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EU Lessons on Digital Market Dominance for Indonesia and the Philippines

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Abstract: This study aims to examine the adequacy of antitrust frameworks in Indonesia and the Philippines in addressing digital market dominance, particularly when benchmarked against the European Union’s Digital Markets Act (DMA). This objective is aimed at addressing the literature gap where existing studies have yet to systematically assess how ex-ante regulatory logic, as pioneered in the EU context, can be normatively adapted to the specific deficiencies of Southeast Asian antitrust frameworks. The research employs a normative legal method combined with a comparative approach, analyzing statutory regulations and relevant legal literature, including Indonesia’s Law No. 5 of 1999, the Philippine Competition Act, and the EU DMA. The findings reveal that both countries’ competition laws are inadequate in addressing the complexities of digital markets, particularly in relation to data control, network effects, algorithmic practices, and platform dependency. Indonesia’s framework is significantly outdated, while the Philippines’ law, although more recent, still lacks digital-specific provisions. Aside from normative deficiency identification, the benchmarking against DMA also reveals that the ex-ante approach is more suitable to address today’s digital platform dynamic, which leads this study to contribute a legal development model for both Indonesia and the Philippines, each tailored to their existing normative architecture

Keywords: Antitrust Law, Comparative Law, Dominant Position, Digital Market, Regulatory Reform.

INTRODUCTION

The proliferation of digital platforms has made it inevitable for the legal system to expand and extend many of its legal aspects into the digital sphere.¹ One of the legal aspects

¹ Foo Yun Chee, “Google Loses Fight against \$2.7 Billion EU Antitrust Fine,” Reuters, September 2024, <https://www.reuters.com/technology/eu-court-upholds-googles-27-bln-eu-antitrust-fine-2024-09-10/>; see Michele

that has now become an interesting discourse in the context of digital platforms is antitrust, which aims to address the potential exploitation of platform influence over the market and consumers.² Antitrust systems were originally designed to ensure fair competition and prevent abuse of market dominance in traditional industrial markets, particularly those centered around physical goods and services.³ A digital market dominance, when exploited, can lead to the exploitation of data and privacy rights,⁴ which are already a set of serious concerns to begin with,⁵ along with the more recent issues due to the utilization of AI, such as bias, explainability, and accountability.⁶ Within the context of antitrust, it can stifle innovation in an industry where innovation is perhaps the most important thing.⁷ Many cases have emerged regarding this. For example, Google was fined about 4.34 billion EUR for the exploitation of a dominant position regarding the use of their operating system, Android, where the company forced developers to install their apps exclusively.⁸ Not only that, but similar cases have also been brought against Apple, which also has its own operating system, much like Google, where the company is often accused of exploiting the app market to charge an unreasonable amount of money from developers' earnings.⁹

Unfortunately, this issue has not gathered a lot of attention in Indonesia and the Philippines, despite having some of the biggest markets in the world for digital platforms. Therefore, assessing this issue is important in not only ensuring that consumers and businesses in the digital space are not exploited by digital platform providers,¹⁰ but also in ensuring that both countries can maintain their economic growth trajectory. In 2024, Indonesia's digital economy reached a Gross Merchandise Value (GMV) of \$90 billion,¹¹ while the Philippines' digital economy grew to \$31 billion, marking a 20% increase from the previous year and is on pace to hit the forecasted \$60 billion in 2030.¹² Both countries have experienced significant growth in e-commerce, with Indonesia's sector valued at \$65 billion

DeStefano, Bjarne P. Tellmann, and Daniel Wu, "Don't Let the Digital Tail Wag the Transformation Dog: A Digital Transformation Roadmap for Corporate Counsel," *Journal of Business & Technology Law* 17, no. 2 (2022): 183–264, <https://doi.org/4021593>.

² Robert W. Crandall and Thomas W. Hazlett, "Antitrust Reform in the Digital Era: A Skeptical Perspective," *University of Chicago Business Law Review* 2, no. 2 (2023): 293–331. <https://chicagounbound.uchicago.edu/ucblr/vol2/iss2/1/>.

³ John M. Newman, "Antitrust in Digital Markets," *Vanderbilt Law Review* 72, no. 5 (2019): 1497–1561.

⁴ Nafila Andriana Putri, "The Intersection Between Data Privacy and Competition Law in Zero-Price Market-Based Digital Platforms," *The Lawpreneurship Journal* 2, no. 2 (2022): 172–87, <https://doi.org/10.21632/tlj.2.2.172-187>.

⁵ Aris Sarjito, "Data Security and Privacy in the Digital Era: Challenges for Modern Government," *JIAN - Jurnal Ilmiah Administrasi Negara* 8, no. 3 (September 2024): 1–13, <https://doi.org/10.56071/jian.v8i3.933>.

⁶ Michael T. Sacramed, "Reviewing the Philippines Legal Landscape of Artificial Intelligence (AI) in Business: Addressing Bias, Explainability, and Algorithmic Accountability," *International Journal of Research and Innovation in Social Science* VIII, no. V (2024): 2506–10, <https://doi.org/10.47772/IJRISS.2024.805181>.

⁷ Wenjuan Tu et al., "Evaluating High-Tech Industries' Technological Innovation Capability and Spatial Pattern Evolution Characteristics: Evidence from China," *Journal of Innovation & Knowledge* 8, no. 1 (2023): 1–8, <https://doi.org/https://doi.org/10.1016/j.jik.2022.100287>.

⁸ European Commission, *Commission Decision of 18 July 2018 Relating to a Proceeding Under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement*, Case AT.40099 Google Android, C(2018) 4761 final (Brussels: European Commission, July 18, 2018). Google also lost the appeal. See also Court of Justice of the European Union (General Court), *Google LLC and Alphabet Inc. v European Commission*, Case T-604/18, ECLI:EU:T:2022:541, judgment of September 14, 2022.

⁹ Damien Geradin and Dimitrios Katsifis, "The Antitrust Case against the Apple App Store," *Journal of Competition Law and Economics* 17, no. 3 (2021): 503–85, <https://doi.org/10.1093/joclec/nhab003>.

¹⁰ Muhamad Teguh Setiadi, "The Impact of Technological Innovation on Sustainability and Competitiveness in the Food and Beverage Industry Sector," *International Journal of Management Science and Information Technology* 4, no. 2 (September 2024): 438–49, <https://doi.org/10.35870/ijmsit.v4i2.3208>.

¹¹ Lukman Nur Hakim, "Ekonomi Digital RI Terbesar Di Asean 2024, E-Commerce Kontributor Utamanya," *Bisnis Indonesia*, November 2024. <https://teknologi.bisnis.com/read/20241113/266/1815669/ekonomi-digital-ri-terbesar-di-asean-2024-e-commerce-kontributor-utamanya>.

¹² Janine Alexis Miguel, "PH E-Commerce Seen Hitting \$60B," *The Manila Times*, November 2024. <https://www.manilatimes.net/2024/11/27/business/top-business/ph-e-commerce-seen-hitting-60b/2011721>.

and the Philippines' at \$21 billion in 2024.¹³ These figures highlight the rapid expansion and potential of the digital economies in both nations, making it even more important to ensure that market dynamics remain competitive and conducive, without exploitation of dominant positions.

The main legal issue of this discourse stems from the minimum understanding, or the lack thereof, regarding the digital nature of market exploitation. The Indonesian and Philippine legal framework for antitrust was enacted in 1999 and 2015 respectively. These timelines can raise certain questions regarding the acknowledgement and understanding of the purely digital nature of market dominance and the possibility of its exploitation, which has been widely affected by the rapid developments of digital technologies in recent years. The European Union, on the other hand, has managed to stay updated on the recent issues and discourses regarding digital problems. For antitrust issues in the digital space, the European Union relies on the Digital Markets Act, which was enacted in 2022.¹⁴ This regulation specifically tackles issues related to digital markets, including the power dynamics and possible antitrust issues,¹⁵ which shows a much more advanced legal framework, in comparison to both Indonesia and the Philippines. Not to mention, discussions around digital platforms often revolve around data protection and privacy issues, which while equally important, may shift the focus away from systemic issues that can be identified from the antitrust lens.

Across various literatures, there have been attempts to analyze this particular discourse. A study conducted by Volynets et al. (2024) laid out the foundational understanding regarding the state of the art in the academic sphere regarding digital transformation, particularly regarding the legal realm.¹⁶ Although not specifically addressing antitrust, the study critically showcases how the existence of digital platforms has created an entirely new perspective regarding many of the economic aspects that a legal system traditionally regulates. Issues like cybersecurity and data protection are underscored as key challenges that will most likely impact all kinds of legal issues regarding the development of digital platforms, particularly e-commerce, be it directly or indirectly. Another study conducted by Kartikawati (2024) is principally in agreement with these, particularly regarding how complex and intertwined a lot of legal aspects regarding digital platforms are.¹⁷

In Indonesia, the Antitrust Law (Law No. 5 of 1999) has been criticized many times, with critics like Toha (2019) highlighting the urgency to revise the law, due to how old it is.¹⁸ Having enacted long ago in 1999, this law has been implied by both studies to carry the traces of post antitrust issues that Indonesia used to have during the financial crisis, which no longer reflect the current and more modern challenges that the country face. In the Philippines, a study carried out by Marquis (2018) addresses some of the normative issues the country's antitrust framework has, particularly its ambiguity in defining anti-competitive

¹³ Google, Temasek, and Bain & Company, "E-Conomy SEA 2024" (Singapore, November 2024). <https://www.bain.com/insights/e-conomy-sea-2024/>.

¹⁴ Jasper van den Boom, "What Does the Digital Markets Act Harmonize? – Exploring Interactions between the DMA and National Competition Laws," *European Competition Journal* 19, no. 1 (January 2023): 57–85, <https://doi.org/10.1080/17441056.2022.2156728>.

¹⁵ Viktoria H S E Robertson, "The Complementary Nature of the Digital Markets Act and the EU Antitrust Rules," *Journal of Antitrust Enforcement* 12, no. 2 (July 2024): 325–30, <https://doi.org/10.1093/jaenfo/jnae013>.

¹⁶ Vitalii Volynets et al., "E-Commerce Development: Prospects and Legal Challenges of Business Digital Transformation amidst Economic de-Shadowing," *Multidisciplinary Reviews* 8 (December 2024): 1–9, <https://doi.org/10.31893/multirev.2024spe053>.

¹⁷ Dwi Ratna Kartikawati, "Digital Transformation and Business Competition Challenges Comparative Analysis of Antitrust Law," *Journal of Progressive Law and Legal Studies* 2, no. 3 (June 2024): 163–70, <https://doi.org/10.59653/jplls.v2i03.877>.

¹⁸ Kurnia Toha, "Urgensi Amandemen UU Tentag Persaingan Usaha Di Indonesia: Problem Dan Tantangan," *Jurnal Hukum & Pembangunan* 49, no. 1 (2019): 73–90, <https://doi.org/10.21143/jhp.vol49.no1.1911>; Kartikawati, "Digital Transformation and Business Competition Challenges Comparative Analysis of Antitrust Law."

conduct, the lack of clear standards for merger control and abuse of dominance, and the absence of explicit competitive neutrality provisions.¹⁹ In both Indonesia and the Philippines, the normative gaps in their respective antitrust laws indicate that neither country is adequately equipped to address antitrust issues, which are becoming even more complex with the challenges brought by digital transformation.

The lack of analysis and actual normative benchmarking efforts to improve Indonesian and Philippine legal framework for antitrust in the digital sphere is a critical gap in the literature that needs to be extensively addressed. While the concept of dominant position has been extensively explored by many legal scholars, applying it to the dynamics of digital platforms may require a new perspective, particularly when influence and grip over consumer's decision-making processes are taken into account. The primary objective of this study is to conduct an in-depth analysis regarding the normative constructs and legal implications of antitrust issues regarding digital market dominant positions. To add even more value of novelty, this study utilizes the EU's Digital Market Act as a tool of legal benchmark to assess the existing Indonesian and Philippine frameworks. More importantly, insights from this study can be utilized by policymakers in future legal developments, which at this state can be thought of as something inevitable. Furthermore, it is also crucial to highlight that this study does not rely on empirical evidence to confirm the effectiveness of the relevant frameworks, as it focuses on the doctrinal analysis of the relevant legal norms. Nevertheless, this study offers crucial insights on antitrust issues surrounding digital platform environment, particularly in assessing how dominant positions may manifest in today's digital economy.

This study utilizes the normative legal research method, or what is often referred to as the doctrinal legal research method, to carefully assess the relevant legal norms that are extracted from laws and regulations.²⁰ This analysis typically involves the utilization of secondary data in the form of primary law sources, to be used as a lens in dissecting a particular legal issue.²¹ This method also enables the assessment of the normative architecture relative to the legal topic at hand, by utilizing the Black Letter Law-styled analysis to extract normative implications descriptively, which is then followed by critical assessment. Furthermore, this study is also equipped with comparative approach, to broaden and enhance the analysis by juxtaposing relevant legal systems in the relevant conceptual framework of analysis, and to reveal how similar legal issues on digital market dominance tackle in Indonesia and the Philippines. Secondary data used in this research include Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (Indonesia), Philippine Competition Act (Republic Act No. 10667), Regulation (EU) 2019/1150 of the European Parliament and of the Council on Promoting Fairness and Transparency for Business Users of Online Intermediation Services (EU Digital Markets Act, DMA).

RESULT AND DISCUSSION

The Evolution of Antitrust in the Digital Economy

Antitrust systems around the world have come a long way since they were first developed. From the robber barons, where businesses where businesses amassed vast

¹⁹ Mel Marquis, "Competition Law in the Philippines: Economic, Legal, and Institutional Context," *Journal of Antitrust Enforcement* 6, no. 1 (April 2018): 79–122, <https://doi.org/10.1093/jaenfo/jnx014>.

²⁰ Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (2022): 289–304, <https://doi.org/10.37253/jjr.v24i2.7280>.

²¹ David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 8, no. 5 (2021): 2463–78, <http://jurnal.um-tapsel.ac.id/index.php/nusantara/article/view/5601>.

monopolistic control over industries through aggressive tactics,²² to the mid-20th century era of industrial consolidation, where antitrust laws were tested against sprawling conglomerates and corporate mergers that sought to dominate key markets, which resulted in restriction of trades through secretive deals.²³ The changes that have been made to many antitrust systems serve not only the purpose of curbing anti-competitive behavior but also of adapting to the complexities of more modern economies. These changes aim to ensure fair markets, foster technological advancements, and protect consumer welfare by moving beyond outdated price-based analyses and incorporating new economic frameworks that address non-price competition, and the dynamic nature of innovation-driven industries.²⁴

Digital transformation came as a massive revolution that affected all facets of life, including the legal system.²⁵ The antitrust system as a key part of the legal system that guarantees fair competition and prevents exploitative business maneuvers is also significantly challenged and affected by this change that is often considered the fourth industrial revolution, or Industry 4.0.²⁶ This transformation is reshaping modern antitrust law by moving away from consumer welfare as the sole objective and focusing more on fairness and keeping markets open to competition. New regulations are being introduced to limit the power of dominant digital platforms and address the risks that come with their strong market positions.²⁷ In the digital economy, tech giants can leverage data, network effects, and platform dominance to solidify their market power, essentially forcing antitrust frameworks to rapidly evolve to try to tackle possible antitrust implications and maintain market balance in the digital space.²⁸

In classical economic markets, a dominant position refers to a situation where a company has substantial market power, enabling it to operate independently of competitive pressures and even consumer influence.²⁹ This dominance often arises from factors such as ownership of key infrastructure, vertical integration, and control over essential market access.³⁰ Companies in dominant positions can engage in exploitative practices such as predatory pricing (selling below cost to eliminate competition),³¹ exclusive dealing (forcing suppliers or customers to work only with them), or tying and bundling products to limit consumer choice.³² Traditional antitrust laws, such as Indonesia's Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition and the Philippines' Philippine Competition Act, were designed to curb such practices, ensuring fair competition

²² Thierry Suchère, "Wall Street: On Capitalism and the Predatory Instinct," *Journal for Cultural Research* 26, no. 3–4 (October 2022): 294–307, <https://doi.org/10.1080/14797585.2022.2137819>.

²³ Laura Phillips Sawyer, "US Antitrust Law and Policy in Historical Perspective," *Harvard Business School Working Paper*, Harvard Business School Working Paper (Cambridge, 2019). <https://www.hbs.edu/faculty/Pages/item.aspx?num=56116>.

²⁴ Daniel F Spulber, "Antitrust and Innovation Competition," *Journal of Antitrust Enforcement* 11, no. 1 (March 2023): 5–50, <https://doi.org/10.1093/jaenfo/jnac013>.

²⁵ Elina L. Sidorenko and Pierre Von Arx, "Transformation of Law in the Context of Digitalization: Defining the Correct Priorities," *Digital Law Journal* 1, no. 1 (May 2020): 24–38, <https://doi.org/10.38044/DLJ-2020-1-1-24-38>.

²⁶ Rashiya Bekmurzaeva and G.S. Kovalev, "Industry 4.0: The Fourth Industrial Revolution," *SHS Web of Conferences* 172 (2023): 1–7, <https://doi.org/10.1051/shsconf/202317202011>.

²⁷ Elias Deutscher, "Reshaping Digital Competition: The New Platform Regulations and the Future of Modern Antitrust," *The Antitrust Bulletin* 67, no. 2 (April 2022): 302–40, <https://doi.org/10.1177/0003603X221082742>.

²⁸ Otobek Razzakov, "Taming the Tech Giants: Assessing the Implications of Monopoly Power in the Platform Economy" (Polytechnic University of Turin, 2023). <https://webthesis.biblio.polito.it/28416/>.

²⁹ Vikas Kathuria, "Vertical Restraints under Indian Competition Law: Whither Law and Economics," *Journal of Antitrust Enforcement* 10, no. 1 (March 2022): 194–215, <https://doi.org/10.1093/jaenfo/jnab002>.

³⁰ Damien Geradin and Stijn Huijts, "Abuse of Dominance: Has the Effects-Based Analysis Gone Too Far?," *Oxford Review of Economic Policy* 40, no. 4 (December 2024): 776–86, <https://doi.org/10.1093/oxrep/gra047>.

³¹ Aarne Puisto and Hamed Alavi, "Abuse of Dominant Market Position by Predatory Pricing: The Valio Case," *Hasanuddin Law Review* 1, no. 1 (April 2016): 24–37, <https://doi.org/10.20956/halrev.v1i1.212>.

³² Filippo Lancieri and Caio Mario S Pereira Neto, "Designing Remedies for Digital Markets: The Interplay Between Antitrust and Regulation," *Journal of Competition Law & Economics* 18, no. 3 (September 2022): 613–69, <https://doi.org/10.1093/joclec/nhab022>.

and protecting consumers from monopolistic abuses. Enforcement mechanisms typically involve market share analysis, price monitoring, and legal actions against unfair business practices.

In the digital economy, however, dominance is not solely based on physical assets or production capacity but on intangible factors such as data control, network effects, and platform dependency. Tech giants leverage vast amounts of user data³³ to refine algorithms, and personalize services,³⁴ which can create ecosystem lock-ins, thus making it difficult for competitors to challenge their dominance.³⁵ Unlike traditional markets where monopolistic control is measured through tangible outputs, digital market power is often derived from control over digital infrastructure,³⁶ such online marketplaces, app ecosystems, and advertising dominance. Exploitative practices in this space include self-preferencing (favoring their own products in search rankings),³⁷ restricting third-party access to essential data,³⁸ and enforcing restrictive contract terms on app developers or advertisers.³⁹ The legal response to such exploitation is evolving, with regulations like the EU's Digital Markets Act (DMA) made to improve existing antitrust framework in response to digital challenges,⁴⁰ along with increasing number antitrust lawsuits in the U.S. aiming to address these unique challenges.⁴¹ However, there are still legal systems around the world who are still not making subsequent normative development to tackle this issue, much like what the EU has done with the Digital Markets Act.

The classical aspect of antitrust, at least in the strictest sense, still applies in this issue, particularly the prohibition of mergers and company buyouts that can significantly alter the dynamics of digital market and competitions among many digital platforms.⁴² Furthermore, this must also be combined with the understanding of the digital nature of dominant position and its possible exploitation in the digital form. This includes the ability of dominant platforms to leverage data control, influence market access through algorithmic adjustments, and impose conditions that can limit competition, by utilizing relevant digital capabilities.⁴³ These factors contribute to reinforcing market dominance in ways that may not always be immediately visible through traditional antitrust frameworks. As a result, understanding how digital power operates and evolves is essential for assessing its potential competitive effects and ensuring that existing antitrust principles remain effective in addressing market distortions.

³³ Hongfei Gu, "Data, Big Tech, and the New Concept of Sovereignty," *Journal of Chinese Political Science* 29, no. 4 (2024): 591–612, <https://doi.org/10.1007/s11366-023-09855-1>.

³⁴ Yifei Wang, "From Open Access to Guarded Trust Experimenting Responsibly in the Age of Data Privacy," *Queue* 22, no. 1 (2024): 104–16, <https://doi.org/10.1145/3649305>.

³⁵ Shili Shao, "Antitrust in the Consumer Platform Economy: How Apple Has Abused Its Mobile Platform Dominance," *Berkeley Technology Law Journal* 36, no. 1 (March 2022): 353–412, <https://doi.org/10.2139/ssrn.3603682>.

³⁶ Annisa Rahma Diasti, "Regulating Data Exclusivity of Ride-Hailing Service in Indonesian Competition Law," *Indonesia Law Review* 11, no. 3 (2021): 285–302, <https://doi.org/10.15742/ilrev.v11n3.4>.

³⁷ Ruoyao Li, "Antitrust Regulation of Self-Preferential Behavior of Digital Platform Operators in China," *SHS Web of Conferences* 190 (April 2024): 1–7, <https://doi.org/10.1051/shsconf/202419003031>.

³⁸ Björn Lundqvist, "An Access and Transfer Right to Data—from a Competition Law Perspective†," *Journal of Antitrust Enforcement* 11, no. Supplement_1 (June 2023): i57–71, <https://doi.org/10.1093/jaenfo/jnac017>.

³⁹ Qian Li and Caroline Cauffman, "Abuse of Relative Dominance by Digital Platforms: A Law and Economics Perspective," *GRUR International* 20 (January 2025): ikaf001, <https://doi.org/10.1093/grurint/ikaf001>.

⁴⁰ Imelda Maher, "Regulatory Design in the EU Digital Markets Act: No Solo Run for the European Commission," *Journal of Antitrust Enforcement* 12, no. 2 (July 2024): 273–79, <https://doi.org/10.1093/jaenfo/jnae029>.

⁴¹ Cecilia Kang and David McCabe, "What's Next in the U.S. Antitrust Cases Against Amazon, Apple, Google and Meta," *The New York Times*, August 2024. <https://www.nytimes.com/2024/08/05/technology/antitrust-google-amazon-apple-meta.html>.

⁴² Elena Argentesi et al., "Merger Policy in Digital Markets: An Ex Post Assessment," *Journal of Competition Law and Economics* 17, no. 1 (2021): 95–140, <https://doi.org/10.1093/joclec/nhaa020>.

⁴³ Shahzada Aamir Mushtaq and Malik Muhammad Hafeez, "An Analysis of the Abuse of Dominance Using Artificial Intelligence (AI) Enabled Price Discrimination from a Law and Economics Perspective," *Pakistan Social Sciences Review* 8, no. 3 (August 2024): 701–18, [https://doi.org/10.35484/pssr.2024\(8-III\)56](https://doi.org/10.35484/pssr.2024(8-III)56).

A well-structured policy framework for digital market dominance must first establish clear thresholds for what constitutes harmful dominance, particularly in markets where size alone does not necessarily indicate anti-competitive behavior. Traditional antitrust laws have relied on market share as a primary indicator of dominance, but in digital markets, factors such as network effects, control over user data, and dependence on platform ecosystems contribute more significantly to reinforcing market power. Policymakers need to define at what point a platform's influence shifts from being a result of fair competition to an obstacle that prevents other businesses from entering or surviving in the market. This requires a clear legal standard for assessing how dominant firms leverage their position to limit competition, whether through prioritizing their own services in rankings, restricting access to critical datasets, or using algorithmic control to shape market outcomes. Without such clarity, enforcement risks becoming inconsistent, and policymakers may struggle to intervene effectively when competition is being harmed.

Another critical aspect of any normative framework is ensuring greater accountability and structural transparency in how digital platforms operate. Unlike traditional industries where dominance can be observed through pricing strategies or supply chain control, digital platforms exert influence through algorithmic decision-making, data-driven market manipulation, and complex contractual restrictions. Policy frameworks need to require clear disclosure of platform policies, ranking mechanisms, and data-sharing agreements to prevent companies from quietly entrenching their dominance in ways that escape scrutiny. In addition, enforcement should balance proactive measures that prevent abusive conduct before it happens with reactive mechanisms that address market distortions once dominance has already been exploited. Policies should not only focus on penalizing misconduct but also on creating conditions where competition remains viable, making it easier for smaller firms and new entrants to compete. This balance between preventing harm and fostering competitive markets is essential for any modern antitrust system that aims to address the realities of digital platforms.

Benchmarking with the EU's Digital Markets Act

Indonesia's antitrust framework came in the time of turbulence, not long after the country underwent through a state-altering reformation, which was triggered by severe monetary crisis. Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, or what can be shortened as Antitrust Law, came as one of the fruits of Indonesia's economic reforms, which was required by the International Monetary Fund (IMF) in their financial support for the country.⁴⁴

This legal framework is perhaps the most obviously fallen-behind legal framework among other systems in this paper, as it was enacted way before digital transformation started having widespread impacts to the Indonesian society, in the year of 1999. Not only that, the fact that it was made as a part of broader economic reform during the turbulent years of Indonesia's economy, could imply that the standard for anti-competitive measures, along with the expectation from the regulation was low to begin with. The most glaring weakness is this weakness is the punishments for anti-competitive practices, which to date, still relies on the same amount as required during the enactment of the Antitrust Law in 1999 without considering an important factor like inflation and actual economic impacts.

Overtime, the regulatory framework for Indonesia's commerce sphere continues to evolve, in an exhaustive attempt to adapt to the changes that are happening all over the

⁴⁴ Andi Fahmi Lubis et al., *Buku Teks Hukum Persaingan Usaha*, ed. Ningrum Natasya Sirait, Andi Fahmi Lubis, and Helena Wirastris Wulandari, 2nd ed. (Jakarta: Komisi Pengawas Persaingan Usaha (KPPU), 2017).

world.⁴⁵ Much like traditional markets, digital markets are also constantly threatened by all kinds of practices that can undermine competition and shifting power dynamics to create a dominant position, even through traditional measures like mergers and acquisition, which has always been seen, as it should be, in a skeptical lens to prevent the possible abuse of dominant position.⁴⁶ It has also become apparent that these challenges continue to evolve and pose challenges that Indonesia might not be normatively equipped to tackle. Normative issues regarding the inadequacy of tackling digital market dominance is listed in the table below:

Table 1. Weaknesses of Indonesia’s Antitrust Law

Issue	Weakness in Indonesian Antitrust Law	Explanation
Market Dominance Definition [Article 1 (4)]	The definition of “dominance” is insufficiently nuanced for digital platforms.	The law defines dominance in terms of market share and financial strength, but does not account for platform-specific factors like network effects and user data control.
Monopoly or Unfair Business Practices in Digital Platforms [Article 17 (1), 18 (1), 19 (1)]	Provisions targeting monopoly or unfair business practices do not account for the unique features of digital platforms.	The current provisions do not address the role of algorithms, data control, or the network effect on market behavior, which are key drivers in the digital age.
Vertical Integration [Article 14]	The prohibition of vertical integration is too general and may not sufficiently address complex digital ecosystems.	Digital platforms often engage in complex vertical integration that is not explicitly covered by the current legal framework, which may lead to anti-competitive practices.
Price Fixing and Discriminatory Pricing [Article 5 (1), 6, 7, 8]	Price-fixing provisions may not capture the unique pricing mechanisms used in digital markets (e.g., freemium models, dynamic pricing).	The law does not explicitly address price discrimination and other pricing mechanisms specific to digital platforms, like personalized pricing based on data.
Digital Market Exemptions [Article 50 (b)]	The exemption for agreements concerning intellectual property does not address digital-specific practices, like data sharing or platform exclusivity.	The exemption in intellectual property law does not consider how digital platforms' use of data or exclusive arrangements can lead to anti-competitive effects.
Lack of Regulatory Focus on Data [Articles 4-9, 25-29]	The law lacks provisions on how data usage and control contribute to market dominance in digital platforms.	The legal framework does not address how access to large datasets can grant companies an unfair competitive edge, especially in tech sectors.

Source: research analysis

The Philippines relies on a relatively newer law compared to Indonesia, through the Philippine Competition Act (PCA), which was enacted in 2015.⁴⁷ As a rapidly growing economy, this law has been playing a pivotal role in ensuring fair competition and the prevention of anti-competitive practices that can ultimately stifle economic growth, and lower innovation rate. However, as found in Indonesia’s Antitrust Law, framework that is not specifically made to tackle the antitrust challenge in the digital sphere can find it difficult to

⁴⁵ David Tan, Lu Sudirman, and . Jane, “Perlindungan Hukum Bagi Pihak Indonesia Dalam Perjanjian Joint Venture Ditinjau Dari Kepastian Hukum,” *EKSEKUSI* 5, no. 2 (December 1, 2023): 175–202, <https://doi.org/10.24014/je.v5i2.25384>.

⁴⁶ Lu Sudirman, “Implementation of Pre-Notification in the Company’s Merger & Acquisition: Preventive Action on Notification Delays,” *Jurnal Pacta Sunt Servanda* 4, no. 1 (March 2023): 278–93.

⁴⁷ Jose Ramon et al., “Philippine Institute for Development Studies Examining Trends in ICT Statistics: How Does the Philippines Fare in ICT?,” *Philippine Institute for Development Studies*, 2016.

tackle the present-day challenges that exist within the digital market, especially when there are some key normative weaknesses. Here is the table assessing the weaknesses of the PCA in tackling the exploitation of dominant position in the digital market.

Table 2. Weaknesses of the PCA

Issue	Weakness in the Philippine Competition Act (PCA)	Explanation
Dominant Position [Section 27 (a), (b), (c)]	The criteria for determining dominant position may not fully capture the unique dynamics of digital platforms.	The PCA defines dominant position based on market share and barriers to entry but does not account for factors like network effects or data dominance in digital platforms.
Abuse of Dominant Position [Section 15]	The provisions for abuse of dominant position are too general to address the unique forms of anti-competitive conduct in the digital economy.	Digital platforms often use sophisticated methods like data manipulation and algorithmic bias, which are not explicitly addressed in the PCA.
Price Discrimination [Section 15 (d)]	The law does not clearly address discriminatory pricing mechanisms used in digital platforms, such as personalized pricing based on user data.	Digital platforms often engage in personalized pricing that discriminates based on user data, which isn't fully captured under the PCA's provisions.
Platform-Specific Practices [Section 15 (f), (g)]	The law does not account for practices common in digital markets, such as tying or bundling unrelated products and services in digital ecosystems.	Practices like bundling services or offering platform-specific discounts that restrict competition aren't directly addressed by the PCA.
Data Control and Market Power [Section 15, Section 14 (c)]	The PCA lacks provisions that specifically address the role of data control in digital market dominance.	Data is a key asset for digital platforms and its control can create market power, but the PCA does not adequately address this issue in relation to competition.
Lack of Digital-Specific Exemptions [Section 14 (c)]	The PCA's exemption clauses are broad and not tailored to the digital economy, leaving gaps in regulating specific digital market behaviors.	The PCA allows for certain anti-competitive practices if they lead to efficiency gains but does not specifically tailor these exemptions for the digital context.

Source: research analysis

The European Union is often cited as having one of the most advanced legal systems. This shows with its infamous General Data Protection Regulation (GDPR), which has become a gold standard and a solid benchmarking tool for many legal systems around the world. Still in the digital context, the EU has also developed another key regulation to tackle digital issues, particularly the proliferation and utilization of digital platforms, through the Digital Markets Act. This regulation highlights the longstanding commitment of the EU to react fast and promptly to challenges that are brought by the digital transformation. This particular regulation covers many aspects that are relevant with digital markets, including antitrust.

However, it is imperative to outline the role of the European Union's Digital Markets Act as a regulation in the digital age. This regulation in itself serves as an overarching set of legal norms that govern many legal aspects that affect digital platforms. However, in the specific context of antitrust, it does not serve as a standalone regulation. Instead, it serves the purpose of a complimentary regulation, that must still be enforced according to the EU's root regulation for antitrust, which is the EU Competition Law. Most importantly, this regulation works in a different way than regular comprehensive antitrust frameworks, by focusing

mainly on ex-ante aspects, highlighting the need and answering the challenges in preventive measures of digital antitrust issues. Below is the table benchmarking the EU’s Digital Market Act as a complimentary regulation that can specifically tackle the abuse of dominant position in the digital markets.

Table 3. Benchmarking with the EU’s Digital Markets Act

Issue	DMA’s Approach	Explanation
Market Dominance Definition	Article 3	The DMA clearly defines “gatekeepers” with a detailed, multi-faceted approach, including market size, user numbers, and financial power, which is more comprehensive than both the Indonesian and Philippine frameworks.
Abuse of Dominant Position	Articles 5-7	The DMA directly addresses digital-specific abuses, such as self-preferencing and unfair conditions imposed on business users, which the Indonesian and Philippine laws struggle to cover in the digital context.
Platform-Specific Practices (e.g., Tying, Bundling)	Articles 6-7	The DMA targets platform-specific practices, such as tying or bundling of services, which aren’t well addressed in the existing antitrust frameworks of Indonesia and the Philippines.
Price Discrimination	Article 5, Article 6	The DMA requires gatekeepers to allow businesses to offer different pricing models and services, specifically addressing price discrimination in digital platforms.
Data Control and Market Power	Articles 6-7, 9-10	The DMA tackles the digital issue of data dominance, preventing gatekeepers from unfairly using data to enhance their market power, something the Indonesian and Philippine laws don’t adequately handle.

Source: research analysis

The EU Digital Markets Act (DMA) stands out as a pioneering regulation for addressing the unique challenges posed by digital platforms in modern economies. Its ex-ante provisions are particularly notable because they proactively address potential anti-competitive practices before they occur, creating a framework that ensures fair competition from the start. By designating large digital platforms as "gatekeepers" and imposing clear obligations on them, the DMA seeks to prevent harmful practices like self-preferencing, unfair bundling, and data misuse—issues that can stifle innovation and harm consumers. This proactive approach ensures that digital markets remain contestable, encouraging new entrants and safeguarding consumer choice and innovation. Unlike traditional antitrust frameworks that react to anti-competitive behavior after it has caused damage, the DMA anticipates and mitigates these issues in real time, maintaining market health and fairness in the fast-moving digital sector.

An example of what the DMA is capable of tackling but Indonesia and the Philippines both can’t is the provision against abuse of dominant position through practices such as self-referencing, which involves algorithmic manipulation. This was fully illustrated in a case Google, where the company was fined €2.42 billion by the European Commission for systematically favoring its own comparison-shopping service in search results while demoting competitors. This conduct, addressed under Article 102 TFEU, is now explicitly prohibited under Article 6(5) of the DMA. In fact, this case directly inspired the provision, strengthening the ex-ante approach that EU was taking in the drafting process of the regulation.⁴⁸

⁴⁸ Carlo F. Petrucci, “Self-Preferencing in the EU: A Legal and Policy Analysis of the Google Shopping Case and the Digital Markets Act,” *Competition Law Journal* 22, no. 1 (2023): 18–29, <https://doi.org/10.4337/clj.2023.01.03>.

This ex-ante approach is incredibly effective in the digital realm, where rapid innovation and large-scale network effects can lead to entrenched market dominance very quickly. By imposing regulations on gatekeepers before any anti-competitive harm is done, the DMA prevents dominant platforms from engaging in practices that could potentially harm smaller competitors and consumers in the long term. This is crucial in the digital sector, where market dynamics differ significantly from traditional industries. For example, data control and network effects often make it difficult for smaller companies to compete, which can lead to market concentration and reduced competition. The DMA’s forward-thinking provisions ensure that dominant platforms cannot use their power to undermine market fairness, making the regulation an essential tool in fostering a competitive and innovative digital economy.

Proposed model of legal development for Indonesia and the Philippines

The need for legal reforms in Indonesia and the Philippines to address the increasing dominance of digital platforms cannot be overstated, as both countries continue to experience rapid digital transformation, and their current antitrust frameworks are proving to be insufficient in effectively regulating the digital economy. Overlapping legal obligations and normative gaps will only create legal uncertainty, which in turn creates unnecessary legal risks and discourages future investments.⁴⁹ The ex-ante regulatory approach proposed in this model is particularly critical in the digital context, where platforms can quickly establish entrenched dominance, making the DMA’s proactive approach a vital model for both countries to follow. The DMA serves as a complementary regulation, which opens the doors for Indonesia and the Philippines to choose their way of normative reform: either by adopting the same path as the EU with a complementary regulation or simply updating each country’s existing framework. This paper favors the latter approach to minimize potential normative disharmony, and while this is suitable for both countries, Indonesia happens to be even more aligned with this approach given the age of its antitrust law, which is already in dire need of revision anyway, though this also remains the best choice for the Philippines.

Based on this approach, this study proposes a model of legal development tailored for Indonesia and the Philippines. The aim of this proposed model is to address the critical normative deficiencies previously identified, so that both countries can be equipped to tackle the continuously growing dominance of certain platforms while promoting better competitive landscape. Below is the proposed model of legal development materialized in the form of table.

Table 4. Ex-Ante Digital Antitrust Adaptation Framework for Indonesia and the Philippines

Model Component	Normative Gap (ID/PH)	DMA Reference	Proposed Reform for Indonesia	Proposed Reform for Philippines
Digital Gatekeeper Definition	No platform-specific dominance threshold (Art. 1(4) Law 5/1999; Sec. 27 PCA)	Art. 3 DMA	Amend Art. 1(4) to include network effects, user data control, and platform reach as dominance criteria	Amend Sec. 27 to introduce digital-specific dominance thresholds
Ex-Ante Prohibition of Abusive Practices	No preventive mechanism; ex-post only (Art. 17-19 Law 5/1999; Sec. 15 PCA)	Arts. 5–7 DMA	Insert ex-ante prohibition provisions targeting self-preferencing and algorithmic manipulation	Add digital-specific prohibitions under Sec. 15 covering algorithmic bias and data-driven exclusion
Data Control	No data-specific	Arts. 6–7,	Add provisions	Expand Sec. 14(c)

⁴⁹ Rufinus Hotmaulana Hutauruk et al., “Copyright Law and Investment in Indonesia: A Legal Bridge,” *Mimbar Hukum* 35, no. Special Issue (December 28, 2023): 197–217, <https://doi.org/10.22146/mh.v35i0.11456>.

& Market Power	competition provisions (Arts. 4–9 Law 5/1999; Sec. 14(c) PCA)	9–10 DMA	restricting anticompetitive use of proprietary data	exemptions to explicitly exclude data-hoarding that distorts competition
Platform-Specific Practices	No tying/bundling rules for digital ecosystems (Art. 14 Law 5/1999; Sec. 15(f-g) PCA)	Arts. 6–7 DMA	Revise Art. 14 to cover digital vertical integration and app ecosystem exclusivity	Add explicit digital tying/bundling provisions under Sec. 15
Updated Sanctions	Penalties have been unchanged since 1999, unadjusted for inflation	—	Revise penalty amounts to reflect current economic scale and digital market impact	—

Source: Authors’ analysis

This model specifically targets each of the identified normative deficiencies in the Indonesian and the Philippine legal systems. From the model it is apparent that despite both countries having similar gaps, the recommended steps for reform differ to ensure that they are tailored to fit into the relevant normative architecture in each country. A crucial point to be highlighted in this model is the lack of recommendations for the Philippines’ penalty structure. This is intentionally left empty as the previous analysis did not identify it as a gap. While it could technically be identified as a gap, such identification requires a comprehensive empirical evidence. This is fundamentally different than Indonesia's penalty structure, where the incoherence with current currency values and digital market scale is self-evident without requiring empirical verification.

For Indonesia, the introduction of an ex-ante regulatory framework is urgently needed to address both classical and digital market dominance issues. While Indonesia’s current legal system is somewhat capable of tackling traditional forms of market manipulation, such as price-fixing and monopolistic practices, it falls short when it comes to the digital realm. The lack of digital market provisions, the outdated penalties, and the absence of a clear regulatory body for digital sectors all make Indonesia one of the most behind countries in terms of antitrust enforcement. Although these classical issues are not as closely linked to the ex-ante approach proposed here, they must still be addressed as part of broader legal reforms to ensure fair competition across all industries. By modernizing its antitrust laws, Indonesia can address both traditional antitrust problems and the more digital-specific issues that are arising with the proliferation of digital platforms.

For the Philippines, while its PCA is more modern than Indonesia’s law, it still lacks the digital-specific provisions necessary to adequately regulate the growing influence of digital platforms. The proposed model would introduce a clearer definition of market dominance in the digital context, as well as mechanisms to prevent the abuse of this dominance. The Philippines, like Indonesia, needs to update its competition law to specifically tackle issues related to data control, self-preferencing, and other unfair practices common in the digital marketplace. By adopting a regulatory approach similar to the DMA, both Indonesia and the Philippines could establish legal frameworks that prevent dominant players from abusing their position, thus fostering a competitive digital economy that benefits both consumers and businesses. The key takeaway from the DMA’s ex ante provisions is the importance of regulating digital platforms before they can exploit their market power, ensuring that both Indonesia and the Philippines remain competitive in the global digital economy.

CONCLUSION

In conclusion, both Indonesia and the Philippines face significant challenges in regulating digital market dominance due to outdated antitrust frameworks that fail to address the challenges of modern digital economies. This is further confirmed by benchmarking analysis against the EU DMA, which reveals that the ex-ante regulatory logic embedded in the DMA represents a more advanced normative standard, particularly in its capability to address digital-specific dominance thresholds, data control provisions, and platform-specific enforcement mechanisms, which both Indonesia and the Philippines fail to normatively address. By drawing on the EU's Digital Markets Act (DMA) as a complementary regulation, this paper contributes a structured ex-ante legal adaptation model for both countries, proposing specific, tailored legal reforms to address the dominant position of today's digital platform providers. This ex-ante approach aims to proactively prevent the abuse of dominant positions in digital markets, replacing the previous ex-post approach. Furthermore, it ensures greater alignment with evolving digital market dynamics, reduces normative disharmony, and fosters a more competitive and fair digital economy in both countries. Thus, this paper further encourages policymakers, legal scholars, and regulators to take these recommendations for legal reform seriously and to start a conversation that considers digital fairness and sustainability not only in Indonesia and the Philippines, but in Southeast Asia as a priority. Future research could explore the practical implications of implementing such updates through comparative case studies or empirical data to assess the effectiveness of the proposed regulatory changes in mitigating digital market dominance.

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