



CCIA Comments on the Saudi Arabian CITC’s Draft Competition Regulations for Digital Content Platforms

The Computer and Communications Industry Association (“CCIA”)¹ welcomes the opportunity to comment on the Saudi Arabian Draft Competition Regulations for Digital Content Platforms (“the Regulation”)² issued by the Communications & Information Technology Commission (“CITC”) in July 2022.

Online digital services platforms, referred to in the Regulation as Covered Platforms, offer innovative and popular services to consumers, and have revolutionized the way consumers and businesses interact with each other. The Regulation is based on an understanding that there might be market features of Covered Platforms that may impede, distort or restrict competition. CCIA strongly believes that for the CITC to determine whether there is a need to address possible competition concerns in this area, it is important to fully and accurately understand the various business models behind the online intermediation platforms and the industries in which they operate.

When proposing this type of regulation, the CITC should take into account business realities. As such, it is important for the CITC to continue to reexamine its positions detailed in the Regulation to fully reflect the underlying business models of these complex services and revisit its provisional proposals and recommendations accordingly.

CCIA’s comments underscore the benefits Covered Platforms provide for consumers and discuss that there are important considerations the CITC and regulators should take into account when designing any proposed regulation for Covered Platforms. Without adopting some basic principles, an *ex ante* regulation would run the risk of harming consumers, competition, and innovation. Therefore, our comments provide some considerations and suggested approaches in response to the CITC’s proposed Regulation.

¹ CCIA is an international, not-for-profit association representing a broad cross section of communications and technology firms. For fifty years, CCIA has promoted open markets, open systems, and open networks. The Association advocates for sound competition policy and antitrust enforcement. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit www.ccianet.org.

² Saudi Arabian Draft Competition Regulations for Digital Content Platforms. July 2022. <https://istitlaa.ncc.gov.sa/en/transportation/citc/crdcp/Documents/Competition%20Regulations%20for%20Digital%20Content%20Platforms.pdf>

I. Key Considerations and Principles to Guide Regulatory Proposals

Covered Platforms provide consumers and businesses tremendous benefits. Numerous studies have confirmed the many ways in which digital services and multi-sided business models reinforce and stimulate competition in the internal market.³ Given the dynamic and innovative nature of digital markets, any new regulation for platforms needs to take into account wider potential implications for businesses and consumers. Therefore, CCIA encourages the CITC to thoroughly assess whether the benefits of any proposed digital platform regulation would outweigh its potential negative impact for consumers and the economy.

As such, an overly burdensome and heavy-handed regulation could significantly hinder innovation and harm economic growth. In addition to the impact from a competition enforcement and policy perspective, these regulatory proposals often have significant impacts in areas such as data privacy, national security, cybersecurity, and intellectual property with significant implications for businesses operating in Saudi Arabia. Overly complex, intrusive, or broad regulatory regimes are likely to deter entry and investment from innovative companies. In this regard, a key consideration is whether the existing enforcement frameworks, including competition, consumer protection, and data privacy already provide more proportionate ways to achieve the desired outcomes. Therefore, clarifying the expected outcomes of a proposed framework is particularly important for consumers and businesses alike.

CCIA also encourages the CITC to review evidence and past experience to focus the proposed framework on types of conduct that are recognized to be demonstrably harmful, rather than seeking to address theoretical or speculative harm, which would risk overregulation to the detriment of innovation. In addition, it is important to acknowledge that economy-wide harms are better addressed by economy-wide reforms, rather than platform-specific regulation. CCIA's recommendation is for the CITC to embrace a balanced, evidence-based approach.

In addition, CCIA recommends that prior to proposing a new platform regulation, the CITC and policymakers gather evidence through extensive consultation to confirm and justify that there is in fact a need for the rules to be changed or for additional rules to be imposed to Covered Platforms. If the need for new rules is identified and confirmed, those new rules should be proportionate to the impact of potential harm and should take into account the chances that such a harm may take place. New rules should aim to promote competition and enable

³ See *e.g.* European Commission “Staff Working Document: Evaluation of the Vertical Block Exemption Regulation” (8 September 2020), available [here](#), at 32 (“[A]lternative online distribution models such as online marketplaces have made it easier for retailers to access customers. By using these third-party platforms, small retailers may, with limited investments and effort, become visible to potential customers and sell products to a large customer base and in multiple Member States.”). See *e.g.* Oxera’s study “How platforms create value for their users: implications for the Digital Markets Act” (12 May 2021), available [here](#) at 34 (“The bundling and tying of different features and services by a platform can boost the efficiency of a market by reducing transaction costs, increasing choice for consumers, and helping businesses to achieve scale economies.”).

continuous innovation in the marketplace, while preventing competitive harm and unfettered regulatory discretion.

The integrity of a new regime should also be secured by suitable procedural protections and review mechanisms. In particular, full merits review by a court should be available for decisions that have legal consequences for affected companies.

Additionally, due to the significant economic impacts of regulating Covered Platforms in Saudi Arabia, it is crucial that the CITC plays an active role in engaging with relevant stakeholders and market players in the development of any *ex ante* regime. Introducing new regulation for platforms is not costless, especially given the dynamic and innovative nature of digital markets. As a result, the ultimate objective of any new regime should be to promote competition and innovation.

To ensure that the cost of any new regime does not outweigh its benefits, the rules should allow conduct that is clearly pro-competitive or completely benign and recognize justifications for legitimate protections. Without appropriate safeguards an *ex ante* regime may outlaw legitimate and pro-competitive forms of conduct, to the detriments of consumers and businesses that use these platforms.

Finally, any remedy should endeavor to maintain competitive neutrality.⁴ *Ex ante* regulations that blatantly favor or inhibit particular market participants risk delegitimizing both the regulation and its underlying policy goal and may lead to reduced investment and entry into Saudi Arabia's markets.

II. Concerns Regarding the Categorization of Covered Platforms and the Potential Scoping of New Rules to Specific Companies

The Regulation identifies specific online digital services platforms as Covered Platforms that the Regulation classifies based on “detailed qualitative and quantitative assessment by CITC” that includes a 24-month analysis of their size, number of users, and the entry barriers of their services, among other aspects. CCIA encourages the CITC to avoid arbitrary scoping of new rules to specific online digital services platforms. Proposed remedial actions and recommendations should be rules of general applicability and should not be designed and enforced only against a few companies. CCIA suggests implementing guidance and/or regulations if any at a *principle-level* rather than targeting and scoping particular companies.

⁴ “It is a fundamental principle of competition law and policy that firms should compete on the merits and should not benefit from undue advantages for example due to their ownership or nationality.” OECD, Competitive Neutrality in Competition Policy, at 1: <https://www.oecd.org/competition/competitive-neutrality.htm>.

Given the complexity of these markets, CCIA believes that an exhaustive analysis of each one of the markets, products, and services is needed to determine, based on evidence, which are the Covered Platforms subject to the prohibitions listed in the Regulation and why these companies should be subject to more regulation than others also participating in the markets.

More importantly, CCIA believes that the CITC should carefully analyze if categorizing a few companies as leading Covered Platforms and implementing additional and costly rules to such platforms is in fact the way to (i) promote growth and investment while promoting fair and vibrant competition among Digital Content Platforms providing Digital Content to Users and Business Users in the Kingdom; (ii) protect Users and Business Users from unfair and anti-competitive practices, and (iii) promote certainty and consistency for all actors engaged in the Digital Content sector in the Kingdom, in line with global best practices.

In conclusion, CCIA cautions against relying on speculation or hypothetical situations to define which online digital services platforms are considered Covered Platforms that warrant further regulation. As mentioned above, CCIA believes that an exhaustive analysis is crucial and therefore encourages the CITC to gather evidence through extensive consultation to confirm and justify that there is, in fact, a need to regulate these platforms.

III. CITC Should Be Cautious in Relying on Untested International Regulatory Proposals

The Regulation mirrors relevant developments and findings in other major competition jurisdictions, which help to inform some of the conclusions and recommendations. While it may be useful to study certain jurisdictions that are leading the charge towards regulation of the digital economy, it is important that the CITC not assume that the first mover or most active jurisdiction is making the best choice for Saudi Arabia's consumers.

In this regard, CCIA strongly recommends avoiding relying on international regulatory experiments in this area. Digital reforms are being considered in various jurisdictions. However, as of today, only one jurisdiction – Germany – has introduced an *ex ante* regulatory framework, and the results of this reform are not yet available. While it is clearly useful to understand international proposals, CCIA is concerned that the context to those reforms is often lost. For example, some proposed reforms are the result of particular political dynamics and there are emerging concerns about the impact of digital-specific reforms. Also, other international reforms are approaching implementation, which will introduce further issues and challenges as those reforms take effect.

For example, the Digital Markets Act (“DMA”) has been plagued with concerns about implementation, complementarity with existing regulations and competition authority mandates, and reliance on broad and untested new concepts (such as “fairness”).

CCIA urges the CITC to avoid rushing to adopt reforms potentially reflecting international regulatory experiments, without first allowing some time to gauge how those are working or whether the reforms are harming consumers and innovation. Rather than play “follow the leader” (which, given the lack of similar implementation in other jurisdictions, may actually reveal the leader as the outlier), the CITC should continue to focus on developing its understanding of the unique dynamics of Saudi Arabia’s market and tailoring its proposals accordingly. The CITC and the Government’s role is to ensure that Saudi Arabia’s competition regime is fit for purpose and supports the domestic economy, promotes innovation, and delivers benefits to consumers.

IV. CITC Should Avoid Implementing Ambiguous Prohibitions

The Regulation provides a list of prohibitions and establishes, for example, that with regards to the services it operates, a platform designated as a Covered Platform shall refrain from “inappropriately” and “anti-competitively” favoring the products or services provided by the Platform’s Service Provider over the products or services offered by other competing Service Providers.” However, the provision does not clarify what “inappropriately” or “anticompetitively” mean in practice. CCIA encourages the CITC to provide clarification on this ambiguous point considering the impact that the prohibition could have on consumers and on the businesses that have benefited from these technological innovations.

In that sense, the prohibitions listed in Art. 6 of the regulation should be limited to those practices where there is unambiguous likelihood of significant harm. Limiting Art. 6 to obligations that can be complied with unambiguously would increase legal certainty.

V. Potential Covered Platforms Should Have the Opportunity to Comment on Specific Rules before CITC

Given the significant potential consequences of the introduction of a regulatory regime for Covered Platforms, we encourage the CITC to consult extensively with relevant stakeholders before implementing the final regulation.

CCIA is pleased to provide this input on the Regulation and welcomes any questions from the CITC.