

EMERGING ISSUES IN KEEPING UP WITH DIGITALIZATION

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Background



- Digitalization provides growth opportunity for this region.
- Intellectual Property Rights (IPRs) are very important areas to attract more economic activity and FDI while protecting the interests of innovators, talent, and consumers.
- The highly connected cross-border transactions and activities changes the approach towards competition issues.

3 related issues in encouraging trade and investment in digital economy

The need to increase FDI and contribute to trade in goods and services (digital goods and services and non-digital goods and services using digital platform as intermediary)

The increased importance of IPR – for digital goods and services and as intermediary. IIAs include IPR in the list of “Investment” (e.g. A.9.1 TPP)

Redefining the IP rights in the national law. To be driven by industry in main digital economy players. E.g. Patent with new digital technologies; copyright of digital products and protection of source codes

Competition Issues in the Digital Economy

Data

Big Data as an asset

- Merger/ take over of "big data" tools or datasets would give the merged entity an overly advantage over competitors.
- Personal data as currency

Scope

Market Domination

- How to define market domination that causes uncompetitive behaviour. Competition laws are territorial in nature and the definition and treatment of market domination may differ

Balancing

Competition v. Innovation

- Difficulty in finding the balance between enforcing strict competition policy over the need to encourage a higher level of innovation.

Recommendations

Careful consideration on competing balance of interest and protection in new FTAs.

Consideration on “Indirect Expropriation” under Investment Chapter

Overhaul of existing competition policy, by adjustments to established concepts and assessment tools. Regulatory changes may be needed in the longer run in some areas

Competition agencies to contribute to the better functioning of the digital economy by providing more guidance = more legal certainty for companies.

TPP provides a baseline for future consideration.

Thank you.
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