery service providers, thereby expanding their pool of potential customers and increasing competition among affiliated and non-affiliated virtual kitchens. With greater competition in the virtual kitchen sector, consumers who use food delivery apps will have a greater range of food options to choose from, while affiliated and non-affiliated virtual kitchens will be incentivized to innovate when they have to compete against each other.³⁸

In an earlier case involving interoperability, CCCS worked with a payment service provider to remove restrictions that prevented merchants from accepting other payment cards on common payment terminals. With these restrictions, merchants that wished to accept different payment methods would have had to install different terminals, when otherwise a common terminal could have been used. CCCS found that the restriction by the payment service provider prevented competitors from offering their services to merchants, thus limiting competition from competitors and undermined the interoperability of payment terminals.

The ability of consumers to easily and accurately compare and choose between alternatives is important for e-Commerce growth. Yet, consumers may be discouraged from participating in e-Commerce due to a lack of trust in online transactions caused by low levels of transparency and consumer safeguards against the associated harm. The emergence and rapid growth of online platforms such as marketplaces and price comparison websites ("PWCs") have made price comparison significantly easier for consumers, which reduces search costs for consumers. This increase in price transparency has also intensified price competition. Online reviews and ratings on various platforms such as marketplaces and PWCs help consumers make more informed choices. Unfortunately, consumer reservations about false and misleading information can affect the development of e-Commerce despite some progress made on this front. For example, the way prices are displayed can influence consumers' decisions. Consumers make fully informed purchasing decisions when accurate prices are displayed fully and clearly upfront. However, e-Commerce platforms sometimes engage in misleading price practices such as drip pricing, false time-limited discounts and "free" offers to entice customers. These misleading pricing practices thwart consum-

37 More information on CCCS's probe into the online food delivery sector in October 2019 can be accessed via <https://www.straitstimes.com/singapore/probe-into-online-food-delivery-sector>.

38 <https://www.cccs.gov.sg/media-and-consultation/newsroom/media-releases/online-food-delivery-and-virtual-kitchen-sector-5-aug-20>.

ers' ability and efforts to make informed purchasing decisions, which then impedes the ability of honest rival businesses to compete with such errant market players on a level playing field.

Recognizing the importance of the digital economy and the growth of e-Commerce, the CCCS recently conducted a study on the online provision of bookings for flight tickets and hotel accommodation to Singapore consumers. The study examined various business practices adopted by the industry players, and the associated competition and consumer issues, including misleading prices³⁹ displayed by suppliers.⁴⁰ Following on from this study, CCCS is developing a set of guidelines on price transparency which will address various questionable pricing practices such as “drip pricing” and “pre-ticked boxes,” discounts, use of the term “free” and price comparisons (with other suppliers).⁴¹ By educating suppliers on when pricing practices may be potentially misleading, such practices can be reduced over time, thereby enabling consumers to shop confidently online.

IV. COOPERATION AMONG COMPETITION AUTHORITIES IN ASEAN

While competition authorities are able to take enforcement action against anti-competitive activities, the cross-border nature of e-Commerce platforms may pose enforcement challenges. Antitrust jurisdiction is based on the impugned conduct having adverse effects on competition within the territorial jurisdiction over the national competition authority, but the businesses involved in the anticompetitive conduct may be located overseas. For example, some e-Commerce websites may target domestic consumers but have limited physical presence domestically. This highlights the importance of regional cooperation among competition authorities to achieve effective competition enforcement. Competition authorities in ASEAN have already begun to work together on common challenges. For example, CCCS cooperated with competition authorities in Malaysia, Philippines and Vietnam on the *Grab/Uber* merger, sharing non-confidential information. Memorandums of understanding (“MOUs”) between ASEAN competition authorities can help to facilitate enforcement cooperation, which is particularly relevant to tackling cross-border issues and common challenges. CCCS has signed an MOU with the Indonesia Competition Commission in 2018 to encourage notification of enforcement activities that potentially affect one

39 CCCS has statutory powers to gather evidence against retailers who engage in such practices, file injunction applications against them and enforce compliance with injunction orders issued by the courts.

40 CCCS's market study into the Online Travel Booking Sector in Singapore can be accessed via <https://www.ccs.gov.sg/resources/publications/market-studies>.

41 More information on the CCCS's proposed guidelines on price transparency can be accessed via <https://www.ccs.gov.sg/media-and-consultation/newsroom/media-releases/otb-and-price-transparency-guidelines-30-sept-19>.

authority's interests, facilitate exchange of information between the two authorities, and support enforcement coordination for cases of mutual interest.⁴² The MOU will also contribute towards more consistent and effective outcomes and remedies, which will, in turn, provide businesses with greater regulatory certainty.

Alongside enforcement cooperation, ASEAN competition authorities have come together to build and strengthen their capabilities to identify and address anti-competitive activities in the e-Commerce sector. This has been done, for example, through the development of a competition assessment framework for competition issues in e-Commerce sector, training programs and educational materials such as the Handbook on e-Commerce and Competition in ASEAN,⁴³ which was developed by the CCCS. ASEAN Member States are also taking important steps to bridge digital divides through the ASEAN Digital Integration Framework⁴⁴ which enables ASEAN Member States to prioritize⁴⁵ existing policy actions, including facilitating digital trade and innovation, while enabling seamless digital payments.

Similar attention has been paid to the development of consumer protection regimes as the part of the AEC Blueprint. The first publication on consumer protection regimes in ASEAN – the Handbook on ASEAN Consumer Protection Laws and Regulations⁴⁶ is part of the important process of providing consumers access to information and building awareness.

The aim of establishing a regional trade bloc requires a competitive ASEAN region as a whole, achievable only through deep cooperation across every ASEAN member on various fronts, including competition and consumer protection.

42 More information in relation to the MOU and a copy of the MOU can be accessed via <https://www.cccs.gov.sg/media-and-consultation/newsroom/media-releases/kp-pu-cccs-mou-enforcement-cooperation-30-aug-18>.

43 The Handbook on e-commerce and Competition in ASEAN can be accessed via <https://cccs.gov.sg/resources/publications/other-publications/asean-ecommerce-handbook>.

44 More information on the ASEAN Digital Integration Framework can be accessed via <https://asean.org/storage/2019/01/ASEAN-Digital-Integration-Framework.pdf>.

45 The ASEAN Digital Integration Framework enables ASEAN Member States to prioritize existing policy actions that will deliver the full potential of digital integration. Facilitating seamless trade, protecting data while supporting digital trade and innovation, enabling seamless digital payments, broadening digital talent base, fostering entrepreneurship and coordinating different actions of the ASEAN Digital Integration Framework have been identified as priority areas in the immediate term address the critical barriers and accelerate existing ASEAN platforms and plans to realize digital integration.

46 The Handbook on ASEAN Consumer Protection Laws and Regulations can be accessed via <https://asean.org/wp-content/uploads/2018/05/Handbook-on-ASEAN-Consumer-Protection-Laws-and-Regulation.pdf>.

V. ENSURING THAT GOVERNMENT POLICIES AND REGULATIONS ALSO SUPPORT MARKET ACCESS

As competition can also be affected by government policies and regulations, government agencies should ensure that their policies and regulations provide a conducive environment for businesses to grow and expand into new markets. Nurturing a regional ecosystem that is friendly and conducive to ASEAN e-Commerce growth requires the authorities to understand the impact of their actions on competition and market access, which plays a critical role in developing the AEC's e-Commerce landscape. National competition authorities can play the advisory roles to other government agencies in evaluating the impact of their policies on e-Commerce so as to avoid any unintended negative consequences on competition.

For example, in developing the physical infrastructure necessary to support e-Commerce in Singapore, the government-initiated Locker Alliance⁴⁷ piloted by the Infocomm and Media Development Authority (“IMDA”)⁴⁸ in end 2018 adopted an open access delivery network comprising of parcel lockers and collection points to enable consumers to collect parcels at their convenience. The Locker Alliance brought together industry players from different segments of the e-Commerce supply chain, including locker operators, logistics service providers and e-marketplaces onto one interoperable platform. In Singapore, lockers are used as convenient delivery pickup points given their functional contribution to the “last mile” segment of the delivery process. With parcels being sent to a conveniently located locker, consumers will never have to miss a delivery to their homes and are able to retrieve their items easily by entering an authentication code.⁴⁹ This extensive network ensures that consumers will have easy access to the locker stations that are near their homes, or along the routes of their daily commute on the public transport network. With the growth of e-Commerce in Singapore, open access to the “last mile” delivery infrastructure has become a key component to building and retaining a solid customer base. The coordinated policy efforts which have given consumers timely and convenient access to their e-Commerce purchases have also given logistic service providers and online merchants the ability to deploy cost-efficient strategies to meet the demands of an ever-growing customer base. In addition, this initiative has the potential to reduce the distance travelled by delivery drivers and increase the number of parcels that can be delivered a day. This, in turn, will support the exponential growth in e-Commerce locally and regionally. In developing this initiative, the government was mindful of the need to

47 More information about the Locker Alliance can be accessed via <https://www.lockeralliance.net/>.

48 The IMDA is a statutory board in the Singapore government. It develops and regulates the infocomm and media sectors.

49 More information on the pilot can be accessed via <https://www.opengovasia.com/imda-launches-pilot-for-singapores-federated-locker-initiative/>.

ensure that the system was open and interoperable, thereby preventing any market player from excluding their rivals from using this national infrastructure. For example, the platform is designed to allow different locker operator networks to function alongside each other. Using a standardized data interchange, it creates a transparent, secure and consistent user experience across the delivery process. Through the platform, each operator will utilize a standardized service mediation layer to orchestrate the “last mile” delivery segment. Currently, individual locker operators may be using different unique proprietary programs but the Locker Alliance allows any operator to join the Alliance easily by simply switching to the standards prescribed in the application programming interface it has adopted. This makes it easier for new market players to scale up their operations and reach multiple locations.⁵⁰

Competition authorities can also work with other government agencies to address emerging issues that affect e-Commerce, especially when they cut across competition and other domains, such as balancing the benefits to consumers and businesses of data portability with its compliance costs for businesses. Recognizing how empowering consumers with greater control over their data can support the growth of digital economy and trade, CCCS also partnered with the Personal Data Protection Commission (“PDPC”) ⁵¹ to study data portability and how it can be introduced to support a digital economy.⁵² For example, online shoppers can have their shopping history at one e-Commerce provider transferred to another platform, allowing the latter to extend more tailored offers from the get-go with data portability. These ongoing discussions with different regulators ensure that various issues that could affect e-Commerce development can be concurrently monitored, and hopefully, addressed.

E-Commerce will continue to play an increasingly significant role in the way the ASEAN nationals consume goods and services, and will continue to be a key front for ASEAN economic integration. For ASEAN to fulfil its e-Commerce growth potential, competition law and policy can be deployed as a regulatory tool to facilitate development of a vibrant digital ecosystem for the benefit of both businesses and consumers across the region.

50 More information on the launch of the Locker Alliance pilot and the steps taken to ensure interoperability between parcel locker networks operated by various operators can be accessed via <https://www.opengovasia.com/imda-launches-pilot-for-singapores-federated-locker-initiative/>.

51 The PDPC was established on January 2, 2013 to administer and enforce the Personal Data Protection Act 2012 (PDPA). More information of the PDPC can be accessed via <https://www.pdpc.gov.sg/About-Us/Who-We-Are>.

52 More information on the discussion paper on data portability and a copy of the discussion paper can be accessed via <https://www.ccs.gov.sg/resources/publications/occasional-research-papers/pdpc-cccs-data-portability>.