

The Existence of Digital Platforms and the Challenges in Enforcement of Indonesian Competition Law

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ABSTRACT. This paper delves into the transformative impact of digital platforms on the enforcement of Indonesian competition law. The advent of these platforms has revolutionized the competition law landscape, with their multisided nature marking a conceptual departure from traditional economic platforms. This study underscores the challenges faced by enforcement agencies in applying the efficiency and consumer welfare approach to business competition law cases involving digital platforms. Recognizing these challenges, there is a growing awareness of the need for an alternative enforcement perspective, notably emphasizing the principle of fairness. By combining an exploration of the unique challenges posed by digital platforms with the imperative for a nuanced enforcement approach, this research contributes to a comprehensive understanding of the complexities surrounding Indonesian competition law in the evolving digital era.

KEYWORDS. Digital Platform, Multisided Platform, Competition Law, Fairness Principle

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Rhido Jusmadi*

Introduction

Throughout history, economic development has been shaped by revolutionary technological discoveries. It is the same with the current development of the digital economy, which is part of the development of information technology (internet) which is massive, mass, convergent, accessible, and global. Its development has provided economic benefits not only for developed countries but also for developing countries. (Oxford Economics, 2011).

One of the impacts of the development of the digital economy is the birth of a digital platform which in its development creates a disruption effect in many economic sectors (Kieran Tranter, 2017). The development of digital platforms has provided many digital infrastructures capable of providing various services, including marketplace, application stores, social networking, ride-hailing, and search engines. This digital platform has implications not only for the nature of its economic transactions but also for the company's ability to rapidly expand its scale so that it can affect the

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structure of its economy (UNCTAD, 2019).

As with conventional businesses that have existed previously based on the availability of physical infrastructures such as airports, seas, trains, and toll roads/arteries, this digital platform-based business has structurally very different consequences from conventional businesses. When the digital platform becomes dominant, it will become more assertive on both sides of the market by becoming a monopoly in search engines and monopsony in e-commerce. Digital platforms are also moving from a product and service pricing model to a data-driven one, selling data, extracting it, or using it for commercial purposes (Prospera, 2019).

Business competition authorities in several jurisdictions have difficulty applying conventional approaches that have been used to assess whether or not there has been a violation of competition law. Argentina, Colombia, Pakistan, Russia, and Turkey reported difficulty using conventional competition assessment instruments based on price and consumer welfare in dealing with emerging competition issues in the digital platform sector. Egypt, Kenya, Peru and Turkey also reported problems when defining relevant markets and determining whether the digital platform market is dominant. Furthermore, Brazil, Kenya, Russia and Turkey also reported that standard economic analysis mechanisms and traditional business competition assessment tools such as market share and small but significant and non-transitory increase in price test (SSNIP), in abuse of dominant position and merger valuation, do not sufficient in providing an assessment of cases related to digital platforms (UNCTAD, 2021).

Indonesia also experienced the same thing. Komisi Pengawas Persaingan Usaha (KPPU) conveyed this on various occasions that in addition to the difficulties in applying standard economic analysis mechanisms and traditional business competition assessment tools such as the SSNIP, KPPU also sees significant control over consumer data that provides market power which is not only related to business competition issues but also related to consumer protection and privacy protection issues. Therefore, KPPU seeks to answer challenges related to how Indonesia's business competition policies and laws identify and deal with the negative impact of market power from digital platform companies and find ways to face these challenges to protect and encourage competition in the digital economy (Wibowo, 2021).

The existence of digital platforms arises because of the influence of the development of information technology (internet) which massively and

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systematically aggregates, accumulates, and connects all economic actors (producers, consumers, distributors, intermediaries, logistics, transporters, and so on) into one large ecosystem, digital economy. As has been explained, the authorities of competition law enforcement in the world (including Indonesia) see the impact of digital platform has resulted in the economic and legal approaches that have been used to analyze, whether or not, there is a fraudulent competition practice in the market. So it is necessary to implement the existence of alternative approaches that are more effective so that the current business competition law can reach digital platforms. This article tries to analyze the alternative approaches that can later be used to anticipate the occurrence of fraudulent competition practices carried out by digital platforms in the digital economy market.

Method

The type of research that will be used in this research is normative legal research used to examine the rule of law, legal principles, legal theories, and legal doctrines to answer legal issues that have been determined in the research. The achieved result is to provide a description of what should be done (Marzuki, 2014; Hutchinson, 2006). This study used a conceptual approach derived from the views and doctrines that develop in the science of law. By studying this, this research will be able to find ideas that create legal understandings, legal concepts and legal principles relevant to the research problems (Marzuki, 2014).

The sources of legal materials used in this research are primary legal materials and secondary legal materials. Primary legal material is an authoritative legal material, which means it has the authority consisting of statutory regulations, official records or minutes in making laws and regulations, and judges' decisions both in Indonesia and also in other countries. While secondary legal materials are all publications on the law that are not official documents, which include textbooks, legal dictionaries, legal journals, and comments on court decisions (Marzuki, 2014).

Analysis of legal materials is carried out in a logical-systematic manner with the following stages: 1) conducting an inventory and identification of the sources of relevant legal materials, namely primary legal

materials and secondary legal materials; 2) systematizing all existing legal materials and also to apply principles, theories, concepts, legal doctrines and other references; and 3) conducting a deductive analysis of legal materials, namely an analysis that explains a general matter and then draws it to a more specific conclusion, the analysis process is carried out based on the logical rules of systematic, prescriptive legal thinking (Hernoko, 2010; Hadjon & Djatmiati, 2005).

Digital Platforms: Dynamics, Multisided Business, and the Legal Protection

Since first appearing in the mid-1990s, the definition of the digital economy has evolved a lot, following developments that reflect the rapidly changing nature of technology (Barefoot, et.al, 2018). The digital economy is more than just a market (in its conventional/physical context) that crosses and integrates all markets where goods and services utilize the internet base for production, distribution, trade, and consumption by various parties. Meanwhile, market understanding has traditionally been considered only as a stream in economics, such as financial markets or capital markets, but in this context, the digital economy has become a whole in an economic system that runs parallel to the industrial economy (Competition Commission South Africa, 2020).

The definition of the digital economy then develops into an analysis related to various policies and digitalization of technology on the one hand and the growth of information, communication and technology (ICT) and digital-oriented companies as the main actors on the other (OECD, 2012a). Furthermore, the digital economy then develops more on digital technology, services, products, techniques, and skills that spread across economies. This process is often referred to as digitization, which is the transition of a business through digital technology, products and services (Brennen & Kreiss, 2014).

Furthermore, digital platforms are defined as products or services where users with various kinds of products, services, or complementary information (applications) can interact with each other. The platform includes devices (such as telephones), software (such as operating systems and browsers), and services (such as search engines, social networking and

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e-commerce sites). Digital platforms provide access between consumers and many diverse applications, extend and combine functionality, and improve consumer access to applications (Shelanski, 2013). Digital platform also defined as “two-sided network...that facilitate interactions between distinct but interdependent groups of users, such as buyers and suppliers.” (Koh & Fichman, 2014). This definition focuses on a digital platform as a process of interaction between different groups of users who join the platform as both users and providers of goods and services (Asadullah, Faik, & Kankanhalli, 2018).

Based on this definition, there are at least several forms of the scope of the digital economy, namely: *First*, the core form of the digital sector (ICT) consists of hardware manufacture, information services, software, and IT consulting, dan telecommunications. *Second*, a narrower scope, namely digital services, platform economy (digital), sharing economy, and gig economy. *Third*, a broader scope, namely e-business, e-commerce, industry 4.0, precision agriculture, and the algorithmic economy (Bukht & Heeks, 2017).

In another perspective, digital platforms can also be divided into technical and non-technical. Based on technical concepts, the notion of digital platforms focuses on technical elements and processes that interact with each other to form a digital platform (Asadullah, Faik, & Kankanhalli, 2018; Spagnoletti, Resca, & Lee, 2015). In a non-technical sense, a digital platform is defined as a commercial network market that allows transactions in the form of business to business (B2B), business to customer (B2C), or even customer to customer (C2C) (Asadullah, Faik, & Kankanhalli, 2018).

Based on this definition and scope, digital platforms have several characteristics. *First*, digital platforms significantly reduce transaction costs, including distribution, retrieval, contracting, and monitoring costs (Eisenmann, Parker, & Alstyne, 2006). *Second*, digital platforms assist in organizing and coordinating the development of complementary product technologies through modularity and adjustment of governance structures (Tiwana, Konsynski, & Bush, 2010). *Third*, digital platforms have the character of generativity, namely the ability of technology to produce new results-driven by large and heterogeneous uses (Faraj, Krogh, Monteiro, & Lakhani. 2016). *Fourth*, digital platforms create a cross-side network effect, which is a condition that reflects the fact that the value of a platform for users

on the one hand increases as the number of participants on the other side increases (Hagiu, 2014).

Based on these characteristics, digital platforms need consideration in analyzing their competitive conditions. *First*, multisided on digital platforms implies that the participation of one group of users results in network externalities on the other side of the digital platform. Cross-network (indirect) externalities exist where demand on one side of the digital platform depends on participation (OECD, 2019). *Second*, digital platforms can also benefit from direct network effects, where the benefits felt by users of digital platform services directly increase along with the increase in the number of other users of the digital platform services (Katz & Shapiro, 1985).

Third, the network effects in digital platforms imply that the efficiency and benefits of using digital platforms will increase as the size of the digital platform increases. Network effects also affect the price structure, namely the relationship between the prices charged on different sides of the digital platform. For multisided digital platforms, how the total price is divided between the different sides may be necessary because there are so many price levels in the price formation. This explains the frequent phenomenon of zero-price for users on the one hand being subsidized by payments. Economies of scale are also typical in multisided markets, given their relatively high proportion of fixed costs, such as for research and development and their low proportion of variable costs (Duch-Brown, 2017; OECD, 2019).

Fourth, the special features of a multisided business and network effects in digital platforms can lead to "winner-takes-all". And create business competition based on an "ecosystem," which refers to a new way to organize goods and services involving many companies that are mutually exclusive collaborate and compete to offer various goods or services (World Economic Forum, 2019). The prevalence of network effects may imply business competition outside the market rather than within the market (LEAR, 2019). However, not all digital platform markets are "winner-takes-all" in the market. Because this requires strong network effects, high switching costs, and multihoming (the practice of using more than one digital platform simultaneously, such as using two search engines with different users simultaneously), users become undesirable or very difficult (OECD, 2019). Similarly, a strong network effect can make markets simultaneously

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efficient and concentrated. So far, there are no clear benchmarks for efficient market structures in the digital platform market (Duch-Brown, 2017).

The dynamic structure of the digital platform market with its inherent characteristics such as zero-price, network effect, and multisided and multihoming services is one of the factors that requires careful consideration when determining the market and building market power in the digital platform market. In some cases, it is not clear whether digital platforms are competing with traditional businesses or whether they are building a separate relevant market. This requires careful analysis and understanding of market dynamics, especially those in the digital platform sphere (UNCTAD, 2021). In addition, digital platforms have new business service models and functions whose operations rely on unique programming algorithms designed to collect and process data and make decisions based on the data collected and processed. High economies of scale and scope characterize the costs of such a business model and, as such, can facilitate the concentration of large data markets across multiple businesses playing in that market (OECD, 2016).

The existence of digital platforms as digital entities raises questions about types of services they provide, most of which are not regulated in the existing laws and regulations. Some digital platforms still give rise to many interpretations regarding the types of services provided from the business model run with the existing laws and regulations (Prospera, 2019). In general, several problems arise related to law enforcement issues in business competition law that arise as a result of the existence of the digital platform. Some of these problems will be mapped as follows, namely:

- a. Multisided platforms. It is a business model that acts as an intermediary between two or more different platforms as a user group that allows mutual interaction. Therefore, multisided platforms consist of shared facilities where interactions occur among users. Multisided platforms are based on virtual or physical places (platforms) that allow and facilitate interaction between two or more different user groups, characterized by interdependence between the parties, due to indirect relationships and network effects (Rochet & Tirole, 2003; Armstrong, 2006; Rysman, 2009; Piezunka, 2011; Hagiu & Wright, 2014; Li, 2015; Staykova & Damsgaard, 2016). These dual and multisided digital platforms make many competition principles irrelevant or unapplicable, making it

difficult for competition authorities to continue to protect the interests of consumers (Prospera, 2019).

- b. Integrate vertically and horizontally. Every business person can have relationships with other parties, competitors, and suppliers. However, when a business person wants his market share to be more significant, the company's growth and profit increase, the level of efficiency is getting higher, and also to reduce uncertainty about the supply of raw materials needed in the production and marketing of products, the company will merge or collaborate with other business people. The collaboration both with business people at the same/similar level (horizontal) or with business people at different levels who have business links from upstream to downstream (vertical) (Lubis, et.al., 2017).
- c. Network effects arise when the value of a product for one consumer increases when other consumers also consume the product. In the context of digital platforms, network effects will appear when more consumers use and adopt digital services. In this case, Google's search engine algorithm will increase if there is a high search volume, and social features on Facebook will work well when more and more friends share their content. In theory, network effects can lead companies to adopt anti-competitive practices to dominate the market, even as new and better technologies emerge and are introduced in the market. Such behavior can be hazardous for business competition because it not only prevents the entry of potential competitors but also opens the way for predatory pricing practices (Parker, Petropoulos & Alstyne, 2020)
- d. Free services or zero price provision. In the era of digital platforms, the market with zero price provision has increased with its unique characteristics and extensive scope. It is almost impossible for a consumer not to use at least one free digital product or service daily. This is usually designed to build customer loyalty, obtain user data from their customers, get free publicity, and even annoy other businesses that compete with them. The difficulty that the competition authority will face is the question of how to evaluate the transaction between the user and the provider of the product/service that is provided free of charge. Suppose the nature of the transaction is difficult to assess. In that case, the relationship between digital platform entrepreneurs and consumers will likely be challenging to define, making it difficult to implement appropriate regulations. In an environment where products cannot be identified and the business model is ambiguous, the existence of a digital

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platform business will be far from the reach of existing laws and regulations (Prospera, 2019).

- e. Data usage and control. Digital platforms rely on all kinds of data to function correctly. Digital transaction data must be transferred between users, customers, merchants, payment system operators, card companies, and many other intermediaries. Apart from this data flow, the reality is that there are still many obstacles to sending fast and secure data. The capacity to move large amounts of data in a fast way across a country's jurisdictional boundaries can violate provisions such as privacy and consumer data protection (Prospera, 2019).

Based on this, new findings shape the intervention in the digital market and lead the competition authorities to understand it with a different mindset. The new findings are as follows: (Competition Commission South Africa, 2020; Sivinski, Okuliar & Kjolbye. 2017; Vestager, 2019; OECD, 2013, 2014, & 2016).

- a. Fast and responsive innovations presented by digital platforms in the digital market are the desired result of business competition policies because one of the objectives of implementing business competition policies is to encourage creativity and innovation. Therefore, intervention in the form of competition regulation on digital platforms must balance to enforce the principles of fair business competition with the desire to maintain innovation in the digital platform market.
- b. It is possible, in the digital platform market, to concentrate on the advantages of being a pioneer in the market, data accumulation, network effects, and proprietary behavior. If they occur, these conditions require competition policies and regulations to proactively identify and prevent as a form of defense strategy before it becomes too difficult and complex to enforce.
- c. In the digital platform ecosystem, consumer conditions are very different from consumers in conventional markets. Digital market consumers are well informed, and with the ease of entering the digital market, consumers can determine the benefits of their choice quickly and accurately. This requires competition authorities to balance the long-term policy objectives of economic growth with consumer preferences.
- d. The fast pace of change in the world of digital platforms requires the competition authority to monitor developments continuously and be

ready to anticipate when conditions change at any time, which can lead to various problems that must be resolved.

The accumulation of big data, the most valuable asset on a digital platform, and the presence of network effects can provide market power and abuse of dominant position. From an economic perspective, the dominant position is occupied by the company with the largest market share. Having a significant market share, the company has market power. With this market power, the dominant company can take action/strategy without being influenced by its competitors. The parameter is that business people who are in a dominant position have the highest position among their competitors in terms of market share, financial capacity, ability to access supply or sales, and ability to adjust supply or demand for specific goods or services (Lubis, et.al., 2017).

Most of the business competition authorities in the world do not prohibit business people from being in a dominant position, nor are they prohibited by it, as long as the achievement of the dominant position is carried out through the fair or healthy business competition. However, what is prohibited is if the businessman abuses his dominant position. Article 25 paragraph (1) and Article 19 of Law Number 5 of 1999 explain the forms of abuse of dominant position or barriers to business competition that can be carried out by business people who have a dominant position, namely:

- a. Establishing trading conditions with the aim of to prevent and/or prevent consumers from obtaining goods and/or services that are competitive in terms of price and quality; or
- b. Limiting market and technology development; or
- c. Inhibit other business actors who have the potential to become competitors from joining the relevant market; or
- d. Refuse and or prevent certain business people from carrying out the same activities in the relevant market; or
- e. Preventing a competitor's consumer from having a relationship with that competitor; or
- f. limit the circulation and/or sale of goods and/or services in the relevant market; or
- g. Conduct discriminatory practices against certain business people.

Market power and abuse of dominant position in the market are not the only concerns in the context of business competition. However, these

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market forces have become a source of concern in digital platforms, as described below (OECD, 2013, 2014, & 2016):

- a. Vertically integrated digital platform companies benefit from ownership of the platform and at the same time compete with sellers on the platform. This allows the platform owner to use the information and data collected from the seller to the seller's advantage and the seller's disadvantage.
- b. Vertical integration also encourages incentives for self-preferences, actions whereby digital platforms will give preferential treatment to their services over those of other companies and thereby maintain their dominance within the platform.
- c. Conglomeration can potentially negatively impact inclusive growth in the digital platform market, even for several major economic players who compete with each other in the digital market. This is concerning, especially if the level of market concentration is already very high in a digital platform market, and the possibility of increasing conglomeration will increase the entry barrier for potential entrants.
- d. Resale price maintenance, also known as vertical price-fixing in the digital platform market, has also been investigated, especially in several cases that have emerged in Europe. The practice of resale price maintenance is not an act against the law of business competition, where every business actor has the right to control several aspects of the distribution of his products. Business people can set up retail companies or work with other parties. Establishing retail itself requires capital and energy, while cooperation with other parties does not, but business people do not have direct control. However, what needs to be considered is when the resale price maintenance occurs on a digital platform where the business people already have market power and a dominant position in the digital platform market, so that these business people can exercise control up to a market monopoly (Duke, 2007; Kayne, et al. al., 2007).

Fairness and Justice in Competition Law: A Discourse

The presence of digital platforms has brought problems related to business competition issues. Most of these problems are very difficult to solve if relying on normative positivist approaches that have been adopted by

business competition law, such as efficiency, consumer welfare, collusion, vertical integration, horizontal integration, market power, dominant position and so on. Therefore, it is necessary to have another approach that comprehensively and fundamentally can cover the gaps in these technical approaches' inability to solve the problems in competition law enforcement related to digital platforms.

The existence of digital platforms does not only have an impact on the emergence of technical legal problems, but it also has an impact on the theoretical level of business competition law. It is known globally that the development of digital platforms impacts business competition law policies and regulations. In addition, digital platforms also have an impact on re-questioning the existence of business competition law, following the 2 major theories as explained above. Based on two major theories given the main objectives of business competition law, the existence of digital platforms has been able to achieve its goals. In the context of efficiency goals for business actors, digital platforms have been able to simplify and reduce the cost structure of production, logistics, and payment processes, improve communication between suppliers and/or consumers and offer the possibility of advertising tailored to consumer interests (OECD, 2016).

In the context of consumer welfare goals, digital platforms can also provide space for startups to establish their companies online and generate revenue in the global digital platform market. Digital platforms can also create "market democratization" by providing networks and distribution channels between micro, small and medium enterprises (MSMEs) and large businesses. The digital platform will create a level playing field between MSMEs with major economic business people and facilitate the potential to get the same customers among them. For consumers, digital platforms can reduce product search costs, facilitate price and product comparisons, and create more efficient and convenient shopping distances. Likewise, digital platforms can create new options for consumers, including workplace sharing, ride-hailing, food delivery, and local freelance work opportunities. The features available on digital platforms can provide consumers with information, convenience, choice and competition at low prices and increased quality (World Economic Forum, 2019).

Therefore, currently, several global business competition authorities are trying to shift their approach more broadly by using the principle of

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fairness as an alternative approach to analyzing the existence of digital platforms in enforcing business competition law. Several important people in the business competition authority have initiated the principle of fairness in business competition. Renata Hesse, former Assistant Attorney General of the United States for the Antitrust Division, and Margrethe Vestagar, European Commissioner for Competition, said that the essence of business competition is fairness with the main objective of protecting competition at all levels of the economy. (Hesse, 2016; Vestagar, 2017, 2016, 2015).

The European Commission increasingly echoes the need for competition fairness in the Competition Policy Annual Report (2017) which sets out the desire to make the market work more fairly for everyone and spread the benefits of applying justice in business competition both in Europe and in the world (European Commission Report on Competition Policy-2016, 2017). The decision to connect the principle of fairness in business competition law is an effort not to separate the economic sector from the community but instead seeks to unite it with the community and seeks to show the broader community that fairness can also contribute to the welfare of society (Lamadrid de Pablo, 2017).

In addition, in the United States, similar movements have emerged that promote the principle of fairness as an alternative approach to the business competition law system, including the New Brandies Movement. The New Brandies Movement determines several core principles in the paradigm of the objectives of business competition law, in which the principle of fairness is the primary basis. Those core principles are: *First*, antimonopoly is the main tool and the essential philosophical foundation for structuring a democratic society. In this case, the New Brandies Movement fears that economic power helps gain political power, and that such power can weaken the government. Market-dominant firms have enormous influence over the political process, whether through lobbying, financing elections, staffing government, funding research, or establishing systemic interests they can leverage. They use this strategy to win favorable policies and strengthen their dominance. Furthermore, the New Brandies Movement believes that the structure of the market and the economy can determine how authentic the freedom experienced by individuals is in everyday life. This can be done by interacting with government officials and through relationships in everyday economic life that occur in society. *Second*, antimonopoly is more than just antitrust. In this case, antimonopoly aims to create a system

of checks and balances in the commercial and economic fields. Antitrust law is only one tool of the antimonopoly system (Khan, 2018).

Third, antimonopoly is not defined as "big is bad". Certain industries tend to develop naturally into monopolistic practices. In such cases, the answer is not to break up the companies but to devise a regulatory system that prevents corporate executives from exploiting power. *Fourth*, antimonopoly must focus on the structure and process of business competition, not on outcomes. Antimonopoly laws were passed to protect consumers from excessive market concentration from private power and to protect market structures that redistribute opportunity and individual wealth. For the most part in its journey, antitrust law enforcement achieves its goal not by focusing on any specific outcome, but by ensuring that markets are structured in a way that promotes openness and competition. *Fifth*, there is no such thing as "market forces". The Chicago Schools state that market structures emerge largely through "natural forces", whereas the New Brandies Movement believes that political economy is structured only through laws and policies and rejects all forms of inevitable power. Technological advances may shift the existing balance in a way that facilitates consolidation. However, just as governments can structure political economies to encourage innovation, they can also ensure that emerging innovations are not used to exert control over markets (Khan, 2018).

In its development, business competition law and economics have become concepts that have developed more objectively and strictly protect the free market economy, with four principles: a) "consumer welfare" and "efficient allocation of resources" or efficiency have become the main objectives of business competition law; b) "anti-competitive effect" and "competition on the merits" have been used as the main criteria to determine compliance with business competition law; c) "proportionality" and "useful effect" as benchmarks for settlement solutions; d) "due process" and "rule of law" as principles that support proper law enforcement. It is through compliance with these four principles that business competition law protects the values represented by various ideas about the principle of fairness, and business competition authorities in the world must respect and comply with these principles to embody the vision of a fair market and society (Dolmans & Lin, 2017).).

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In legal terms, the principle of fairness in business competition means fair competition among competing business actors. From an economic point of view, the basis of fair competition is the proper function of a competitive market, where profits are shared equally among its members (consumers and companies) (OECD, 2018). European Union's Rules on Competition defined fairness in business competition : “..... are designed to ensure fair and equal conditions for businesses, while leaving space for innovation, unified standards, and the development of small businesses.” US Fair Competition Act said the fairness in business competition are :“(a) to promote and maintain and encourage competition; (b) to prohibit the prevention, restriction or distortion of competition and the abuse of dominant positions in trade in Barbados and within the Caricom Single Market and Economy; (c) to ensure that all enterprises, irrespective of size, have the opportunity to participate equitably in the market place; and (d) for connected matters.”

In recent years, there have been many comments about fairness concerning the rule of law. In particular, some scholars such as Kaplow and Shavell have the opinion that the rule of law in the business competition should be chosen because it can bring prosperity, so the idea of fairness should be the primary basis in evaluating the rule of law in business competition (Kaplow & Shavell, 2000). In this context, the prominent discussion of fairness in business competition law is due to several reasons. First, fairness may have reflected a view on long-held and internalized social norms. Second, fairness may be a proxy for some instrumental purposes. Third, fairness represents a desire for satisfaction (Kaplow & Shavell, 2000, 2002).

The existence of the principle of fairness in business competition law is increasingly prominent and strengthened when answering fundamental problems that previously could not be solved using the approach of consumer welfare and efficiency theory. As explained above, the theory of consumer welfare and efficiency has long been a reference for establishing the general objectives of business competition law worldwide. So, currently, there is a growing demand that the purpose of competition law is not enough to use the two theories. However, there must be a new theory in determining the main objectives of business competition law that better reflects the value of justice in responding to the problems that currently arise in society, namely fairness (Khan, 2018).

Conclusion

Digital platforms have different market characteristics from conventional markets. However, from a business competition perspective, the digital market must be seen as a business model that brings new challenges, theoretically in business competition law and technically in law enforcement. Several classical approaches in business competition law, such as efficiency theory and consumer welfare theory, are basically able to answer the phenomenon of the development of digital platforms. However, problems in business competition law still arise. Among them is the monopolistic behavior of digital platform business actors who aggregate their market power to the point of abusing their dominant position in the market. In addition, the extraction of consumer data by business actors to increase profits through digital platforms leads to abusive behavior and privacy violations against consumers. These conditions require global business competition authorities to encourage fairness as a moral foundation in upholding the principles of fair business competition in the digital platform era. So that the primary goal of business competition can be achieved, namely protecting business competition so that it continues to exist and implemented by all business actors.

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