ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION
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COMMENTS OF ITIF

Before the

Malaysia Competition Commission (MyCC)

Kuala Lumpur, Malaysia

In the Matter of: Interim Report of Market Review on the Digital Economy Ecosystem Under the Competition Act 2010 [Act 712]	)	Public Comment

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RESPONSE TO THE MALAYSIA COMPETITION COMMISSION'S CONSULTATION REGARDING THE INTERIM REPORT OF MARKET REVIEW ON THE DIGITAL ECONOMY ECOSYSTEM UNDER THE COMPETITION ACT 2010

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INTRODUCTION

The Information Technology and Innovation Foundation (ITIF), the world's top-ranked science and technology policy think tank, appreciates the opportunity to respond to the Malaysia Competition Commission (MyCC)'s public consultation on its *Interim Report of the Market Review on the Digital Economy Ecosystem under the Competition Act 2010*.[1] We welcome the MyCC's proactive effort to assess Malaysia's digital markets and to examine how competition and innovation can be supported in this fast-evolving sector.

ITIF acknowledges that the interim report serves as an exploratory tool to better understand Malaysia's digital economy. ITIF welcomes the MyCC's open and consultative approach and agrees that this process offers an opportunity to ensure any future interventions are carefully tailored, proportionate, and grounded in evidence specific to Malaysia's market realities.

However, the report's underlying premise—that rapid growth and concentration in digital markets may require new forms of government intervention—is unsubstantiated. In our view, Malaysia's digital economy does not exhibit systemic failures that would justify introducing ex ante regulation targeting its digital economy, and we submit that the digital sectors under review are broadly competitive, dynamic, and responsive to consumer demand. Before we respond to the specific elements of the report, we hope to emphasize three general concerns:

[1] Malaysia Competition Commission (MyCC): Background and Overview of the Study Interim Report of Market Review on the Digital Economy Ecosystem Under the Competition Act 2010, https://www.mycc.gov.my/public-consultation-for-interim-report-market-review-of-the-digital-economy-ecosystem-under-the.

- First, the report appears to suggest that certain observed market trends, such as concentration or dominance in digital sub-sectors, point to an emerging market failure. However, in digital markets, concentration is not uncommon and often reflects competitive dynamics stemming from innovation and increased efficiency. Features such as network effects or platform scale can deliver real value to consumers and small businesses alike, and should not be assumed to be harmful without clear evidence of anti-competitive effects.
- Second, the report seems to imply that the existing legal framework—most notably the Competition Act 2010—may be insufficient to address these developments.[2] However, the Competition Act provides the MyCC with significant powers to investigate and act against anti-competitive agreements and abuses of dominance. In addition, Malaysia already has a number of sector-specific laws and regulations that govern key areas of the digital economy, including the Communications and Multimedia Act of 1998, the Consumer Protection Regulation of 2012, and the Personal Data Protection Act (Amendment) of 2024.[3] Collectively, these laws already offer a comprehensive legal toolkit for addressing the challenges and potentially harmful conduct in digital industries.
- Third, any resulting call for regulatory intervention may therefore be premature. Adopting digital antitrust regulation should be grounded in a clear demonstration of market failure and sustained competitive harm that cannot be effectively remedied under existing legal mechanisms. Introducing new, potentially ex ante obligations—especially in rapidly evolving sectors like mobile platforms, e-commerce, and digital advertising—risks constraining innovation and deterring investment in Malaysia's emerging digital markets.

ITIF's comments follow the structure of the interim report and respond to MyCC's call for input across the five sub-sectors examined: mobile operating and payment systems, e-commerce marketplaces, digital advertising services, online travel agencies (OTAs), and data protection/privacy. A brief conclusion follows.

RESPONSES TO THE MYCC'S MARKET REVIEW

Mobile Operating and Payment Systems

The MyCC has expressed concerns regarding potential anti-competitive practices within mobile operating systems (OS) and integrated payment systems. Specific issues highlighted include high commission rates, restricted access to device functionalities, and limited payment options within app stores.

Despite these concerns, Malaysia's mobile OS market demonstrates healthy competition and consumer choice. To be sure, while Apple and Google may have high market shares, this is not inherently indicative of market failure. What matters is market performance—especially outcomes like innovation, affordability, and

[2] Malasyia Competition Act of 2010, https://www.mycc.gov.my/sites/default/files/Competition%20Act%202010%20-%2022092020.pdf.

[3] See, for example: Communications and Multimedia Act of 1998, https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Act588bi_3.pdf, Consumer Protection Act of 1999, 011121_Akta 599_muktamad.pdf, Personal Data Protection Act of 2024 (Amendment), https://pdp.gov.my/ppdpv1/wp-content/uploads/2024/11/Act-A1727.pdf.

product quality.[4] And on this score, Malaysia's mobile sector continues to expand, with smartphone penetration projected to reach nearly 90 percent by 2025 and over 43 million active mobile connections recorded—indicators of strong consumer adoption and a well-functioning market.[5]

Practices such as app store commissions and control over device functionalities are standard in the industry and generally serve pro-competitive purposes like incentivizing platform development, ensuring security, and providing consistent user experiences. For example, while often criticized, commission rates enable platforms to recoup significant investments in ecosystem development, security infrastructure, developer tools, and app distribution networks. These revenues also support the maintenance of trusted app environments that benefit developers and consumers. Similarly, restricted access to certain device functionalities—such as non-SDK APIs (i.e., private or hidden APIs that are not intended for use by third-party developers)—is often necessary to maintain system integrity, enhance user privacy, and reduce security risks, particularly in a mobile ecosystem where misuse of core functionalities can lead to substantial consumer harm. Moreover, these practices can also be a part of a broader strategy for platforms to engage in interbrand competition with more open rival platforms, specifically by differentiating themselves based on security, privacy, and user experience. Finally, limiting in-app payment options can help standardize user experience, prevent fraud, and ensure seamless integration with OS-level features like parental controls, subscriptions, and refunds.[6]

E-commerce Marketplaces

In the e-commerce space, MyCC's interim report raises issues such as preferential treatment of certain sellers, self-preferencing behavior, lack of transparency in product rankings, and excessive operational requirements for merchants within e-commerce platforms.

In reality, Malaysia's e-commerce sector continues to thrive and shows little sign of market failure. As of 2024, the total value of Malaysia's e-commerce market appeared to reach $23.5 billion USD, with retail e-commerce contributing approximately $16 billion USD.[7] This seems to reflect a substantial increase compared to previous years and underscores the sector's rapid digitalization and resilience.[8] Such growth strongly indicates the absence of market failure. It suggests that current platform practices—including commission structures and integrated services—have not hindered, but rather supported, ecosystem development. Consumers appear to enjoy access to a wide array of local and international platforms such as Shopee, Lazada, PG Mall, Zalora, and Mudah, offering diverse products and services to Malaysian

[4] See, Joseph V. Coniglio and Lilla Nóra Kiss, Comments to Japan's Fair Trade Commission Regarding the Smartphone Software Competition Promotion Act, September 3, 2024, https://itif.org/publications/2024/09/03/comments-to-jftc-regarding-the-smartphone-software-competition-promotion-act/.

[5] DataReportal, Digital 2025: Malaysia, 2025, https://datareportal.com/reports/digital-2025-malaysia.

[6] Joseph V. Coniglio and Lilla Nóra Kiss, Comments to Japan's Fair Trade Commission Regarding the Smartphone Software Competition Promotion Act, September 3, 2024, https://itif.org/publications/2024/09/03/comments-to-jftc-regarding-the-smartphone-software-competition-promotion-act/.

[7] See, Statista: Annual gross merchandise value (GMV) of the e-commerce market in Malaysia from 2019 to 2024, with a forecast for 2030, https://www.statista.com/statistics/1117638/malaysia-gmv-e-commerce-market/.

[8] For example, in 2021 the same data was approx. at MYR 31.9 billion (USD 7.6 billion). *Malaysia e-commerce market to grow by 19.9% in 2022, estimates GlobalData*, GlobalData (2022, October 26), https://www.globaldata.com/media/banking/malaysia-e-commerce-market-grow-19-9-2022-estimates-globaldata/

consumers.[9] In particular, small and medium-sized enterprises (SMEs) have likely benefited from these platforms' ability to offer market access, digital tools, and fulfillment infrastructure that would otherwise be out of reach. Indeed, in 2019, approximately 42,620 SMEs participated in e-commerce platforms, a number that more than tripled to 140,883 SMEs by September 2020, reflecting the significant role these platforms play in empowering local businesses.[10]

Moreover, the report does not provide evidence that the aforementioned practices have deteriorated consumer outcomes within Malaysia's vibrant e-commerce landscape. For example, self-preferencing is a common and widely accepted feature of both digital and offline commerce. Far from being anti-consumer, this practice can reduce costs, improve delivery times, and enhance user experience. For example, a platform may promote its own branded products that offer better value or bundle logistics and payment services to streamline user interactions. This is analogous to grocery stores placing store-brand products at eye level—a standard retail strategy that enhances efficiency and consumer satisfaction. As long as consumers retain choice and clarity, and rival sellers are not excluded from visibility or access, there is no basis to presume harm.

Digital Advertising Services

The interim report identifies potential competition concerns in digital advertising, including market power through vertical integration, lack of transparency in ad mechanisms, and data utilization by incumbent players.

However, Malaysia's advertising market is on an upward trend. In 2024, advertising revenue grew by 8.5 percent, totaling 9 billion MYD (approximately $1.9 billion USD).[11] Digital advertising accounted for 76 percent of total advertising budgets, a significant increase from 28 percent in 2015.[12] This growth is consistent with a healthy and competitive digital advertising market, as well as competition between digital and non-digital advertising.

The digital advertising infrastructure is often built around highly integrated systems that connect advertisers and publishers through tools that include ad exchanges, ad servers, and ad networks. These systems function as two-sided transaction platforms—facilitating real-time matches between supply and demand.[13] In this context, advertisers benefit from platforms with more publishers and vice versa, creating mutual value. These integrated platforms can enhance efficiency by, for example, reducing transaction costs, improving ad targeting, and streamlining campaign management. Limiting integration in the ad tech space thus risks not

[9] See the top e-commerce platforms in Malaysia, listed by Avada.io, https://avada.io/blog/malaysia-ecommerce-platform/.

[10] FocusM, SMEs to capitalise on e-commerce platforms to sustain its lifeline, 2021, https://focusmalaysia.my/smes-to-capitalise-on-e-commerce-platforms-to-sustain-its-lifeline/.

[11] Statista, Total digital advertising expenditure in Malaysia from 2nd quarter 2022 to 2nd quarter 2024, https://www.statista.com/statistics/1551801/malaysia-digital-ad-expenditure/.

[12] Vishnu Devarajan, Malaysian Social Media Advertising Powers Ahead Offsetting Linear Advertising Declines, https://marketingmagazine.com.my/malaysian-social-media-advertising-powers-ahead-offsetting-linear-advertising-declines/.

[13] Joseph V. Coniglio, Crunch Time in DOJ v. Google: An Ad Tech Market Definition Cluster?, December 16, 2024, https://itif.org/publications/2024/12/16/crunch-time-doj-google-ad-tech-market-definition-cluster/.

only misunderstanding the competitive dynamics of the market, but also chilling output-enhancing efficiencies.

Online Travel Agencies (OTAs)

MyCC has also raised concerns about OTAs engaging in potentially anti-competitive practices, including the enforcement of price parity clauses, the imposition of high commission rates, as well as the alleged dominance of metasearch engines.

Despite these worries, Malaysia's online travel industry is recovering and expanding. In 2023, the gross merchandise value (GMV) of online travel reached $4 billion USD and is projected to grow to approximately $10 billion USD by 2030.[14] Competition is evident across local and global platforms—Agoda, Booking.com, Traveloka, and Trip.com—offering diverse accommodation options and user-focused features. Consumer choice remains broad, and switching between services is easy.

Moreover, the flagged practices are not inherently anti-competitive. Price parity clauses help ensure price consistency across platforms, which reduces search costs for consumers and builds trust by minimizing confusion over price discrepancies. They also help prevent free-riding, where hotels or other providers benefit from an OTA's marketing and customer acquisition efforts but then undercut prices on their own channels. Furthermore, commissions charged by OTAs often reflect the comprehensive services they provide to hotels, including extensive marketing, customer support, and secure booking platforms. In addition, commissions often reflect bundled services such as fraud checks, multilingual support, and 24/7 customer service.

Finally, while metasearch engines play a key role in the online travel ecosystem, concerns about their alleged dominance should be assessed within the broader context of competition across the travel search and booking value chain. For example, travel-specific search engines not only compete with OTAs and more general search engines engines, but also direct distribution through hotel booking channels—limiting their ability to exert market power.

Data Privacy and Protection

The interim report notes concerns surrounding data privacy and protection across all sub-sectors. It emphasizes the need for robust legal mechanisms to allow users to control their personal information and prevent misuse or unauthorized access to personal information. However, Malaysia has proactively addressed these issues through legislative measures. For example, the Personal Data Protection (Amendment) Act 2024 introduces significant measures toward protecting privacy, including the mandatory appointment of data protection officers and increased penalties for data breaches.[15] It also includes pro-competitive measures such as data portability requirements. It is far too soon to say that this legislation has been ineffective, let alone requiring additional competition regulations to supplement it. Indeed, data privacy issues, while important,

[14] Statista, Gross merchandise value (GMV) of online travel in Malaysia from 2015 to 2024, with a forecast for 2030, https://www.statista.com/statistics/1176615/malaysia-gmv-online-travel/.

[15] Personal Data Protection Act of 2024, https://pdp.gov.my/ppdpv1/wp-content/uploads/2024/11/Act-A1727.pdf

are distinct from competition concerns and should be addressed primarily through data protection law, not digital competition regulation.

RECOMMENDATIONS

For these reasons, ITIF offers the following recommendations:

- **Focus on market performance:** Across the digital sub-sectors reviewed—such as e-commerce, mobile ecosystems, digital advertising, and travel platforms—there is no compelling evidence of sustained market failure. In fact, many of the practices identified (e.g., self-preferencing, platform integration, price parity clauses) are standard in competitive markets and deliver tangible benefits to consumers and businesses alike through lower costs, increased access, and improved user experience.
- **Leverage existing laws to address harmful conduct:** To the extent issues arise, Malaysia already possesses a robust set of legal tools under the Competition Act 2010 and the recently amended Personal Data Protection Act (PDPA) that can be used to investigate and remedy specific instances of anti-competitive conduct and privacy violations.
- **Regulatory intervention can do more harm than good:** Heavy-handed regulations could hinder the very innovation driving the country's economic strength and digital transformation—including by creating barriers to entry for smaller firms that chill the very competition and dynamism authorities intend to promote.

CONCLUSION

Malaysia's digital economy is dynamic and growing, and it is already supported by a strong legal framework to protect against anti-competitive conduct and other anti-consumer behavior. While the interim report reflects a valuable step toward understanding market trends, it does not present clear evidence of systemic market failure that would warrant prescriptive regulatory intervention. Moving forward, policymakers should prioritize evidence-based enforcement under existing laws and avoid introducing rules that may unintentionally stifle innovation, reduce competition, and harm consumers.

Thank you for your consideration.

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