Enhancing Policy and Regulatory Approaches to Strengthen Digital, Platform, and Data Economies

ADB Technical Meeting on Enhancing Digitalization in the GMS

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1. **Introduction** – Background of the Research
2. **Key Findings** – Building Blocks of Digital Economy Regulation
3. **Key Findings** – International Best Practices
4. **Conclusion** – Policymaking in the Digital Age
1. Introduction – Background of the Research
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In 2020, the Government of Viet Nam commissioned a report to support the implementation of its National Digital Transformation Program.

The main objective was to obtain guidance to ensure regulatory frameworks effectively drive the growth and dynamism of Viet Nam’s digital economy, all while promoting competition and innovation and safeguarding consumers’ and citizens’ interests.

Access Partnership conducted a comparative analysis of the best regulatory practices in nine jurisdictions: Australia, the European Union, Indonesia, Malaysia, the People’s Republic of China, the Republic of Korea, Singapore, Thailand, and the United Kingdom.

Beyond Viet Nam’s own digitalization efforts, the report and its findings can help digital economies of the Greater Mekong Subregion (GMS) learn from the variety of approaches taken by other economies.
2. Key Findings – Building Blocks of Digital Economy Regulation
Key Findings – Building blocks of a conducive digital economy regulatory approach

- Enabling Environment
- Roles and Responsibilities
- Registration and Presence
- Data Governance
- Tools and Mechanisms
Fostering an Enabling Environment

1. National Plans and Strategies
   • Provide rationale and policy drivers for policy and regulatory approaches to the digital economy

2. Cross-Agency Coordination
   • Whole of Government approach required to digital economy policy making
   • Lead digital agency in place for consistency and coordination

3. Foundational Frameworks
   • Support the digital economy and cover off fundamental elements, including e-transactions, data, consumer protection
4. Enhance digital literacy, skills, and competencies of citizens
   • Provide continued education and guidance to ensure citizens have the capacity to engage effectively in the digital, platform, and data economies

5. Public Participation and consultation
   • Ensure that all citizen’s interest are considered and protected
   • Guarantee engagement of civil society representing marginalized and vulnerable populations
Clarifying Roles and Responsibilities

Clarity and Consistency

- Clear about who is being regulated, what is being regulated, and why they are doing so
- Clearly set out definition and scope of large and dominant players, to ensure that small and medium players are not disproportionately affected
- Adopt a tailored approach to the roles and responsibilities placed upon digital players, according to their usage and their characteristics to ensure that proportionate obligations and requirements are applied appropriately to different categories of digital players
Clarifying Roles and Responsibilities

What are we regulating?

Who should be regulating?

Who should be ensuring accountability and enforcement?

How do laws, rules, policies, or regulations continue to work effectively over time?
Streamlining Business Registration and Not Requiring Local Presence

Complex Registration Requirements
• Register separately for different purposes such as business, provision of services, or taxation
• Devote resources to a multi-step registration process involving various agencies such as information and broadcasting, commerce, and finance
• Establish a permanent presence

Simplified Registration
• Streamline and simplify business registration and licensing policies and procedures, and reduce costly regulatory fees and licensing burdens to ease the barrier of entry, especially for MSMEs, and encourage compliance
• Registration process can be as simple as a one-step online process with a single agency or centralized portal
• Regulators can retain oversight and authority by establishing open and transparent communication channels with providers
• Ensure that regulators of consumer protection, personal data protection and privacy, and competition work together to align the regimes and strengthen their effectiveness and enforcement, both within and across jurisdictions.

• Hold digital service providers accountable for the personal data that they have access to and use.

• Set out parameters for data breach notification that are harm-based and focused on serious data breaches, yet avoid imposing prescriptive definitions and thresholds that could result in over-notification and unnecessarily raise compliance costs.

• Ensure consent provisions balance innovation with privacy protection and are flexible, technology neutral, and future proofed.

• Empower consumers to have more control over how their data is being used.
Data Governance: Promoting Data Sharing and Access

Promoting Data Sharing and Access

• Encourage active data collaborations using centralized data platforms and endorse the use of common data standards
• Enable cross-border data sharing through regional and international data governance frameworks and standardization, and model contractual clauses
• Foster trust by developing policies and frameworks to support data sharing and collaboration, as well as promote greater awareness on potential benefits
Leveraging Existing and New Tools and Mechanisms

- Leverage the range of tools and mechanisms to create a dynamic and collaborative regulatory environment (codes of conduct, regulatory sandboxes, and multi-agency, cross-sector regulation cooperation forums at national, regional, and global levels).
- Regulations must also be balanced, consistent, predictable, and granular, which can be achieved through:
  - *Customized* regulation (tailored and targeted but not prescriptive)
  - Within existing laws (ensuring that requirements are *clearly defined and differentiated*)
  - Involve working with industry to leverage or utilize *self-regulatory measures* (ensuring and enforcing industry-led responsibility and transparency)
  - *Regular review* of foundational frameworks to reflect new technologies and challenges
Key Findings – International Best Practices

Across the 9 economies used to benchmark effective policymaking in the digital age, several recurring items can be found:

• Clear and precise definitions are essential: broad/vague definitions create confusion, make compliance difficult, and lead to uncertainty.

• Government bodies tasked with regulation must have clear mandates and structures, as well as the resources they need to get things done.

• Laws, policies, and regulations are not made/implemented in a vacuum; to be truly effective, they need to function within a coordinated, comprehensive, and conducive environment.

• The public sector (civil service, lawmakers, policymakers, regulators) needs to be fully capacitated to both understand and guide the scope, scale, and pace of digital transformation.

• Laws, policies, and regulations must take local contexts, conditions, and dynamics into account; copy-pasting measures from elsewhere has its limits when it comes to addressing local challenges (infrastructural limitations, demographic characteristics, geopolitical considerations, etc.).

• Where cross-border economic activities are concerned, interoperability through the use and recognition of international standards is key to ensure digital development and growth enables regional integration.
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<th>Jurisdiction</th>
<th>Highlights</th>
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<td><strong>Australia</strong></td>
<td>Regularly evaluates and reviews its overarching approach to the digital economy – the Australian Government updated its Australia’s Tech Future digital economy strategy in 2022 to include the Blueprint for Critical Technologies, the Australian Data Strategy, and the Digital Government Strategy. Uses codes of conduct as a flexible regulatory tool to set out expectations and accountability provisions – such as the Content Services Code, and the Internet and Mobile Content Code, which is later supplemented by the Online Safety Act 2021.</td>
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<td><strong>European Union</strong></td>
<td>Provides clear definitions of obligations for different service providers – The Digital Services Act takes a four-tiered approach, with clearly outlined distinction accounting for scale, type of activities, and the level of risks associated. Promotes the availability of data and develops a trustworthy environment on which data can be better utilized for innovative services – as outlined in the Data Governance Act including new mechanism that enables wider sharing and reuse of protection public-sector data, new business model for data intermediary services, and enabling guidelines around data altruism.</td>
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<td><strong>Indonesia</strong></td>
<td>Emphasizes the importance of inclusive development – one of the strategic priorities in the Indonesia Digital Roadmap for 2021–2024 is to build inclusive, safe, and reliable digital infrastructure and connectivity. Streamlines business registration – with the establishment of the online single submission system designed to streamline and simplify business licensing by providing a one-stop shop for businesses and administrators.</td>
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**Malaysia**

Supplements overarching regulations with sector-specific guidelines – regarding personal data protection, there is the Code of Practice for the Banking and Financial Sector 2017, the Personal Data Protection Code of Practice for the Utilities Sector (Electricity) 2017, and the Personal Data Protection Code of Practice for the Communications Class Data Users 2017

**People’s Republic of China (PRC)**

Adopts a whole-of-government approach – with the five-year digital economy plan containing 30 strategies, including optimizing digital infrastructure, prioritizing the use of data, accelerating digital industrialization, making digital public services more inclusive, and strengthening governance, and cybersecurity

**Republic of Korea**

Targets development in key sectors – the Digital New Deal emphasizes the media and content industry, including OTT, metaverse, and blockchain; effectively recognizing these as key industries that need to be promoted

**Takes on holistic development of the data ecosystem**

– with the DataKITA program focusing on four strategic pillars including: (i) promotion of data literacy, (ii) development of data-driven infrastructure, (iii) training of data professionals, and (iv) adoption of data-driven technology such as AI

**Is responsive when it comes to updating regulations**

– the Measures for the Supervision and Administration of Online Transactions introduced in 2021 replaces the E-Commerce Law of the People’s Republic of China, first promulgated in August 2018, to address the rapid evolution of e-commerce through channels such as social media and live streaming

**Makes concerted efforts to remain in line with prevailing international standards**

– with KFTC, MSIT, and KCC closely monitoring the development of EU’s revision of definitions in competition regulation
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<td>Singapore</td>
<td>Is a first-mover when it comes to adopting foundational policies – Singapore is one of the first countries to adopt the UNCITRAL model, including the MLETR, which covers key documents for international trade. Provides clear frameworks to pilot innovation – the Trusted Data Sharing Framework, accompanied by the Data Collaboratives Program and Data Regulatory Sandbox mechanism, enables businesses to pilot data use cases while lowering the uncertainties of compliance and regulation from the direct engagement with IMDA and the Personal Data Protection Commission (PDPC).</td>
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<td>Thailand</td>
<td>Adopts a comprehensive approach that encompasses digital foundations to global digital leadership – the National Digital Economy Masterplan clearly outline the approach to infrastructure, in addition to emphasis of universal access and development of digital skills among entrepreneurs and MSMEs. Improves coordination between ministries and agencies – through the Office of the Prime Minister on the Prevention, Suppression, and Resolution of the Dissemination of False Information on Social Media B.E. 2535, the Government of Thailand seeks to improve the agility of departments across the country to flag instances of fake news.</td>
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<td>United Kingdom</td>
<td>Creates a dedicated agency to push for digital development across government – the Central Digital and Data Office (CDDO) is instrumental in reviewing and updating the country’s digital economy agenda. Conducts extensive public consultations – the consultation launched for the development of the National Data Strategy, which sets out how the UK plans to build a world-leading data economy, allowed the government to identify the need for additional guidance to supplement the strategy.</td>
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4. Conclusion – Policymaking in the Digital Age
Conclusion – Digitalization requires us to rethink the way economic activities are defined, framed, and classified.

If we are to consider how and whether to regulate them ...

On what basis – and within which sector – is regulation justified?

Do regulations enforce silos, deter new entrants, and restrict innovation?

Is regulation practical and enforceable given cross-sectoral and cross-jurisdictional application?
Conclusion – Policymaking in the Digital Age

The main challenge is to prepare against rapidly emerging/evolving risks without imposing legislative, policy, or regulatory burdens that hinder innovation and investment.

Regulators can count on a set of tried-and-tested principles:

- **Approach policies holistically,** considering the borderless nature of the digital economy.
- **Bridge siloed policymaking,** working closely in collaboration with private sector and civil society participants.
- **Make regulatory objectives clear,** rooting them in comprehensive frameworks and tracking their progress over time.
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