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SCHUMPETER PROJECT ON COMPETITION POLICY

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COMMENTS OF ITIF

Before the

Trade Competition Commission of Thailand

Bangkok, Thailand

In the Matter of: Public consultation on proposed revisions to guidelines governing digital platforms, modern wholesale and retail businesses, and on-demand delivery services	)	Public Comment

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INTRODUCTION AND SUMMARY

On July 31, the Trade Competition Commission of Thailand (TCCT) issued a public consultation (Consultation) on proposed revisions to guidelines governing digital platforms, modern wholesale and retail businesses, and on demand delivery services (Proposed Guidelines).[1] The consultation follows the TCCT's prior issuance in March of a guideline on the assessment of conducts of multi-sided platforms trading goods or services under Thai competition law, as well as the creation of two new subcommittees designed to intensify oversight of digital platforms and modern trade businesses.

The Information Technology and Innovation Foundation (ITIF), an independent, nonprofit, non-partisan research and educational institute focusing on the intersection of technological innovation and public policy, appreciates the opportunity to comment on the Consultation. At the outset, ITIF commends Thailand's Digital Economy and Society Minister Chaichanok Chidchob for his decision to review the country's draft Digital Platform Economy Act (PEA), which mirrors the European Union's Digital Markets Act (DMA), on the grounds that such heavy-handed *ex ante* competition regulation would be both unnecessary and harmful to Thailand's growing digital economy. In the same vein, ITIF is concerned that the Proposed Guidelines unfortunately reflect the very sort of problematic *ex ante* regulation that Minister Chidchob is rightly hesitant to adopt and similarly pose a significant risk of harm to consumers and innovation in Thailand.

ITIF's comment proceeds in several parts. First, ITIF expresses concern about the Proposed Guidelines' placement of unilateral conduct restrictions on platforms without any demonstration that they enjoy market dominance. Second, ITIF explains that both consumer protection and rules that are tantamount to *de facto* price regulation are beyond the scope of how the TCCT should understand its competition mission. Third, ITIF analyzes how Section 3's *per se* bans on conduct like self-preferencing will chill efficiency-enhancing behavior in a way that is likely to hurt consumers and innovation. Fourth, ITIF counsels against an approach to algorithms that can encourage free-riding and have other unintended harmful consequences. Fifth, ITIF notes how banning a platform from leveraging third-party data to benefit its own competing services (what

[1] TCCT, Open to listening to opinions for development Competition Regulation, https://sites.google.com/view/tcctrequestforcomment/หนาแรก.

critics often label "data misappropriation") will also result in condemning procompetitive behavior that poses little risk of consumer harm. Sixth, ITIF presents some general reflections on the procedural proposals surrounding internal mechanisms and dispute resolution and exhorts the TCCT against inserting itself into platforms' compliance processes. A brief conclusion follows.

SECTION 1: PLATFORM GOVERNANCE CRITERIA AND RESPONSIBILITIES

Section 1 of the Proposed Guidelines explains that firms will be assessed based on factors that include revenues, number of users, transaction value, dependence, and market access, although the Proposed Guidelines do not appear to indicate that this list is exhaustive. However, none of these factors either taken individually or in their totality are a good proxy for determining whether a firm enjoys market dominance or monopoly power, which should be a requirement for imposing restrictions on unilateral behavior to avoid false positives by targeting firms who have no ability to unilaterally harm competition or consumers. For example, that a firm has high revenues, users, or platform transaction value does not mean that it has a dominant market position, as it may compete intensely with other high-value platforms which consumers use as part of a multi-homing strategy that is common in many digital markets. Indeed, this risk of false positives is exacerbated by the TCCT's further contemplated assessment of criteria like "dependence" and "market access," which are both highly subjective factors that could also be utilized to target firms who do not have any unilateral ability to harm competition. As such, should the TCCT go forward with platform-specific rules, it should make clear that they will only apply to firms who have a substantial degree of market power.

- Recommendation: Require proof of dominance before applying unilateral conduct rules. While ITIF does not object in principle to the TCCT imposing some revenue and user requirements should it decide to move forward with special rules for digital platforms, it should clarify that satisfying these criteria are necessary but not sufficient conditions for the rules to apply. As an additional necessary condition, the TCCT should also require that the digital platform has some demonstrable market dominance so as to ensure its rules do not restrict conduct in markets where it has no prospect of unilaterally harming competition.

SECTION 2: TRANSPARENCY OF CONTRACTS AND FEES

Section 2 of the Proposed Guidelines details a number of provisions relating to the transparency of contracts and fees, which include requirements that terms and conditions be in writing, clear, easy to understand, and verifiable, a prohibition on irrelevant fees being imposed, a ban on unfair unilateral changes to terms without prior notice, as well as restrictions on the shifting of marketing costs to businesses on the platform without consent. To be sure, while ITIF understands that the TCCT should want consumers and business users to be protected from fraudulent or deceptive business practices, these are matters better addressed through general consumer protection laws rather than sector-specific competition guidelines. What's more, by including a ban on irrelevant fees, the Proposed Guidelines would effectively turn the TCCT into a price regulator—a recipe for chilling innovation by preventing firms from recouping their investments. The TCCT should thus avoid bringing either consumer protection issues or rules suited for *ex ante* regulation into its Proposed Guidelines.

- Recommendation: Focus on Competition Enforcement Issues. The TCCT should handle matters associated with consumer protection separately and avoid provisions that would turn competition enforcement into heavy-handed price regulation.

SECTION 3: PREVENTING UNFAIR COMPETITION

Section 3 of the Proposed Guidelines contains measures designed to prevent unfair competition, which include prohibitions on unfair discrimination, self-preferencing, tying and bundling without a valid business reason, as well as a data sharing requirement. Most of these measures are problematic. First, not only is it unclear when discrimination will be viewed as unfair, but discriminating between different users does not inherently involve any exclusion or harm to the competitive process but is instead typically common profit-maximizing behavior that benefits the platform. Second, prohibiting self-preferencing that merely harms sellers is likely to condemn a broad swath of procompetitive digital behavior that benefits consumers with a better user experience, such as when an e-commerce platform features its own low-priced private label offerings. Third, not only do digital platforms have a variety of procompetitive reasons to place conditions on third parties to, for example, offer the best price on their platform, but overly demanding data sharing obligations can both create free-rider problems that chill innovation as well as privacy and security risks.

- **Recommendation: Avoid *per se* bans on unilateral conduct.** Rather than reflect conduct that is almost always anticompetitive in a way that would justify application of *per se* rules, such as with a cartel, practices like discriminating between users and self-preferencing are widespread in the digital economy and very often procompetitive—even when engaged in by dominant platforms. As such, banning these practices will likely have the result of chilling procompetitive, efficiency-enhancing behavior that benefits Thai consumers.

SECTION 4: GOVERNANCE IN ALGORITHMIC SYSTEMS

Section 4 of the Proposed Guidelines focus on ensuring proper governance in algorithmic systems, such as by mandating disclosure in ranking algorithms, allowing the TCCT to oversee a platform's internal processes for rankings, restricting a platform's ability to remove users without justification, and requiring protections against retaliation. While here again ITIF believes that consumer protection laws should restrict platforms from engaging in fraudulent or deceptive behavior, the government micromanaging or forcing broad disclosure of algorithms can have unintended consequences that include businesses rigging the algorithm in ways that harm consumers, as well as chilling platform investments even if the disclosure obligations are exclusive of trade secrets. Moreover, imposing restrictions on platforms from removing business users can similarly have the unintended consequence of harming the very business users the guidelines wish to protect, as platforms may be forced to impose more stringent requirements on who is able to participate on the platform in the first place to ensure that they protect consumer privacy and security.

- **Recommendation: Be Wary of Unintended Consequences from mandating more open platforms**. Forcing platforms to share their algorithms and limiting their ability to remove bad actors can harm the innovation, user experience, privacy, and security that define a healthy online ecosystem.

SECTION 5: REGULATING THE USE OF DATA

Section 5 of the Proposed Guidelines contains a provision that attempts to regulate the use of platform data, and specifically to protect the non-public information of business users from being utilized by the platform to benefit its own services that compete with those of the business user. But the Proposed Guidelines' apparent

per se ban on this so-called "data misappropriation" is not good policy. First, such a restriction may condemn behavior that does not even pose a risk of anticompetitive harm, such as when the platform's competitive offering has a much lower market share than the dominant business user it is seeking to compete with—the very sort of competition that the TCCT should want to encourage. Moreover, even if this data was being used by the platform to obtain a dominant position in an ancillary product market, consumers may often benefit if, as in many cases, the e-commerce platform used aggregated platform data to develop lower-price alternatives that benefit consumers through new more competitive offerings. At bottom, big should not be seen as bad when it results from conduct that benefits consumers even if rivals may be harmed.

- **Recommendation: Do not impose overly burdensome restrictions on "data misappropriation."** A platform leveraging aggregate third-party to introduce new and often lower priced products is not only likely to benefit consumers, but is the very essence of competition on the merits itself—not least when the platform is competing with a business user on its platform that may have a dominant position it wishes to challenge.

SECTION 6: INTERNAL MECHANISMS AND DISPUTE RESOLUTION

Section 6 of the Proposed Guidelines lays out provisions that discuss the establishment of internal competition compliance practices for the platform, as well as create channels for receiving and resolving third party complaints. ITIF of course does not object in principle to the TCCT either establishing effective and transparent channels for third parties to make complaints about anticompetitive behavior—provided that adequate procedural protections are in place for platforms who receive them—or requiring that platforms have defined complied policies. However, ITIF would strongly object to any proposal by the TCCT's to actively oversee the internal compliance policies of platforms seeking to comply with its guidelines, as doing so would represent the very worst kind of *ex ante* regulation where the government intervenes unnecessarily into a company's day to day decisions.

- **Recommendation: Do not micromanage platform's compliance procedures.** Platforms are already well incentivized to comply with the TCCT's competition rules and inserting the TCCT into their internal compliance processes can seriously stifle entrepreneurial behavior and ultimately reflect poorly on the overall business environment in Thailand.

CONCLUSION

ITIF is grateful for the opportunity to comment on the Proposed Guidelines as the TCCT considers how to be best protect competition and innovation in Thailand. Indeed, Thailand's digital markets exhibit no general market failure that could justify either new *ex ante* digital antitrust regulation like the PEA or the sort of heavy-handed sector-specific changes to its *ex post* enforcement framework contemplated by the Proposed Guidelines. On the contrary, as the U.S. International Trade Administration has found, "Thailand's rapidly expanding digital economy, projected to grow by 7.3 percent and reach approximately $140.3 billion in

2025—well above the national GDP growth of 2.8 percent—is positioning the country as a key digital hub in the ASEAN region and creating strong opportunities for U.S. companies."[2]

What's more, not only is there little reason to think that *ex ante* regulation like the PEA or measures like the Proposed Guidelines will improve Thailand's economy, but these regimes may have the effect of unfairly targeting the very U.S. companies that want to invest and help grow Thailand's economy, which could itself be viewed unfavorably the United States government, who has begun to take action against antitrust regimes targeting American firms like the European Union's Digital Markets Act. Moreover, there is no reason for thinking that the enforcement of Thailand's current competition laws is insufficient to address any anticompetitive behavior that digital platforms may engage in. Indeed, because regular competition law enforcement is *ex post* and general in nature, it generally avoids the economic problems associated with *ex ante* regulation that attempts to condemn behavior before it occurs and its effects can be analyzed, as well as mitigates concerns about regulatory capture associated with industry specific regimes. Simply put, the TCCT should be mindful that just because *ex post* investigations that analyze competitive effects may take time does not mean that more stringer *ex ante* or sector-specific approaches will improve the economic status *quo.*

Very truly yours,

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[2] International Trade Administration, Thailand Country Commercial Guide (last updated Apr. 10, 2026), https://www.trade.gov/country-commercial-guides/thailand-digital-economy.