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**Digital Trade in Asia**

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European University Institute  
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## **Abstract**

Digital trade has become a major driver of economic development by enhancing productivity and lowering costs of trade in goods. While digital trade promises new opportunities for individuals and firms of all sizes, it also raises new challenges. Policymakers and business leaders need to better understand the drivers of this paradigm for trade and find solutions for potential issues in dialogue with stakeholders so as to ensure digital trade policies that are more sustainable and inclusive for all. This paper addresses emerging topics, with limited existing regulations in place and with clear challenges ahead in designing effective and appropriate policy responses that effectively address each topic. The risks of incompatible policy frameworks across the Asia-Pacific region cannot be discounted. Such regulatory fragmentation could destroy the promise of the digital economy and make it significantly harder for large and small firms across the region to participate in digital trade in the future.

## **Keywords**

digital trade, trade in services, Asia, digital policy

## The Importance of Digital Trade in Asia<sup>1</sup>

The digital economy has become paramount for continued economic growth and development across the Asia Pacific region.<sup>2</sup> Inside six economies in Southeast Asia (Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam), for example, digital trade growth has expanded from 260 million internet users in 2015 to 400 million users in 2020.<sup>3</sup> A similar story of explosive digital growth can be told for every country in the region.

The COVID-19 pandemic has only accelerated these trends. The Asia Pacific has been the fastest growing region in global e-commerce marketplaces and holds the largest share of the global business-to-consumer (B2C) markets.<sup>4</sup> So-called “Singles Day” shattered records in China on 11 November 2020, with US\$ 115 billion in sales generated between the Alibaba and [JD.com](https://www.jd.com) platforms.<sup>5</sup> Transactions per second peaked at 583,000.<sup>6</sup> Singles Day has spread across much of the region as well. Southeast Asia’s Lazada platform had more than US\$ 100 million in sales in the first hour of the sales from midnight to 1 am.<sup>7</sup> By way of comparison, Americans spent US\$ 136 billion in a five-day period between Thanksgiving and “Cyber Monday” in 2019.<sup>8</sup>

Digital trade or the digital economy includes goods and services delivered in whole or in part through digital means. E-commerce has traditionally meant the delivery of goods ordered online, making it part of the larger category of digital trade.<sup>9</sup>

In the earliest days, the digital economy flourished with minimal regulatory oversight. It may be imagined that firms prefer unfettered operations, but most companies experience unnecessary risks when operating without any guardrails in place nor any clear sense of how government regulations might adjust. Unlike the offline world, regulatory changes can destroy or facilitate digital activities immediately. For example, a government decision to restrict the flow of information across borders or to require local registration prior to delivering services can completely upend previously profitable and viable business models overnight. The speed

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- 1 The authors gratefully acknowledge the support provided by the EUI and the Hinrich Foundation for this paper.
  - 2 This paper largely focuses on the Asia-Pacific economies of Brunei, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, South Korea, Thailand, and Vietnam.
  - 3 See e-Economy SEA 2020: At Full Velocity, Temasek, Google and Bain, November 2020.
  - 4 ADB, “Embracing the E-Commerce Revolution in Asia and the Pacific,” 2018, [www.adb.org](http://www.adb.org).
  - 5 More than 31,000 brands out of more than 250,000 participating brands on the Alibaba platform came from outside China. Alibaba’s sales across an 11-day extension of “Single’s Day” more than doubled from 2019 to 2020. See “Alibaba, JD Set New Records to Rack Up Sales of \$115 Billion,” CNBC, November 12, 2020, accessed at: <https://www.cnbc.com/2020/11/12/singles-day-2020-alibaba-and-jd-rack-up-record-115-billion-of-sales.html> on November 14, 2020.
  - 6 See “Singles Day,” Minghe Hu, South China Morning Post, November 11, 2020, accessed at: <https://www.scmp.com/tech/e-commerce/article/3109290/singles-day-chinese-consumers-spend-us56-billion-10-days-during> on November 15, 2020.
  - 7 “Alibaba-owned Lazada Saw ‘Record’ Sales on Singles Day,” Shaheli Roy Choudhury, CNBC, November 12, 2020, accessed at: <https://www.cnbc.com/2020/11/12/alibaba-owned-lazada-saw-record-sales-on-singles-day.html> on November 15, 2020.
  - 8 See “Online Holiday Sales Grow 13.6% in 2019,” Jessica Young, January 19, 2020, DigitalCommerce 360, accessed at: <https://www.digitalcommerce360.com/2020/01/17/online-holiday-sales-grow-13-6-in-2019/> on November 14, 2020.
  - 9 Do note, however, that trade officials and governments working on digital trade still typically include a range of issues related to digital trade into different chapters, but most of the attention has been on a chapter called “e-commerce” rather than using a broader title like “digital trade.” The digital services elements of trade agreements have remained part of the negotiations largely in the trade in services chapters.

of adjustment required by digital firms to fit new regulations can prove impossible, particularly for smaller firms.

Digital trade is not just about technology companies. The list of relevant stakeholders in designing better outcomes can be long, but at least seven groups are of key importance: government; technology-focused multinational companies (MNCs); non-tech or more traditional MNCs; financial institutions; micro, small and medium sized enterprises (MSMEs); consumers; and civil society. As the portions of the economy driven by digital technology have continued to expand and as digital connectivity has increased, governments have increasingly been grappling with the appropriate ways to allow digital trade to grow while restraining harms that might flow to consumers and businesses. Effective management of the regulatory and policy environment to facilitate digital trade will become one of the most important aspects of trade policy.

The digital economy clearly holds enormous potential. However, there has been relatively limited work on digital trade in Asia. Most of the research done to date has either focused on measuring the size of the digital economy or the readiness of countries to embrace digitalisation. The policy and regulatory environment in the region has not received the same levels of attention, with most existing thought leadership for digital trade drawn from North American and European experiences.

In order to stay ahead of the curve, governments and businesses need to prepare for the opportunities and challenges brought forth by digital trade. There are a range of important topics in digital trade looming for the region, including the importance of allowing digital services to flow, managing digital taxation, addressing efficient and affordable cross-border digital payments, and encouraging the smallest firms to participate in the rapidly growing digital economy. As a sign of the challenges ahead, in most of these key policy areas, the majority of Asian governments have no regulatory frameworks in place or a patchwork of policies and regulations. In some instances, regulations are not aligned with neighbours, leading to increasing regulatory fragmentation.

Absent robust domestic frameworks, many Asian governments are working on digital trade issues the other way round—they start with a cooperative commitment made in a regional forum and then craft appropriate domestic procedures to support implementation of new regional rules and commitments. This situation is likely to be true especially for the issues discussed in this paper where the thinking around appropriate regulatory frameworks remains uncertain. It is, in fact, precisely to drive consensus that many governments have signed up to various commitments in different arrangements in Asia to help officials explore and grapple with important issues and build on existing best practices.

Digital trade and e-commerce have become major drivers of economic development by enhancing productivity and lowering costs of trade in goods. While digital trade promises new opportunities for individuals and firms of all sizes, it also raises new challenges. Policy makers and business leaders need to better understand the drivers of this paradigm for trade and find solutions for potential issues in dialogue with stakeholders so as to ensure digital trade policies that are more sustainable and inclusive for all.

This paper is intended to raise more questions than it answers. It addresses emerging topics, with limited existing regulations in place and with clear challenges ahead in designing effective and appropriate policy responses that effectively address each topic. The risks of incompatible policy frameworks across the Asia Pacific cannot be discounted. Such regulatory



fragmentation could destroy the promise of the digital economy and make it significantly harder for large and small firms across the region to participate in digital trade in the future.

## **Key Digital Policy Issues**

It is clear that Asia has seen explosive growth in the digital economy. The increasing size of the digital pie, however, has brought new scrutiny to the policy frameworks that facilitate or frustrate digital trade. In the earliest days of the internet, governments largely allowed digital to flourish without restrictions of any kind. As the technology was rapidly evolving and the penetration of the digital world into the offline world was limited, it made sense to take a hands-off approach to regulation. Where needed, officials adapted off-line policies to fit a new digitally-enabled world.

As the digital economy has grown, however, government officials from around the world have increasingly begun to grapple with a range of issues thrown up by digital trade. Some of the challenges come from comparing the situation of off-line companies to those operating largely or entirely digitally. Governments are under increasing pressure to ensure “a level playing field” for all firms. Other issues arise from government mandates to ensure public health, safety, and security.

Many firms have also become increasingly uncomfortable with unregulated spaces. A lack of rules can actually be problematic for firms, as there are no guardrails or clarity on allowable activities. Loose or non-transparent regulation can also lead to competitive advantages for locally-based firms that may receive earlier notice of any regulatory or policy rules changes ahead of foreign counterparts. Unlike traditional trade flows, the digital economy generally has paid less attention to geographic boundaries. Even the smallest firm can be “born global” from the outset and find buyers for goods and services around the globe. This means that governments need to pay greater attention to the role of small firms engaged in trade that might, in the past, have been ignored as the level of cross-border trade for micro, small and medium sized (MSME) firms in the offline environment might have been extremely low.

An increasing challenge to firms of all sizes is the potential for regulatory incoherence, with policies related to digital trade that vary from one market to another. Given the porous nature of digital trade, policy frameworks that are inconsistent can be much more problematic to companies and consumers than conflictual policy settings in the off-line world. A “micro-multinational” firm that provides digital services like graphic design or sells e-commerce goods like wedding dresses to brides located around the world are more likely to experience challenges in cross-border trade than a traditional firm. The off-line vendor of graphic design may never, in fact, attempt to deliver services to any customers overseas. The wedding dress designer operating out of a physical retail shop or even a chain of shops may still never find buyers outside of the local community. However, once such firms move online to become part of the digital economy, they may find purchasers around the globe. Suddenly, cross-border rules matter deeply to even the smallest firms.

COVID-19 has not just disrupted companies as they have tried to adjust to both supply and demand shocks around the world. It has also altered government policymaking. While government officials had expected to more carefully grapple with a variety of digital issues, most of these conversations over the past two years have been postponed or have proceeded more slowly than originally anticipated. Governments around the world have turned their attention to managing the fallout of the pandemic, including navigating various forms of shutdowns, altered transport options, and cratering demand for travel. Negotiations and discussions between

governments have shifted to Zoom which limits the ability of participants to share innovative ideas, more fully explore synergies, and observe disconnects between planned approaches to new topics.

As the tensions associated with the pandemic start to moderate across much of the region, officials in Asia are cautiously optimistic about the prospects for a return to a “new normal.” Assuming that the virus is managed in the region, it is likely that governments will see a strong resumption of efforts at the domestic, regional and international levels to try to create clarity around a range of digital rules.

Given the diversity in Asia, governments will have a variety of topics to address. Some governments in the region already have in place significant regulations and legislation to manage aspects of the digital economy. Others are at an earlier stage of the journey. Within Asia, it may be also important to note that some of the least developed countries are racing ahead of other, more developed, economies in crafting a range of domestic level regulations, decrees, and policies to address newer digital issues.

There are several issues that are likely to rise to prominence across Asia.<sup>10</sup> Several areas, in particular, are expected to be on the minds of policymakers and embedded into various negotiating agendas in the region, including:

- **Digital Services:** While trade in e-commerce goods tend to grab headlines, with spectacular sales on Singles Day and increasing purchases of everything from food to clothing online in a pandemic, significant growth is also happening in the digital delivery of services. The policy landscape, however, for managing digital services, especially across borders, is much less well understood and developed. Asian governments have traditionally focused less on services and much more on export of goods. But as services grow in increasing importance, managing consistency in the space will become critical to ensuring success in a post-pandemic recovery period.<sup>11</sup>
- **Digital Taxation:** Governments emerging from lockdowns and spending significantly on subsidies and a wide range of policy actions to encourage economic growth are likely to be looking for new sources of revenue. The digital economy will present a promising target. Of particular importance will be the methods and manner in which governments seek to collect tax from digitally delivered goods and services, especially in cross-border settings. Collection policies that are poorly thought out or ineffectively implemented can completely ruin the potential for firms—and especially the smallest companies—to continue to find new market opportunities overseas. In the past, trade policy was squarely focused on cross-border trade challenges and tax was considered a problem to be managed by other officials, especially from Central Banks and Finance Ministries. The digital economy, however, is increasingly bringing together tax and trade in cross-border settings in new ways that are insufficiently understood.
- **Competition:** Digitalisation and online platforms provide numerous benefits to firms and consumers, including increased choice and economic opportunity, but they can also raise market concentration and competition concerns. With competition governance questions

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10 For a fuller description of many of these areas, please see the Digital Trade in Asia series prepared by the Asian Trade Centre for the Hinrich Foundation. Papers in the series can be found here: <https://asiantradecentre.org/asia-in-the-digital-economy> and here: <https://www.hinrichfoundation.com/global-trade/digital-trade/>

11 One useful review of issues can be found in the World Economic Forum’s (WEF), “Digital Trade in Services,” WEF, accessed October 23, 2020, [weforum.org/projects/digital-trade-in-services](https://weforum.org/projects/digital-trade-in-services)

entering mainstream political discourse, there is a need for a balanced, evidence-based reassessment of the appropriate role of competition policy in the digital space.

- **Digital Payments:** As a key enabling factor for digital trade, digital payments play an important role in accelerating economic growth. At the moment, cross-border e-payment systems across Asia are often unnecessarily challenging to use, costly and frequently inefficient. Consumers without bank accounts or payment cards can be left out of the digital economy entirely. Policy makers need to facilitate the development of inclusive and efficient digital payments systems, ensure the safety and reliability of payments, improve the interoperability of bank and non-bank financial service providers, and enhance consumer trust.
- **MSME Development:** Policymakers in Asia often assume that only large firms are set up to take advantage of the digital economy, leaving smaller firms at a competitive disadvantage. Yet many of the smallest firms are now, effectively, “micro-multinationals” in the digital world with suppliers and customers across the region and the world. Any regulatory and legislative changes planned for the digital economy will likely impact smaller firms significantly. Micro, small and medium sized enterprises (MSMEs) typically do not have substantial resources to adapt and adjust to changing policies or to understand and manage differing policies in a cross-border landscape. The COVID-19 pandemic has called attention to the important role that digital can play in future economic recovery and the critical position of smaller firms to domestic economic growth and development.

These issue areas often have significant overlap. As an example, digital services trade requires information and data flows. A landscape architect needs to be able to send plans, drawings and plant lists to clients, suppliers and vendors to be able to create a dream garden in a cross-border setting. These need to be sent without risk of cyber breaches, including important client or company data. The architect needs to be paid at the end, which requires the movement of payments and financial data. The architect may be part of a small firm with an international client base or embedded in a larger global property developer.

One of the challenges, in fact, with tackling digital trade is precisely the overlapping nature of such trade. Digital should be seen a cross-cutting enabler of a wide variety of economic activity rather than an end in itself. This makes it tough for many governments to manage, as the structural or institutional approaches to handling trade policy can be divided into fiercely defended silos. Trade in goods, for instance, is usually managed with specific approaches to the topic by different departments, or even ministries, from trade in services. Both may not be involved in discussions on taxation or planned payments policy adjustments.

## **Digital Services**

Governments have been creating rules of one kind or another to handle the global flow of goods trade for centuries. Until relatively recently, however, services trade lacked similar types of legal and regulatory arrangements. This was driven in part by actual difficulties in delivering services across borders and an unclear understanding by governments about how services might be transferred between countries.

The first serious attempt to tackle trade in services did not take place until the 1980s and 1990s, under the auspices of the General Agreement on Tariffs and Trade (GATT), which became the World Trade Organization (WTO) in 1995 when the Uruguay Round agreements were put into place. Services trade was divided then into what were called “modes” of supply depending on who or what moved—the service itself, the consumer of the service, the supplier

of the service by investing in another economy to provide the service, or the individual supplying the service who could temporarily move across a border to deliver a service in another country. In the intervening 25 years, cross-border trade in services has exploded.

Many of these services are now delivered online, without suppliers or customers moving at all. The international system has adapted the “mode 1” category of services to trade to fit digital delivery of services. Mode 1 was originally crafted with the idea of sending services like architectural plans through the post or, perhaps, by the then new-fangled fax machine. The internet was just becoming publicly available in 1995 when the WTO was starting implementation of new services rules.

Because governments were cautious about addressing an entirely new area of trade, many WTO members made only limited services commitments. The paucity of commitments has increased many difficulties in clarifying the rules further for a wide range of services into many different WTO members. As members have not returned to the topic and added additional services sectors and subsectors, increasingly large shares of traded services may not have any clear global commitments at all. Newer services that may be entirely digitally delivered, like car or ride sharing or private room bookings, are also excluded.

In addition, the global rulebook to govern trade in services (beyond the specific legal commitments made in various WTO member schedules) was also relatively “thin” with limited rules in place as governments were simply uncertain about the potential impact of various regulatory options for services. This rulebook and the accompanying schedules were part of the WTO’s “built-in” agenda for the next round of negotiations. However, after a disastrous attempt to launch a new round in Seattle in 1998 and a promising effort in 2001 in Doha, limited progress has been made on global rules for services (and, indeed, most aspects of global trade). Services are less tangible and the issues surrounding services trade are often more complex.<sup>12</sup>

This has meant that governments have increasingly had to either adapt existing WTO services rules very liberally or to create cross-border rules for trade in services through other settings at the regional or bilateral levels. Most of these arrangements are also relatively thin commitments and most do not explicitly address digital services trade.

As an example of an Asian approach, existing commitments on services from the 10 members<sup>13</sup> of the Association of Southeast Asian Nations (ASEAN) had been conducted on the basis of successive “rounds” of market liberalization under the ASEAN Framework Agreement on Services (AFAS). Members have offered up new commitments in each round with the intention of fully opening services markets by 2015. This deadline was missed and ASEAN members have adjusted future services negotiations in 2020 to a new institution called the ASEAN Trade in Services Agreement (ATISA).<sup>14</sup>

One important element of ATISA was to develop a more modern set of rules to govern trade in services across the region. Member states also committed to shifting the method of scheduling services liberalization from positive lists to negative lists. Of course, ATISA covers more than just digital services activities, but it represents ASEAN ambitions to more effectively tackle coordination of trade in services across ASEAN.

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12 “World Trade Report 2019: The Future of Services Trade,” n.d., 13.

13 ASEAN members include: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

14 <https://asean.org/wp-content/uploads/2012/05/ATISA-signed-scanned.pdf>

ASEAN members also agreed to a substantial upgrade to existing services rules as part of the Regional Comprehensive Economic Partnership (RCEP) agreement. RCEP came into force in 2022 and includes both new rules governing trade in services across the region as well as a significant shift in the method used to schedule services commitments. The eight participating members that agreed to use positive lists for commitments in RCEP have also agreed to switch to negative listing of their commitments within eight years.<sup>15</sup>

There is an ongoing debate about the value of positive vs. negative lists for scheduling commitments. However, under a negative list, it is less possible to discriminate against digitally provided services. Negative lists also mean that future services will be automatically opened for market access and national treatment unless the parties agree to a new reservation. Given the speed of adjustment for digitally delivered services trade, this difference could be substantial.

Trade in services can create welfare gains for society through a more efficient allocation of resources, greater economies of scale, and an increase in the variety of services on offer. Because services providers must often be present in the area where the service is delivered, the quality of institutions in the importing country is of greater importance for services trade than for goods trade.

The service sector in Asia has the potential to become a new engine of economic growth for developing Asia, which has traditionally relied on export-oriented manufacturing to power its growth. The transition from agriculture through manufacturing to a services economy has been the hallmark of economic development for many countries. Due to its labor-intensive nature, a large and growing service sector can generate millions of jobs for the region's huge workforces and thus promote more inclusive growth.<sup>16</sup> Extensive synergies between the service and industry sectors mean that service sector development can lift productivity throughout the economy. Those synergies are all the more evident in modern, high value-added service industries such as finance, information and communication technology, and professional business services.

With ASEAN renewing their focus on the importance of a competitive services agenda to realize overall growth and development across their respective regions, the services sector in these economies too will likely join the 60-plus-percent club soon.<sup>17</sup> Other Asian countries such as India and Sri Lanka have headed straight to services without developing a significant manufacturing sector at all. The growth in services has likely transformed not only the composition of the world's economic production and employment, but also altered global trading patterns.<sup>18</sup>

The participation of developing economies in services trade is not yet inclusive. A close look reveals that trade is very concentrated, with the same five economies ranking both as leading services exporters and importers, although in a different order. In 2017, China was the leading services trader, followed by Hong Kong (China), the Republic of Korea, Singapore and India. Since 2017, services exported by these five economies through branches and subsidiaries abroad made up, on average, 55.9% of their services exports, a rise of 22 percentage points

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15 Cambodia, Laos, Myanmar, Philippines, Thailand, Vietnam, China and New Zealand currently have positive list schedules. Do note that RCEP has not yet entered into force for Myanmar and Philippines by the end of April 2022.

16 Donghyun Park and Kwanho Shin, "The Service Sector in Asia: Is It an Engine of Growth?," SSRN Electronic Journal, 2012, <https://doi.org/10.2139/ssrn.2198154>

17 "The Services Economy's Importance to World Economic Growth | Deloitte Insights," accessed November 11, 2020, <https://www2.deloitte.com/us/en/insights/economy/issues-by-the-numbers/trade-in-services-economy-growth.html>

18 "The Services Economy's Importance to World Economic Growth | Deloitte Insights," accessed November 11, 2020, <https://www2.deloitte.com/us/en/insights/economy/issues-by-the-numbers/trade-in-services-economy-growth.html>

since 2005. In China and the Republic of Korea in particular, up to two-thirds of services were exported through foreign-controlled affiliates, more than half in Hong Kong, China, and around half in Singapore, too. In India, cross-border trade remains the dominant mode, with only 20% of services exported through foreign-controlled affiliates in other economies.<sup>19</sup>

For these countries, construction, finance and distribution are the sectors that contribute most to the remarkable growth of their services exports through foreign-controlled affiliates. However, in a variety of other sectors, from professional and business services, to ICT and transport, a shift in the way services are exported has already occurred. In others, such as tourism or health services, a change is well under way.<sup>20</sup>

Services are increasingly likely to be embedded in manufacturing activities. Research suggests that up to half of the value in a range of manufactured products comes from services inputs like warehousing and distribution, retail sales, intellectual property development, legal services and even catering.<sup>21</sup> The digital economy allows some of these service activities to be delivered across borders and online.

An important trend is the process of adding services to products, known as “servicification.”<sup>22</sup> When manufacturers add service components to a connected product, it opens up new ways to generate value to customers and to firms. The addition of such services will be key to driving additional competitive advantage, especially in markets where product differentiation is blurring and customer expectations for product and service performance are expanding.<sup>23</sup>

Technology has enabled a decline in trade costs in services. A key effect is that global exports of services enabled by information and communications technology (ICT) have more than doubled between 2005 and 2018. Moreover, by enabling cross-border trade for services that have traditionally needed face-to-face interaction, digital technologies will reduce the cost of trading in services even further. Digital technologies will further blur the distinction between goods and services activities. Digital allows firms to reach larger numbers of suppliers and customers across the globe and to facilitate the outsourcing of activities. These trends will increase the importance of data flows, intellectual property and investment in digital infrastructure.

A key challenge for all Asian countries is to improve the quality of services sector data. Absent sufficient data and reliable statistics, it can be hard to see where specific obstacles and opportunities might lie. Overall, while services sector development can be a long and challenging process, creating more competitive services markets by removing a wide range of internal and external policy distortions is vital for improving services sector productivity. Moreover, complementary investments in physical infrastructure and human capital will also be necessary to achieve a strong services sector.

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19 “World Trade Report 2019: The Future of Services Trade,” n.d., 13.

20 UNCTAD, “Trade in Services by Category,” UNCTAD e-Handbook of Statistics 2019, accessed November 11, 2020, <https://stats.unctad.org/handbook/Services/ByCategory.html>

21 See, for instance, *Services in Global Value Chains*, Patrick Low and Gloria Pasadilla, eds, APEC and World Scientific, 2016.

22 “Servitization Business Model: How to Turn Product into Services | TCS,” accessed November 11, 2020, <https://www.tcs.com/perspectives/articles/what-happens-when-you-turn-your-products-into-services>

23 M. S. I. Data, “What Is Servitization and Why Should Manufacturers Care?,” Text, <https://www.msidata.com/> (MSI Data, December 4, 2015), World, <https://www.msidata.com/what-is-servitization>

Globally, the barriers to digital services trade are sizable with connectivity and infrastructure being the most discussed. In 2019, the level of services trade restrictions was 30% higher than the year before.<sup>24</sup> Barriers especially affected service sectors that underpin digital trade, including telecommunications, computer services and audio-visual services. They include limiting foreign providers' access to infrastructure and connectivity, hindering electronic transactions and international payments, and other restrictive measures.<sup>25</sup> In countries including Malaysia, the Philippines, Vietnam and China, restrictions on FDI in the communications sector are more stringent than the overall national averages across all sectors. In China, India and Indonesia, telecommunications and computer services face greater trade restrictions than the OECD average. Countries also face regulatory challenges relating to the protection of intellectual property rights on traded digital goods and services.<sup>26</sup>

In the years ahead, governments in the region will increasingly be looking to clarify conditions for digital services trade. The pandemic has highlighted a significant shift in economic activities, with a growing share of services being delivered online. This includes everything from education conducted online for populations from school-aged children through skills development courses for working adults. Increasingly, medical services have also been delivered digitally. In fact, final figures for the pandemic period are likely to reveal a shift to the digital delivery of services that have never been traded online or cross-borders in the past. The policy landscape will need to adjust to catch up with the growing importance of the digital services sector.

## Digital Taxation

Digital services present a range of new challenges for trade officials trying to create domestic regulations and policies. Digital trade has also thrown up another conundrum: how to manage a range of new taxation pressures. In a pre-digital era, tax was applied largely based on businesses having a physical presence or "permanent establishment" in different tax jurisdictions. There are, broadly speaking, two types of taxes: direct and indirect. Direct taxes are paid, as the name suggests, directly to the government. These include corporate tax, income tax, and property tax. Indirect taxes take several different forms, but the basic insight is that taxes are first collected by one entity or individual and then remitted or paid to the government. The most easily recognized form of indirect tax are Value Added Taxes (VAT) or Goods and Services Taxes (GST) which are collected by shops or suppliers or manufacturers from customers and then later paid to the government.

Trade officials have traditionally not been much concerned about tax policies at all. Tax is managed through ministries of finance and the only connection most trade officials have had to tax policy is the payment of customs tariffs at the border. As trade becomes increasingly digital, trade officials will need to start following tax debates much more carefully. Cross-border delivery of e-commerce goods has increasingly included indirect tax charges and digital services are also becoming subject to tax payments.

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24 "Oecd-Stri-Policy-Trends-up-to-2020.Pdf," accessed November 2, 2020, <https://www.oecd.org/trade/topics/services-trade/documents/oecd-stri-policy-trends-up-to-2020.pdf>

25 "Oecd-Stri-Policy-Trends-up-to-2020.Pdf."

26 "Leveraging Digital Trade to Fight the Consequences of COVID-19," OECD, accessed October 16, 2020, <https://www.oecd.org/coronavirus/policy-responses/leveraging-digital-trade-to-fight-the-consequences-of-covid-19-f712f404/>

Most of the news capturing headlines recently is about changes to global direct taxation. More than 130 different economies are now involved as part of an Inclusive Framework, led by the OECD, in the development of a system of principles to be implemented domestically and through tax treaties.<sup>27</sup> This process took a significant step forward at the G7 talks in June 2021, where the G7 member countries agreed on the principle that a global corporate minimum tax rate should be at least 15%. Participants also endorsed the idea that a proportion of the largest, most profitable MNCs can be taxed in locations where profits are generated.

While most of the recent focus on digital tax changes have examined direct taxes, the proliferation of new tax policies has not just taken place in the direct taxation. The use of indirect taxes that apply to the digital space have also proliferated. KPMG has noted 82 countries that have enacted rules for digital indirect taxes, typically either a goods and services (GST) or value added tax (VAT), with an additional 11 countries considering the application of such tax regimes.<sup>28</sup>

To ensure greater consistency in the application of digital indirect taxes, the OECD released a set of recommended principles and mechanisms to address the challenges for the collection of VAT on cross-border sales of digital products identified in the context of the Base Erosion and Profit Shifting (BEPS) project in April 2017<sup>29</sup> and a new set of model rules for platform operators in the gig economy and sharing economy was released in July 2020.<sup>30</sup>

While 165 countries have used a VAT system<sup>31</sup> for managing indirect taxes by early 2017, the extension of such rules into the digital economy without a clear global framework has risked both under-taxation and trade distortion due to double taxation. The situation is most fraught for digital services trade. The OECD started working on these issues in 2006 and completed work in 2015.

The burden of paying VAT, as a broad-based consumption tax, is not meant to fall on businesses but to be borne by household users. It is, as the name implies, a tax on the value added across a supply chain. Firms engaged in supply chain activities are responsible for controlling and collecting the tax and remitting the portion of tax on the margin (the difference between the VAT on taxed inputs and the VAT on taxed outputs) to the relevant government tax authorities. The details of how this process takes place can be complicated, even for trade in goods, and the challenges with a neutral application of VAT are compounded for services. Effective management of VAT systems in cross-border settings can be even more complex.<sup>32</sup>

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27 See, for example, <https://www.oecd.org/tax/beps/background-brief-inclusive-framework-for-beps-implementation.pdf> accessed May 26, 2021.

28 See Taxation of the Digitized Economy, KPMG, slide 64, Updated January 15, 2021, accessed at: <https://tax.kpmg.us/content/dam/tax/en/pdfs/2020/digitalized-economy-taxation-developments-summary.pdf> on June 2, 2021.

29 See the recommendations at <https://www.oecd.org/tax/consumption/international-vat-gst-guidelines-9789264271401-en.htm> accessed June 2, 2021.

30 See the report at <https://www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm> accessed June 2, 2021.

31 The OECD definition of VAT or GST involves “a broad-based tax on final consumption collected from, but in principle not borne by, businesses through a staged collection process, whatever method is used for determining the tax liability (e.g. invoice-credit method or subtraction method).”

32 For more details, see the OECD’s International VAT/GST Guidelines, particularly chapter 1 on core values, found at [https://www.oecd-ilibrary.org/sites/9789264271401-en/1/2/1/index.html?itemId=/content/publication/9789264271401-en&csp\\_5aada55c6b13e05a90961dd0a07e26eb&itemGO=oecd&itemContentType=book](https://www.oecd-ilibrary.org/sites/9789264271401-en/1/2/1/index.html?itemId=/content/publication/9789264271401-en&csp_5aada55c6b13e05a90961dd0a07e26eb&itemGO=oecd&itemContentType=book) on June 2, 2021.



Note that many of the countries in the KMPG list with indirect GST or VAT policies in place do not follow the OECD guidelines. The guidelines are, of course, just that—a set of recommended practices and not requirements under any sort of legal obligation. But they suggest that indirect tax policies applied to the digital space already vary and may continue to diverge in the future.

As with the application of direct tax schemes, a core trade principle of non-discrimination may be eroded with the imposition of indirect tax schemes, like VAT, on companies in the digital economy. The cross-border nature of such transitions and the limited ability of firms to effectively collect and remit taxes to local tax jurisdictions can be exacerbated by the lack of domestic presence for the firms attempting to pay VAT or to remit such payments to the relevant authorities.

While many trade agreements explicitly outlaw the need for local presence<sup>33</sup> in order to provide services, the spread of indirect tax obligations may undermine these commitments. To ensure that proper VAT payments have been attributed to the firm, companies may need to have local tax identification or registration numbers in overseas markets. Such an obligation may constitute a local presence requirement.

Collection of cross-border VAT on digital services, in particular, could be quite problematic for smaller firms that lack the capacity to register in overseas market and effectively remit payments, especially in local currencies, to local tax authorities.

Of course, smaller services providers may not collect and remit VAT themselves, but will rely on other, larger companies to provide these services.<sup>34</sup> For example, e-commerce and digital services platforms could collect VAT for purchases on behalf of companies or, alternatively, financial services firms like banks, credit card companies or payment processing platforms might be tasked with managing tax payments. As many of the indirect taxation schemes are new or under development, particularly for the application of VAT to digitally delivered services, it is not entirely clear how such indirect taxes might ultimately be paid or what sort of impact the expansion of collection will have on smaller firms. If the compliance costs of collecting and remitting taxes gets too high, platforms and other intermediaries may opt to stop carrying the services of some companies, especially the smallest, or to halt the delivery of services into some markets.

VAT rates vary considerably, with levels ranging from 5-25%. This can make it quite difficult for firms to predict, in advance, what VAT might be applied to their product prices in the final markets. The digital world allows customers to purchase goods and services from anywhere, meaning that companies could find their price points severely impacted by alternative levels of VAT rates if they are unaware of the variations in VAT that will apply to purchases in overseas markets. As a simple example, companies that have designed price points based on relatively lower VAT rates in their home market and immediate neighbours could be significantly disadvantaged if sales are made to high VAT rate markets in Europe.

Managing VAT is made more complex by the fact that some markets have differing rates of VAT within their own jurisdiction—such as US states that may apply additional taxes to purchases made within the United States, or Canadian provinces that use differing VAT rates.

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33 See, for example, local presence rules found in Article 10.6 in the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) or Article 8.11 in the Regional Comprehensive Economic Partnership (RCEP) that collectively cover 15 markets in Asia.

34 Responsibility for making all legally required tax payments, however, will likely be borne by the firm even in circumstances where platform or financial services providers are involved.

Given the inconsistency in VAT schemes identified by KPMG, it is highly likely that companies in overseas jurisdictions may find themselves, often inadvertently, out of compliance with the tax regimes in one or more markets. Managing compliance and effective and efficient payment of tax will add significant costs to firms. Tax has to be remitted in local currencies, which can also be tricky for firms to manage. Firms may end up hiring local tax agents to manage more of the process, driving up costs.<sup>35</sup>

Indirect taxes are payable whether or not firms make or book profits. The payment is due the moment a customer makes a purchase (regardless of whether or not the payment has been received by the firm). For smaller firms, the cash flow implications could be significant.

As digital firms, especially services companies, provide products directly to individual consumers, managing indirect taxes also means tracking tax payments on behalf of individual purchasers that may not have a tax or VAT registration number beyond their own home market (and may not even have a clearly identifiable number domestically for payment of tax).

In order to manage the indirect tax requirements increasingly applicable to the delivery of digital goods and services, it is also clear that data will need to flow across borders. Firms will be unable to effectively and efficiently remit tax payments if they cannot move financial data or customer data across borders. To help reduce the costs of compliance, companies are likely to centralize tax operations in a limited number of jurisdictions, which may also require relevant data to be housed in different markets. Restrictions on the location of data hosting can dramatically impede the ability of firms to consolidate tax functions.

What is becoming increasingly clear is that governments have been watching the growth of the digital economy with a wary fiscal eye. In the past, trade officials and tax authorities had relatively little coordination around policy responses. The rise of digital trade is likely to lead government tax offices to look for new sources of revenue. Many of the forthcoming policies designed to capture revenue may have trade implications.

Countries in Asia have already adopted different approaches to impose taxes. These approaches are varied depending on existing tax structures and revenues generated by the companies. For instance, Malaysia and Singapore were the first two countries in South East Asia to impose a tax on imported digital services. Malaysia's Service Tax (STA) (Amendment) Act 2019 was introduced to enlarge the scope to tax B2C imported digital services.<sup>36</sup> Similarly, the Goods and Services Tax (Amendment) Act 2018 in Singapore was imposed on B2C digital services, namely, the provision of digital services by overseas suppliers to non-GST registered customers in Singapore.<sup>37</sup>

The approach taken in both jurisdictions is the same, that is to extend the ambit of a pre-existing tax regime which was originally applicable to only local suppliers, to foreign suppliers. By placing the responsibility and liability to charge and account for tax squarely on their shoulders, the foreign suppliers or service providers are placed on an equal footing with local suppliers to the extent of the additional and onerous compliance obligations and costs to be

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35 See, for example, 'Why Businesses Need to Revisit Digital Economy Taxation Post-COVID-19' EY, [https://www.ey.com/en\\_ae/tax/why-businesses-need-to-revisit-digital-economy-taxation-post-covid-19](https://www.ey.com/en_ae/tax/why-businesses-need-to-revisit-digital-economy-taxation-post-covid-19), accessed June 9, 2021.

36 "INSIGHT: Taxation of Digital Services—A Comparison of the Malaysian and Singapore Approach," accessed November 2, 2020, <https://news.bloombergtax.com/daily-tax-report-international/insight-taxation-of-digital-services-a-comparison-of-the-malaysian-and-singapore-approach>

37 "INSIGHT: Taxation of Digital Services—A Comparison of the Malaysian and Singapore Approach," accessed November 2, 2020, <https://news.bloombergtax.com/daily-tax-report-international/insight-taxation-of-digital-services-a-comparison-of-the-malaysian-and-singapore-approach>

borne by them. Although such costs may ultimately be passed on to the consumers, this may not be inconsistent with the stated objective of ensuring that foreign suppliers do not have an unfair competitive edge over local suppliers solely on account of tax.<sup>38</sup>

Other countries like Australia, India, Japan, New Zealand and Republic of Korea, have also promulgated rules requiring online suppliers who sell in their domestic markets to register for VAT. Indonesia introduced Reg 48/2020 in May 2020, which will impose a 10% value-added tax on digital services provided by non-resident companies. The tax will apply to companies that have 'significant economic presence' in Indonesia operating in sectors, such as big data, multimedia, and software.<sup>39</sup> Indonesia's move came after Singapore introduced a 7% tax for overseas digital services and Malaysia imposed a 6% tax on imported digital services from the start of 2020.<sup>40</sup> Cambodia has also gotten into the taxation field in 2022 by requiring non-resident entities delivering digital products, services and e-commerce to Cambodian consumers to pay value added taxes under Sub-Decree 65.

There are likely to be a range of issues for consideration as governments take such steps to manage cross-border digital taxes. This includes the basic challenge that tax rules have been based on the principle of 'establishment' or physical presence. Developed for brick and mortar companies, tax rules do not seem adequate for managing online businesses. Different approaches to collecting tax will have differing impact on firms in the region.

Another issue is the risk of double or multiple taxation. Current bilateral tax treaties may not allow for deduction of digital service tax in the computation of tax liabilities in the home jurisdiction. Taxes on turnover instead of profit could be problematic as some businesses may have high turnover but low margins while others have high margins and low turnover. The design of an efficient tax structure in the digital space needs to ensure proper collection of taxes for income generated at source while avoiding over-taxation of digital activities when compared to other industries.

While this issue is likely to be deeply problematic for firms in the digital economy trying to trade goods and services across borders, there are currently very limited arenas for addressing the issue. Most trade arrangements explicitly carve out tax policies, beyond noting that governments can impose non-discriminatory excise taxes.

## Competition Law/Antitrust Policies

Digitalisation and online platforms provide numerous benefits to firms and consumers, including increased choice and economic opportunity, but they can also raise market concentration and competition concerns. With competition governance questions entering mainstream political discourse, there is a need for a balanced, evidence-based assessment of the proper role of competition policy in the digital space.<sup>41</sup>

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38 "OECD - 2019 - The Role of Digital Platforms in the Collection of VAT," accessed November 2, 2020, <http://www.oecd.org/tax/consumption/the-role-of-digital-platforms-in-the-collection-of-vat-gst-on-online-sales.pdf>

39 "Indonesia Issues Regulation on Taxing Digital Services," ASEAN Business News (blog), June 26, 2020, <https://www.asean-briefing.com/news/indonesia-issues-regulation-taxing-digital-services/>

40 Sample HubSpot User, "Tax Developments Affecting Digital Sales in South-East Asia," accessed November 2, 2020, <https://blog.taxamo.com/insights/digital-tax-news-south-east-asia>

41 [WEF Competition Policy in a Globalized Digitalized Economy Report.Pdf](http://www3.weforum.org/docs/WEF_Competition_Policy_in_a_Globalized_Digitalized_Economy_Report.pdf) accessed November 11, 2020, [http://www3.weforum.org/docs/WEF\\_Competition\\_Policy\\_in\\_a\\_Globalized\\_Digitalized\\_Economy\\_Report.pdf](http://www3.weforum.org/docs/WEF_Competition_Policy_in_a_Globalized_Digitalized_Economy_Report.pdf)

With the onset of an increasingly digital world across Asia and the growing interests of regulators in the sector, it is important to understand the unique antitrust issues raised by companies operating in the digital economy.<sup>42</sup> The growth of the sector and the apparent dominance of a handful of firms has prompted greater scrutiny of the tech giants and a renewed focus on the appropriate use of competition policy and regulation to manage outcomes. Many policymakers have argued that, if harnessed more effectively, existing competition policy frameworks should ensure healthy competition in the digital economy. However, without adequate regulatory tools and appropriate conceptualization of existing competition policy options, authorities have struggled to cope with non-traditional business models and evaluate alleged anti-competitive behaviours.

Competition policy and anti-trust regulation have been used to prevent the development of monopolies, which are assumed to deliver poor outcomes to the marketplace. Digital trade, and especially the rise of digital platforms, has given new life to arguments about the concentration of power and the economic implications that come from such monopolies. It may be the case that many digital markets are simply predisposed to become “natural” monopolies, where consumers gravitate to one platform because it delivers superior service. The collection of more information from customers may lead the platform to refine service even further, driving more customers onto the platform. Access to and control of data is crucial and confers market power, and this feature is further reinforced by network effects. Firms therefore “compete for the market instead of competing in the market, leading to ‘winner takes all’ outcomes.”<sup>43</sup> Attempts to disrupt this cycle may not automatically result in better results for consumers. Indeed, it could create significantly worse outcomes, as the quality of service from fragmented suppliers may decline.

Dominant platforms have expanded their businesses vertically into upstream and downstream markets, and have sometimes become competitors to traders or application developers that use their platforms. Such expansion improves the platform’s capacities to collect more data and increase their competitiveness and confers on them the role of gatekeepers of online stores and application markets, in which they are both owners and users. This situation may at any time give rise to abusive and exclusionary conduct by dominant platforms.<sup>44</sup>

For example, Amazon started as an online bookstore but later diversified, and now sells music, audiobooks and a wide array of other consumer goods. The company has also moved into manufacturing and retailing its own brands, competing with other traders on its marketplace, thereby making it possible for the dominant platform to discriminate against independent traders that are its clients and competitors at the same time.

The vigour with which national competition regulators pursue problems of perceived anti-competitive behaviour depends on several factors, including level of development, ideological leanings, and enforcement capacity. While some governments carefully examine corporate mergers that threaten to limit consumer choice, others may, as an example, actively defend the monopoly of a state-owned enterprise (SOE) in the telecom industry. Increasingly, authorities share a purview that extends to the digital sphere. Policymakers are struggling to keep pace

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42 [lina.klimaite@hsf.com](mailto:lina.klimaite@hsf.com), “The Digital World in Asia - New Opportunities and Challenges amidst a New Antitrust Enforcement Horizon,” Herbert Smith Freehills | Global law firm, March 13, 2018, <https://www.herbertsmithfreehills.com/latest-thinking/the-digital-world-in-asia-new-opportunities-and-challenges-amidst-a-new-antitrust>

43 Big Data: Bringing Competition Policy To The Digital Era -- Background Note By The Secretariat -- 29-30 November 2016, DAF/COMP(2016)14, [https://one.oecd.org/document/DAF/COMP\(2016\)14/en/pdf](https://one.oecd.org/document/DAF/COMP(2016)14/en/pdf)

44 “[OECDwork-Digital-Economy-Innovation-Competition2017-Web.Pdf](#),” accessed November 11, 2020, <http://www.oecd.org/daf/competition/OECDwork-Digital-Economy-Innovation-Competition2017-web.pdf>

as the inherent scalability of digital platforms causes market structures to change quickly and often.

In the context of this rapid change, policymakers often find themselves ill-equipped to meet the challenge of regulating competition in the digital sphere. Armed with tools perhaps better suited to non-digital aspects of markets, they are unable to enact timely policy. Improper conceptualization of digital markets can also result in incongruent policies.

There are additional points of confusion around managing competition in the online space. It may make sense to regulate online and offline markets in the same way, but it can be harder than anticipated to determine whether both are the same “relevant market.” Advertising, as an example, may be viewed as similar but they are also quite different in the traditional media from digital approaches.

The fact that many digital platforms charge no monetary price to consumers renders traditional market definition tools unsuitable. In the digital economy, it may be impossible to provide well defined markets. Competition authorities need to employ additional criteria for the definition of the relevant market in digital sectors.

The challenges of appropriately regulating the digital economy is exacerbated in many developing countries which have small competition authorities with limited resources for taking on competition cases in an increasingly concentrated global economy. Given the growth of e-commerce, appropriate e-commerce policies and regulations can help to ensure open access to platforms under fair terms and conditions by local small and medium-sized enterprises (SMEs). Getting the balance right has been difficult.<sup>45</sup>

Much of the current conversation around competition regulation is US-centric. This is partly due to the dominant economic position of the US, and because the country enacted some of the first competition laws of the modern era. The use of tools and approaches considered by the US to manage competition could be a challenge when transferred to other markets, or the reverse, as the competitive landscape in many Asian economies may not reflect competition practices in the digital space in the United States.

It may be worth noting that companies and products previously proclaimed to have reached monopoly status in the tech world – including Myspace, Apple’s iTunes, Nokia, Yahoo’s search engine, and Xerox – were unable to maintain their market dominance.<sup>46</sup> Instead, innovative competitors frequently swooped in to replace the front-runners and disrupt markets. Theoretically, it should be extremely difficult or impossible to disrupt an entrenched monopoly firm absent government intervention. Yet the repeated collapse or retreat of once dominant digital players and platforms belies this assessment.

The rapid growth of the digital economy in the Asia-Pacific region outpaces the rest of the world. Between 2016 and 2018, Asia accounted for 52% of total growth in the revenue of technology companies.<sup>47</sup> The Asia-Pacific region is diverse in terms of economic development, thus experiences varying levels of buy-in and enforcement capacity when it comes to competition regulation. Less developed countries in the region, like Myanmar, Lao PDR, and Cambodia,

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45 The Global Battle for Digital Trade,” accessed November 11, 2020, <https://www.csis.org/blogs/future-digital-trade-policy-and-role-us-and-uk/global-battle-digital-trade>

46 <https://www.cato.org/publications/policy-analysis/time-different-schumpeter-tech-giants-monopoly-fatalism#executive-summary>

47 <https://www.mckinsey.com/featured-insights/asia-pacific/how-asia-can-boost-growth-through-technological-leapfrogging>

have been more concerned with market liberalization to increase ICT uptake through lower prices. Hence, policymakers in these countries are focused on bringing more internet and cellular providers into markets previously dominated by a handful of SOEs. Conversations and concern around the increasing dominance of a handful of digital platforms should be careful not to exclude less developed nations, as tech giants have overtly stated the intent to expand platforms to new regions and users.

Consider again the sector's explosive growth. In 2020, there were 782 million online consumers in China alone.<sup>48</sup> By 2025, Statista predicts that there will be 3.13 billion e-commerce users in Asia – up from 2.38 billion today.<sup>49</sup> While familiar players like Apple, Amazon, Microsoft, Google, and Facebook have a presence in the market, domestic and regionally-focused digital platforms are also extremely popular.

Market structure can vary considerably by country. Southeast Asia is home to two very popular multi-service apps: Gojek, the ride-hailing app with 100 million monthly active users, and Grab, which hit US\$ 507 million in revenue on the first quarter of 2021. Chinese markets are dominated by domestic firms, many with little presence outside of China. In addition to Gojek, dominance for Asian firms can be found in Alibaba's online marketplace Taobao, with 755 million monthly active users.

A key trend worth noting in the region is the tendency toward 'super apps,' applications wherein users can access multiple services on a single platform. These services may include messaging, e-commerce, payments, hotel bookings, ride-hailing, and more. WeChat, with over a billion users, offers an estimated one million services through integrated third-party programmes. Through the tangible benefits offered to users with both vertical and horizontal integration, these apps are able to keep users from straying from the platform, driving daily usage and maintaining user engagement. Already-dominant super apps are likely to capture much of the region's growth in coming years.

Such super apps may lead to several concerns about competition. As with other vertically and horizontally integrated platforms, these platforms attempt to keep users' transactions inside the app or platform. Facilitated by the all-in-one platform, for instance, a WeChat user might order food for delivery by a WeChat driver using WeChat Pay, with the platform collecting its cut at several points in the transaction.

Super apps may further raise privacy and data usage concerns, as user consumer preferences, financial information, and social media profiles are all under the same app. Access to this data can further entrench the dominance of specific platform markets, as firms can leverage data to improve customer experiences and drive more user activity.

Despite concentrated tech markets in the region, especially for digital platforms, competition regulation has received relatively little attention. In Southeast Asia, enforcement actions against tech firms have been uncommon, with few examples to draw on. China is an obvious exception, as regulators have increasingly challenged the market power of large firms. The speed of regulatory change, particularly, around competition policy, can make it difficult to keep up with adjustments. The following sections highlight some of the competition regimes and approaches taken to regulating digital trade across Asian markets:

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48 [https://www.eastasiaforum.org/2021/10/13/what-is-driving-chinas-e-commerce-growth/?utm\\_source=subscribe2&utm\\_medium=email&utm\\_campaign=postnotify&utm\\_id=410992&utm\\_title=What%20is%20driving%20China%26rsquo%3Bs%20e-commerce%20growth%3F](https://www.eastasiaforum.org/2021/10/13/what-is-driving-chinas-e-commerce-growth/?utm_source=subscribe2&utm_medium=email&utm_campaign=postnotify&utm_id=410992&utm_title=What%20is%20driving%20China%26rsquo%3Bs%20e-commerce%20growth%3F)

49 <https://www.statista.com/forecasts/1259097/e-commerce-users-asia>

## China

China's competition regime is largely governed by the 2007 Anti-Monopoly law, which is aimed at ensuring fair market competition and safeguarding consumer interests to promote the "... healthy development of [the] socialist market economy."<sup>50</sup> Competition regulation is managed by the Ministry of Commerce, the National Development and Reform Commission, the State Administration for Industry and Commerce, and the State Administration for Market Regulation (SAMR). Penalties can be up to 10% of total turnover in the previous year.

Authorities have put forward several competition regulations that are digital-focused. These include a draft amendment to the Anti-Monopoly Law that will increase scrutiny of online platforms and new anti-trust guidelines for digital platforms, which were released in February 2021. While the most recent of the regulations have not yet come into effect, this has not stopped authorities in China from pursuing digital platforms for violating existing laws.

Examples of such policing efforts are both numerous and frequent. Widely termed a 'crackdown' on tech, frequent enforcement action against Chinese tech firms over the past year has led to market volatility and an uncertain outlook for digital markets in China, wiping out hundreds of billions of dollars in wealth for shareholders.<sup>51</sup> Many of China's leading tech companies, including Tencent, Meituan, Pinduoduo, Full Truck Alliance, Didi, Baidu, and ByteDance have been fined for various offences by the SAMR – of which some of the offences occurred before the regulatory body was created in 2018.<sup>52</sup>

It is worth noting that most of China's tech giants are largely domestic companies – a pattern rarely seen outside of the United States. In general, these companies are focused on the domestic market, though some may have a presence in other countries. By contrast, American tech giants generally operate all over the world. Of course, the sheer size and scale of China's domestic market provides an opportunity for ample competition and market size without a need to find overseas consumers. Most economies do not have the same scale for operating domestic-only operations. For example, China's "Lipstick King" sold US\$ 1.7 billion in products by livestreaming for just 12 hours in the lead-up to a Singles Day event in 2021 on e-commerce platform Taobao.<sup>53</sup>

## India

India is primarily guided by the 2002 Competition Act and enforced by the Competition Commission of India (CCI). The Act makes no specific mention of the digital sphere but the 2019 Competition Law Review Report does offer recommendations to ensure the sufficiency of Indian competition law in this area. As such, authorities have increasingly scrutinized digital markets and several high-profile cases have demonstrated the CCI's willingness and ability to pursue global tech giants for violations of the Competition Act.

In March 2021, for example, the CCI declared that WhatsApp had violated the Competition Act, through a new privacy policy that shared data with parent company Facebook. This data

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50 <http://english.mofcom.gov.cn/article/policyrelease/Businessregulations/201303/20130300045909.shtml>

51 <https://www.nytimes.com/2021/10/08/technology/china-meituan-antitrust-fine.html>

52 <https://supchina.com/2021/08/02/chinas-big-tech-crackdown-a-guide/>

53 <https://www.businessinsider.com/china-lipstick-king-sold-17-billion-stuff-in-12-hours-2021-10>

sharing, the CCI argued, would complicate efforts by up-and-coming competitors to enter the market.<sup>54</sup>

Information Technology Rules were released by the Ministry of Electronics and Information Technology in February 2021 and came into force in May. Though not overtly aimed at regulating competition, the legislation imposed increased compliance costs for large digital platforms featuring user-generated content, like Facebook and Instagram, as well as communications platforms like WhatsApp. The 2020 E-Commerce Rules further established a compliance framework for digital platforms that are likely to disproportionately affect smaller platforms.<sup>55</sup>

Like China, India's domestic market is substantial enough to support firms without the need for a cross-border strategy. However, unlike China, many of India's leading digital companies such as Infosys and Tata started as firms providing digital services to global firms. How India will manage the tension between outward-focused firms and its inward-looking regulatory approach remains unresolved.

### **Japan**

The 1947 Anti-Monopoly Act is the primary legislation governing Japan's competition regime, which is enforced by the Japan Fair Trade Commission (JFTC). In February 2021, the government of Japan enacted a law - the Act on Improving Transparency and Fairness of Digital Platforms - that is specifically designed to regulate digital platforms. Applying to specified digital platform providers designated by the Cabinet Ordinance, which set thresholds based on sales figures in defined fields of business in Japan, the Act is applicable extraterritorially. By requiring the platforms to be proactive in ensuring transparency and fairness - through a framework of guidelines issued by the Ministry of Economy, Trade and Industry<sup>56</sup> - the Act adopts a 'co-regulation' approach. It provides a general framework while leaving day-to-day enforcement to businesses.

The JFTC is increasingly shifting focus to digital platforms. For example, it is conducting market surveys from the perspective of 'Abuses of Superior Bargaining Power' in respect to benefits to businesses and the privacy of general users.<sup>57</sup> Thus far, big tech has not run afoul of the Anti-Monopoly Act. Hence, there have not been significant enforcement actions, despite relatively active regulatory authorities.

### **Indonesia**

The 1999 Anti-Monopoly Law, as well as several ex-ante regulations, govern Indonesia's competition regime. These rules are managed by the Supervisory Commission for Business Competition (KPPU) and the Competition Commission of Indonesia. Firms found to violate these regulations can be found civilly or criminally liable depending on the severity of the violation. The KPPU has additionally issued ex-ante regulations for competition in the digital sphere, signalling an increased focus off the back of a 2017 review of the digital economy.

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54 <https://www.competitionpolicyinternational.com/whatsapps-2021-privacy-policy-update-from-india/>

55 <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/977768/consumer-protection-e-commerce-rules-2020-a-compliance-framework-in-the-digital-market>

56 [https://www.meti.go.jp/english/policy/mono\\_info\\_service/information\\_economy/digital\\_platforms/pdf/0401\\_001b.pdf](https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/pdf/0401_001b.pdf)

57 <https://www.nortonrosefulbright.com/en/knowledge/publications/9d1779c2/japan-competition-law-fact-sheet>



In 2020, the KPPU assessed a fine of US\$ 3.2 million for Grab, which was found to have unfairly given preference to ride-hailing drivers from partner company Teknologi Pengangkutan Indonesia.<sup>58</sup> Though the decision is being appealed, it signals that the KPPU is increasingly prioritizing digital competition. According to global law firm Norton Rose Fulbright, the KPPU has also hinted more focus on the country's financial technology sector.<sup>59</sup>

### **Singapore**

Singapore's competition regime is guided by the 2004 Competition Act and the 2009 Consumer Protection Act, which are enforced by the Competition and Consumer Commission of Singapore and the Ministry of Trade and Industry. Regulatory authorities have increasingly prioritized anti-competitive behaviour in the digital sphere and have pursued a number of cases using the Competition Act.

### **Thailand**

While not yet in force, the Thai government has put forward draft guidelines on digital platforms, digital services, and e-commerce, signalling more regulatory scrutiny on the digital sphere. The guidelines will supplement the 2017 Trade Competition Act, which is administered by the Trade Competition Commission. The Act covers a variety of anti-competitive behaviours, including restrictive agreements, abuse of dominant position, and mergers.

Digital platforms are an emerging focus area for competition regulators. The Online Food Delivery Guidelines, which came into force in December 2020, rein in the anti-competitive practices of app-enabled food delivery companies. Further guidelines on the telecommunications and digital services sector are forthcoming.<sup>60</sup>

### **South Korea**

South Korea's competition regulation regime is guided by the Monopoly Regulation and Fair Trade Act, which is administered by the Korea Fair Trade Commission (KFTC). The KFTC regularly pursues enforcement actions. In 2020 alone, it assessed a total of US\$ 196 million in fines across 29 cases.<sup>61</sup>

Korean regulators have also enacted several digitally focused policies and regulations. The Information and Communications Technology taskforce was established in 2019 to investigate unfair practices in the digital sphere.<sup>62</sup> In August 2021, the Telecommunications Business Act was amended; it now requires application market operators, like Apple's App Store and Google's Google Play, to offer consumers a choice of payment methods. App market operators, including Apple and Google, are also asked to turn in compliance plans that detail how the companies plan to meet the law's requirements.<sup>63</sup> Further changes to Korea's

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58 <https://www.nortonrosefulbright.com/en-id/knowledge/publications/018aab37/competition-law-fact-sheet-indonesia>

59 <https://www.nortonrosefulbright.com/en-id/knowledge/publications/018aab37/competition-law-fact-sheet-indonesia>

60 <https://www.allenoverly.com/en-gb/global/news-and-insights/publications/2020-an-unprecedented-year-for-thai-competition-law>

61 <https://www.nortonrosefulbright.com/en/knowledge/publications/8f18c445/competition-law-fact-sheet-korea>

62 <https://seoullegalriskmgmt.com/kftc-creates-team-to-probe-unfair-trade-practices-in-the-ict-industry/>

63 <https://www.kedglobal.com/newsView/ked202111050007>

digital competition regulations are likely. In 2020, the KFTC proposed the Fair Intermediation Transaction on Online Platform Act, which remains under review.

### **Back to Consumer Welfare**

Since the first anti-monopoly laws were enacted around the turn of the 20th century, regulators have sought to boost consumer welfare through preventing monopolistic behaviour that limits choice, raises prices, and stifles innovation. But digital markets are qualitatively distinct. Many factors have shaped the digital sphere into an arena less clearly suited for existing regulatory policies. Services are often unpriced or even free. Users can switch between digital platforms with ease. Launching new services often requires limited capital. Constant innovation can generate significant rewards, especially as users find more needs met more quickly and easily.

The challenges facing competition regulators are apparent. Traditional regulatory tools are unsatisfactory. Enforcement actions are also often insufficiently dissuasive. Competition law litigation tends to take a long time compared to the speed of change in the digital economy, and actions often use somewhat arbitrary turnover thresholds. Enforcement is also complicated by the tendencies toward ‘natural’ monopolies and the multisided nature of markets. If enforcement takes place, typically it only assesses nominal fines for “bad” behaviour and does not significantly alter market structures.

One question that is often overlooked is whether these efforts to rein in digital platforms are likely to meaningfully boost consumer welfare. The answer is not clear, especially where digital platforms appear to offer consumers and companies lower prices and more choices and demonstrate commitment to innovation. This raises further questions as to whether governments are, indeed, acting to boost consumer welfare. Conversations around breaking up big tech often present little evidence that such a move would meaningfully contribute to lower costs or increased innovation.

In the near term, it seems quite clear that governments will need to think considerably harder about how to effectively ensure fair competition in the digital space. It is not a simple matter of translating off-line regulations to online settings. Given the range of approaches already on display across the region, it will also be important to coordinate efforts to ensure that consumers continue to benefit from the spread of digital trade while limiting the direct harms that consumers may face from digital competition.

### **Digital Payments**

Competition is not the only issue of concern to firms and policymakers. Opening up digital trade for business does not work if firms cannot get paid quickly, easily and at an affordable price. Digital payments are at the centre of digital trade expansion and serve as a key enabling factor for digital commerce. Payment services are a critical component of the online services ecosystem that allows consumers to conveniently make purchases for goods and services from merchants globally and for firms to sell around the world far more easily and cheaply than ever before.

In recent years, the use of digital payment solutions has multiplied in the region. Asia-Pacific overtook Europe and North America to become the non-cash transactions volume leader at US234.6 billion in 2019, and this value is expected to reach US\$ 493.2 billion in 2023.<sup>64</sup>

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64 Capgemini Research Institute, “World Payments Report 2020,” 2020, <https://worldpaymentsreport.com/wp-content/uploads/sites/5/2020/10/World-Payments-Report-2020.pdf>

China, India and Southeast Asian economies are driving this growth, steered by increasing smartphone use, booming e-commerce, digital wallet adoption, and mobile/QR-code payments innovations.

Making payments today requires a vast network of mutually interdependent networks that connect firms, consumers, financial institutions, mobile applications, international and domestic payment networks, clearing and settlement systems, digital currencies and other important parts of the payment ecosystem. The cross-border payment process is complex and often requires multiple domestic and international or cross-border steps. In fact, many payments processes that appear to connect a purely domestic purchaser with a domestic seller may have international elements included in the transaction, as some elements like fraud protection may be performed outside of a specific domestic setting.

With the rise in cross-border transactions, cross-border flows now represent one-sixth of total transaction values and totals up to US\$ 200 billion globally. This equates to 27% of global transaction revenues and is increasing by 6% annually.<sup>65</sup> ASEAN and East Asia have the world's fastest growing online market, with over 350 million Internet users and an overall market size of US\$ 72 billion in 2018.<sup>66</sup> E-commerce is the most dynamic sector in the region. In the next five to 10 years, the regional e-commerce market is projected to grow at an average rate of 25% to 35% per year.<sup>67</sup> Increasing demand for e-commerce purchases across borders and need for international financial services has impacted the growth of cross border e-payments, raising the importance of interoperability of e-payments.<sup>68</sup>

In the Asia-Pacific region, non-cash transactions have been growing even faster—at a rate of 20% per year, and 30% in emerging Asia.<sup>69</sup> Emerging markets are home to 85% of the global population and Asian countries—including India, China, and Indonesia—make up the majority.<sup>70</sup> As a whole, digital payments in Asia are forecast to grow 16.4% annually and reach a value of over US\$ 2.5 trillion per year in 2022—half of the estimated worldwide total value of US\$ 5.4 trillion.

The COVID-19 pandemic has accelerated the growth of digital payments in Asia. Driven by the rise in online shopping and increase in preference for contactless payments over cash, consumers are increasingly embracing electronic payments. In a three-month period in 2020

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65 McKinsey and Company. A vision for the future of cross border payments. (2018). <https://www.mckinsey.com/~media/McKinsey/Industries/Financial%20Services/Our%20Insights/A%20vision%20for%20the%20future%20of%20cross%20border%20payments%20final/A-vision-for-the-future-of-cross-border-payments-web-final.pdf>

66 Lurong Chen and Fukunari Kimura, E-Commerce Connectivity in ASEAN (Economic Research Institute for ASEAN and East Asia, 2020), [https://www.eria.org/uploads/media/Books/2020-E-commerce-Connectivity-in-ASEAN/E-commerce-Connectivity-in-ASEAN\\_Full-Report.pdf](https://www.eria.org/uploads/media/Books/2020-E-commerce-Connectivity-in-ASEAN/E-commerce-Connectivity-in-ASEAN_Full-Report.pdf)

67 Lurong Chen and Fukunari Kimura, E-Commerce Connectivity in ASEAN (Economic Research Institute for ASEAN and East Asia, 2020), [https://www.eria.org/uploads/media/Books/2020-E-commerce-Connectivity-in-ASEAN/E-commerce-Connectivity-in-ASEAN\\_Full-Report.pdf](https://www.eria.org/uploads/media/Books/2020-E-commerce-Connectivity-in-ASEAN/E-commerce-Connectivity-in-ASEAN_Full-Report.pdf)

68 For more on the interoperability of payments systems, see <https://www.weforum.org/whitepapers/defining-and-measuring-payment-interoperability/>

69 Capgemini Research Institute. World Payments Report 2019. <https://www.europeanpaymentscouncil.eu/sites/default/files/inline-files/World-Payments-Report-2019.pdf>

70 PwC. Emerging Markets Driving the payments transformation. (2014). <https://www.pwc.com/gx/en/financial-services/publications/assets/pwc-emerging-markets-12-July.pdf>

under COVID, 41% of consumers in Asia made five or more eCommerce transactions.<sup>71</sup> Three quarters of consumers in the region have said they will keep using digital payments instead of going back to cash, even after the global pandemic has subsided.

The proliferation of payment solutions has encouraged MSME growth. Digital payments help micro and small merchants grow their revenue, manage their business, and gain access to other financial services. A survey conducted by VISA found that 54% of smaller firms surveyed found that sales increased after adopting digital payment methods.<sup>72</sup>

MSMEs are now a significant part of Asia's economies, constituting more than 98% of enterprises and contributing up to 50 per cent of GDP and employment across the markets.<sup>73</sup> Their development, through the adoption of technology and participation in global trade, has been recognized as a key contributor to inclusive growth and recovery efforts from the COVID-19 virus.<sup>74</sup> Digitisation has boosted overall revenues for MSMEs by up to 80%.<sup>75</sup> Research has found that once businesses begin accepting digital payments, their revenues increase an average of 17% year on year.<sup>76</sup>

Cross-border digital payments open-up opportunities for MSMEs to enter markets abroad. Within the cross-border payments market, MSME usage has been growing at two or even three times the rate of large corporates.<sup>77</sup> By lowering the barriers of entry to global markets, digitalisation has allowed MSMEs to internationalise at a lower cost by making it easier for them to find new customers by accessing new regional and global markets and managing their payments. The MSME segment, in particular, stands to benefit the most from cross-border payments' convergence, accessibility and simplification.<sup>78</sup>

Governments across the region have put in place initiatives to increase the adoption of digital payments, particularly aimed at smaller firms. For instance, governments in emerging markets are encouraging non-bank players to become cashless as smartphone usage increases.<sup>79</sup> Singapore, as an example, has rolled out a "Hawkers Go Digital" plan to encourage 18,000 small food and beverage vendors, called "hawkers" to move to online payments by June 2021.<sup>80</sup>

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71 Wilson, Georgia. Visa: making digital payments fast, simple and secure in Asia. Business Chief. (9 July 2020). <https://www.businesschief.asia/corporate-finance/visa-making-digital-payments-fast-simple-and-secure-asia>

72 VISA, "Digital Transformation of SMEs: The Future of Commerce," 2020, <https://www.visa.com.au/dam/VCOM/regional/ap/australia/global-elements/Documents/digital-transformation-of-smes.pdf>

73 Wood, Duncan. "5 Things You Need to Know About SME Banking in Asia-Pacific." (2018). Oliver Wyman.

74 Asian Development Bank. "MSMEs Key to Southeast Asia's Post-COVID-19 Recovery ." Asian Development Bank, October 22, 2020. <https://www.adb.org/news/msmes-key-southeast-asias-post-covid-19-recovery-ADB>

75 GSMA. Regional Privacy Frameworks and Cross Border Data Flows: How ASEAN and APEC can protect data and drive innovation. (September 2018).

76 Roubini ThoughtLab, and Visa. Rep. Cashless Cities: Realizing the Benefits of Digital Payments, 2017. <https://usa.visa.com/dam/VCOM/global/visa-everywhere/documents/visa-cashless-cities-report.pdf>

77 McKinsey and Company. Global payments report. 2019: Amid sustained growth, accelerating challenges demand bold actions. (September 2019).

78 McKinsey and Company. Global payments report. 2019: Amid sustained growth, accelerating challenges demand bold actions. (September 2019).

79 Khan, A., M. Gandhi, A. Jain, and N. Kacholia. "Emerging Markets Driving the payments transformation." PWC network (2016).

80 See details at: <https://www.imda.gov.sg/news-and-events/Media-Room/Media-Releases/2020/Good-Progress-for-Hawkers-Go-Digital-Programme>

As Singapore's scheme illustrates, moving payments to the digital space can be aimed at the smallest companies. The cost reductions and efficiencies that come with the increased use of online payments can help governments address many of their policy priorities. Many have recognized that digital payments can also be a tool to combat the grey economy and increase market transparency.<sup>81</sup>

Despite potentially large benefits, MSMEs in the region still face a host of challenges that include logistics, language barriers, and standards that make it difficult for MSMEs to sell their goods internationally.<sup>82</sup> An inability to easily, effectively, and efficiently manage different digital payments systems is an often-overlooked challenge.

Despite the importance of digital retail payments to regional trade, significant logistical and governance challenges persist in regions like Asia. Differences between economies in technological maturity, regulations, standards, cost, digital access, and security levels have made it difficult for service providers to create value-adding services that are interoperable across multiple locations.

Regulatory agencies that are responsible for consumer protection, financial stability, and other public interests are grappling with the legitimate challenge of updating policy frameworks to account for technological innovation and changes in consumer behaviour. A focus on protecting consumers and companies from undue risk appears to have limited the spread of efficient and effective means of driving e-payments, especially for cross-border mechanisms.

Despite the opportunities that the proliferation of inclusive and interoperable cross-border e-payment can provide the region's economic development, neither Asia nor ASEAN have policies in place to allow regional interoperability frameworks to standardize the processing of payments. Given the growing importance of cross-border transactions, it is necessary to think harder about how to manage payment networks to become more interoperable, especially for retail payments.

Advances in technology and regulatory reforms have led to a renaissance in digital payment innovation. While the appearance of new payment providers and technologies has led to new innovations and increased competition, it has also led to an increasingly complex set of systems with significant variation in standards by region, making cross-border payments increasingly difficult. These two factors—new technologies and regulatory fragmentation—have created significant interoperability challenges and additional friction in making and receiving cross-border retail payments.

Broadly defined, interoperability enables all participants of the payment system (e.g. consumers, merchants and governments) to easily send funds between different payment networks and instruments. There are steps countries in the region can take to reduce existing frictions and move toward greater harmonization and interoperability.

Cross-border retail payments are typically processed by payment service providers (PSPs) and/or payment infrastructures subject to the legal and regulatory regimes of multiple jurisdictions. As a result, cross-border retail payments inherently encounter more legal and regulatory requirements than domestic payments, which typically fall under a single legal

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81 Schneider, Friedrich. Rep. Digital Payments and the Global Informal Economy . A.T. Kearney Inc. , 2018. [https://navigate.visa.com/\\$/v/2/m/x/Digital\\_payments\\_and\\_the\\_global-informal-economy-report.pdf](https://navigate.visa.com/$/v/2/m/x/Digital_payments_and_the_global-informal-economy-report.pdf)

82 Schaap, Famke. Rep. Whitepaper on Enhancing MSME Participation in Trade: Considerations for the WTO Informal Work Programme for MSMEs. CUTS International, 2018. [http://www.cuts-geneva.org/pdf/KP2018-Study-MSME\\_Trade\\_Participation\\_Whitepaper.pdf](http://www.cuts-geneva.org/pdf/KP2018-Study-MSME_Trade_Participation_Whitepaper.pdf)

regime. Recent PSP surveys show that when asked to cite the most significant costs and challenges to their business, PSPs noted legal, regulatory and compliance considerations more than any other.<sup>83</sup>

Increased compliance costs and regulatory uncertainty do not only affect the profitability of PSPs, but affect their ability to develop accessible, affordable and interoperable cross-border payments solutions for MSME merchants and consumers. A lack of interoperability between systems remains a point of friction that makes it increasingly difficult to make and receive cross-border retail payments. Currently, with vastly different license requirements around the globe that need to be navigated, companies must spend large amounts of time and money to navigate the different policies and requirements. For instance, advisors at the Consultative Group to Assist the Poor highlighted license simplification as key to improvements made in the Malaysia–Philippines remittance corridor.<sup>84</sup>

There are a few regulatory challenges that are significantly impeding the ability of firms to move payments across borders. One critical issue is inconsistent regulatory frameworks, standards and practices for anti-money laundering (AML), combating the financing of terrorism (CFT), and know-your-customer (KYC) requirements. These inconsistencies in frameworks and practices increase the compliance costs associated with the delivery of cross-border e-payment services. Conflict between regulatory KYC requirements across regions has impeded operations by payment providers in international jurisdictions.<sup>85</sup> Similarly, while the codification of AML/CFT rules is often similar across jurisdictions, differences can be observed in their respective implementation and supervision. According to the Financial Action Task Force (FATF), countries have different levels of AML/CFT compliance and effectiveness when it comes to cross-border payments.<sup>86</sup>

Another challenge for making payments work better for all can be found in differing standards. Currently countries are working on the implementation of ISO 20022, a common global standard for financial messaging, providing an approach to unifying multiple existing financial standards and accepted as the de facto standard promoting global interoperability.<sup>87</sup> The efficient use of ISO 20022 across borders requires standardisation of the implementation approach. However, key differences in digital payments infrastructure and digital payments regulations between countries in the region means that different countries are at different stages of adopting such standards. For instance, within ASEAN payment services modernization plans that include the development of implementation of real time retail payment systems do not all use ISO 20022 standards. The implementation of ISO standards has been completed in Singapore, is under review in Malaysia, Philippines and Vietnam, and is not planned to be implemented in Thailand.<sup>88</sup>

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83 BIS. "Enhancing Cross-Border Payments: Building Blocks of a Global Roadmap - Technical Background Note," 2020. [www.bis.org](http://www.bis.org)

84 See "Cheaper Remittances: How Malaysia and Philippines Paved the Way," <https://www.cgap.org/blog/cheaper-remittances-how-malaysia-and-philippines-paved-way>

85 <https://www.afi-global.org/sites/default/files/publications/2019-03/KYC-Innovations-Financial-Inclusion-Integrity-Selected-AFI-Member-Countries.pdf>

86 WEF. Rep. Addressing E-Payment Challenges in Global E-Commerce. World Economic Forum, 2018. [http://www3.weforum.org/docs/WEF\\_Addressing\\_E-Payment\\_Challenges\\_in\\_Global\\_E-Commerce\\_clean.pdf](http://www3.weforum.org/docs/WEF_Addressing_E-Payment_Challenges_in_Global_E-Commerce_clean.pdf)

87 SWIFT. "Achieving Financial Integration in the ASEAN Region." SWIFT Discussion Paper, 2017

88 KPMG. "Cross-Border Payments Interoperability Network Feasibility Study," 2018.

## Digital Trade and MSME Development

Micro, small and medium-sized enterprises (MSMEs) play a crucial role in the Asia Pacific economies in supporting job creation and employment growth. MSMEs in the Asia Pacific region represents more than 98% of all businesses and contributes to a large share of employment in the region.<sup>89</sup> In Indonesia, MSMEs employed 97% of the labour force and MSMEs in the Republic of Korea employed 89.8% of the total labour force.<sup>90</sup> The crucial role that MSMEs have in supporting economic activities and social development through provision of employment for local communities and marginalised groups helped to enable social mobility and inclusiveness.

Digitalisation is a key driver for MSME development, functioning as enablers for even the smallest of firms to reach out and sell to customers globally and connecting MSMEs to global value chains (GVCs). The use of online platforms and e-commerce marketplaces to sell goods and services have reduced the cost of internationalization for MSMEs and helped match buyers and sellers without a need for other intermediaries, thereby supporting the growth of MSMEs by expanding their market outreach.<sup>91</sup> Digital productivity tools and enterprise resource planning (ERP) software help to automate many business processes and reduce the workload involved to track orders, inventory, and financials. MSMEs could also integrate their services with new digital offerings of electronic payments, mobile applications, and tracking services that provide added value to their business offerings. With digitalisation being a growth enabler, governments will need to ensure that MSMEs at different stages of development will be able to keep up with the pace of digital transformation to benefit from digital trade.

The Covid-19 pandemic has severely affected small businesses who are facing major hurdles arising from supply chain disruption as well as import/export measures and lockdown restrictions that impact the delivery of goods and services. According to a business survey conducted by the International Trade Centre (ITC), smaller businesses tend to be worse affected than larger businesses with those in the tourism and hospitality industry suffering the most from losses in revenue.<sup>92</sup> To cope with the crisis, governments in the Asia Pacific have stepped up on activities to support MSMEs to go digital and find new opportunities for growth. There are many challenges however, that could limit MSME participation in the digital economy or render MSMEs in developing countries less competitive.

Various sociocultural, infrastructure and regulatory challenges have made participation in the digital trade difficult for MSMEs. Especially in developing countries, MSMEs may not have the financial and resource capabilities to adopt new digital tools and train their workers to harness productivity from the use of these tools. Access to a reliable information infrastructure and network is often a concern for many MSMEs in developing countries. Furthermore, regulatory heterogeneity in data privacy laws, payment regulations, and taxation rules as well as the compliance burden on MSMEs to cope with new laws and regulations could also impede MSMEs from leveraging digital trade. Such challenges faced by MSMEs will often require

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89 APEC. "Overview of the SME Sector in the APEC Region: Key Issues on Market Access and Internationalization," April 2020. <https://www.apec.org/Publications/2020/04/Overview-of-the-SME-Sector-in-the-APEC-Region>

90 APEC. "Overview of the SME Sector in the APEC Region: Key Issues on Market Access and Internationalization," April 2020. <https://www.apec.org/Publications/2020/04/Overview-of-the-SME-Sector-in-the-APEC-Region>

91 Organization for Economic Co-operation and Development (OECD). "Fostering greater SME participation in a globally integrated economy", Discussion Paper, SME Ministerial Conference 22-23 February 2018.

92 International Trade Centre. "SME Competitiveness Outlook 2020: COVID-19: The Great Lockdown and its Impact on Small Business", June 18, 2020. ITC, Geneva. <https://www.intracen.org/publication/smeco2020/>

policy intervention from governments to support MSMEs to transit to the digital economy and leverage digital trade to sell to larger markets.

As digitalization is a whole-of-society change, government-led efforts to establish enabling conditions are essential to the success of digital transformation. This transformation, which has significant consequences for both economic growth and development, has found varying success across the Asia-Pacific region. Though every government in the region—from the most developed to the least—has a digital strategy, success has varied widely. Though digitalization is accelerating across the region, the ability to harness digital tools for growth and development will vary in line with the success of efforts to stimulate the appropriate enabling conditions.

Government-led efforts to create these enabling conditions are essential to supporting MSMEs and their digitalization. In doing so, regional governments can drive growth and efficiency gains for the businesses that make up the vast majority of GDP and employment in the region. The following section details government-led efforts across a handful of Asian countries to boost digitalization through creating these enabling conditions.

## **Vietnam**

Uptake of ICTs is high in Vietnam. Between 2000 and 2010, total mobile cellular subscriptions in Vietnam rose from less than 1 million to 112 million—more than the total population of the country.<sup>93</sup> Since then, the digital economy in Vietnam has matured significantly, with e-commerce reaching new heights due to a pandemic-related bump in users. As of 2021, 70.7% of consumers make use of digital services, and plan to continue to do so.<sup>94</sup> The value of Vietnam's internet economy was US\$ 21 billion in 2021 and is predicted to grow to US\$ 57 billion by 2025.<sup>95</sup>

The Vietnamese government has put forward regulations on electronic transactions and electronic signatures, key to e-commerce, fintech, and more. These regulations facilitate mobile payments and digital banking platforms through creating a stable, reliable, and customer and business-friendly digital environment. The Ministry of Industry and Trade (MOIT) is the regulator responsible for e-commerce. In 2020, MOIT issued new requirements for e-commerce entities, requiring foreign entities to establish in-country website domains, and comply with regulations on consumer protection and product quality.

The 2021-2025 E-Commerce Development Master Plan, announced by the Vietnamese government in May 2020, seeks to promote digital transformation and enhance e-commerce capabilities.<sup>96</sup> Specifically, the Plan promotes business uptake of digital services, and makes efforts to narrow the existing urban-rural digital divide, build a sustainable virtual market, and increase cross-border, e-commerce trade.<sup>97</sup> Further regulations are expected on digital identities, which are anticipated to improve trust and security for online transactions.<sup>98</sup> Despite efforts to create these enabling conditions through regulation, firms operating in Vietnam

93 <https://data.worldbank.org/indicator/IT.CEL.SETS?locations=VN&view=chart>

94 [https://services.google.com/fh/files/misc/vietnam\\_e\\_economy\\_sea\\_2021\\_report.pdf](https://services.google.com/fh/files/misc/vietnam_e_economy_sea_2021_report.pdf)

95 [https://services.google.com/fh/files/misc/vietnam\\_e\\_economy\\_sea\\_2021\\_report.pdf](https://services.google.com/fh/files/misc/vietnam_e_economy_sea_2021_report.pdf)

96 <http://en.vecom.vn/government-approves-2021-2025-national-e-commerce-development-master-plan#:~:text=The%20national%20e%2Dcommerce%20development,contributing%20to%20the%20modernization%20of>

97 <https://www.trade.gov/country-commercial-guides/vietnam-ecommerce>

98 <https://www.biometricupdate.com/202107/vietnam-releases-draft-digital-identity-and-authentication-guidelines>



have noted difficulties due to laws around cybersecurity, data privacy, and cross-border data transfers.<sup>99</sup>

### **Malaysia**

As of 2019, 90% of Malaysian households had access to the internet, and the value of the country's e-commerce market was RM 16 billion (roughly US\$3.8 billion).<sup>100</sup> The Malaysia Digital Economy Blueprint seeks to grow the digital economy, doing so through building enabling infrastructure, increasing competitiveness, and digitizing the public sector. Through the plan, the Malaysian government has made efforts to stimulate the growth of the digital economy through establishing enabling policies and regulations. The Blueprint broadly pursues digital transformation in six thematic areas: the public sector, private sector, enabling infrastructure, and human capital, as well as improving inclusivity and trust in the digital economy.<sup>101</sup> With dozens of individual programs, targets, and outcomes, the Blueprint is a robust effort to leverage digitalization into growth and development.

Through the Digital Economy Blueprint, the Malaysian government stands to make significant strides toward boosting MSME participation in the digital economy. Specifically, this includes adapting the intellectual property (IP) system and regulatory environment to the digital economy; lowering barriers to trade for MSMEs participating in cross-border e-commerce; clarifying tax frameworks for the digital economy; and building up internet infrastructure.<sup>102</sup> These initiatives, combined with the others included in the Blueprint, are likely to contribute to harnessing Malaysia's digital economy for growth and development.

Further efforts are being made to attract foreign investment in the country's digital sector. Announced in July 2021, the Digital Investments Future5 Strategy is a five-year plan to attract investment in Malaysia's digital economy and establish the country as the "Heart of Digital ASEAN."<sup>103</sup> By 2025, Malaysia aims to attract RM 50 billion (US\$11 billion) in investment for the digital sector, facilitate growth in key digital sectors, attract 50 new Fortune 500 companies to Malaysia, establish five unicorns, and create 50,000 jobs.

### **Indonesia**

In 2021, Indonesia's digital economy was valued at an estimated US\$ 70 billion, and is predicted to reach US\$ 146 billion by 2025.<sup>104</sup> Much of this growth will be driven by the country's already large e-commerce sector. Indonesia is home to several popular digital platforms, including marketplace Tokopedia and multiservice platform Gojek--now renamed GoTo after a merger between the two unicorns.

The Indonesian government is making efforts to induce further growth of the digital economy. A *Making Indonesia 4.0* strategy seeks to increase uptake of advanced technologies and boost participation in the digital economy. With the stated goal of helping Indonesia grow

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99 [file:///Users/nickagnew/Downloads/18-00566\\_DATA61\\_REPORT\\_VietnamsFutureDigitalEconomy2040\\_ENGLISH\\_WEB\\_190528.pdf](file:///Users/nickagnew/Downloads/18-00566_DATA61_REPORT_VietnamsFutureDigitalEconomy2040_ENGLISH_WEB_190528.pdf)

100 <https://www.epu.gov.my/sites/default/files/2021-02/malaysia-digital-economy-blueprint.pdf>

101 <https://www.epu.gov.my/sites/default/files/2021-02/malaysia-digital-economy-blueprint.pdf>

102 <https://www.epu.gov.my/sites/default/files/2021-02/malaysia-digital-economy-blueprint.pdf>

103 [https://mdec.my/wp-content/uploads/MDEC-Moves-Forward-With-Digital-Investments-Future5-Strategy\\_19-July-2021\\_.pdf](https://mdec.my/wp-content/uploads/MDEC-Moves-Forward-With-Digital-Investments-Future5-Strategy_19-July-2021_.pdf)

104 Roaring 20s: The SEA Digital Decade

to be one of the ten largest economies in the world by 2030, the strategy further seeks to increase labour productivity through digitalization and increase research spending.<sup>105</sup> To do so, the Indonesian government has prioritized ten action areas, including the empowerment of MSMEs, harmonizing digital policies and regulations, and building digital infrastructure.<sup>106</sup> However, the Strategy is primarily focused on the manufacturing sector.

Though the Indonesian digital economy is expected to grow rapidly, large platforms have captured most of this growth and MSME participation is limited. Both businesses and consumers are often constrained by limited trust in digital transactions, lack of internet connectivity, and complicated and expensive logistics.<sup>107</sup> Addressing these issues will require robust regulatory and policy responses from the Indonesian government.

### **Philippines**

Compared to other countries in the Asia-Pacific region, the Philippines is a relative underperformer in terms of digitalization. Though the country is home to a growing digital economy with an annual growth rate of 17%, the value of e-commerce in the Philippines was only US\$ 4.8 billion in 2020.<sup>108</sup> Despite this rapid growth, the Philippine digital economy is likely to remain relatively small compared to other countries in the region due to limited infrastructure and regulatory constraints, including restrictions on new entrants to the telecommunications and logistics sectors.<sup>109</sup> A further barrier to e-commerce is lack of trust in digital payments, as well as the Philippines being a generally cash-based economy, meaning many consumers and MSMEs are unfamiliar and uncomfortable with digital payments services.<sup>110</sup>

Acknowledging these limitations, the Philippine government is making efforts to encourage digitization through legislative and regulatory means, enacting a series of laws and policies to boost access to the internet, encourage digital innovation and investment, strengthen data privacy, and build capacity to use digital tools. This includes high-level strategies such as the Digital Philippines Plan, the E-Commerce Roadmap, and the National Broadband Roadmap, as well as legislation such as the Innovation Act, the Innovative Startup Act, and Data Privacy Act.

### **Thailand**

Thailand's digital economy was worth a total US\$ 21.9 billion in 2021 and is anticipated to grow

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105 <https://www2.investindonesia.go.id/en/why-invest/indonesia-economic-update/making-indonesia-4.0-indonesias-strategy-to-enter-the-4th-generation-of-ind#:~:text=The%20implementation%20of%20Industry%204.0%20aims%20to%20achieve%20the%20great,GDP%20to%20R%26D%20and%20technology>

106 <https://www2.investindonesia.go.id/en/why-invest/indonesia-economic-update/making-indonesia-4.0-indonesias-strategy-to-enter-the-4th-generation-of-ind#:~:text=The%20implementation%20of%20Industry%204.0%20aims%20to%20achieve%20the%20great,GDP%20to%20R%26D%20and%20technology>

107 <https://www.worldbank.org/en/country/indonesia/publication/beyond-unicorns-harnessing-digital-technologies-for-inclusion-in-indonesia>

108 <https://www.businesstimes.com.sg/asean-business/philippine-e-commerce-sales-to-grow-by-17-a-year-to-us103b-in-2025-report>

109 <https://documents1.worldbank.org/curated/en/796871601650398190/pdf/Philippines-Digital-Economy-Report-2020-A-Better-Normal-Under-COVID-19-Digitalizing-the-Philippine-Economy-Now.pdf>

110 <https://documents1.worldbank.org/curated/en/796871601650398190/pdf/Philippines-Digital-Economy-Report-2020-A-Better-Normal-Under-COVID-19-Digitalizing-the-Philippine-Economy-Now.pdf>

to US\$ 53 billion by 2025.<sup>111</sup> The Thai government has developed several initiatives to enhance uptake of digital technologies, particularly among MSMEs, as well as to develop e-government services. These strategies include Digital Thailand and Thailand 4.0, both of which take a multi-sectoral approach that relies on public-private collaboration to achieve digitalization goals. The Bank of Thailand Financial Sector Master Plan seeks to modernize technology and boost adaption of digital payments, which remain relatively low due to Thailand's cash-based economy.

Despite these efforts, regulatory and policy barriers to digitalization remain in place for MSMEs. In the *2021 Thailand Economic Monitor*, the World Bank highlighted several Thai regulations that are likely barriers to MSME participation in the digital economy. Businesses wishing to participate in e-commerce are subject to registry requirements from several government agencies, including the Department of Business Development, the Office of Small and Medium Enterprise Promotion, the Bank of Thailand, and the Consumer Protection Board.<sup>112</sup> All businesses engaging in e-commerce must further comply with the Computer-Related Offenses Act, the Cybersecurity Act, and the Personal Data Protection Act. The World Bank noted that these laws disadvantage MSMEs due to high compliance costs, while the laws lack clarity and further burden data-dependent business models like Artificial Intelligence (AI) and the Internet of Things (IoT).<sup>113</sup> Thailand further lacks enabling regulations on things like e-signatures, robust consumer protections, and interoperable digital payments.<sup>114</sup>

## India

As of 2019, India's digital economy was worth a total US\$ 170 billion, and is predicted to reach a potential US\$ 435 billion by 2025.<sup>115</sup> Though large in terms of total value, only 5% of India's commercial activity is online, compared to 25% in China.<sup>116</sup> However, as the Indian government continues to promote rapid progress in digitalization initiatives, uptake of digital tools is likely to accelerate.

The Digital India strategy, launched in 2015, seeks to boost connectivity, the delivery of digital government services, and improve digital skills.<sup>117</sup> The strategy was conceived to address both connectivity gaps and economic inequality between regions, firms, and individuals. To do so, the strategy has dozens of individual initiatives broadly pursuing the improvement of digital infrastructure, the expansion of digital governance, and the digital empowerment of Indians. Some of the strategy's successes include the Aadhaar digital ID program, enabling the delivery

111 <https://thaiembdc.org/2021/09/24/thai-digital-industries-poised-for-rapid-growth/> and <https://www.weforum.org/whitepapers/defining-and-measuring-payment-interoperability/>

112 <https://documents1.worldbank.org/curated/en/099505112112129099/pdf/P1774810eff81c0030b22f0874a695a491d.pdf>

113 <https://documents1.worldbank.org/curated/en/099505112112129099/pdf/P1774810eff81c0030b22f0874a695a491d.pdf>

114 <https://documents1.worldbank.org/curated/en/099505112112129099/pdf/P1774810eff81c0030b22f0874a695a491d.pdf>

115 <https://www.mckinsey.com/~media/mckinsey/business%20functions/mckinsey%20digital/our%20insights/digital%20india%20technology%20to%20transform%20a%20connected%20nation/mgi-digital-india-report-april-2019.pdf>

116 <https://www.mckinsey.com/~media/mckinsey/business%20functions/mckinsey%20digital/our%20insights/digital%20india%20technology%20to%20transform%20a%20connected%20nation/mgi-digital-india-report-april-2019.pdf> and <https://www.weforum.org/whitepapers/defining-and-measuring-payment-interoperability/>

117 <https://www.digitalindia.gov.in/content/vision-and-vision-areas>

of e-government services to its 1.2 billion participants, and rapidly increasing access to digital tools in India's poorest states.<sup>118</sup>

The Digital India strategy has enabled participation in the digital economy. The Aadhaar digital ID enables digital payments and e-signature verification for e-commerce.<sup>119</sup> The ID system offers further benefits to MSMEs, as it allows the use of online services to register their businesses and pay taxes.<sup>120</sup>

While the Indian government has made significant efforts towards increasing access and usage of digital tools, recently enacted regulations threaten to increase the costs and risks associated with digitalization, especially for MSMEs. Firms may struggle to comply with stringent data regulations in the 2019 Personal Data Protection Bill and the 2021 Information Technology Rules. Though these regulations target large digital platforms, MSMEs that use digital platforms as a part of their business may be affected by enforcement actions. Engaging in international e-commerce may risk non-compliance with data rules.

### ***MSMEs and Enabling Conditions in the Asia-Pacific Region***

A robust digital economy requires an ecosystem of public sector actors to establish a regulatory and policy framework to establish trust, transparency, and the rule of law in the digital sphere. In doing so, governments can construct an environment wherein e-commerce and digital trade can flourish, and where both businesses and individuals benefit from digitalization. Several governments in the region have made efforts to create such an environment, attempting to establish relevant and prescient regulation to stimulate growth in the digital sphere.

Despite these efforts, many governments, such as those noted above, maintain policies, laws, and regulations that are less than ideal. In the Asia-Pacific region, MSMEs demonstrate a remarkable level of resiliency—even the smallest of firms are accustomed to stiff competition and challenging business environments. But governments must realise that high-level policy decisions have a tangible effect on these MSMEs. By improving enabling conditions for MSMEs, governments in the region stand to help small firms grow and contribute to development.

Conversely, without making such efforts, governments risk harming the sector, which constitutes the vast majority of firms and employment in any given country. Despite their resilience, even the most successful of MSMEs can fail under unnecessarily challenging conditions.

## **Digital Governance in Asia**

Evolving digital issues like e-payments, delivery of cross-border digital services, or online competition policies will be addressed at some point through domestic regulatory rules. But given the ease of digital trade flows across borders, coordination is necessary to avoid creating conflicting, overlapping or inconsistent regulatory rules governing the digital economy.

Asia's impressive digital economy growth has taken place largely within regulatory landscapes that do not address many of these newer topics. Thus far, most of the governments

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118 <https://www.mckinsey.com/~media/mckinsey/business%20functions/mckinsey%20digital/our%20insights/digital%20india%20technology%20to%20transform%20a%20connected%20nation/mgi-digital-india-report-april-2019.pdf>

119 <https://www.scirp.org/journal/paperinformation.aspx?paperid=79879>

120 <https://www.mckinsey.com/~media/mckinsey/business%20functions/mckinsey%20digital/our%20insights/digital%20india%20technology%20to%20transform%20a%20connected%20nation/mgi-digital-india-report-april-2019.pdf>

in Asia have not developed and implemented regulatory policies that match the topics of this paper. Many governments, particularly in Southeast Asia, have growing histories of working collaboratively on trade rules. Hence, some of the regulatory settings that will be required to tackle these digital trade topics might be developed at the regional level and subsequently implemented through domestic level regulatory actions.

Asian governments have a variety of economic integration and coordination regimes available that can serve as platforms for discussing new topics, building capacity among officials to address diverse topics, and crafting new consistent or interoperable rules or regulations to tackle evolving digital economy challenges.

Policy does not develop out of a vacuum. It has to fit within the existing legal and regulatory frameworks of a government, align with political objectives, and suit the past historical experiences of each country. Governments cannot simply “copy and paste” regulatory rules from one setting directly into their own regimes without careful assessment of the consequences of doing so and without putting into place the necessary supporting infrastructure to make any new policy effective. Increasingly, however, some Asian governments have tried to do just that—to catch up with policy developments elsewhere, officials are embedding regulatory rules into domestic settings that may be completely different, leading to significant challenges.

The diversity of countries in Asia makes arriving at a cohesive outcome in any policy arena exceptionally challenging. It is not simply differences in size, wealth, and growth prospects that vary, but also the legal and institutional structures that can be wildly different across the region. Hence, any consistent policy outcome will need to take into account flexibilities in either rules or implementation to account for variations in possible policy landscapes. The goal may not be to harmonize policies, but to better coordinate policy outcomes or to help achieve interoperability.

The result of even effective policy discussions, dialogues and agreements may not be as satisfying. Most outcomes will not yield identical policies. For companies operating in the region, such an ending could still throw up a wide range of operational challenges. The burden of compliance with differing regimes, as always, will end up felt most strongly by the smallest firms who may find it difficult or even impossible to deliver digital trade across Asia and beyond.

Nevertheless, often the best that might be achieved, such as promise to follow high-standard objectives regarding digital services trade, might still be better than no commitments at all. Certainly, governments that cooperate to craft trade rules are likely to be creating more aligned policies than those that do not. Asian governments work together in ASEAN, RCEP, and digital-only trade arrangements. Each is considered briefly in turn.

The ten member states of ASEAN have been creating ever closer economic integration for decades. ASEAN's approach may be unique with considerable flexibility in both commitments and implementation arrangements. The result is often an uneven application of policies across member states. Nevertheless, ASEAN provides a useful platform for governments to design trade policies for the future.

ASEAN has a robust agenda related to digital trade. While not every topic noted in this paper is already part of the ongoing dialogues within ASEAN, existing arrangements may apply to some evolving policy areas. For example, while ASEAN has not attempted to tackle digital taxation at the regional level yet, services liberalization has been underway for years. The organization has a variety of commitments already in place for managing digital trade.

These include the entry into force of ASEAN's E-Commerce Agreement in late 2021<sup>121</sup> and the current application of the five-year workplan to support the agreement.<sup>122</sup> The E-Commerce Agreement urges members, for example, to coordinate on electronic payments, but the Workplan provides specific activities to ensure that this coordination takes place with a goal to craft consistent regulatory frameworks for managing cross-border e-payments by the end of the implementation in 2025.

ASEAN members have already committed to a significant upgrade. The “Bandar Seri Begawan Roadmap (BSBR): An ASEAN Digital Transformation Agenda to Accelerate ASEAN's Economic Recovery and Digital Economy Integration” was officially endorsed by the 20th ASEAN Economic Community Council on 18 October 2021. The BSBR affirms ASEAN's collective commitment to a robust five-year agenda towards the development of an integrated ASEAN Digital Economy, culminating in negotiations for a new ASEAN Digital Economy Framework Agreement by 2025.<sup>123</sup>

In the development of the new Framework, members will have an opportunity to add new topics that were not part of the negotiating agenda when ASEAN crafted its first agreement on e-commerce. This may include competition policy in the digital space or other new issues and, in particular, more information sharing about evolving domestic regulations for member governments. ASEAN standing committees meet regularly, with a multitude of digitally-related projects and programs running which provide additional opportunities for ministries and agencies to coordinate policies.

ASEAN members are simultaneously part of RCEP. RCEP, which also includes Australia, China, Japan, New Zealand, and South Korea, has an ecommerce chapter<sup>124</sup> and members spent considerable time working on digital trade issues during the eight years of negotiations. The final agreement is currently relatively unambitious on digital and e-commerce issues. However, as RCEP members have agreed to have a Secretariat and hold regular committee and subcommittee meetings as part of the implementation of the agreement, there are also opportunities to coordinate on new and evolving digital trade areas in the future. RCEP also has a built-in review mechanism every five years which provides a placeholder for inclusion of new topics.

Asia also has two different digital-only methods of tackling next generation trade issues. New Zealand and Singapore have joined with Chile in the Digital Economy Partnership Agreement (DEPA).<sup>125</sup> DEPA includes a range of modules that are meant to help members coordinate policies in the digital space. This includes working with current and prospective DEPA members but also encouraging others to use similar modules in other trade agreements and arrangements to help spread consistent digital approaches more widely. Singapore has also been very active in promoting an alternative digital-only trade arrangement called Digital

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121 <https://asean.org/asean-agreement-on-electronic-commerce-officially-enters-into-force/>

122 <https://asean.org/book/work-plan-on-the-implementation-of-asean-agreement-on-electronic-commerce/>

123 <https://asean.org/asean-economic-community-council-endorses-roadmap-to-accelerate-economic-recovery-digital-economy-integration/>

124 <https://www.mfat.govt.nz/pl/trade/free-trade-agreements/free-trade-agreements-in-force/regional-comprehensive-economic-partnership-rcep/rcep-text-and-resources/>

125 <https://www.mti.gov.sg/Improving-Trade/Digital-Economy-Agreements/The-Digital-Economy-Partnership-Agreement>

Economy Agreements (DEAs)<sup>126</sup> with Australia<sup>127</sup> and the UK,<sup>128</sup> as well as a Digital Economy Partnership (KSDPA) with South Korea.<sup>129</sup>

The DEAs also have an additional innovation that may be an important mechanism for addressing cutting-edge issues: the use of the Memorandum of Understanding (MOU). The MOUs are meant to be used for cooperation on topics that are not understood well enough or not “ripe” enough for commitments to be embedded in the trade agreement. Under the Singapore-Australia DEA, members agreed to include topics like digital identities or electronic invoicing as MOUs for future work.<sup>130</sup>

Given the new and uncertain implications of some topics, like digital taxation, it may make sense for members to think about using MOUs as a mechanism to encourage and foster greater regulatory discussions. These topics may, or may not, ultimately get embedded back into the broader DEA commitments or slotted into other trade arrangements. The DEAs are all part of existing bilateral free trade agreements, allowing members to include topics of relevance to digital trade that go beyond the commitments found in the DEA alone, such as services trade, trade facilitation rules of importance to e-commerce goods firms, and financial services commitments.

In short, while many Asian governments may have limited domestic level laws, rules and regulations governing digital trade, they are well positioned to leverage regional integration approaches to help develop the thinking, skills and practices needed to implement policies domestically.

## Conclusions

Digital trade has clearly flourished across Asia, even in the absence of clearly defined, consistent or interoperable rules and regulations. It may seem odd to be focused on the policy landscape now as a growing point of concern. However, as cross-border trade has become an ever-larger driver of economic growth, with a growing share of MSMEs engaged in trade in goods and services, obstacles, restrictions or barriers have gained an outsized importance. Especially in the wake of the global COVID-19 pandemic, governments and firms are looking for any spark to growth to help structure economic recovery.

Governments have not always focused on the role of digital trade, nor understood the risks and opportunities that can come through policy decisions. Given the porous nature of digital trade, what happens in one market may not simply affect that domestic economy. It can have significant implications for a wide range of firms and customers located across the region and around the world.

This paper has highlighted a few policy areas related to digital trade that appear to be ripe for additional investigation. Domestic regulations can be non-existent, incomplete and fragmented. They could be in direct or indirect conflict with policies being promulgated by neighbours. Topics like digital services, digital taxation, competition, electronic payments and

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126 <https://www.mti.gov.sg/Improving-Trade/Digital-Economy-Agreements>

127 <https://www.mti.gov.sg/Improving-Trade/Digital-Economy-Agreements/The-Singapore-Australia-Digital-Economy-Agreement>

128 <https://www.mti.gov.sg/Improving-Trade/Digital-Economy-Agreements/UKSDEA>

129 <https://www.mti.gov.sg/Improving-Trade/Digital-Economy-Agreements/KSDPA>

130 <https://www.dfat.gov.au/trade/services-and-digital-trade/australia-and-singapore-digital-economy-agreement#mous>

MSME support are important bellwethers about the future direction of travel. Asian governments that manage to coordinate policy actions will like reap benefits while those that do not follow decisionmaking elsewhere run a serious risk of hampering firms with excess compliance costs or even an inability to do business at all.



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