ACT
Association for
Competitive Technology

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RE: Comments of the Association for Competitive Technology to the Office of the Trade Competition Commission of Thailand regarding the Public Consultation on the Development of Regulatory Guidelines for Digital Platform Businesses

The Association for Competitive Technology (ACT) appreciates the opportunity to comment on the public consultation opened by the Office of the Trade Competition Commission (OTCC) on 31 July 2026 to develop the trade competition rules applicable to digital platform businesses.[1] ACT welcomes the Trade Competition Commission's decision to test its existing guideline against market experience before amending it, and we welcome the Commission's openness to international comparison. We confine these comments to the digital platform track, which bears most directly on the small software companies we represent, and we offer them constructively as a stakeholder whose members build software that Thai consumers and Thai businesses rely on every day.

ACT has engaged with Thai policymakers before, including our October 2024 recommendations to the Electronic Transactions Development Agency (ETDA) on digital platforms and competition[2] and our June 2025 comments on the draft principles of Thailand's artificial intelligence legislation.[3]

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[1] Office of the Trade Competition Commission (OTCC), Press Release No. 12/2569, "The Trade Competition Commission prepares to refresh the guidelines for digital platforms, wholesale and retail, and on-demand delivery services – open for public comment from today until 31 August 2026" (31 July 2026), available at https://www.tcct.or.th/assets/portals/1/files/Press_12_69.pdf. The consultation materials and comment forms are hosted at https://sites.google.com/view/tcctrequestforcomment.

[2] Association for Competitive Technology, Recommendations on Digital Platforms and Competition, submitted to the Electronic Transactions Development Agency (8 October 2024). The Thai text is available at https://actonline.org/wp-content/uploads/ACT-Positions-on-Digital-Platforms-and-Competition-for-Thailand-EDTA-TH.pdf and the submission is listed on ACT's publications page at https://actonline.org/act-publications/.

[3] Association for Competitive Technology, Comments on (Draft) Principles of the Artificial Intelligence Act, submitted to the Electronic Transactions Development Agency (18 June 2025), available at https://actonline.org/wp-content/uploads/App-Assn-Comments-re-EDTA-Draft-National-AI-Principles-20-June-2025.pdf.

I. Statement of Interest

ACT represents small business application developers and connected device companies located in the Asia-Pacific region and around the world. Our members are micro, small, and medium-sized enterprises (MSMEs). They write the software that runs on smartphones, in vehicles, in clinics, in warehouses, and in the systems that merchants and service providers depend on. They are, at different moments, developers distributing through curated online marketplaces, sellers on e-commerce platforms, vendors of software to platform operators, and in some cases operators of small platforms of their own.

That position gives ACT members a particular stake in this consultation. They do not have in-house competition counsel, government affairs teams, or compliance departments, so where a rule is unclear they cannot afford to litigate its meaning and will instead avoid the conduct, the market, or the country, and where a rule is clear but disproportionate they absorb a cost that their largest competitors absorb more easily. ACT's consistent message to regulators is that the design of platform regulation determines whether small firms benefit from it or pay for it.

ACT set out this analysis for the Asia-Pacific region in 2026 in *Asia-Pacific at the Crossroads*, which examines the digital platform regulatory choices facing eleven jurisdictions, including Thailand.[4] Modelling by the Southeast Asia Public Policy Institute of the compliance cost of Digital Markets Act-style *ex ante* conduct rules across nine APEC economies puts the annual compliance cost at approximately USD 3.07 billion, with roughly 70 per cent of that burden falling on MSMEs rather than on the large firms such rules nominally target.[5] We would ask the Commission to keep that distribution in view as it develops this guidance.

II. General Views

ACT's comments underscore that obligations addressed to a platform operator impact the businesses that build on that platform, in features withdrawn or delayed, in tools that arrive later in Thailand than elsewhere, and in markets that operators decide not to serve at all. ACT offers the following general views on how competition rules for digital platforms should be designed:

- **Prefer flexible, industry-agnostic competition enforcement to sector-specific rules.** As ACT advised ETDA in 2024, a flexible, industry-agnostic approach to competition policy and enforcement is far superior in addressing unique and challenging use cases. Sector-specific instruments tend to fix the features of a market at the moment they are written, and digital markets change faster than the rules written about them. Where the Commission concludes that sector-specific guidance is nonetheless warranted, it should be drafted as guidance on how the general prohibitions of the Trade Competition Act B.E. 2560 (2017) will be applied, rather than as a parallel body of obligations.

[4] Association for Competitive Technology, Asia-Pacific at the Crossroads: How the Region's Digital Platform Regulation Choices Will Shape the Future of the Digital Economy (2026), available at https://actonline.org/asia-pacific-at-the-crossroads/.

[5] Southeast Asia Public Policy Institute, Toward Balanced Digital Platform Regulation in APEC (3 September 2025), available at https://seapublicpolicy.org/work/toward-balanced-digital-platform-regulation-in-apec/, discussed in Asia-Pacific at the Crossroads, supra note 4.

- **Begin with evidence of actual harm rather than presumed harm.** Market power assessments should be holistic and rest on more than market share. An appropriately scoped market definition should precede any determination of market power, and any determination of market power should precede any finding of abuse. In two-sided and multi-sided markets this discipline matters especially, because a platform's practices and pricing on one side of the market affect the other side, and a term that appears costly when viewed from one side alone is frequently what keeps participation free or low-cost on the other.
- **Exhaust the powers of existing law before building new machinery.** The Trade Competition Act already reaches abuse of dominance, unfair trade practices under section 57, and anticompetitive agreements, and the Commission has shown, through its food delivery and e-commerce guidelines, that those powers reach platform conduct. Where an enforcement gap is asserted, it should be identified specifically and shown to be a gap in law rather than in resources or in the evidentiary record.
- **Obligations should track demonstrated dominance rather than raw reach.** Designation thresholds keyed to revenue, user counts, or transaction volume sweep in firms that hold no market power and miss firms that do. Pre-designating operators on predetermined criteria also creates a stigma effect that distorts the commercial relationships the rules are meant to protect. Where thresholds are unavoidable, they should function as a screen for further analysis rather than as a presumption of dominance.
- **Preserve the platform functions that MSMEs cannot replicate.** Digital platforms do three things for small developers and small merchants that those firms cannot do for themselves. They reduce overhead costs, they confer instantaneous consumer trust, and they enable cost-effective access to markets far larger than the ones the firm could reach alone. Curation, security review, fraud screening, payment integrity, and dispute resolution are the source of that trust. Rules that require platforms to reduce curation, or that make curation legally hazardous, transfer a cost from the platform to every small business that relies on the trust curation produces.
- **Compliance cost is itself a barrier to entry.** High compliance requirements widen the moat around established players. A compliance stack that only the largest incumbents can build is a structural obstacle to the entry that would otherwise discipline them, and it is felt most acutely by the small Thai platforms and small Thai developers who have the least capacity to absorb it. Where the Commission is concerned about concentration in a platform market, it should be especially careful that the remedy does not raise the cost of entering it.
- **Avoid regulatory fragmentation, both within Thailand and across jurisdictions.** Domestically, obligations for digital platforms are now developing in parallel at the OTCC under the Trade Competition Act and at ETDA under the Royal Decree on the Operation of Digital Platform Service Businesses Requiring Notification B.E. 2565 (2022). A Thai software company should be able to identify one regulator, one obligation, and one enforcement path for any given duty. Internationally, each divergent national framework adds another

layer of fragmentation, and small firms increasingly face different rules in each region, which requires specialised compliance expertise they do not have.[6]

- **Transparency is better achieved commercially than by mandate.** The operators of curated online marketplaces and e-commerce platforms generally publish the policies that govern ranking, featuring, fee-setting, account suspension, and delisting, and they maintain review mechanisms for sellers and developers who believe a decision was reached in error. ACT members benefit from those practices and from the competitive pressure among platforms that keeps them improving. ACT does not support obligations to disclose ranking algorithms or comparable proprietary systems, and it would caution against converting commercial disclosure practices into prescriptive regulatory requirements that fix them in their current form. Disclosure of algorithmic detail enables spam, manipulation, and gaming of results by the best-resourced actors, and the businesses least able to defend against that manipulation are the smallest sellers.
- **Do not let interoperability or data-access mandates override security and privacy.** Interoperability is important, but it should never compromise data security, encryption, or privacy. Broad mandates for continuous, real-time, or non-aggregated data access to third parties normalise a permissive access model across a much wider set of actors and sit uneasily with the obligations Thai businesses already owe under the Personal Data Protection Act B.E. 2562 (2019). Standards development led by the private sector remains the most efficient route to interoperability that works in practice.

III. Comments on the Development of the Digital Platform Business Guidelines

This consultation invites comment on the development of the guidelines governing multi-sided platform businesses in the e-commerce category, which were published in the Government Gazette on 24 March 2026 and took effect on 25 March 2026.[7] ACT sets out below the considerations it asks the Commission to weigh in deciding whether, and how far, that guideline should now be revised.

- **Allow the current guideline to generate an evidentiary record before amending it.** The guideline has been in force for roughly five months. Its reach is already broad, extending to platform conduct toward sellers, logistics providers, digital advertisers, and payment channels, and addressing pricing conduct, self-preferencing, algorithmic visibility, participation in promotions, use of logistics and payment services, exclusivity, ranking, delisting, and use of counterparty data. The volume of complaints the Commission has received indicates that the guideline is being used. The better course is to apply it and to publish reasoned outcomes before concluding that its text requires revision. Published

[6] Association for Competitive Technology, European Union Digital Markets Act: One Year Later (6 March 2025), available at https://actonline.org/wp-content/uploads/DMA-One-Year-Later.pdf.
[7] Notification of the Trade Competition Commission Re: Guidelines for the Consideration of Unfair Trade Practices and Acts Constituting Monopolisation or Reduction of Competition in the Conduct of Multi-Sided Platform Businesses, Category: Digital Platform Service Businesses for the Sale of Goods or Services (E-Commerce), published in the Government Gazette on 24 March 2026 and effective 25 March 2026, available at https://www.tcct.or.th/assets/portals/1/files/Multi_sided_Platform.pdf.

reasoning is what allows a small business to know in advance where the line falls, and it is of considerably more practical value to our members than a further expansion of the rules.

- **Preserve and strengthen the reasonableness limb of the current guideline.** The most valuable feature of the March 2026 guideline is that it does not treat the listed conduct as unlawful per se. Conduct is not unfair where it has a reasonable economic, business, or technological basis, where it accords with commercial practice in the market, or where it does not substantially restrict competition or impose an undue burden.

  That structure should be retained and developed with published examples and safe harbours. Four categories of documented justification (security and platform integrity, prevention of fraud and abuse, service quality and reliability, and relevance to the consumer) should be considered when a request is made. An operator, whatever its size, that can point to a documented rationale of that kind for a design choice should be able to rely on it with confidence rather than discovering its adequacy only after an investigation has begun. ACT would be glad to help the Office develop illustrative examples of each category.

- **Do not treat self-preferencing or vertical integration as presumptively unlawful.** Self-preferencing can be a procompetitive example of vertical integration. Where vertical integration or self-preferencing leads to greater efficiency, better quality, or lower costs for consumers, the competition concern is minimal, and blanket characterisations of self-preferencing and tying should be avoided because such conduct is more often procompetitive than not. An inquiry into self-preferencing is warranted only where the operator possesses market power in a properly defined market and the conduct produces demonstrated exclusionary effects, and the fact that an operator ranks or displays its own service does not by itself supply either element.

- **Regulation of algorithmic ranking systems calls for particular care.** Ranking systems in e-commerce serve consumers by surfacing relevance, availability, reliability, and price, and they serve sellers by matching their products with the customers most likely to buy them. A rule that treats systematic prioritisation or deprioritisation as suspect without regard to the objective the ranking serves would discourage operators from investing in the quality of those systems, to the disadvantage of the small sellers who depend on being found. The question worth asking is whether particular ranking conduct has produced demonstrated exclusionary effects in a properly defined market, rather than whether the design of a ranking system should itself be a subject of regulation.

- **Approach the proposed *ex ante* direction with caution.** ACT has noted the Commission's published roadmap, which contemplates in the medium term a requirement that platforms seek permission from or notify the regulator before certain actions, and in the longer term a draft Digital Platform Economy Act.[8] ACT respectfully urges the Commission not to move in that direction without first demonstrating that the Trade Competition Act cannot address the conduct at issue. The Commission has just shown, through the March 2026 guideline, that Thailand's existing competition law reaches platform conduct in detail. A specialised digital statute layered on top of that guideline and on top of ETDA's Royal Decree framework would add redundancy rather than fill an enforcement gap, while multiplying

[8] OTCC, Press Release No. 16/2569 (20 August 2026), available at https://www.tcct.or.th/assets/portals/1/files/Press_16_2569.pdf.

compliance obligations for small Thai developers who would then answer to two regulators for overlapping duties.

- **The comparative record does not support importing the Digital Markets Act model.** The Commission's expert session of 31 July 2026 with Dr. Amber Darr considered the European Union's Digital Markets Act and the Indian approach modelled on it. ACT's assessment of the Digital Markets Act one year after its gatekeeper obligations took effect was that its most concrete results were delayed access to new features and technologies, uncertainty regarding implementation and enforcement, and increased work, cost, and risk for small and medium-sized enterprises.[9] Mandated reductions in curation carry a foreseeable risk of increasing the circulation of applications with harmful features, and rather than empowering MSME developers, the regime further fragmented the distribution channels those developers rely on. It is also relevant that India, having studied the same model, has not advanced its *ex ante* digital competition legislation and has instead continued to enforce technology-neutral competition law *ex post*,[10] while commissioning further market study of the thresholds such a regime would use and the effects it would have on startups and smaller firms.[11] ACT encourages the Commission to weigh both experiences carefully before adopting a comparable framework in Thailand.
- **Credit the services that platform fees actually pay for.** Commentary on platform economics often examines the headline commission rate in isolation from what it purchases. For the small developers and small sellers ACT represents, that rate is the mechanism that funds free or low-cost listing, fraud protection, payment guarantees, logistics and delivery infrastructure, marketing reach, and customer acquisition, none of which our members could assemble for themselves at anything approaching the same cost. An assessment of platform conduct that treats the fee as a standalone burden, without accounting for the services it supports, will understate the value small businesses receive and overstate the case for intervention.
- **The distinction between marketplaces and software distribution should be preserved.** The current guideline is addressed to platforms intermediating the sale of goods and services. ACT cautions against extending it, whether by amendment or by interpretation, to the distribution of software through curated online marketplaces. Requirements that oblige app stores to accept unvetted third-party software, or that materially weaken platform security controls, increase consumer exposure to malware.[12] Such requirements also weaken the notice-and-takedown mechanisms small developers depend on to remove

[9] ACT, European Union Digital Markets Act: One Year Later, supra note 6.
[10] Association for Competitive Technology, Statement for the Record, U.S. House of Representatives Committee on the Judiciary (15 December 2025), available at https://actonline.org/wp-content/uploads/2025-12-15-ACT-Statement-for-the-Record-1.pdf.
[11] Ministry of Corporate Affairs (India), request for proposals for a study on the thresholds for systemically significant digital enterprises, core digital services, and the effects of ex ante regulation on start-ups and MSMEs, issued 3 November 2025 on the Government e-Marketplace. The request for proposals was not published at a permanent public address.
[12] Association for Competitive Technology, Comments to the United Kingdom Competition and Markets Authority regarding its Call for Evidence on Proposed Commitments from Apple and Google (12 March 2026), available at https://assets.publishing.service.gov.uk/media/69cbed8d69dd81b3f213c692/The_App_Association.pdf.

counterfeit copies of their applications.[13] The result is that counterfeit applications are placed on a more equal footing with legitimate ones, and the developers least able to police infringement bear the loss. Trust and security are of paramount importance to MSME developers, and the confidence that consumers place in curated marketplaces is an essential input to the businesses our members have built.

- **Clarify how regulatory responsibility is divided between the Commission and ETDA.** Marketplace platforms serving Thai users are already subject to seller and product verification and to notice-and-takedown duties under ETDA's notification for online marketplace platforms.[14] Where the Commission's guidelines address the same conduct, ACT would encourage an explicit statement of which authority takes the lead, so that a small operator is not exposed to inconsistent findings or duplicative proceedings on the same facts.

IV. Thailand's International Commitments and the Sequencing of Any New Framework

ACT does not suggest that any measure now under consideration would breach Thailand's international obligations. We raise the following because the standards Thailand has adopted, and the negotiations it currently has under way, bear directly on how an *ex ante* platform framework would be received abroad and on the sequence in which such a framework is best considered.

- **Thailand's OECD accession review covers this subject matter directly.** Thailand submitted its Letter of Intent in April 2024, the OECD Council adopted the Accession Roadmap in July 2024, and the Prime Minister delivered Thailand's Initial Memorandum in December 2025. The technical review is now under way across 26 committees, among them the Competition Committee and the Digital Policy Committee.[15] Two OECD instruments named in that process speak to a new *ex ante* regime. The Recommendation on Competition Assessment asks adhering governments to screen proposed regulation for restrictions on competition that are not necessary to its objective, to keep any exception narrowly drawn and limited in time, to adopt less restrictive alternatives where they are available, and to involve the competition authority early in regulatory design.[16] The Recommendation on Transparency and Procedural Fairness in Competition Law Enforcement asks that enforcement be carried out in a reasonable, consistent, and non-discriminatory manner, without prejudice to the nationality or ownership of the parties, with written notice of the case, access to the evidence, a full opportunity to respond, protection

[13] ACT, Recommendations on Digital Platforms and Competition, supra note 2.
[14] Notification of the Electronic Transactions Development Agency issued under Section 18(2) of the Royal Decree on the Operation of Digital Platform Service Businesses Requiring Notification B.E. 2565 (2022), concerning additional measures for online marketplace platforms, effective 31 December 2025.
[15] OECD, Roadmap for the OECD Accession Process of Thailand, C(2024)118/FINAL (adopted 10 July 2024), available at https://one.oecd.org/document/C(2024)118/FINAL/en/pdf. See also OECD, "Thailand reaches key milestones in OECD accession process" (December 2025), available at https://www.oecd.org/en/about/news/press-releases/2025/12/thailand-reaches-key-milestones-in-oecd-accession-process.html.
[16] OECD, Recommendation of the Council on Competition Assessment, OECD/LEGAL/0455 (adopted 11 December 2019), available at https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0455.

of confidential business information, and review by an independent body.[17] These are political commitments rather than binding law, and ACT describes them as such. They are nonetheless the standard against which Thailand has asked to be measured, and the OECD peer review of Thailand's competition law published in May 2025 already recommended that the Commission publish its decisions in full, with their facts, legal basis, and penalties, and that it strengthen its procedural rules and rights of defence.[18] ACT would encourage the Commission to carry out an OECD-style competition assessment of any proposed *ex ante* regime before adopting it, and to build the procedural guarantees of the transparency Recommendation into its design.

- **RCEP sets a regional expectation for how competition rules are applied.** The Regional Comprehensive Economic Partnership has been in force for Thailand since 1 January 2022, and Article 13.3 of its competition chapter commits each party to apply its competition laws without discrimination on the basis of nationality, to give the parties to a proceeding the reasons for a decision and a fair opportunity to be heard, and to provide for review by an independent authority or court.[19] The competition chapter is excluded from the agreement's dispute settlement mechanism, so these are commitments Thailand undertook rather than obligations another party could litigate, and ACT states that plainly. They describe the regional standard Thailand helped to set, and a designation-based framework whose burden fell in practice on operators of a single national origin would sit awkwardly beside them.
- **Several of the instruments that will govern this area are still being written.** Thailand and the European Union are negotiating a free trade agreement that includes a digital trade chapter, and the ASEAN Digital Economy Framework Agreement has been concluded at negotiator level and is moving toward signature.[20] Adopting a domestic *ex ante* framework while those texts remain unsettled risks committing Thailand to a design it may shortly need to revisit, and it gives up the opportunity to shape the regional approach while that approach is still being formed. The sensible course is to sequence any structural reform after those negotiations have produced text the Commission is able to read.
- **Non-discrimination obligations apply even where a measure is drafted in neutral terms.** Article II of the General Agreement on Trade in Services obliges Thailand to accord services and service suppliers of any Member treatment no less favourable than that accorded to like services and service suppliers of any other country, and that obligation attaches to measures affecting trade in services whether or not the sector concerned

[17] OECD, Recommendation of the Council on Transparency and Procedural Fairness in Competition Law Enforcement, OECD/LEGAL/0465 (adopted 6 October 2021), available at https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0465.

[18] OECD, OECD Peer Reviews of Competition Law and Policy: Thailand (May 2025), available at https://www.oecd.org/en/publications/oecd-peer-reviews-of-competition-law-and-policy-thailand_377b42f9-en.html.

[19] Regional Comprehensive Economic Partnership Agreement, Chapter 13 (Competition), Article 13.3. The agreement entered into force for Thailand on 1 January 2022. Article 13.9 excludes Chapter 13 from the dispute settlement mechanism in Chapter 19.

[20] On the Thailand and European Union free trade agreement negotiations, see the European Commission at https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/thailand_en. On the ASEAN Digital Economy Framework Agreement, see the ASEAN Secretariat at https://asean.org.

appears in Thailand's schedule. Designation criteria expressed in terms of revenue, user numbers, or transaction volume can yield a designated population drawn overwhelmingly from a single country of origin, and whether that outcome raises a question under Article II depends on the criteria finally chosen. ACT makes no allegation that any Thai measure would offend that provision, and we encourage the Commission to satisfy itself on the point before committing to thresholds. We note as well that Thailand indicated, in the October 2025 joint statement on a framework for a reciprocal trade agreement between the United States and Thailand, that it would refrain from measures that discriminate against United States digital services or digital products.[21]

[21] Joint Statement on a Framework for a United States–Thailand Agreement on Reciprocal Trade (26 October 2025), available at https://www.whitehouse.gov/briefings-statements/2025/10/joint-statement-on-a-framework-for-a-united-states-thailand-agreement-on-reciprocal-trade. The joint statement records a framework rather than a concluded agreement.

V. Conclusion

ACT shares the Commission's objective of markets in which Thai consumers are well served and Thai small businesses can compete on the merits. The single most important factor in the app ecosystem's growth has been the presence of curated platforms that reduce the cost of reaching customers, and barriers to entry for MSME developers have never been lower than they are today. Regulation designed with that in view can address demonstrated abuse without weakening the infrastructure on which our members depend.

ACT respectfully urges the Commission to build its rules on demonstrated harm rather than presumed harm, to apply and publish decisions under the powers it already holds before constructing new *ex ante* machinery, to keep obligations proportionate to demonstrated market power, to test any proposed framework against the international standards Thailand has adopted and the negotiations it presently has under way, and to write in a way that a small business can read and follow without counsel. We welcome the opportunity to discuss any of these points with the Office. ACT can also convene the developers among our membership who distribute software into Thailand or who operate small platforms serving Thai users, so that the Office is able to hear from them directly, and we would be glad to assist with any further consultation in this area.

Thank you for your consideration of these comments.

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