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MERGER PHENOMENA IN DIGITAL ECONOMY: UBER-GRAB COMPETITION TELL-TALE IN MALAYSIA

Angayar Kanni Ramaiah (a)*
*Corresponding author

(a) Universiti Teknologi MARA, Cawangan Pulau Pinang, Malaysia, kanni844@ppinang.uitm.edu.my

Abstract

The marriage of two-leading ride-hailing digital platforms, Grab Holdings Inc. and Uber Technologies Inc. had been implicated as a strategic merger tell-tale of two prominent digital firms to significantly undermine the competition and consumer welfare in South East Asia's (SEA) consumer transportation industry. Although Malaysia has enacted Competition Act 2010 (CA 2010) under the initiative of ASEAN Economic Community (AEC) agreement 2015 to develop the regional economic development and enhance the competitive edge, it falls short to include merger control provision. Henceforth the Grab-Uber merger tell-tale challenged the CA 2010 and predicted to potentially reduce the competition by enabling unfair practices that can tantamount to abuse of market dominance and harmful merger leading to algorithmic abuse, increase in price and reduce in consumer choice. Therefore, the Malaysia Competition Commission (MYCC) as the entrusted regulator to monitor the national anti-competitive developments on the forefront to control this digital giant's merger as *parens patriae* is questionable. The paper explores the MyCC jurisdictional issue and adverse effect of the regulatory gap on merger control under the CA 2010 in consideration of digital merger phenomenon generally and specifically with reference to Grab-Uber case in Malaysia.

Keywords: Competition law, consumer welfare, digital merger, dominance.

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1. Introduction

Uber Technologies Inc. (Uber) is a digital company which offers e-hailing or ride hailing service, ridesharing food delivery, and a bicycle-sharing app with operations in 633 cities worldwide. Grab Holdings Inc (Grab) (formally known as MyTeksi and GrabTaxi) is Asian based digital firm which offers consumer transportation and food delivery (with digital payments) services via mobile app in Asia (BBC News, 2018). Uber and Grab had on-going legal-social conundrum, (Freischlad, 2016; Tech In Asia, 2015) even after being legalised in Malaysia under conditional approval (Reuters, 2017) with various dissatisfaction from incumbent taxi drivers claiming E-hailing caused unfair competition and disrupted the regulatory system in SEA. Meanwhile, Grab-Uber marriage agreement took off and further strengthened their market share and increased the competitive gap with the traditional service providers. Generally, experts classified the Grab and Uber's agreement (Grab-Uber) as merger that could adversely affect a plethora of Competition Law (CL) issues and challenge the present regulatory environment in South East Asia (SEA) consumer transportation (Meyer, 2018) market.

A merger generally ceases the existence of a corporation and absorbs into another (as single identity) and acquires its assets and liabilities (Black et al., 1999). Meanwhile, an acquisition involves a takeover of one entity by another by purchasing its assets or shares. Mergers can be classified as merger proper, acquisition of shares, voting rights, or assets, or acquisition of control over an enterprise. Mergers and Acquisition (M&A) is found to be a common phenomenon in industry with rapidly changing technology (especially in high technology) and fierce competition (Sherman, 2018) such as presently the digital platform industry. Mergers for purpose of assessing level of competition can be further classified as horizontal merger (involving enterprises at same level of supply chain in direct competition), vertical merger (involving enterprises at different level) or conglomerate mergers (between enterprises manufacturing or distributing different products). The horizontal merger causes combined firm to encounter increased market power that attracts potentially anticompetitive effects (Gaughan, 2015). The 2015 OECD report recorded the M&A deals in data-related sectors increased rapidly from 55 deals in 2008 to almost 164 deals in 2012 (OECD, 2015).

Digital firms' merger has become a common phenomenon in digital economy. In the task of controlling their merger for anti-competitive activity the CL regulators worldwide faced with challenge to strike the right balance between enforcement and embracing the data driven innovation for growth and general well-being. As a result, the digital merger have become the pivotal focus under CL nationally and globally, with cases like WhatsApp (acquired by Facebook) and Uber merging with Grab in Asia.

2. Problem Statement

2.1. Competition, Innovation and Competition Law Application

Competition in people market leads enterprise to cut costs and encourage innovation to produce better products and services (Whish & Bailey, 2015). The equilibrium to equal the demand price and supply price (by way of competition) for buyers to buy at the maximum demand price that they are willing and able to pay (Amos WEB, 2019) requires unrestrained competition by way of CL enforcement which regulates restrictive agreements, monopolization and trade restraint by way of a merger or acquisition

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(UNCTAD, 2007; Stucke, 2013). Any anti-competitive agreement which evades CL by way of merger, is also equally regarded as anti-competitive (Dhall, 2008).

Competition Law (CL) generally accepted to widen consumer choice, reduce prices and improve quality besides encouraging innovation (EU, 2012). Therefore, Competition law and policy (CPL) application essential for businesses of the same kind to compete fairly with each other in order to maximise consumer welfare (Whish & Bailey, 2015). In this context the Malaysia Competition Act 2010 (CA2010) enacted specifically to prohibits all forms of anti-competitive practices, which includes the horizontal and vertical anti-competitive agreement and abuse of dominance but unfortunately does not have any specific provision to control anti-competitive merger. Hence, the Malaysia Competition Commission (MyCC) task to monitor the M&A progression for anti-competitive conducts became limited or rather ineffective under the current legal position. The paper examines the impact of the regulatory gap in the light of the recent digital corporation's merger phenomenon within the CA2010 with specific reference to Grab-Uber merger case in Malaysia. The paper concludes with some recommendations in view of competition and consumer welfare on digital economy platform with respect M & A phenomena in Malaysia

2.2. Competition Law Enforcement and Propensity of Merger and Acquisition in Digital Economy

Generally, merger is not a harmful transaction by itself but because it facilitates one entity to control a significant part of the assets or decision-making process of another (Tiwari, 2011) it must be monitored for strong likelihood of abuse of their market dominance. Marker dominance could decrease the volume of enterprises and facilitate the remaining enterprises to coordinate their behaviour in terms of price, quantity or quality like a cartel-type arrangement especially in markets for homogeneous products. Therefore, merger control exercise is an essential remedial measure for reviewing the mergers to determine its effects on market competition and to undertake necessary remedial measures to avert the anti-competitive impact or alternatively prevent the merger from even taking effect if the remedial measures found to be ineffective (Goldberg, 2007).

Under the CL perspective M & A is subjected to a merger review based on the given definition of the merger to identify whether the transactions are "suitable" for merger review and/or notification requirements based on its accepted thresholds. A notification threshold is based on the size of the transaction or of the parties and eliminates transactions with no material impact in each jurisdiction. A"suitability" test is a one-off review to determine whether the combination of the independent assets likely to change materially the incentives as to how the assets are used in the competitive process, which in turn could conflict with the policy goals of a competition law regime. The conflicting goals in this cost/benefit framework is more commonly recognized for setting and adjusting the notification thresholds (OECD, 2013).

An order to block or modify infringement since depends largely upon their future performance or behaviour rather than the existing or past behaviour an efficient legal measure to prevent abuse of market power better done upon agreement instead of post-merger stage. Furthermore, the social and economic cost of de-merging is more cumbersome and tedious (with tough-decision option) on competition authorities.

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(Dhall, 2008). Thus, anti-competitive merger control provision with pre and post notification is indeed necessary asset to regulate merger impacts in digital platforms.

Digital economy is also about innovation and technology, so firstly regulators in digital merger cases also obligated to strike the right balance between potential creation (or beneficial innovation) over enforcement and laxity to allow the innovation progress. Secondly, it is difficult to predict digital firm's projection which is borderless and based on binary. Hence their development is complicated and requires different criteria-based assessment unlike the conventional brick and mortar business market which involves an analysis beyond market shares and demand-side substitutability (Herrlinger, 2018) to find infringement under CL.

Some mergers are exempted under CL for purposes of generating efficiencies, public interest benefits and/ facilitating national policy objectives for promoting growth in its national markets and exports. These exclusionary principle for the accepted purposes is recognised to ensure beneficial mergers proceed without interference or unduly hampered by regulation to achieve a delicate balancing between act of prohibition and permission in merger control. (Goldberg, 2007). Therefore, to effectively monitor digital firms merger, CL merger control mechanism chiefly essential as an initial step to control harmful merger on one part and on another part to achieve a delicate balance between the beneficial innovation and killer M&A tech companies to achieve a delicate equilibrium between the decision to prohibit or permit (or conditional permission) a merger transaction.

However, the present volume of merger activity under the current geopolitical and technological outlook has caused competition authorities globally to reconsider whether their regimes still fit for merger control. Whereby, the focus on digital merger control is going beyond the considerations of future market development and innovation towards 'killer acquisitions' big tech companies tends to acquire the small innovative start-ups who don't necessarily meet the traditional turnover-based thresholds to trigger a review. Thus, some jurisdiction has introduced a transaction value threshold and has increased their reliance on the parties' internal documents for their reviews, with much heavier sanctions for procedural infringements, such as 'gun-jumping' or closing a deal pre-clearance and incomplete or misleading submissions (Financier, 2019).

3. Research Questions

3.1. Grab-Uber Marriage at the Crossroad of Competition Law: Is it an anti-competitive merger?

The Grab-Uber agreement became a CL concern, firstly as to whether it tantamount to a merger and/or acquisition in infringement of the CA 2010 or mere business contract (market sharing contract). And secondly whether the market concentration as result of their mutual agreement will ultimately benefit or defeat the competition and consumers welfare in future. Meanwhile, the industry watchers observed the transaction as "asset light" because did not entail Grab's acquisition of Uber's vehicles, employees, drivers and its algorithms as part of the deal. Their transaction for merger unfolded like a tell-tail without any specific regulatory clearance or public disclosure of information and took off unguarded (Toh, 2018) on its terms and value of transaction. The merger information was gathered mostly through newspaper

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announcements, reports and interviews given by the Chief Executive Officer (CEO) of Uber and Grab (Grab, 2018; Kollewe, 2018) via Grab Press Centre.

Uber's came into Asian shores in 2013 after Grab (Wikipedia) in 2012. Grab started with only 40 drivers in Kuala Lumpur under the name of 'Grab' via GrabTaxi app. They resolved the never-ending decade old consumer transportation problem in SEA (Tung, 2016) innovatively with point-to-point service on the availability and quality of both taxi and car services (Russell, 2018a). However, Grab captured more popularity with tactful approach and better understanding of the Asian economic culture compared to Uber which failed to attract the Asian market with their one size fits all western styled app (Hempel, 2018). Uber openly declared their lost over millions of dollars into recruiting riders and drivers in their non-profitable Asian market (Kollewe, 2018) before withdrawing their services on March 26, 2018 and after selling its SEA operations to Grab under a sealed agreement with 27.5% stake and a seat in the Grab's Board of Directors. Ubers pull out made Grab an instant leader with dominant market share in SEA region (Iwamato & Venzon, 2018). Their so-called merger co-operation surprised their consumers and drivers with lots of uncertainty. The SEA government regulators and competition authorities were put to test as to how to channel the right regulatory approach against them. Their merger deals generally by-passed most SEA jurisdiction without fulfilling any notification procedure or legal approval per se. The Malaysian regulatory situation further disadvantaged the regulators because it did not have any power or jurisdiction to control the merger or scrutinise their transaction. Meanwhile, Uber digital services with minimal physical assets walked out breezily and ended all services in the region within two weeks after the announcement.

3.2. What is impact of Grab-Uber Marriage on market competition and consumer welfare ?

Grab-Uber's horizontal merger agreement caused huge market concentration even though the exact value of the deal was not disclosed. However, Grab's declaration indicated the deal as the largest deal ever done in SEA with access to over 5 million drivers with agents and downloaded over 90 million mobile devices. The difficulty faced by Uber in Asia served as a bad investment experience to shoo away other foreign investors to enter the SEA to compete with Grab (Lee, 2018). So, the other well-funded foreign hailing apps such as German-Brazilian Easy Taxi and Britain's Hailo and Karhoo who left SEA region by 2016, never came back even after Uber left. Henceforth, Grab became ruling king in SEA land transportation fleet and agent network, locking around 195 cities in eight countries with widest range of on-demand transport services including private cars, motorbikes, taxis, and carpooling services, in addition to food and package delivery services (Bloomberg Technology, 2018; Grab, 2018). Grab's (2018) claim that the merger contributes to cost efficiency in the region is indeed arguable because Grab marginalised the market and consequently raised the fares and scaled back the driver's incentives.

Generally, experts concluded Grab-Uber marriage is indeed a merger agreement that can create an anti-competitive conduct and region-wide monopoly (Iwamoto, 2018). Therefore, must be scrutinised carefully its long-term effect (Ong, 2018a) because it will result SEA consumer transportation to undergo a massive structural overhaul of its tectonic proportions (Ong, 2018b). As a result, more SEA governments probed into Grab's deal for anti-competition concerns (Russell, 2018b) and realised that that their authorities were ill-equipped to keep up with the present fast-acting tech companies' monopolistic anti-competitive practices on platforms. Meanwhile, Google-Temasek report noted that ride-hailing services in Southeast Asia are expected to surge to almost SG$30 billion by 2025 from SG$7.7 billion in 2018 and

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around 35 million users using ride hailing services every month. (Temasek, 2018). Thus, merger if not monitored could threaten to undermine trade deals and hard-won economic integration such as AEC (Iwamato & Venzon, 2018).

The Competition and Consumer Commission of Singapore (CCCS) was the first SEA regulator to react and investigate Grab-Uber marriage for anti-competitive merger under Section 62 of the Competition Act (Cap. 50B) 2004. (CCCS, 2018). CCCS reacted after receiving numerous complaints from both riders and drivers at post-merger transaction period. CCCS found Grab Rewards Scheme reduced the number of points earned by riders per dollar spent on Grab's trips and increase in the number of points required for redemptions besides an increase in the fare between 10% and 15% at post-transaction stage. CCCS also discovered that Grab's potential competitors (to access drivers and vehicles) are hampered by driver's exclusivity agreement and cannot scale to compete effectively against Grab. Thus, CCCS ruled Grab-Uber transaction is anti-competitive under section 54 of the Competition Act for substantially lessening competition in the ride-hailing platform market in Singapore (Resty, 2018). Singapore authorities admitted that they had overlooked the impacts of the ride-hailing apps merger process on the interests of commuters and drivers and regarded the deal as an "unnotified merger transition" (CCCS, 2018). The CCCS investigation also revealed Uber would not have left (or terminated) its business if the merger had not finalised. Therefore, overall it appears that the merger was indeed motivated to remove Grab's closest competitor in ride-hailing platform services in SEA. CCCS proposed directions to restore their point-to-point transport market contestability and Financial Penalties on Uber and Grab (CCCS, 2018) alerted other SEA nations to also probe into the monopoly risks triggered by the merger (The Straits Times, 2018b, 2018c, 2018e; Russell, 2018a).

4. Purpose of the Study

4.1. Scope of Competition Act 2010 and MyCC: Regulatory gap and Consequential Effect on market competition

Malaysian CA2010 like other SEA nations have various application gaps in its substance, procedure and enforcement stages (except for Singapore) because the CL application is still at infant stage and lack the relevant experts, capability building and slow in enforcement (Ramaiah, 2017). The CA2010 prohibits firstly, under Section 4(1) horizontal and vertical anti-competitive agreements between enterprises with an object or effect of significantly preventing, restricting or distorting competition in any market for goods or services. Secondly, Section 10 (1) it prohibits enterprises from engaging either independently or collectively, in any conduct which amounting to an abuse of a dominant position in any market for goods or services (CA 2010). A dominant enterprise is considered to have abused its position according to MyCC Guidelines to Chapter 2, when it directly or indirectly found to impose an unfair purchase or selling price or unfair trading conditions unto a supplier or customer ; or limiting or controlling production, market outlets or access, technical or technological development or investment to the prejudice of consumers; refusing to supply to any enterprises or group of enterprises; or when applying discriminatory conditions to discourage new market entry.

The CA2010 totally left out merger control jurisdiction although it was recommended by ASEAN Regional Guidelines on Competition Policy (RCGP, 2010). This omission left a huge regulatory vacuum

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with respect to merger allocation, scope and prohibition to regulate anticompetitive merger under CA jurisdiction unlike other ASEAN neighbours like Singapore, Philippines, Indonesia and Vietnam. As a result, MyCC, the enforcement agency at the forefront of protecting and safeguarding free and fair competition (CA 2010) lacked the required legal mechanism or tools amounting to toothless tiger to monitor and control anti-competitive merger transaction or their terms of agreement. Meanwhile, the sector-specific regulations on mergers under the Malaysian Aviation Commission (MAVCOM) and Malaysian Communications and Multimedia Commission (Guidelines on Mergers and Acquisitions) (MCMC, 2019) is also not applicable to Grab-Uber merger transaction.

4.2. Merger management in Malaysia and role of Competition Act 2010 in digital economy

M & A transactions in Malaysia is generally governed within the Capital Markets and Services Act 2007 (CMSA), the Malaysian Code on Take-Overs and Mergers 2016 and Companies Act 2016 to facilitate the take-over and mergers framework in Malaysia (Legal TAPS, 2017). These corporate laws ensure take-overs and mergers take place in a competitive, informed and efficient market, so to provide fair and equal treatment to only shareholders or investors (Star Online, 2007) privy to the transactions. It fails to address the impact on the consumer market leads to substantial lessening of competition or strengthening of the dominant position. Previous studies on merger also strongly recommends that regulatory framework for corporate merger and CL should go together and the provision for merger control should be specifically addressed under the CL in Malaysia for the purpose of uniformity and transparency (Wan et al., 2013).

Grab-Uber merger agreement reflects the phenomenon of digital firm's trend to monopolise market via merger regionally and globally. MYCC was instructed by the Ministry (The Edge, 2018; The Malaysian Insight, 2018) to monitor Grab-Uber transaction in respond to Singapore's cue of possible violations of CL with respect to pricing and abuse of dominance (Khuen, 2018) to safe guard general public interest (The Straits Times, 2018d, 2018e). However, MyCC, as the national competition watchdog declared, it is in no position to stop, prevent or apply merger control on any anti-competitive M&A from taking place but may intervene only in case of abuse of dominance (Star Online, 2019a). MyCC cannot require any clearance before any M&A or conduct any market assessment to study their impact on the present or future market. This inability disallows MyCC to efficiently control merger from initial stage and assess their market power. This shortcoming under merger control regulatory mode contributed to the failure to address pertinent anti-competitive legal-social implication on Malaysian market at the very beginning. However, MyCC arguably, submitted it will intervene if the merged enterprise starts abusing its dominant position within the scope of Section 10 CA, if or when it imposes an unfair purchase or selling price or trading conditions or abused its dominant position to limit or controls production, market access, technological development or investment, unless the dominant enterprise had reasonable commercial justification or represents a reasonable commercial response to the market entry or market conduct of a competitor within Sec 10(3) CA2010. The anti-competitive review and enforcement powers on merger under Section 10 proviso is rather limited only with in respect of behavioural conduct and not the merger control mandate itself (Kandiah, 2017). Therefore is questionable whether the control mechanism enough to control the merger phenomena in digitalised economy with sophisticated platform market?

Furthermore, a merger control infringement assessment and application involves different legal exercises from other infringements (anti-competitive agreement and abuse of dominance) under CL. For

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instance a horizontal merger cases are placed on the level of increase of the market concentration caused by the merger and the resulting concentration itself to find the prima facie illegality case (FTC v. H.J. Heinz Co., 246 F.3d 708, 711-12, 727 (D.C. Cir. 2001). The merger control mechanism is based on future prediction of the market structure and behaviour by using substantive test and shifting the burden of proof onto the merging parties to prove no negative effects on competition (Wan et al., 2013). The merging parties only allowed to rebut the structural presumption (Areeda & Hovenkamp, 2016) in cases where the market shares cannot accurately predict the competitive effect. This occurs in instance where firstly, the proposed market is poorly defined, or the market shares exaggerate the merger's anticompetitive potential. Secondly, in instance the merger can discipline any price increase. Thirdly, if merger produces an offsetting efficiency which considered sufficient to keep prices at premerger levels or otherwise tantamount to counteract any anticompetitive effects (Hovenkamp & Shapiro, 2018).

Therefore, it can be concluded that a merger analysis is a much-needed workable guidance to inquire and evaluate as to whether Grab-Uber market concentration prima facie illegal and if so, does it have any justifiable ground to be excused or excluded prior to its merger and after merger proactively instead of waiting for an instance of abusive conduct to penalise. The definition of merger and merger inquiry (and also timely completion) is also equally important process to avoid any hold up of the proposed merger (Dhall, 2008) by way of pre-merger analysis to inquire whether the transactions fall within the purview of merger control regime (Tiwari, 2011). Hence, prior notification exercise serves as an excellent ex ante control tool of the level of the concentration on the relevant market to prevent elimination of competition that might follow. In this context the Malaysian CA may be faced with a huge regulatory gap or vacuum because we don't have any specific provision on merger to fulfil any pre-or post-merger notification to deal with its likely adverse effect. CL considerations is an extremely important legal tool at preparatory and due diligence status of an M & A for the relevant authority to undertake the merging parties to enter commitments to remedy the anticompetitive effect or prohibit the transactions entirely if the merger considered to have an anti-competitive effect (IFLR, 2013).

5. Research Methods

5.1. Case study: Impact and Challenges of Grab-Uber Merger on Competition Act 2010

MyCC optimistic approach to address the current phenomena within the wide scope of Sec 10 abuse of dominance and Section 4(1) anti-competitive agreement prohibition rules is rather sceptical and weak practically from the viewpoint of the man on the street. In consideration of the recent news that Digi and Celcom are going to merge to become the largest telco provider in Malaysia as way to survive a 'global digital arms race' (The Edge, 2019b) has stirred the Malaysian users to wonder how they would be affected by the change and what regulatory measures could be undertaken by the MyCC to take control of any possible anti-competitive conducts related to the merger. So, merger phenomenon in Malaysia must be addressed soon with specific regulatory tools. Digital firms mostly at initial stage more focused to broaden their user-base data to create network effects by permanently or temporarily offering their services or products free of charge (alternatively only charge selective users) to secure the market dominance and strategies market position (CPI, 2018). Therefore, the mere reliance on finding abuse of dominance for

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addressing anti-competitive activity among the digital firms is a harder task because most digital firms (especially on two-sided market) realise their revenue and profit years after the start-up phase.

The check on Samsung's Play Store of other e-hailing service providers in Malaysia such as EzCab, Public Cab, Swift Limousine & Cab, 2GO, HelloTeksi and iTeksi. EzCab reveals that even the largest among them only had about 10,000 downloads, compared with 68 million for Grab. The Ministry, for the public transport licensing authority regarded them as not illegal or anti-competitive but stressed CA2010 will only be invoked to keep tabs on Grab, if the company imposes unfair practices or sudden fare increases (The Strait Times, 2018). In the post-merger scenario, abuse of dominant position could be such as forcing an exclusivity contract on drivers and charging passengers excessive prices when there is no other decent and suitable alternative. However, it was noted that the finding for an infringement at this post-merger stage may require merger control provisions to mandate market assessment by way of conducting a market analysis to see how much of the e-hailing market is dominated by Grab and whether they are included in the larger public transport network. It was noted the options consumers have to get from point A to point B should also be included in the analysis before one can call the merged entity a dominant player in e-hailing or in the public transport system (Kamarul, 2018).

In recent development although Grab services subjected to stringent regulatory procedure to obtain licence, passenger insurance, e-hailing sticker and e-hailing vehicle permit (EVP) from the Land Public Transport Agency (APAD) (Lai, 2019), this changes only effects the drivers. This regulatory measure do not address and /or resolve the merger related anti-competitive behaviour with respect to price-hike and algorithm related misuse to deter competition and related consumer welfare. MyCC is still ill-equipped with the relevant legal tools to take the appropriate action as the authority (Star Online, 2019b) to curtail anti-competitive merger infringements.

In the latest development MyCC received various complaints against Grab. MyCC's investigation also found Grab to have abused its dominant position by imposing various restrictive clauses on its drivers, relating to the third-party advertising on the driver's vehicle which prevented the drivers from promoting as well as providing advertising services to Grab's competitors in e-hailing and transit media advertising market in Malaysia. Thus, MyCC proposed a financial penalty of RM86.77 plus daily penalty of RM15,000 from the date of service (October 3) if it fails to take remedial actions as directed by the MyCC to address the competition concerns. MyCC rightly argued such restrictions will distort the market because it creates barriers for other E-Hailing entry (or future competitors) and expansion for Grab when the drivers cannot promote or advertise other platforms. Grab which claimed to be surprised by the action maintained they fully complied with the Malaysian CA2010 and intends to defend its case by filing a written representation to the Commission (Star Online, 2019c; The Edge, 2019a). MyCC is expected to make its final decision after receiving Grab's written defence. The written reply would reveal whether Grab had any justification and whether MyCC could effectively curb anti-competitive merger behaviour merely within the abuse of dominance proviso under Sec 10 of the CA2010 on multi-tech digital platforms.

6. Findings

The Grab-Uber case-study reveals an in-depth key lesson on platform competition, network effects, internationalization strategy as well as effects in digital entrepreneurship, technology standards, mutual forbearance, market consolidation, real options and equity ownership and control (Davis et al., 2018). The case in study have revealed the possibility of abusive conduct antecedent as result of market concentration which occurs as result of M & A.

In this context a CL can play significant role with an effective merger control regime to address the gap of knowledge and control of the merger phenomena. The requirement for prior notification and market study as well as post-merger notification are essential tool to control the level of market concentration to prevent the elimination of competition in the relevant market. Merger regulatory empowerment would also facilitate the regulators to constantly check with periodic amendments and improvements which are much needed because merger agreement by itself does not indicate any negative impact in future or possibility of market being less competitive and more concentrated. Hence, in the journey to achieve a right balance between innovation, market concentration and competition, it is pertinent to ensure business co-operations don't lead to anticompetitive behaviour.

Meanwhile, MYCC's lack of jurisdiction on mergers has left them toothless to encounter merger in digital plethora. The soft laws (such as Take-Over Code) and other competition provisions (under anti-competitive agreement provision) or policies in Malaysia can only regulate merger up to certain level. Digital economy is comprised of tech giants and borderless economy which leads data-driven markets towards 'winner takes it all' approach that aims for market concentration for market success (OECD, 2014). Hence Malaysian CA2010 has more significant role to address issues in the digital merger phenomena.

7. Conclusion

In fulfilling the current of digital economy business demand and practice, it is pertinent, firstly to place a regulatory framework on merger control under the CA2010 and secondly to have provisions that could curb the difficulty and challenges to identify infringement threshold on platform businesses. MyCC, as an expert authority at the forefront of curbing anti-competitive behaviour is indeed an important driver in command and to ensure their efficiency must actively advocate its role by bringing to the notice of government the fallouts in merger control and propose changes to suit the current trend in the digital market economy. Grab-Uber case is an indication to upgrade and improve Malaysian CL to be in par with our other SEA neighbours to tackle the merger catastrophe nationally and regionally through international networks like ASEAN to fully benefit the digital economy space, to promote innovation and entrepreneurship without undermining the competition.

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