In 2018, the acquisition of Asian e-commerce platform Byar by South-East Asia operations by Grab showed how quickly a merger of online players could be completed and made irreversible. The Competition and Consumer Commission of Singapore (CCCS) was quick to act on the merger, imposing fines on the merger parties for the irreversible harm to competition between ride-hailing platforms. It also imposed directions on the parties to restore market contestability and encourage new entry. The order was stayed in June a few months later. In an earlier case involving an e-commerce merger, the CCCS worked with a payment service provider to rectify a merger that prevented merchants from accepting credit card payment cards on different payment terminals. There are many similar behaviours in e-commerce by businesses that merit the competition commission’s attention.

One example is online price comparison tools that claim to ensure customers review and rating system. The value consumers’ ability to make informed decisions and to use different price comparison tools across online sources.

Unfortunately, misleading pricing practices can be harmful. As a result, in addition, there are cross-border businesses that are increasingly using social media to attract consumers.

The CCCS is developing a set of guidelines on price transparency to address this issue.

COOPERATION AMONG ASEAN ECOMMERCE AUTHORITIES

The cross-border nature of e-commerce platforms may pose competition challenges to competition authorities as some countries’ practices may target domestic consumers but have limited local presence domestically.

This highlights the importance of regional cooperation among the competition authorities to achieve effective competition enforcement. The competition authorities in Asia have already begun to work together on common challenges.

For example, the CCCS cooperated with Malaysia and the Philippines on the Grab-Uber merger, sharing non-confidential information.

The motivations for understanding (MOUs) between the competition authorities can be further reinforced. The CCCS has signed an MOU with the Indonesian Competition Commission to encourage cooperation in competition enforcement activities that potentially affect each other’s jurisdiction. This exchange of information between the agencies, supported by a common enforcement approach and coordination in cases of mutual interest, can play a role in facilitating e-commerce growth.

ASEAN member states are also focusing on other approaches to bridge digital divides through the ASEAN Digital Integration Framework, to facilitate digital trade and innovation, while enabling seamless digital payments. As competition can also be affected by government policies and regulations, the authorities need to understand and how their actions might have an impact on competition and market access. The competition authorities can play the role of advising other government agencies on their policies on e-commerce markets to avoid any unintended anti-competitive effects.

In developing the physical infrastructure necessary for e-commerce in Singapore, the government-initiated Locker Alliance adopted an open access delivery network comprising parcel lockers and collection points to enable consumers to collect parcels at their convenience. An open and interoperable system helps to improve the consumer experience, taking advantage of their market positions and innovation from rivals using this national infrastructure.

Another issue where government departments often compete is e-commerce data portability.

Empowering consumers with data portability as a right can help support the growth of the digital economy and trade, as it allows consumers to get the most out of their online viewing habits.

For example, they wouldn’t have to create a new account for every online shopping experience from different websites, but can use one.

Recognising this, the CCCS cooperated with the Personal Data Protection Commission to study a data portability framework and how it can be introduced to support a consumer-centric approach.

These ongoing discussions with different regulators highlight that various issues that could affect e-commerce development are being concurrently monitored and, hopefully, addressed.

The e-commerce landscape is increasingly significant in role in the way ASEAN consumers and businesses can share goods and services, and will increasingly shape the ASEAN economic integration.

A common e-commerce growth potential, competition law and policy can be applied as a regulatory tool to facilitate the development of a vibrant digital ecosystem for the benefit of both businesses and consumers across the region.

Whether regulating super apps, cross-border shopping, or vetting internal government rules, the competition authorities can play a significant role in ensuring that the digital economy is open to competition and conducive to boosting ASEAN’s growth.


Burton Ong and Tan Hli

For The Straits Times

The pandemic is boosting e-commerce, with a growing role for competition law and policy across ASEAN to ensure open market access and fair practices.

The onset of the Covid-19 pandemic has hastened the migration of consumer spending from brick-and-mortar stores to electronic commerce (e-commerce) platforms, heralding news of growth for the digital economy.

Movement restrictions are unlikely to be removed in the near future, with most businesses likely to be subject to more stringent capacity limitations and crowd control measures. These generate market conditions – in Singapore and across the region – that magnify the significance of e-commerce as a pillar of all affected economies.

In South-East Asia, there is tremendous potential for cross-border e-commerce to drive regional economic integration and economic growth. ASEAN consumers are increasingly turning to their smartphones and mobile apps to engage in electronic transactions, whether it is to get a ride-sharing service, go food delivery, buy groceries, or play games.

Successful e-commerce platforms operating across ASEAN today include Lazada from Indonesia and Shopee and Tokopedia from Indonesia and Lazada from Singapore. While ASEAN has experienced positive developments, there is still potential for greater e-commerce adoption in the region. Firms face many challenges today, such as obstacles to foreign market access, and the lack of ASEAN-wide interoperable payment systems and digital services.

In addition, the development of e-commerce platforms has been affected by the emergence of interconnection between previously unconnected markets and industries. For example, ‘super apps’ that make it easier for consumers to transact in different markets and industries through a common platform have the potential to simultaneously impede and facilitate cross-border e-commerce transactions. During this pandemic, as businesses are forced to shut down to reduce transmission risks, many are turning to e-commerce.

Businesses that list their products on multiple e-marketplaces to sell to consumers overseas are able to make up for the loss of domestic sales. Even when the Covid-19 pandemic abates and restrictions are eased, the role of e-commerce in strengthening business resilience and supporting economic recovery across ASEAN is likely to stay.

Super apps first emerged in China with apps such as Meituan, Alibaba and Meituan, leveraging the high recurring usage of their platforms to consolidate all types of different features onto a common application platform. For example, a social media chat app, typically used many times a day, can include payment options and e-commerce, which let users shop and pay through the app.

Similar developments can be found in South-East Asia. Both Indonesian and Singapore-based Grab started as ride-hailing platforms but swiftly expanded to other services including their respective payment services. Grab in fact recently announced its collaboration with Sengtong to build a digital banking licence in Singapore.

With many ASEAN consumers already familiar with apps and their many uses, there is tremendous potential to develop interoperable ASEAN-wide wallets that will significantly reduce payment friction related to intra-ASEAN tourism. Such e-wallets can expand and enhance cross-border e-commerce opportunities, especially for the large segment of unbanked citizens and small businesses in ASEAN.

While super apps may attract us with the wide array of features offered, should we really be concerned that they might eventually dominate the e-commerce landscape to such an extent that they might impair competition in the digital marketplace?

For example, a super app that has a dominant position in one market may offer its consumers ‘handicapped’ discounts – discounts for using the same app for more than one type of service – in order to encourage its users in this market to also use its app for other services in different markets.

If the super app successfully attracts a large enough number of such consumers to use it for services in other markets due to the bundled discounts, the resulting “network effects” may compel businesses in other markets to use that super app to access their consumers. If other apps without the market power are unable to replicate such strategies, would businesses ultimately be forced to list on these dominant platforms or to use their payment services exclusively? Super apps that utilise such exclusivity contract to sustain their dominance after driving out competitors, may, subsequently, be able to charge higher fees from businesses and consumers that transact on their platforms, raising the costs of cross-border trade for everyone.

Without facing robust competition, developers of super apps may not be incentivised to engage in continuous product innovation unless the legal and regulatory environment ensures the market remains contestable, systems remain open and interoperable, and pricing practices remain transparent. This would suggest that super apps need careful monitoring by the competition authorities.

ROLE OF COMPETITION LAW AND POLICY

This is where competition law and policy can play a role in facilitating e-commerce growth. The Competition and Consumer Commission of Singapore (CCCS) was quick to act on the merger, imposing fines on the merger parties for the irreversible harm to competition between ride-hailing platforms. It also imposed directions on the parties to restore market contestability and encourage new entry.

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