

INTERNATIONAL WORKSHOP

***THE DIGITAL ECONOMY:
POTENTIAL BENEFITS, CHALLENGES
&
IMPLICATIONS FOR REGULATIONS***

EVENT REPORT



*Ho Chi Minh City, Vietnam
30.08.2017*

Background

An international workshop entitled “The Digital Economy: Potential Benefits, Challenges and Implications for Regulations” was organised on the 30th of August, 2017 in Ho Chi Minh City, Vietnam by Consumer Unity & Trust Society (CUTS International), in cooperation with the Vietnam Chamber of Commerce and Industry (VCCI). The event marked the launch of the CUTS “Regional Inclusive Growth” Project (Diginomics-I), to be implemented in three countries, namely India, the Philippines and Vietnam, over the course of 18 months (June 2017 – December 2018). This workshop followed an earlier launch of the project in India, marked by an international conference entitled “Future of the Digital Economy: Need and Importance for Optimal Regulations” organised by CUTS on the 11th of August, 2017 in New Delhi, and is to be followed by a similar launch event of the project in Manila, Philippines in October, 2017.

Executive Summary

The workshop agenda was built around the main thesis that: The Digital Economy could bring huge benefits to consumers (with new products and services, availability of information, increased choice and accessibility), businesses (in the form of competition, more/new market opportunities and enhanced efficiency) and governments (via efficient public service delivery, better public participation in governance); as well as challenges (regarding disruptions and replacement, job loss, privacy and data protection, lack of liability, cybersecurity, etc). Respective countries, as well as the international community, therefore, need to put in place an optimal regulatory framework, which could help unleash its innovative potentials, reap the accruing benefits, and address the challenges. This gave rise to the workshop’s two thematic panels and their ensuing discussions.

While benefits are easy to identify, several challenges were discussed and highlighted during the discourse. First, consumers, business and governments in developing countries alike need to be kept abreast of the rising significance of data and data analytics, as well as other issues such as privacy, security, ownership and utilisation. Secondly, underdeveloped infrastructure and outdated regulations in developing countries are resulting in a wide digital divide, which hampers meaningful participation by stakeholders from there in the global digital economy; and thus making it difficult to achieve inclusive growth. Thirdly, the lack of digital literacy and loss of consumer trust in online transactions due to unethical business practices may dampen the prospects of e-commerce sector. Fourth, the worrying trends of digital protectionism and fragmented governance need to be addressed so as to enable the Internet economy to work well and contribute to economic growth around the world. Last but not least, the changing nature of markets and anticompetitive practices in the context of the digital economy means the traditional approach to competition law enforcement needs to be changed towards being more flexible, principles-based and transparent.

Optimal regulations in such a context might follow a light-touch approach, striving to maintain the balance between existing businesses and disruptive entries; while protecting the consumers' interests in a holistic manner. While disruptive entries by innovative forms of business should be facilitated, to the extent that they promote dynamic efficiency and increase consumer welfare, safeguards should be in place to minimise the downside risks of the digital economy such as collusion, data theft, cyber attacks, job loss and hollow-out, widening income inequality, lack of business liability, tax evasion, etc. The difficult balance between jurisdictional demarcation on the hand and the need to ensure seamless international rule-making on the other was also addressed.

Opening Session

- **Welcome remarks - Mr. Vo Tan Thanh, Vice President, VCCI**
- **Opening remarks - Mr. Pradeep S Mehta, Secretary General, CUTS International**

Mr. Vo Tan Thanh welcomed all the participants of the workshop and expressed his appreciation for the cooperation with CUTS International in organising this event, which deals with a contemporary issue of extremely high social and economic importance for Vietnam: the digital economy, potential benefits that it could bring about, corresponding challenges as well as the implications for an appropriate and balanced regulatory framework. He recognised that Vietnam is putting a lot of emphasis on promoting local start-up entrepreneurship and dealing with the onset of the Industrial Revolution 4.0. The deployment of a digital economy in Vietnam, therefore, could help the country to bridge the development gaps and catch up with other industrialised countries.

Mr. Thanh also stressed that the digital economy could bring both benefits and challenges for the business community in Vietnam. On the one hand, the emergence of new business models such as Uber, Grab, Airbnb, the rising power of tech giants such as Google, Facebook, Microsoft, or the application of digital technologies in e-commerce means the competitive landscape has undergone radical changes and Vietnamese businesses could lose out right on their home front if they can not cope with these changes and/or develop their own innovative capacity. On the other hand, if Vietnamese business could make the best use of these new technologies to strengthen their foothold in the market place, secure the patronage and loyalty of customers, and even create new niche market, they would become of the winners of the game.

Mr. Pradeep Mehta started his opening remarks by introducing to the workshop participants about CUTS International. Founded in 1983 as a voluntary group of like-minded individuals convening in a garage in Jaipur, India to defend the legitimate rights and interests of poor Indian consumers against unethical, unfair and unscrupulous business practices of the day, CUTS today is an international research and advocacy group spanning several countries in Africa, Asia and Europe, working on a wide range of issues from consumer protection, competition policy and law, to trade, investment, climate change and human development.

Throughout these 34 years, the organisation's credo has always been on "Promoting consumer sovereignty within and across borders". CUTS's organic growth came as a result of the realisation that the consumer needs to be economically, politically and socially empowered via diverse subjects such as international trade, competition law and policy, economic and business regulation, economic and political governance, etc. And this issue of consumer sovereignty and empowerment is gaining ever more significance in the context of the digital economy today.

The rise of the Internet, Big Data, computer algorithms, artificial intelligence, and machine learning all promise to benefit our lives. On its surface, the online world – with the growth of price comparison websites, dynamic pricing, web promotions and smartphone apps – seems to deliver a great deal in terms of lower prices, improving quality, widening the selection of goods and services, and accelerating innovation. At the same time, it has also raised scepticism in the mind of several on issues such as cybersecurity, online privacy, data protection, business liability, job losses, etc.

The Digital Economy has come to be known as an incubator for new-age businesses, which are based on disruptive technologies and innovative business models. Despite their immense successes, a number of such businesses have found themselves in turmoil. Due to the disruptive nature of such businesses, the regulatory bodies often find it difficult to regulate such entities, and may end up imposing archaic regulations, which may hamper the growth of these digital enterprises. The unabatable advances of technological change, resulting in drastic changes in consumer preferences, habits, the nature of business competition, and business infrastructure also means traditional businesses could get marginalised or even displaced en masse.

Mr. Mehta then emphasised in his remarks that in this digital economy, data is the new oil. Therefore, what data is being collected and analysed, to what use these digital assets are being put, who has ownership over data, how data is being protected, etc. become issues of prime importance. The consumers ought to be empowered to be in the driver's seat; whereas the role of new-age business is to cater to the demands and preferences of the digital consumers; while governments be an enabler, if the huge potentials of the digital economy are to be fully reaped.

The Diginomics-I Project is meant to address these challenges of the digital economy, at the same, highlight the benefits that it could bring to consumers, business, and governments, most of all the consumers, through policy research and the use of case studies. In order to capacitate consumers on optimally using the digital tools and platforms, to their benefit, the Project would develop Massive Open Online Course (MOOC), which will be available on both, the website and the mobile (Android) platform. The entire programme is envisaged to strengthen the framework for the digital economy as well as improving digital literacy and empowerment of individuals, especially in fields of financial literacy, economic empowerment, education and health.

Session I - “The Digital Economy: Potential Benefits and Challenges”

Chair: Ms. Marife M. Ballesteros, Senior Research Fellow, Philippines Institute for Development Studies (PIDS)

- **Ms. Alice Pham, Director, CUTS International**
- **Mr. Nguyen Manh Hung, Vice President and Secretary General, Vietnam Consumers Association (VINASTAS)**
- **Mr. Simon Lacey, Vice President, Global Government Affairs, Huawei Technologies Co., Ltd.**
- **Ms. Tran Chi Anh, Special Counsel, Baker & McKenzie (Vietnam) Ltd.**

Ms. Pham’s presentation picks up from the theme of the Diginomics-I Project and dealt with the question of whether the digital economy could be a catalyst for inclusive growth in the context of developing countries. She started by defining the digital economy as the amalgamation of several general purpose technologies and the range of economic and social activities carried out by people over the Internet and information networks; then went into highlighting its potentials and dissecting the various components a typical digital economy ecosystem. She then provided some examples to illustrate the various emerging opportunities that the digital economy could open up for governments, business and consumers; while maintaining that these opportunities no doubt came along with challenges. For example, the digital economy not only has disruptive impacts on traditional markets and business, but also regulation; it requires huge infrastructure investments; it could have hollowing-out effects and result in job loss; it could exacerbate income inequality, not to mention other issues such as cyber-security, data protection and privacy, and liability, etc. Whether technology is the natural and necessary solution to our complex social problems, whether the digital economy could help developing countries to achieve inclusive growth, these issues remain open for discussion and debate. In the meanwhile, Ms. Pham urged the audience to consider a number of pertinent questions such as: Does the digital divide only mean the gap between those connected to the Internet and those who are not? Whether Internet connection should be provided by private (commercial) initiatives or be a part of structural solutions supported by Governments? Could digital literacy replace the role of public analog education and skills upgrading? Could flexibility at work replace the quality and stability offered by traditional employment? Could new economic opportunities brought about by the digital economy could make up for job losses? What social protection programmes are needed? And whether a universal basic income is the answer?

Mr. Hung spoke about the increasing popularity of online transactions in Vietnam, quoting a few statistics on e-commerce and adoption. He mentioned about the benefits to buyers and sellers and the envisaged problems for consumers as well. He stressed on the fact that the adoption has to increase further, while also ensuring that consumer rights are adequately protected and the businesses adopt good practices. He apprised participants about the Government of Vietnam (GOV)’s recent regulations and actions to tackle fake and fraud products on e-commerce platforms, as well as some examples and cases of consumer complaints (about bad experiences with online transactions) that VINASTAS has handled so

far. He concluded by emphasising the need to address the same issue, in the case of financial transactions and telecommunications; and highlighting the need the manufacturers' and consumers' cooperation in framing an optimal policy framework.

Mr. Lacey talked about trends in international rule-making for the digital economy. He started by defining not only the digital economy, but also digital trade, then went on to apprise the participants on various aspects of the digital economy, its various layers including Infrastructure, Services, Platforms& Ecosystems, and finally Devices. According to Mr. Lacey, the digital economy is not only difficult to define, but is also in a constant state of flux and is always evolving. It is characterized by innovations and disruptions, with several well-known examples such as what is happening with the online media industry (which disrupts the traditional music, movie and news industries), financial services (with the rise of online payment systems), global travel and tourism industry (which is shaken by online platforms and sharing services), and the individual transportation sector.

Notably, Mr. Lacey introduced a term called “silofication”, or rather the end of silos between goods, since traditionally something you bought or consumed was either a good or a service or a piece of intellectual property, but in the digital economy many goods embody all three elements. The increasing digitization of international trade also means that a holistic trade policy approach is required. Other trends like the “servification of manufacturing” (e.g. Foxconn), 3D printing, the Internet of Things, and cloud computing, all herald a new industrial era of convergence and complementarity where the old trade rules, largely negotiated in the pre-internet era, will need to be updated. A big challenge facing the digital economy at this stage, however, is the fact that internet governance is getting more and more fragmented: Different countries approach the internet economy with different ideas on how to regulate it. There is also another worrying trend of digital protectionism, evidenced in that various kinds of discriminatory trade measures have been enacted by governments around since 2015, with the most frequently one being data policies that discriminate between the origin of data subjects and/or the location at which data is stored and processed. Mr. Lacey then went on to discuss the works which is happening in various forums such as APEC, the WTO, RCEP, TPP and TiSA; and concluded by emphasising that a consensus has to be worked out, so as to enable the Internet economy to work well and contribute to economic growth around the world.

The last speaker of the session - Ms. Tran – focused on addressing the challenges of applying competition law and policy in the context of the digital economy, in particular e-commerce. She started by providing a few statistics on the ascendancy of e-commerce in ASEAN and discussed the various benefits that the application of digital technologies (such as big data and analytics, machine learning, the rise of price-comparison websites) in e-commerce could bring, including price information transparency, reduction of transaction costs, customisation of customer services, etc. However, there are noted challenges: The definition of market is changing; the demarcation between the online world and commerce happening at brick-and-mortar stores is getting blurred; there is increasing risk of price discrimination which may result in consumer harms; how to deal with multi-sided platforms/markets; the rise of disruptive technologies have radically changed the way market power could be assessed; etc.

Ms. Tran then highlighted some current practices in digital-age e-commerce that could have anticompetitive impacts such as: price parity clauses; most favoured treatment, dual pricing system, online market place ban, installation of price-tracking systems, and “biased” search results, etc. To be able to address these challenges, there is a need to strike a balance between those policies to promote competition via technological development and application on the one hand, and competition law and policy on the other. The traditional approach to competition law enforcement also needs to be changed in the direction of being more flexible, principles-based and transparent.

From the floor, a question was raised on the issue of managing foreign entities, which have no legal existence in the countries where they are doing business. There has to be a way to regulate such entities and the issue of extra-territorial jurisdiction needs to be addressed. To this, Mr. Mehta, Secretary General, CUTS International, suggested the need for a dispute resolution process. He added that there should be more deliberations on the aspect of e-governance, which the panel did not delve into much. He then apprised participants on the JAM (Jan Dhan, Aadhar and Mobile) Trinity in India, which sets the foundation for e-governance. There were suggestions on learning from cross-country experiences. Mr. Hung, on the aspect of cyber-security, claimed that Vietnam is drafting laws on it, which also have provisions on where the consumer data must be stored.

Session II - “New age regulations for new age businesses: Where to strike the balance?”

Chair: Mr. Eduardo Pedrosa, Secretary General, Pacific Economic Cooperation Council (PECC)

- **Mr. Rohit Singh, Policy Analyst, CUTS International**
- **Mr. Francis Mark A. Quimba, Assistant Project Director, PIDS**
- **Ms. Le Thi Ha, Deputy Head, Legal Department, Vietnam E-Commerce and Information Technology Agency (VECITA), Ministry of Industry & Trade (MOIT), Vietnam**
- **Mr. Ho Tung Bach, Deputy Head, Consumer Protection Division, Vietnam Competition & Consumer Authority (VCCA), MOIT, Vietnam**
- **Ms. Duangthip Chomprang, Director, Regional Support and Assistance, Institute for International Trade and Development (ITD), Thailand**

The second session started with a presentation by Mr. Rohit Singh, Policy Analyst of CUTS International on the need for optimal regulations for achieving inclusive growth in the context of disruptive innovations. Similar to other speakers in the first session, Mr. Singh pointed out the various benefits and challenges of a digital economy, which no doubt give rise to the regulatory dilemmas faced by governments around the world. Those regulatory dilemmas include: how to ensure a level-playing field between tech incumbents and smaller innovative enterprises; the problem of classification and overlapping jurisdiction; how to protect national

interests in a borderless Internet economy; the need to maintain employability versus job loss due to automation and industry restructuring; measures to safeguard and promote consumer welfare; protection of existing industries versus promoting the emergence of new business models; the issues of data theft, security and privacy, etc. The regulatory barriers were then illustrated via a whole range of examples in the urban mobility sector (competition and balance between traditional taxi companies and taxi aggregators) and in the e-commerce sector.

In order to ensure that optimal regulations are in place so as to facilitate the development of the digital economy for inclusive growth, Mr. Singh recommended several considerations, such as promoting inclusive participation of all stakeholders in the policy-making process; adoption of a modern light-touch regulatory approach which means leaving the market to functions freely and the governments only intervene in case of market failures; the need to accept that new market entries, disruptions and perishing (sunset) industries is part of life; the need to enhance the capacity of regulators to understand and imbibe evolution; the need for out-of-box thinking; balance between ex ante and ex post assessments of regulatory measures; and most importantly the need to have clear demarcation of regulatory jurisdiction.

The next presentation by Mr. Francis Mark A. Quimba, Assistant Project Director of the Philippine Institute for Development Studies (PIDS) – Diginomics project partner organisation for the Philippines – shares insights from a case study of the mobile application-based e-hailing transportation service sector in the country.

Back in 2012, before Transportation Network Companies (TNCs) such as Uber and Grab entered the country, the main land transportation services available in Manila, the capital city of the Philippines, are tricycles, jeepneys, franchised vans, conventional taxis, buses, and trains. Direct transportation service, or service that allows the rider to book a vehicle going to their desired destination, was monopolized by the taxi industry. However, the taxi industry in Manila is plagued with complaints from riders. Based on a study on the vehicle hailing preferences of Filipino riders, the top three complaints of commuters who ride the conventional taxis in Manila are refusal to convey, non-usage of taxi meter, and unsafe driving. Another study which explores the taxi industry in Manila states that the possible driving factor of taxi drivers to provide poor service is their meager income due to the need to reach their daily remittance to their respective taxi operators (this ranges from PhP 1,000 to PhP 2,000).

Through Department Order No. 2015-011, the Filipino Department of Transportation and Communications, now DOTr, classified Uber and Grab as Transportation Network Companies (TNCs), while the drivers or service providers were classified as Transportation Network Vehicle Services (TNVS). The TNCs became very popular in Manila, due to the innovative features of their services, for example the utilization of the Global Positioning System (GPS) installed in smartphones allows both the passengers and drivers to know each other's location. This allows TNCs and TNVS to estimate the distance and time from pick-up point to desired destination, thus also enabling them to compute the fare even before booking. Aside from the fare, upon booking a ride, the passenger is also provided with necessary

details of the driver, vehicle, and estimated time of travel. These innovative features thus allow TNCs to address the major concerns of conventional taxi riders in Metro Manila. Besides, the introduction of ride-sharing option for riders who share similar itineraries or destinations (UberPool and GrabShare) also TNCs to further reduce the fares borne by consumers by 25 -30%.

The entries by TNCs were hailed by both consumers (for providing more options, reliability and quality of service, convenience) and drivers (who earn approximately 30% more than the average income level in the country), but bitterly protested by conventional taxi companies (for unfair competition, tax and other licensing issues). In the meantime, it is recognized that there remain some regulatory gaps that ought to be addressed. For example, some argue that Uber and Grab should be treated as tech or telecoms companies and therefore their operations should not be regulated by the transportation regulator. This, however, seems to miss the point that there are also passengers/riders and their safety involved. On regulation, the question is also not whether there should be government regulation but rather the extent of such regulation. Self-regulatory standards might inevitably be too lenient. Last but not least is the question of liability allocation – What is the liability of Uber, Grab and other TNCs for acts and negligence of their partner drivers? Under the current legal framework, since the drivers are independent contractors, the TNCs have minimal (near zero) liability. The Philippines is currently consider putting in place appropriate regulations for TNCs to ensure road worthiness of vehicles, qualifications of drivers, reasonability of prices, protection of passengers, and payment of fees and taxes. The underlying intention of regulation is not to hinder TNCs services and innovation but rather to serve as a safety net for the riding public.

Ms. Le Thi Ha, the next speaker, talked about Vietnam’s policy framework to support cross-border e-commerce. According to Ms. Ha, the two major pieces of legislation in this area in Vietnam are the E-Transaction Law and the Law on Network Information Security. There are also various supporting regulations such as the Governmental Decree on E-Commerce, Decree on E-Transactions on Financial Activities, Decree on Anti-spam, Decree on Digital signature and CA services, and Decree on Internet Services and Provision of Information over the Internet, etc. This legal framework is far from complete, and at the same time faced with numerous challenges posed by the digital economy, such as the digitization of almost everything, the emergence of new e-commerce business models, and jurisdictional issues in cross-border e-commerce disputes. To address these problems, Vietnam has adopted an E-Commerce Development Master Plan 2016-2020 with the core objectives of: (i) continuing to complete e-commerce legislations; (ii) developing a national e-payment system; (iii) Restructuring logistics network to improve Profitability & Service; (iv) Developing E-commerce infrastructure of safety and security; and (v) Focusing on E-commerce human resource.

To complement what was spoken about by Ms. Ha, the next speaker, Mr. Ho Tung Bach talked about how Vietnam is dealing with the issue of consumer data in the digital economy context. Mr. Bach recognised the importance of Data, “like oil in the 18th century” in the digital economy, which helps to customise goods and services to consumers’ preferences and increase business efficiency. Consumer data these days could be collected from multiple

sources, used/analysed and shared across many digital businesses. There are, however, associated legal risks, for example data security or data theft, as evidenced by the case where personal details of Vietnam Airlines' Golden Members were hacked in 2016. Where consumer data is collected without the awareness of the consumers, where storage is not secured and sharing with third parties is rampant, and business have no obligation towards the consumer, there could be severe consumer harms, resulting from such practices as voice phishing, Internet fraud, misleading and deceptive advertisements, etc. According to the Law on the Protection of Consumer Interests (2010) of Vietnam, consumers' personal information is protected while entering transactions of purchase (Article 6). Businesses would have the obligations of: (i) Disclosing to consumers the purpose of information collection before doing; (ii) Using the information provided by consumers for the purpose that have been disclosed with and consented upon in advance by consumers; (iii) Ensuring the safety, integrity and accuracy of consumer's personal information during the process of collecting, using, keeping and handing over it; (iv) Undertaking measures to update and adjust the received information if the consumers discover it as incorrect; and (v) Transferring the received information to the third party only after obtaining the consent of the concerned consumers except in cases provided by law.

The final speaker of the panel, Ms. Duangthip Chomprang, decided to respond to the issue of where to strike the balance in framing a new-age regulatory framework for new-age businesses, using the case study of platform businesses, or two-sided [multi-sided] markets. Even though there is not yet a universally accepted definition of a two-sided market, firms operating in such markets share some key features:

The first element is that there are two distinct groups of consumers who need each other in some way and who rely on the platform to intermediate transactions between them. A two-sided platform provides goods or services simultaneously to these two groups. The second element is the existence of indirect externalities across groups of consumers. That means that the value that a customer on one side realizes from the platform increases with the number of customers on the other side. For example, a search platform is more valuable to advertisers if it is more likely that it will reach a larger number of potential buyers. At the same time, it is more valuable to potential buyers if the platform has more advertisers because that makes it more likely that a buyer will see a relevant advertisement. The third element is non-neutrality of the price structure, i.e., the price structure of the platform affects the level of transactions. The price structure is the way prices are distributed between consumers on the two sides of the market. The platform can affect the volume of transactions by charging more to one side of the market and reducing the price paid by the other side by an equal amount. Since the price structure matters, the platform must design it so as to induce both sides to join the platform.

Regulation in such two-sided markets in the digital economy is therefore often at a conundrum. On the one hand, the regulators have to ensure that whatever policies are put in place do not stunt innovation, help to promote market efficiencies and returns. On the other hand, social interest/benefits ought to be taken into account. And finally, between traditional

businesses and new platform businesses, market incumbents and small innovative enterprises, how to ensure inclusive and unbiased participation.

Concluding Remarks

Alice Pham, Director, CUTS International thanked all the speakers and participants for the enriching discussions, throughout the workshop. She concluded that the acquired insights from the discussion would definitely help in shaping the Diginomics Project and that CUTS would keep all informed and consulted during the research process.