

# THE COVID-19 TAKE-OFF OF COMPETITION ADVOCACY IN ASIA PACIFIC



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### ASIA PACIFIC: OPPORTUNITIES & CHALLENGES – A GLOBAL CALL FOR COMPETITION POLICY ADVOCACY

By Pradeep S. Mehta



### BIG DATA MARKETS AND COMPETITION LAW IN ASIA

By Vivek Ghosal



### THE COVID-19 TAKE-OFF OF COMPETITION ADVOCACY IN ASIA PACIFIC

By Ruben Maximiano, Wouter Meester & Leni Papa



### AUSTRALIA'S MERGER CONTROL REGIME: EX POST MERGER REVIEWS, CONTINUED PUSH FOR RADICAL CHANGES TO MERGER CLEARANCE PROCESS, PROPOSED SECTOR SPECIFIC RULES

By Kirsten Webb



### REGULATORY HUMILITY: SHOULD LEGISLATORS RETHINK PLANS TO OVERHAUL ONLINE MARKETPLACES?

By Bruce Gustafson



### RECENT DEVELOPMENTS IN COMPETITION POLICY IN JAPAN

By Toshio Dokei, Hideo Nakajima & Takako Onoki



### MOBILE ECOSYSTEMS: COMPETITION AND TRANSPARENCY

By Yusuke Zennyo



### COMPETITION POLICY AND START-UPS IN INDIA

By Dhanendra Kumar & Abir Roy



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By Ruben Maximiano, Wouter Meester & Leni Papa

Competition advocacy has played an important role in the Asia-Pacific. The COVID-19 crisis has only increased its importance, but it has also shown advocacy changing to focus not only on the benefits of competition broadly but more specifically in the design policy actions. This can be expected to continue as the economic recovery and the green transition take off. The active role of competition authorities in the context of the digital economy in the region provides a pathway for agencies.

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CPI Antitrust Chronicle March 2022

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# I. INTRODUCTION

The COVID-19 pandemic has caused an economic recession in most countries around the world with global GDP declining by 3.4 percent in 2020 (OECD, 2021<sup>2</sup>). Governments have implemented far-reaching measures with the objective to contain the effects of the virus, mitigate its economic impact and boost economic recovery. Such measures have been diverse in scale, scope, and objectives. For instance, they have focused on specific industries or companies or on the economy as a whole and have, intentionally or not, temporary or long-lasting effects on the economy. Competition authorities, through their advocacy efforts, can play an important role in ensuring that these measures lead to a faster and more sustained recovery. Firstly, their expertise in how markets function positions them well to provide support in the development, implementation and phasing out of government measures by avoiding or minimizing competition distortions from state interventions. Secondly, competition authorities can advocate for competition enforcement to continue to be a relevant tool for well-functioning markets.

This article discusses the importance of competition advocacy in the recovery from the pandemic in Asia-Pacific and more specifically how the role of competition advocacy can be adapted post-COVID to ensure that competition policy plays a central role for well-designed, impactful, and effective state measures.

## II. ADVOCACY INITIATIVES IN ASIA-PACIFIC BEFORE THE PANDEMIC

Although competition authorities' impact is usually assessed based on the efficiency and effectiveness with which they enforce their competition laws, it is conventional wisdom that efforts to advocate for competition are as important for a successful competition regime. This is even more the case in jurisdictions where competition is not yet a part and parcel of the economic culture.

Competition advocacy consists of many different activities that competition authorities pursue to promote a culture of competition in their economies and markets (OECD, 2022).<sup>3</sup> On the one hand, this has traditionally meant raising public awareness of how policies may impact how market functions. On the other hand, it more recently came to mean participating in the formulation of a country's economic policies which may adversely affect competitive market structures, business conduct, and economic performance (OECD, 2005).<sup>4</sup>

Competition advocacy also tends to be especially important for developing countries as economic policies in these countries are undergoing fundamental changes. Such changing economic policies may include the opening up of markets, the privatization of government-owned incumbents and the development of regulation in certain industries. Such government policies or interventions may affect, intentionally or not, the level and type of competition in the marketplace. Competition authorities in these countries can help bring about government policies that stimulate competition, including levelling the playing field, lowering barriers to entry and minimizing unnecessary government intervention.

In Asia-Pacific, before the pandemic, many jurisdictions focused their competition advocacy on the traditional objectives of advocacy, i.e. the raising of public awareness for competition and the establishment of a competition culture.

Asia-Pacific includes a mix of well-established, experienced competition authorities, including those from OECD member countries (Australia, Korea, Japan, and New Zealand) and a larger number of younger authorities. On average, however, the age of a competition authority in Asia-Pacific is 16 years younger than that in the Americas and Europe (OECD, 2022).<sup>5</sup> For many of the younger authorities, enforcement activities are still relatively low, as their focus and priorities lie in advocacy and creating a culture of competition. Many are adapting and adjusting to new policy goals and assignments of functions in their laws, responding to circumstances and priorities as well as investing resources in advocacy and establishing a competition culture (OECD, 2021).<sup>6</sup> One example is the frequent use by younger authorities in Asia-Pacific of market studies as a tool to screen industries, build knowledge and ensure effective competition in those markets. During the period 2015 to 2020, Asia-Pacific

2 OECD (2021), OECD Economic Outlook, OECD Publishing, Paris, <https://dx.doi.org/10.1787/16097408>.

3 OECD (2022), OECD Competition Trends 2022 <http://www.oecd.org/competition/oecd-competition-trends.htm>.

4 Clark, John (2005), "Competition Advocacy: Challenges for Developing Countries," OECD Journal: Competition Law and Policy, Vol. 6/4. DOI: <https://doi.org/10.1787/clp-v6-art10-en>.

5 OECD (2022), OECD Competition Trends 2022 (<http://www.oecd.org/competition/oecd-competition-trends.htm>), page 19.

6 OECD (2021), OECD Asia-Pacific Competition Law Enforcement Trends, <https://www.oecd.org/daf/competition/oecd-asia-pacific-competition-law-enforcement-trends.htm>, page 21.

competition authorities have conducted approximately 5 market studies per year, which is more frequent than the average OECD jurisdiction, except for 2020 (OECD, 2021).<sup>7</sup>

### III. ADVOCACY ACTIVITIES UNDERTAKEN BY ASIA-PACIFIC COMPETITION AUTHORITIES DURING THE PANDEMIC

The economic shock of the pandemic has prompted unprecedented government actions to prevent a wave of insolvencies of fundamentally viable companies and the destruction of the economic tissue that would make it much harder to recover economically from the crisis. During the first phase of the crisis (the emergency phase), the focus was on issuing immediate measures to avoid the liquidity crisis becoming a solvency one of enormous proportions. This was succeeded by the recovery phase, which focused on implementing anti-recession and recovery packages to minimize the medium-long term damage to the economy to shape future growth. Both phases required multi-dimensional policy responses ranging from fiscal policies, monetary policies, trade policies, and industrial policies.

Competition policy and competition agencies, with their wide range of powers of enforcement and advocacy, also played, and continue to play, an important role in the different phases of the crisis. The OECD has outlined in a policy note the actions that government authorities and competition agencies can adopt to help address the challenges raised by the pandemic while looking into the future.

For competition agencies, these actions include advocating for the non-suspension of competition enforcement, prioritizing the most effective enforcement and advocacy measures to deal with the crisis, helping governments implement state interventions without market distortions, monitoring closely significant and rapid price increases, providing guidance on lawful cooperation between competitors, continuing to look at mergers, minimizing the use of exceptions for public policy consideration in merger control, and looking for procedural flexibility.<sup>8</sup>

In Asia-Pacific, three-quarters of the competition authorities have indicated to having been involved with the design or development of an economic recovery package (OECD, 2021).<sup>9</sup>

#### *A. Advocating for the Continued Enforcement of Competition Law*

Knowing that competition plays a fundamental role in ensuring well-functioning markets that can help promote economic recovery, competition authorities in the region have advocated for the continued adherence to the principles and objectives of competition law enforcement, taking into account the changed realities brought about by the crisis.

China's State Administration of Market Regulation ("SAMR") announced that it would lawfully exempt certain cooperative agreements involving epidemic prevention and the continuation of work and production, such as agreements for the technological improvement of drugs and vaccines, medical devices, and protective equipment, and those that enhanced efficiencies and strengthened the competitiveness of small and medium enterprises.<sup>10</sup>

MyCC, the Malaysian authority, has taken the COVID-19 pandemic into consideration in the imposition of financial penalties. Citing the pandemic, MyCC reduced the financial penalties imposed on General Insurance Association of Malaysia by 25 percent and provided a 6-month payment moratorium.

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<sup>7</sup> OECD (2021), OECD Asia-Pacific Competition Law Enforcement Trends, <https://www.oecd.org/daf/competition/oecd-asia-pacific-competition-law-enforcement-trends.htm>, page 21.

<sup>8</sup> OECD (2020), COVID-19: Competition Policy Actions for Governments and Competition Authorities, available at: <https://www.oecd.org/competition/COVID-19-competition-policy-actions-for-governments-and-competition-authorities.pdf>.

<sup>9</sup> OECD (2021), OECD Asia-Pacific Competition, Law Enforcement Trends 2021, <https://www.oecd.org/daf/competition/oecd-asia-pacific-competition-law-enforcement-trends.htm>.

<sup>10</sup> SAMR on Supporting Epidemic Prevention and Control Announcement on Anti-monopoly Law Enforcement of Resumption of Work and Production, No. 13 of 2020, available at [https://gkml.samr.gov.cn/nsjg/fldj/202004/t20200405\\_313859.html](https://gkml.samr.gov.cn/nsjg/fldj/202004/t20200405_313859.html). See also <https://www.samr.gov.cn/xw/zj/202107/P020210707589294998827.pdf>.

## ***B. Prioritization of Enforcement and Advocacy Actions on Measures Most Effective to Deal with the Crisis***

Noting that the pandemic has created some of the most trying market conditions in Australian aviation history, the ACCC issued a report outlining the types of activities that could damage the airline sector.<sup>11</sup>

ACCC looked for conduct or other factors that may damage competition or make it difficult for new entrants to access the market. It proactively engaged with the government, recognizing that this severely affected industry is also one of strategic importance to the Australian economy.

## ***C. Advocacy in Relation to Enforcing Price Controls, Enforcement Actions Against Price Gouging in Specific Products, Mostly from Health and Medical Markets***

A number of competition authorities in the region undertook enforcement actions against anti-competitive price increases and used advocacy to underscore the risks of price control measures, especially in health and medical markets.

The Japan Fair Trade Commission made clear that it would take strict action against the conduct of businesses putting an unjustifiable disadvantage on SMEs or subcontractors and conduct such as price-fixing cartels impairing the interest of consumers by taking advantage of the shortage of pandemic supplies.<sup>12</sup>

The Bangladesh Competition Commission ("BCC")'s monitoring team oversaw the prices of essential medical and consumer goods and services, specifically PPEs, RT-PCR tests, private health care services, and medicines related to the treatment of COVID-19. Information gathered by the BCC were shared with different ministries related to the health sector.

The Chinese Taipei Fair Trade Commission ("CTFTC") worked within the Unit of the Disease Prevention Supplies Preparation of the Central Epidemic Control Center ("CECC") to monitor prices of disease prevention supplies (e.g. alcohol) and consumer goods (e.g. toilet paper), and take the necessary actions against hoarding or price gouging.<sup>13</sup>

The Philippine Competition Commission ("PCC") cautioned the government about the use of price controls, noting situations wherein this could be counterproductive and may deter the entry of other firms to produce essential goods.<sup>14</sup>

## ***D. Competition Authorities Educated Businesses and Consumers About Their Rights and Obligations***

Early on in the pandemic, ACCC took the approach of educating businesses and consumers about their rights and obligations, with an end view of resolving issues through direct engagement with businesses at an earlier stage over pursuing enforcement action. ACCC wanted to get quick changes in businesses' behavior and redress for impacted consumers in the most efficient way possible, rather than seeking compliance through slower court-based approaches.

## ***E. Consultations With and Provision of Advice to Government Ministries and Departments on Various Policy Issues Such as Industry Support Measures Which Have Implications for Competition***

Several competition authorities undertook advocacy efforts with their governments on the emergency measures (regulatory as well as state support measures) that have been taken in this period. This advocacy also involved consultations with or provision of advice to government ministries and departments on various policy issues such as industry support measures which have implications on competition.

The Office of Trade Competition Commission ("OTCC") of Thailand helped the government design COVID-19 stimulus packages, state aid, and related government policies based on competition principles to ensure that government interventions kept a level-playing

11 Australian Competition and Consumer Commission, "COVID Restrictions Bring Domestic Airline Industry to a Standstill" (*Australian Competition and Consumer Commission*, September 28, 2021) <https://www.accc.gov.au/media-release/covid-restrictions-bring-domestic-airline-industry-to-a-standstill> accessed February 17, 2022.

12 [https://one.oecd.org/document/DAF/COMP/AR\(2021\)18/en/pdf](https://one.oecd.org/document/DAF/COMP/AR(2021)18/en/pdf).

13 Summary of discussion of the Roundtable on Competition Policy in the time of Covid-19. See [https://one.oecd.org/document/DAF/COMP/M\(2020\)1/ANN7/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/M(2020)1/ANN7/FINAL/en/pdf).

14 Jenina Ibañez, "PCC Warns against Unchecked Price Controls" (*BusinessWorld Online*, May 20, 2020) <https://www.bworldonline.com/pcc-warns-against-unchecked-price-controls/> accessed February 8, 2022.

field.<sup>15</sup> MyCC provided economic advice and inputs to relevant government ministries regarding the continuity and efficiency of supply chain operations.

The Hong Kong Competition Commission (“HKCC”) focused its advocacy initiatives on providing comments on the detailed design of government aid. One example relates to the grants given to SMEs to purchase IT services to help them transition to remote working and online commerce. HKCC asked for bid data from the government and has worked on identifying potentially fraudulent bidding practices and collusions.

#### ***F. The Pandemic was Seen as a Time to Revisit Government Policies with Respect to Public Procurement***

The pandemic also served as an opportune time to advocate for the review of government policies related to public procurement, especially as the government emerged as one of the biggest purchasers in the local market during the crisis.<sup>16</sup> As part of its Bid Rigging Awareness campaign, the Competition Commission of Brunei Darussalam (“CCBD”) arranged collaborative workshops with ministries to discuss issues related to potential bid-rigging and urged the participants to provide more detailed information and substantive data in order to facilitate the assessment or investigation public tenders.<sup>17</sup>

#### ***G. Advocating for the Continued Examination of Mergers and Minimizing the use of Exceptions for Public Policy Consideration in Merger Control***

In the Philippines, legislators passed economic stimulus bills that included a provision on the effective suspension of merger reviews for two years in the interest of facilitating business transactions during the pandemic. PCC had little opportunity to express its concerns with the merger review suspension, since the stimulus bills were all passed with urgency. This experience highlighted the need to change the notion among some policymakers that merger review is an added cost or a mere bureaucratic step in doing business. PCC continued advocating competition principles among policymakers and conduct workshops on competition for the legislative staff of the Senate, House of Representatives, and local government units. Its efforts later proved beneficial as PCC successfully pushed for the immediate adoption of the National Competition Policy, which will steer state policies and administrative regulations toward the promotion of fair market competition.<sup>18</sup>

#### ***H. ASEAN OECD Logistics and Small Package Delivery Project***

On top of country-specific advocacy activities during the pandemic, and to support the ASEAN member states’ agreement to implement significant reforms towards market liberalization and elimination of competition distortions as part of the ASEAN Competition Action Plan 2016-2025, the ASEAN Secretariat, with funding from the UK Government, tasked the OECD to assist with the implementation of two advocacy initiatives requiring an assessment of the impact of competition law and policy on the markets of all 10 ASEAN member states. The two parallel components are the competition assessment reviews of specific logistics sub-sectors and competitive neutrality reviews of small-package delivery services. The non-binding policy recommendations to ASEAN governments are expected to help the industry boost overall growth and expedite its recovery from the negative economic impact of the COVID-19 pandemic.

OECD’s meetings and the constant interaction with different levels of government and stakeholders promoted a wide understanding of the importance of conducting competition assessments of rules and regulations and of competitive neutrality. In this way, the OECD encouraged governments to develop processes that integrate a competition assessment and competitive neutrality frameworks when developing new or changing existing laws, policies and/or regulation.

The Project complemented this increased awareness by helping ASEAN officials with effective capacity-building in the ability to conduct competition assessment and competitive neutrality assessment in line with international best practices. During the Project, the OECD team shared knowledge of techniques and methods of measuring competition restrictions. This allowed the ASEAN officials to continue the work on pro-competitive reforms and competition assessment of regulations and policies, becoming champions of competition assessment and competitive neutrality assessment in their respective institutions.

<sup>15</sup> Contribution of the OTCC during the OECD Meeting of High-Level Representatives of Asia Pacific Competition Authorities – Competition in Times of Covid-19 held on July 15, 2020.

<sup>16</sup> <https://app.parr-global.com/intelligence/view/intelcms-mwq9mz>.

<sup>17</sup> <https://www.asean-competition.org/read-news-ccbd-launches-bid-rigging-awareness-campaign>.

<sup>18</sup> The Philippine National Competition Policy, which requires all national government agencies, state-owned enterprises, and local government units to adopt pro-competitive policies and interventions, foster a level playing field between public and private sector businesses, and assist the PCC in enforcing the Philippine Competition Act, was adopted via Administrative Order No. 44 (s 2021) on October 20, 2021. See <https://www.phcc.gov.ph/press-releases/ncp-ao44/#:~:text=The%20NCP%20provides%20the%20framework,uneven%20playing%20field%20for%20businesses>.

The OECD produced twenty country reports, two for each ASEAN member state (one per project component), and two regional reports that summarized the commonalities and differences in the region. Each country report was presented to the public and private stakeholders in the country, while the regional reports were launched by ASEAN and the OECD at the ASEAN Economic Ministers' meeting.

## IV. THE ROAD AHEAD: UPSCALING THE ROLE OF COMPETITION ADVOCACY POST-COVID

### *A. Competition Should be a Guiding Principle in Designing Recovery Measures*

Recent empirical work demonstrates that market power can affect the effectiveness of fiscal and monetary measures. The intuition is relatively straightforward: if profit margins are higher, a government's financial stimulus will be partly absorbed by the firms with market power and thus less widely distributed in the economy. It also will change firms' incentives to invest, for if mark-ups are already high then the impact of monetary policy on investment incentives is not as high. At a moment when fiscal and monetary space is tighter due to the significant public support around the globe, ensuring competitive markets that are increasing productivity and growth is ever more important.

Competition policy, in particular advocacy, can therefore be expected to play a part in the whole-of-policy response for the recovery in many jurisdictions. This may require more resources for competition authorities as they ramp up their dual role of watchdog (enforcer) and guide-dog (advocate for competition).

Enforcement will be crucial to ensure that market power is not created nor abused by firms, and certain sectors with a weightier bearing on the recovery will be prioritized, such as for example digital markets. Enforcement actions will not be sufficient, however, as they are case-specific and can take long to investigate and reach a conclusion.

Advocacy actions by competition authorities can be expected to continue to ensure that rescue packages are deployed in a competition-friendly way. They can also be expected to help ensure that industrial policy measures are more competition friendly and that pro-competitive structural reforms are undertaken as countries exit the crisis. This will be even more crucial since countries will be debt-laden and will need to take razor-sharp policy measures to use limited resources efficiently.

To be at the policymaking table agencies will have to advocate for competition and the role it can play in economic recovery drawing from the lessons of the past – from the Depression to the Global Financial Crisis but also to lessons from other countries from the current crisis.

### *B. Advocating for Competition-friendly Industrial Policies*

As regards Industrial Policy, it can be expected that advocacy should focus on promoting measures that allow for firm entry and competition in the medium term and not around promoting or building moats around national champions. When national champions are defended by policymakers then the latter should be made aware of the trade-offs between the alleged benefits and the harm from competition distortions.

Drawing upon robust empirical work that shows that insulating firms from competition do not make them stronger, competition authorities should therefore advocate with policymakers that there is clear evidence that such a policy would lead or provide a path to the establishment of returns to scale, and even when the likelihood of such a path is high, that the cost for competition and dynamic effects be taken into account in the final decision. Competition authorities may thus advocate that true national champions arise from a stable macroeconomic environment with competitive and stable policies, where firms have access to high-quality infrastructure and utilities and where they can operate under competitively neutral regulation.

This approach was discussed during the OECD Meeting of High-Level Representatives of Asia-Pacific Competition Authorities held in December 2021.<sup>19</sup> In that forum, a number of jurisdictions defended that industrial policies can be relevant to combat market failures, for the common good, but can also be made competition compatible.

To respond to economic consequences from the Covid-19 crisis and beyond, competition agencies should therefore enhance the pro-competitive environment and opportunities for businesses at all levels, helping ensure that industrial policies are competition friendly whenever possible.

19 <https://www.oecd.org/daf/competition/high-level-representatives-meeting-of-asia-pacific-competition-authorities.htm>.

### ***C. Competition Authorities Need to Retool their Skill Sets and Market Know-How: The Example of the Digital Economy***

To be able to participate actively in such advocacy efforts, competition authorities will need to make not just general statements on the benefits of competition (although in many instances that in itself will be beneficial), but to make concrete, data-based analysis. To do so, competition authorities will rely, in some instances, on their expertise in certain markets from their enforcement activities. In other instances, they will rely on market studies that will allow them to understand industry characteristics, dynamics, and eventual competition issues. To fully capture these features of markets, competition authorities can be expected to devote more attention to such market study activities, and to equip themselves with more economists to obtain a better understanding of market dynamics and businesses' incentives and behavior.

Recently in the region, many competition authorities have been investing resources in such market studies, often then providing input to policymakers for legislative or rule changes. A clear example, which can provide a blueprint for other sectors, are the numerous market studies in the digital economy space. This section will thus focus on the digital economy as it also of particular import for the Asia Pacific's recovery. An example is Australia that has used market studies as part of a comprehensive, methodical approach to understanding the impact of digital platforms on its market economy.

#### **1. The Emerging Role for Market Studies**

A recent 2021 report has stated that the value of the internet economy in Indonesia, Malaysia, Singapore, Thailand, the Philippines, and Viet Nam is expected to have exceeded USD170 billion in 2021 and reach USD360 billion by 2025 and USD 1 trillion by 2030.<sup>20</sup> During the meeting of the OECD High-Level Representatives Meeting in December 2021 a number of agencies stated that the pandemic led to the rapid growth of digital platforms in sectors such as food delivery platforms and e-marketplaces in the region. This explains why the competition authorities in the region have been up-skilling on the digital economy, widely using market studies to equip themselves with the knowledge to advocate with policymakers on possible regulatory and other policy actions. A few examples are below:

- In Australia, the ACCC has been analyzing competition and consumer issues arising from digital platforms since 2017. It is currently undertaking a 5-year inquiry into Digital Platform Services to be finalized in 2025. To date this has led to four reports focused on search, social media, and online private messaging services, app marketplaces, provision of web browsers and general search services, choice architectures and the supply of digital advertising services. A report on the general online retail marketplaces is due at end of March 2022.
- The CCCS' conducted a Market Study on E-Commerce Platforms that was finalized in 2020 with a view to providing the authority with a greater understanding of the business models as well as how e-commerce platforms operate and compete. This has led to updated enforcement guidelines (see below).

A number of other jurisdictions have announced plans to undertake their own market studies:

- In Malaysia, MyCC has announced plans to conduct a market review of the digital sector with the view to issuing guidelines to be completed by the end of 2022. The focus will be on e-commerce, food delivery platforms and online travel agents.
- In Thailand, the OTCC plans to conduct three market studies in the digital sector in 2022

#### **2. The Setting Up of Specialized Digital Units**

Together with the importance of the digital transformation of markets as well as the specificities of the digital economy's functioning, in particular that of digital platforms, based on a number of closely interconnected characteristics of network effects, cross-network externalities, the importance of data and feedback loops means that these markets require specific skill sets and experience. This explains why there is a current trend to create digital market units or groups within many competition authorities.<sup>21</sup> One of the main roles of these units is to assist and provide support to case teams that are undertaking investigations in digital markets.

Within the Asia-Pacific region, the JFTC has created the Office of Policy Planning and Research for Digital Markets, while the ACCC has set up a specialist Digital Platforms Branch to conduct work related to digital platform markets.

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<sup>20</sup> Google, Temasek and Bain, e-Conomy SEA 2021.

<sup>21</sup> Outside of the Asia-Pacific Region there are recent examples, which include the UK's CMA, Mexico's COFECE, and Portugal's Autoridade da Concorrência.

### 3. Competition Authorities Should Reach Out to and Foster Linkages with the Regulators Involved in the Digital Space

Key to the digitally driven products and services is data. Many countries have specialized data protection agencies with specific know-how and powers over data regulations. Given this expertise of data protection agencies, many competition authorities are collaborating closely with them to ensure that both enforcement actions as well as regulations are both pro-competitive and respectful of data protection.

An example from the region is found in Singapore, where the CCCS has been collaborating with the Personal Data Protection Commission (PDPC). One result of this collaboration was the introduction of data portability under the Personal Data Protection Act (“PDPA”).

Working closely with consumer protection agencies is also proving invaluable for competition authorities in the region. For example, MyCC reached out to the Ministry of Domestic Trade and Consumer Affairs to engage with the two biggest food delivery platforms.<sup>22</sup>

### 4. Advocating for Amendment of Competition Laws or *Ex Ante* Regulation to Address Perceived Gaps in Addressing the Anti-competitive Practices of Digital Platforms

Equipped with the know-how from market studies, creating digital teams and working closely with specialized regulators has allowed competition authorities in the region to be active in the ongoing dialogue of policymakers around the regulation of digital markets.

Indeed, the specificities of markets in the digital economy have meant that in many jurisdictions there are ongoing calls for ex ante specific regulation of digital platforms and markets. Creating the digital units and undertaking market studies can help build the understanding as to how best to react to such calls, and to be ready to make proposals or feed into such regulatory pushes. This is particularly important given the rising relevance of the digital transformation across industries and markets, and how regulation can affect market dynamics, sometimes in unexpected and unintended ways.

Getting the “right” regulatory environment in place will be key to maintain the main substantial benefits that digitalization can bring, while ensuring that anti-competitive enforcement practices are well adapted to the rapid-scale up of digital platforms that lead to winner takes all dynamics built around eco-systems.

A few examples from the region are the following:

- The SAMR has noted the importance of ensuring up-to date antitrust regulations for digital platforms and has currently pending a proposal to amend the Anti-Monopoly Law (“AML”). The current proposal, if adopted, would mean that a dominant operator that uses data and algorithms, technologies, and platform rules to create obstacles to competitors would amount to an abuse of dominance. The draft amendment to the AML was made available for public comment in October 2021 with proposed changes being adopted potentially already in 2022
- A proposal for ex ante regulation has been made by Japan’s JFTC. Its objective is to better monitor situations of data hoarding by the big tech.
- In Australia, the government introduced in 2021 the News Media Bargaining Code to address bargaining power imbalances between Australian news media businesses and digital platforms, following work by the ACCC under the Digital platform services inquiry 2020-2025.
- Also in Australia, at the end of February 2022, the ACCC has started a consultation process with stakeholders on a number of potential measures to address anti-competitive conduct (e.g. self-preferencing and access to data) for a possible new regulatory framework to promote competition and increase consumer welfare in digital platform services.<sup>23</sup>
- Following the market studies outlined above, the CCCS issued updated guidelines at the end of 2021 to provide further clarity on issues arising from the market power and potentially abusive conduct in digital markets.

<sup>22</sup> <https://app.parr-global.com/intelligence/view/intelcms-qjlx9x>.

<sup>23</sup> <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platform-services-inquiry-2020-2025/september-2022-interim-report>.

## 5. Cooperation with Other Competition Authorities is Increasingly Important

Finally, international collaboration is more important than ever, especially when it comes to the borderless digital economy. One of the main issues in digital markets is the inherently global nature of the markets, the digital market players, and their conduct. As a result, competition authorities will need to enhance co-operation between national competent agencies to address competition issues that are increasingly transnational in scope (OECD, 2021<sup>24</sup>). By collaborating closely, authorities can develop a common approach when dealing with cases. For instance, multi-jurisdictional mergers between digital platforms raise similar challenges for competition authorities, for instance the need to adopt consistent remedies in response to the concerns raised. Given the geographic scope of digital platforms and the flow of data across different countries, mechanisms for information sharing and coordinating investigations would be beneficial for enforcement actions in these markets (OECD, 2019<sup>25</sup>).

Different co-operation initiatives in the Asia-Pacific region may serve as platforms to enable competition authorities to share good practices about their enforcement activities. Such platforms can include the ASEAN Australia New Zealand Free Trade Area (“AANZFTA”), the ASEAN Competition Enforcement Network (“ACEN”), the OECD meeting of Heads of Asia-Pacific Competition Authorities, the ASEAN Expert Group on Competition (“AEGC”).

## V. CONCLUSION

Advocacy has traditionally played an important role for competition authorities in the Asia-Pacific region, especially for the newer competition regimes. It first focused mainly on advocating for a competition culture and for the importance of competition, mainly to reduce anti-competitive conduct by the business community. During the Covid-19 pandemic, this role was more and more broadly intended as, or expanded to, not only advocate for competition generally but for specific policy actions, sometimes helping the design of the recovery packages.

This role of advising policymakers on policy and rulemaking can be expected to increase in the Region. This will require close knowledge of markets to enable agencies to offer pragmatic usable advice that is data-based. The digital economy provides a good proxy for competition authority actions, where a number of authorities have undertaken market studies, created specialized teams and intensified their cooperation with regulators that are active in the particular field.

The competition authority's skill set is unique in the region. Such agencies can be therefore expected to be able to provide specific and effective advice at the policymaking table.

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24 OECD/ICN (2021), OECD/ICN Report on International Co-operation in Competition Enforcement <http://www.oecd.org/competition/oecd-icn-report-on-international-cooperation-in-competition-enforcement-2021.htm>.

25 Background note to the Third OECD Meeting of High Level Representatives of Asia-Pacific Competition Authorities: Practical approaches to assessing digital platform markets for competition law enforcement, December 4, 2019.



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