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Consumer Harms Arising From The Competition Dynamic Of E-Commerce Platforms In Malaysia

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Cover Page Footnote

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CONSUMER HARMS ARISING FROM THE COMPETITION DYNAMIC OF E-COMMERCE PLATFORMS IN MALAYSIA

—Dr. Tze Chin Ong*, Ms. Mei Fei Lee**, Norhoneydayati Abdul Manap†, Dr. Zalina Abdul Halim††, & Sridevi Thambapillay^s

Abstract *The structure of the digital market of e-commerce platforms is dynamic, with a combination of characteristics such as strong network effects, concentrated multi-sided platforms, extreme economies of scale and scope, low marginal costs, and high data returns. These strong network externalities within the multisided e-commerce market make the competitive environment in e-commerce significantly different from the conventional monogamous market as they create gatekeeper positions favouring a few incumbent e-commerce platforms. In these circumstances, gatekeeper incumbent e-commerce platforms often set commercial conditions that have the effect of undermining other players and potential rivals within the ecosystem. In this regard, there has been a trend of raising concerns globally on the inability of the conventional competition law framework to appreciate the extent of consumer harm arising thereto. Further, with the increasing trend in e-commerce, the potential harms arising thereon affect the market and particularly the individual end-user consumers in many ways, such as price discrimination. This research employs a doctrinal research method, wherein the primary data is obtained through systematic content analysis based on relevant reports and*

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articles. This research identifies the consumer harms in the e-commerce platforms market based on theoretical analysis of competition law and consumer protection law focusing on digital market characteristics.

Keywords: Competition law; Consumer Harms; E-Commerce; Digital Market; Incumbent Platforms.

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I. INTRODUCTION

Technological advances and innovation in the 21st century have reshaped the competitive dynamic in the economy. New markets are created, and existing markets are transformed and replaced by new strategies, advanced business models and technology-based businesses, such as online platforms businesses which have become central to the economy today. As a result, the retail market has seen a significant shift to e-commerce platforms. E-commerce has become a global trend in Southeast Asia in the last decade. According to ASEAN, e-commerce has seen rapid and significant growth and the internet economy in Southeast Asia is projected to exceed \$240 billion by 2025.¹ In fact, countries like Malaysia, Singapore and Thailand have become some of the world’s top markets for online shopping.²

Online platforms are defined as channels sharing key characteristics, such as the use of data and communication technology, to facilitate interactions between consumers.³ In the context of e-commerce, the interactions that such platforms facilitate and develop are primarily the sale and purchase of goods

¹ ASEAN, ‘Overview ‘(ASEAN E-Commerce) <<https://asean.org/our-communities/economic-community/asean-e-commerce/>> accessed 27 March 2023.

² Fukunari Kimura and Lurong Chen, ‘E-Commerce as Asia’s New Growth Engine’, (2017) 217 (02) ERIA Policy Brief 1 – 4 <<https://www.eria.org/ERIA-PB-2017-02.pdf>> accessed 27 March 2023.

³ UK Digital Competition Expert Panel, *Unlocking Digital Competition – Report of the Digital Competition Expert Panel* (March 2019) 21 (Furman Report 2019).

and services by sellers/suppliers to buyers. Similar to other online platforms, e-commerce platforms like Amazon and Shopee are able to rapidly expand and sustain their positions in the market due to the strong network effects that their users find most valuable. This characteristic is already an indication of the unique dynamic that e-commerce platforms have, as opposed to typical brick-and-mortar businesses. The structure of the digital market of e-commerce platforms is dynamic, with a combination of characteristics such as strong network effects, concentrated multi-sided platforms, extreme economies of scale and scope, low marginal costs, and high data returns.⁴

While it is undisputed that e-commerce has brought huge gains for businesses and consumers, the strong network externalities and other digital market characteristics of e-commerce platforms make the competitive environment significantly different from conventional markets. It has been identified by various studies that the digital market characteristics afford e-commerce platforms a comparative competitive advantage, leading to unprecedented growth in a short period. Leveraging on this competitive advantage, studies have found that it leads to the concentration of the markets with a few large incumbent firms taking the position of gatekeepers to create barriers to entry and expansion for other rivals. In time and without intervention, there rises a global concern about the competitive dynamic disrupting the healthy competition in the market and harming consumers as a result.

In Section II of this article, the e-commerce platforms market in Malaysia will be identified by analysing the concept of e-commerce platforms and the dominant e-commerce platforms in the country, i.e., Shopee and Lazada, which coincidentally are also the leading e-commerce platforms in Southeast Asia. In Section III, the competitive dynamic of the e-commerce platforms market will be identified by analysing the digital market characteristics and the business model of e-commerce platforms in multi-sided markets. In Section IV, the concept of consumer harms arising from the competitive dynamic in the e-commerce platforms market is identified with an analysis of notable examples of consumer harms in e-commerce.

II. IDENTIFYING THE E-COMMERCE PLATFORMS MARKET IN MALAYSIA

A. Concept of E-Commerce Platforms

To understand the e-commerce platforms market, it is crucial to first identify the concept relating to e-commerce. These concepts are not new and

⁴ Stigler Committee on Digital Platforms, *Final Report* (The University of Chicago Booth School of Business, 2019) 11–17. (Stigler Report 2019).

have been addressed by competition authorities and scholars around the world. There are many definitions of e-commerce derived from many sources, depending on the different concepts and perspectives employed by its users. In this section, the general understanding of the concept of e-commerce platforms is synthesised from selected reports and articles.

In 1998, the WTO Global Work Programme following the Declaration on Global Economic Commerce, defined e-commerce as the production, distribution, marketing, sale or delivery of goods and services by electronic means.⁵ According to Catherine L. Mann *et al*, e-commerce is the purchase or sale of goods or services over any kind of computer network. Possible networks include the internet; an extra net, which is a private platform that uses internet technology, or TCP/IP; and an electronic data interchange (EDI) network.⁶ The Organisation for Economic Co-operation and Development (OECD) defines e-commerce as the sale or purchase of goods or services, conducted over computer networks by methods specifically designed to receive or place orders.⁷ European Union (EU) refers to e-commerce as the sale or purchase of goods or services, whether between businesses, households, individuals or private organizations, through electronic transactions conducted via the Internet or other computer-mediated (online communication) networks.⁸ In this regard, goods and services ordering is sent over the network regardless if the payment and delivery of the goods and services are conducted online or offline. In 2016, the United States Federal Trade Commission Staff Report on the “Sharing” Economy Issues Facing Platforms, Participants & Regulators states that online market place provides a discrete set of services to the parties using it, facilitating their efforts to transact effectively and efficiently, including searching for potential transacting partners, agreeing to terms with them, and performing the contract.⁹ In 2020, the United States House of Representatives Report on Investigation of Competition in Digital Markets defined online commerce as the activity of buying and selling services using the Internet.¹⁰ According to the report, there are two categories of online commerce which are (i) fully integrated with multi-category marketplaces such as Amazon and eBay and (ii)

⁵ WTO, *WTO Global Work Programme on Electronic Commerce*, (30 September 1998) <https://www.wto.org/english/tratop_e/ecom_e/ecom_work_programme_e.htm> accessed 13 April 2023.

⁶ Catherine L Mann, Sue E Eckert and Sarah Cleeland Knight, ‘Global Electronic Commerce: A Policy Primer’ (Peterson Institute for International Economics, 2000) 9.

⁷ OECD, *Measuring the Information Economy* (2002)89 <<https://www.oecd.org/digital/ieconomy/2771174.pdf>> accessed 27 March 2023.

⁸ Eurostat, ‘Glossary: E-commerce’ (Statistics Explained, 2019) <<https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:E-commerce>> accessed 13 April 2023.

⁹ US Federal Trade Commission, *The “Sharing” Economy: Issues Facing Platforms, Participants & Regulators* (A Federal Trade Commission Staff Report, November 2016) 32.

¹⁰ US House of Representatives, *Investigation of Competition in Digital Markets*, (117 Cong 2d Session, CP 117-8 Part 1, July 2020) 68–71.

vertical and single-category marketplaces which focus on single-category markets such as computer hardware.¹¹

ASEAN Handbook on E-Commerce and Competition (2017) defines e-commerce as the sale and purchase of goods and services through the Internet via electronic devices.¹² The Competition and Consumer Commission Singapore defines e-commerce as the sale and purchase of goods and services through the Internet via electronic devices.¹³ In Singapore, the Electronic Transactions Act 2010 does not define e-commerce although the Act intends to facilitate electronic commerce, eliminate barriers to electronic commerce resulting from uncertainties over writing and signature requirements, and promote the development of the legal and business infrastructure necessary to implement secure electronic commerce.¹⁴ Thailand's Electronic Transactions Act B.E. 2544 (A.D. 2001) defines e-commerce as a transaction in which an electronic means is used in whole or in part.¹⁵ In Indonesia, Law No 11 of 2008 concerning Electronic Information and Transactions defines e-commerce as a legal act that is committed by the use of Computers, Computer networks, and/or other electronic media.¹⁶ In Malaysia, under the Electronic Commerce Act 2006, "electronic" and "commercial transactions" are given distinct definitions wherein "electronic" means the technology of utilizing electrical, optical, magnetic, electromagnetic, biometric, photonic or other similar technology.¹⁷ On the other hand, "commercial transactions" is defined as a single communication or multiple communications of a commercial nature, whether contractual or not, which includes any matters relating to the supply or exchange of goods or services, agency, investments, financing, banking and insurance.¹⁸ Separately, in the Consumer Protection (Electronic Trade Transactions) Regulations 2012, "online market place" means a website where goods or services are marketed by third parties for trade.¹⁹

With increased Internet and mobile phone usage, e-commerce has been carried out via software over the Internet that enables commercial activities in social media, applications via mobile phones, websites, and other online channels. E-commerce is often divided into 4 business models, namely Business-to-Consumer (B2C), Business-to-Business (B2B), Consumer-to-Consumer

¹¹ *ibid.*

¹² Competition and Consumer Commission of Singapore, *Handbook on Competition & E-Commerce in ASEAN*. (2017) 16.

¹³ *ibid.*, 14.

¹⁴ Electronic Transactions Act 2010 (Singapore).

¹⁵ Electronic Transactions Act B.E. 2544 (A.D. 2001) s 4 (Thailand).

¹⁶ Law No 11 of 2008 concerning Electronic Information and Transactions ch 1 Art 1 (Indonesia).

¹⁷ Electronic Commerce Act 2006, s 5 (Malaysia).

¹⁸ *ibid.*

¹⁹ Consumer Protection (Electronic Trade Transactions) Regulations 2012, s 2 (Malaysia).

(C2C) and Consumer-to-Business (C2B). According to OECD (2019), the B2B e-commerce business model dominates the e-commerce platforms market and is followed closely by the B2C e-commerce business model which has seen a relatively large increase in its share of total e-commerce transactions.²⁰ E-commerce has become a manifestation of life for consumers. With the Covid-19 lockdown around the world, B2C e-commerce growth accelerated with an increased number of businesses adopting e-commerce to reach consumers. This paper will identify the consumer harms arising from the B2C e-commerce business model, which is essentially a retail-based business model where businesses sell products and services to end-user customers. Some examples include Amazon and eBay, which are two leading e-commerce platforms in the United States and the European Union, focusing on retail e-commerce. According to Statista, Amazon remains the leading online website in the United States, accounting for 43.98% of traffic in e-commerce, followed by (albeit with significant margins) eBay at 10.29% of traffic.²¹ Similarly, Amazon is the dominating online marketplace in the European Union with approximately 1 billion monthly visits followed by eBay at nearly 535 million visits.²²

Digital platforms have been defined in several reports and articles. Considering that e-commerce platforms are a subset of digital platforms, the definition of e-commerce platforms can be drawn from the literary understanding of e-commerce and digital. Complementary to the concept of e-commerce, Rossotto *et al* defined a digital platform as a technological software which has a functionality that serves as a foundation upon which complementary participating entities in the e-commerce platforms market can be developed.²³ This implies that e-commerce platforms are online channels utilising digital technology that enable the sale and purchase of goods and services between different users of the multi-faceted digital market. Lancieri and Sakowski define a digital platform non-technically as an intermediary connecting two or more groups of users in the multi-faceted digital market.²⁴ This is consistent with how

²⁰ OECD, *Unpacking E-Commerce: Business Models, Trends and Policies*, (OECD Going Digital Policy Note, May 2019) <<https://www.oecd.org/digital/ieconomy/unpacking-ecommerce.pdf>> accessed 26 March 2023.

²¹ Daniela Coppola, 'Leading E-commerce and Shopping Websites in the U.S. 2022, Based on Visit Share' (*Reach & Traffic*, 15 February 2023) <<https://www.statista.com/statistics/266203/us-market-share-of-leading-shopping-classified-websites/>> accessed 26 March 2023.

²² Stephanie Chevalier, 'Leading Online Marketplaces in Europe 2022, by Monthly Visits' (*Statista*, 2022) <<https://www.statista.com/statistics/288056/leading-retail-websites-in-europe-based-on-unique-visitors/>> accessed 26 March 2023.

²³ Carlo Maria Rossotto et al, 'Digital Platforms: A Literature Review and Policy Implications for Development' (2018) 19 (1-2), *Competition and Regulation in Network Industries* 93-109. <<https://doi.org/10.1177/1783591718809485>> accessed 23 March 2023.

²⁴ Filippo Lancieri and Patricia Morita Sakowski, 'Competition in Digital Markets: A Review of Expert Reports' 26 (1) 65 *Stanford Journal of Law, Business & Finance* 106 (Lancieri and Sakowski).

Marsden and Podszun²⁵ defined platforms as being intermediaries to several market sides. Despite these, it has been argued that the treatment of e-commerce platforms as intermediaries rather than gatekeepers to e-commerce leads to the exploitation of legal loopholes which exempt e-commerce platforms from any liability in unfair or deceptive trade practices employed by sellers against consumers.²⁶

Digital platforms, of which e-commerce platforms are a subset, are a multi-sided market which serves multifaceted users and not just end-user customers. The understanding of e-commerce platforms is also not new to the concept of traditional brick-and-mortar businesses as amongst others, network effects, economies of scale and scope are characteristics also existing in traditional markets. Network effects are the phenomenon which occurs when the number of users using a service or product increases as more users derive more value or benefit from it.²⁷ Economies of scale occur when the operation of a firm increases in magnitude and scale as the average cost of serving or producing the output decreases.²⁸ When it is cheaper to serve customers or produce more products together than one separately, economies of scope occur.²⁹ Economies of scope are the phenomenon where due to the large datasets that could be collected by large e-commerce platforms, the platforms can offer additional benefits to the users on its platform by offering complementary services or products at a higher quality in adjacent markets.³⁰ The positive relationship of economies of scope with the amount of data indicates that dominant e-commerce platforms can enter new or adjacent markets with a competitive edge to monopolise such markets over other rivals as well.³¹ This also indicates the indirect creation of high switching costs which restricts consumers from switching to another rival e-commerce platform if users intend to purchase products or services that are compatible with one another. Further, it also restricts consumers from multi-homing.³²

Unlike conventional brick-and-mortar businesses, e-commerce platforms utilising the internet to expand and grow their business require significantly

²⁵ Philip Marsden and Rupprecht Podszun, 'Restoring Balance to Digital Competition – Sensible Rules, Effective Enforcement' (Konrad Adenauer Foundation, 2020)12.

²⁶ 'Unsafe Products on Online Marketplaces' (Euroconsumers, 27 February 2023) <<https://www.euroconsumers.org/activities/unsafe-products-on-online-marketplaces>> accessed 23 March 2023.

²⁷ Richard Whish and David Bailey *Competition Law*, (10th edn, Oxford University Press 2021) 11. (Whish and Bailey).

²⁸ *ibid.*, 10.

²⁹ *ibid.*, 10.

³⁰ Stigler Report 2019 (n 4) 4.

³¹ Lancieri and Sakowski (n 24), 26-65.

³² Furman Report 2019 (n 3), 32.

low or near-zero marginal costs for the same production volume of products or services.³³ This does not however negate the necessary distribution costs to account for factors such as poor internet infrastructure, physical distribution of products and e-commerce warehouses. Even so, costs remain significantly lower than that of conventional brick-and-mortar businesses.³⁴ Besides, e-commerce platforms benefit from high data returns, that is the more users are on the e-commerce platforms, the more valuable data that the platform collects. The collection of data is considered a high return on investment because it can be utilised to provide e-commerce platforms with better insights into consumers' behavioural biases and preferences. It can also be monetised for profits, i.e., in the ad-supported business model.³⁵

The characteristics of the digital markets individually are not distinguishable from the traditional markets, rather, it is the combination of the characteristics that are usually found in isolation in traditional markets that justifies the analysis of the competition dynamic of digital markets.³⁶ This is consistent with the findings of the Furman Report³⁷ and the Stigler Report³⁸ that determined that digital platforms share a dynamic combination of characteristics, which put together, lead to a competition dynamic distinguishable from conventional brick-and-mortar businesses. Network effects, global reach, accumulation of data and low marginal costs play a significant role in the economies of scale and scope of digital platforms which could lead to concentration of the markets. Crucially, the higher the number of users (business users and consumer users) using the platform, the higher the value the platform serves to the users.³⁹ For example, Amazon or eBay are considered to have strong network effects because they have a high number of users (business users and consumer users) on their networks, which allows users to have a rich experience utilising the e-commerce platforms for retail activities. Other than the economic features of the market, the Furman Report also suggested behaviours of incumbent e-commerce platforms lead to persistent concentration of the market by a few large incumbent firms. The digital market characteristics of e-commerce platforms will be further elaborated in Part III of this paper.

³³ *ibid*, 13.

³⁴ *ibid*, 16.

³⁵ Stigler Report 2019 (n 4).

³⁶ Lancieri and Sakowski (n 24) , 106.

³⁷ Furman Report 2019 (n 3), 150.

³⁸ Stigler Report 2019 (n 4).

³⁹ Michael L. Katz and Carl Shapiro, 'Systems Competition and Network Effects' (1994) 8 (2) *Journal of Economic Perspectives*, 94 <<https://www.aeaweb.org/articles/pdf/doi/10.1257/jep.8.2.93>> accessed 23 March 2023.

B. E-Commerce Platforms Market In Malaysia

Having understood the concept of e-commerce platforms, it is pertinent to note that Southeast Asia has been one of the world's top markets for online shopping in recent years.⁴⁰ However, unlike the United States and the European Union which are dominated by Amazon and eBay, the largest players in Southeast Asia are foreign investments with local companies set up such as Shopee based in Singapore. Lazada, part of the Alibaba Group, is also based in Singapore, and Tokopedia is a local Indonesian start-up exclusively for Indonesia. All the local alternatives are online e-commerce platforms selling a diverse range of goods and services similar to the Amazon business model.⁴¹ The different dominating players in the market indicate the limitations to the global reach which e-commerce platforms were expected to have due to their gatekeeper position. Benefiting from a large accumulation of data, costs advantages from its scale of operations within the built ecosystem of e-commerce platforms and the scope of its users-based, incumbent platforms create large barriers to entry in its gatekeeper position.⁴² A new entrant generally cannot overcome the cost advantage, network effects of the installed base within the incumbent ecosystem, economies of scale and economies of scope as compared to the incumbent e-commerce platforms effectively in a short period. To this end, the competitive process shifts from competition *in* the market to competition *for* the market. Based on the 2018 Ecinsider analysis of 12.12 sales in 2017, the difference between Gross Merchandise Volume (GMV) and estimate Average Order Volume (AOV), is around 14.3% share per traffic, around 261,704 items flowing from China to Malaysia (direct-to-consumers) during 12.12.2017.⁴³ Besides that, according to logistic insider information to Ecinsider, Malaysia and Indonesia are the top two, around 35% and 33% each on cross-border products flowing from China to Malaysia, though the actual scenario might be much higher based on the simulated GMV and AOV, considering it also excluded made-in-China products imported by local merchants and traders.⁴⁴

According to Diagram 1 below, Shopee is leading in terms of popularity with 343 million monthly visits in Southeast Asia with Indonesia taking up 27% of Shopee's traffic in the region. Lazada, on the other hand, raked in 128

⁴⁰ Kimura and Chen (n 2), 1.

⁴¹ 'Online Marketplaces in Southeast Asia: A Unique Region for Ecommerce' (*Webretailer*, 30 January 2023) <<https://www.webretailer.com/marketplaces-worldwide/online-marketplaces-southeast-asia/>> accessed 26 March 2023.

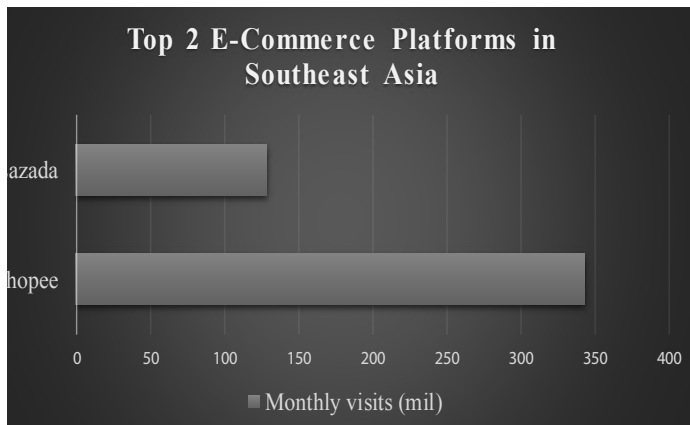
⁴² Stigler Report 2019 (n 4) 13-14.

⁴³ 'What is the Volume of China's Direct Imports to Malaysia via E-commerce?' (*Ecinsider*, 15 May 2018) <<https://www.ecinsider.my/2018/05/volume-of-china-direct-imports-to-malaysia-ecommerce.html>> accessed 26 March 2023.

⁴⁴ *ibid*.

million monthly visits in Southeast Asia with the Philippines, Thailand and Indonesia taking up a larger percentage of the total traffic at 25%, 23% and 20%.⁴⁵ Neither Amazon nor eBay are considered competitors to Shopee and Lazada in the Southeast Asia e-commerce platforms market. This raises doubt about the global reach that e-commerce platforms have, which Diagram 1 indicates to be a regional issue with different incumbent entries affecting the market of e-commerce in the region.

Diagram 1: Monthly Visit of Lazada and Shopee in 2022



Source: Web retailer⁴⁶

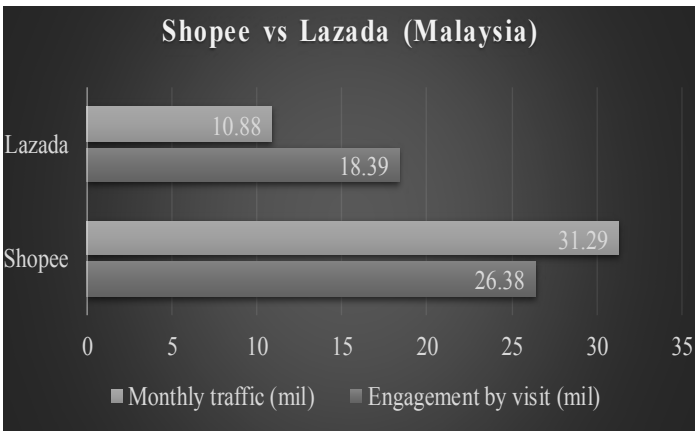
Diagram 1 above compares the popularity of the top 2 e-commerce platforms in the Southeast Asia region in terms of monthly visits measured in million per unit. It indicates that in the Southeast Asia region, Shopee is unrivalled in terms of popularity by monthly clicks as compared to its closest rival, Lazada, having almost 3 times as many monthly visits.

In the Malaysian context, the major players in the e-commerce platforms market are Shopee and Lazada. According to a study conducted by CED Commerce in the second quarter of 2022, Shopee and Lazada lead with 26.38 million and 18.39 million engagements by visits respectively.⁴⁷ These are followed by Lelong, Zalora and GoShop. Lelong is in the niche market of C2Csecond-hand goods and based on the monthly traffic, Lelong is far behind

⁴⁵ Webretailer (n 41).
⁴⁶ *ibid*.
⁴⁷ Shruti Tiwari, ‘Top 10 eCommerce sites in Malaysia!’ (CEDCommerce, 26 October 2022) <<https://cedcommerce.com/blog/top-e-commerce-sites-malaysia/>> accessed 26 March 2023 (Tiwari).

the dominant e-commerce platforms. Similarly, Zalora is niched in clothing, a market which is not fully integrated with multi-category marketplaces like Shopee and Lazada. On the other hand, GoShop is an e-commerce arm of a leading multi-platform media and entertainment company, Astro Malaysia Holdings Berhad, with the benefit of reaching out to end-customers other ways via Astro’s other platforms like TV marketing (i.e., Go Shop 24/7 live shopping channel) and the option of shopping over the phone. These additional functions of GoShop cast a wider net on its audience base to include those that are not technologically savvy.⁴⁸ Despite these competitors, the ranking of Shopee and Lazada in the top 2 spots is consistent with the study of monthly traffic by Marketing Signal Lab in March 2022, showing Lazada with 31.29 and Shopee with 10.88 million monthly traffic respectively.⁴⁹ These are followed by Zalora, GoShop and Qoo10 in the top 5 ranked e-commerce sites with the most online traffic.

Diagram 2: Monthly Traffic and Engagement by Visits of Lazada and Shopee in 2022



Source: CEDC commerce50 and Marketing Signal Lab⁵¹

Diagram 2 above compares the popularity of Shopee and Lazada in Malaysia in terms of monthly traffic and engagement by visits measured in

⁴⁸ Elaine Boey, ‘E-Commerce – Astro’s Go Shop Meets Soaring Demand’ (*The Edge Markets*, Malaysia, 17 August 2020) <<https://www.theedgemarkets.com/article/ecommerce-astro-go-shop-meets-soaring-demand>> accessed 14 April 2023.

⁴⁹ ‘Top 20 E-Commerce Site in Malaysia 2023’ (Marketing Signal Lab, 7 March 2022) <<https://marketingsignallab.com/top-e-commerce-sites-in-malaysia/>> accessed 26 March 2023.

⁵⁰ Tiwari (n 47).

⁵¹ Marketing Signal Lab (n 49).

million per unit. In terms of monthly traffic, Shopee leads with 3 times as many monthly visits as Lazada. In terms of engagement by visits, Shopee is also leading although not in the same magnitude as monthly visits, with 2 times more engagement by visit than Lazada. This comparison in Diagram 2 shows that Shopee is leading the e-commerce platforms market in terms of popularity. Other than this, it also shows that monthly visits do not directly correlate with engagement by visit. Lazada has a higher engagement by visits as compared to the expected engagement by visit based on the monthly traffic while in contrast, Shopee has high monthly traffic and slightly less engagement by visit.

Another study conducted by the Statista Research Department on online traffic based on the number of clicks, however, revealed another rival platform, PG Mall in the second highest spot behind Shopee.⁵² It reported 54,933.3 thousand clicks of online traffic while Lazada had only 23,830 thousand clicks of online traffic and PG Mall had 22,153.3 thousand clicks of online traffic.⁵³ This was followed by Zalora and GoShop although as identified above, Zalora is a more niche segment of the e-commerce market specialising in fashion and clothing and GoShop is a different segment of the e-commerce market concentrating on TV marketing and local products. This indicates the variety of preferences of users and the different types of players in the e-commerce platforms market in Malaysia. Consistently, an iPrice.my's study in the 2nd quarter of 2022 shows Shopee leading the rank of e-commerce players in Malaysia followed by PG Mall, Lazada, Zalora and Applecrum by.⁵⁴ In this regard, PG Mall is like GoShop in terms of scale and size as well as its additional multi-platform media platforms specialising on TV marketing. Applecrum by is like Zalora, in that it is a niche segment of the e-commerce market, specialising in baby products. While competitive, in terms of the economic scale of PG Mall, Zalora and Applecrum by respectively, they are considerably smaller as compared to major incumbents, Shopee and Lazada. Having said this, it is prudent to note that monthly visits and online traffic only infer the popularity of the e-commerce platforms and cannot reasonably indicate market share and size based on economies of scale, scope, network effects and the role of data.

The above shows that the ranking of e-commerce platforms differs based on the variables used to measure the popularity based on monthly visits and traffic and users based. It also noted that different players have different

⁵² 'Most Visited E-commerce Sites in Malaysia Q2 2022, by Monthly Traffic ' (Statista Research Department, 23 November 2022) <<https://www.statista.com/statistics/869640/malaysia-top-10-e-commerce-sites/>> accessed 26 March 2023.

⁵³ *ibid.*

⁵⁴ 'The Map of E-commerce in Malaysia: Mapping Malaysia's Leading E-Commerce Players' (Iprice Insights, 2022) <<https://iprice.my/insights/mapofecommerce/en/>> accessed 26 March 2023.

users based on the different markets depending on the geographical location. Regardless of the variables, Shopee remains consistent in its ranking. This indicates its large market penetration based on popularity which may infer its dominance in both Southeast Asia and Malaysian. This also indicates the rapid progression of e-commerce platforms, considering that Shopee was only launched in 2015 but is already a leading e-Commerce site in Malaysia⁵⁵ and Southeast Asia.⁵⁶ Its parent company Sea Limited also raked in \$7,463,173 of revenue in e-commerce and other services in 2022 which is almost double that of 2021 which was reported at \$4,564,617 and constituting 60% of Sea Limited's total revenue in 2022.⁵⁷ Further, the analysis of the top 5 leading e-commerce sites in Malaysia, are noted to be e-commerce platforms, wherein platforms that sell all categories of products are leading the race and unrivalled niche platforms. This indicates that the competitive dynamic in the e-commerce platforms market is largely based on platform-based rivalry where rival platforms compete to provide similar but varying quality of services to customers, the distinguishing factors being the business model and the benefits offered to consumers. The competition dynamic and business model of e-commerce platforms will be further elaborated in Part III of this paper.

III. COMPETITION DYNAMIC IN THE MALAYSIAN E-COMMERCE PLATFORMS MARKET

A. Digital Market Characteristics

As identified in Part I, the digital market characteristics of e-commerce platforms play a significant role in distinguishing the digital market from conventional brick-and-mortar markets. Rather than a new feature which has not been identified in the conventional brick-and-mortar markets, previous studies have suggested that it is the combination of the characteristics usually found in isolation in traditional markets which makes digital markets distinguishable.⁵⁸ The common denominators in this regard are identified to be strong network effects, concentrated multi-sided platforms, extreme economies of scale and scope, low marginal costs, and high data returns.⁵⁹

One of the most important characteristics of digital platforms is the unprecedented strong network effects that they have over traditional markets. While there is a certain level of network effects in traditional markets, it is unrivalled by the scale which digital platforms have achieved in the past decade. When

⁵⁵ Tiwari (n 47).

⁵⁶ Kimura and Chen (n 2).

⁵⁷ Sea Limited (2022) *FY 2022 Annual Report* 92 <<https://www.sea.com/investor/annualreports>> 14 April 2023.

⁵⁸ Lancieri and Sakowski (n 24), 9.

⁵⁹ *ibid*, 15.

assessing network effects in traditional markets, Whish and Bailey exemplified this by referring to how the original 100 Telcom subscribers in a telecommunications network can contact an additional new subscriber without incurring any additional costs.⁶⁰ In this example itself, it is noted that the lack of interoperability indicates the potential increase in network effects. In the context of two-sided markets, another reference was made to the newspaper network wherein publishers with a higher number of readers have a higher ability to sell advertising space.⁶¹ In the context of digital platforms, which have an unprecedented global reach that could circumvent the limitations of geographical locations, the online channel may be deemed to be akin to the Silk Road, connecting users from both sides of the market from all over the world. Certainly, network effects have positive effects in the sense that consumers can benefit more as the platform becomes more popular. The network effects are also justified from a human behavioural perspective as sellers would not be incentivised to participate in an e-commerce platform if the platform does not offer a large-scale customer base and buyers would not be attracted to an e-commerce platform that offers limited options of products and services sold.

It was also argued that network effects give rise to possible dominant positions in the market which could lead to anti-competitive mergers or collusion. This is concerning considering that in the e-commerce ecosystem, the participating entities include suppliers/sellers, advertisers, payment gateway services providers and delivery and logistics partners as is also evident from the rise of Amazon in the US and EU markets.⁶² Zhu and Iansiti agreed that rapid rise and dominance in the market in a short period may strengthen large incumbents and weaken entrants which do not have similar installed network bases, to begin with, or which could be acquired quickly and cost-effectively.⁶³ Over time, these large incumbent platforms may become incontestable, the markets become impossible to enter by meritorious rivals and nascent entrants and lock-in effects wherein consumers face high switching costs that deter them from utilising other rival platforms for the sale and purchase of goods and services are consequently increased.⁶⁴

⁶⁰ Whish and Bailey (n 27), 11.

⁶¹ *ibid*, 11.

⁶² OECD, 'Rethinking Antitrust Tools for Multi-Sided Platforms', (2018) 57 <<http://www.oecd.org/competition/rethinking-antitrust-tools-for-multi-sided-platforms.htm>> accessed 23 March 2023.

⁶³ Feng Zhu and Marco Iansiti, 'Dynamics of Platform Competition: Exploring the Role of Installed Base, Platform Quality and Consumer Expectations', Harvard Business School Working Paper Series No. 08-031 (November 2007), 2 <https://www.hbs.edu/ris/Publication%20Files/08-031_18af2edb-02de-45e6-b0ee-e10de3c99ef7.pdf> accessed 27 March 2023.

⁶⁴ Joseph Farrell and Paul Klemperer, 'Coordination and Lock-In: Competition with Switching Costs and Network Effects' (2007) 3 1967 *Handbook of Industrial Organization*, 89 <[https://doi.org/10.1016/S1573-448X\(06\)03031-7](https://doi.org/10.1016/S1573-448X(06)03031-7)> accessed 27 March 2023 (Farrell and Klemperer).

Another key characteristic of markets with dominant digital platforms is the extremely high economies of scale and economies of scope.⁶⁵ E-commerce platforms connect business users and consumer users in a multi-sided market, including buyers, sellers, and payment service providers.⁶⁶ In effect, large e-commerce platforms with a high accumulation of data can better serve other users as compared to smaller platforms. With low marginal costs,⁶⁷ the platforms can also, amongst others, offer additional benefits to users with complementary services or products of higher quality in adjacent markets.⁶⁸ The positive relationship of economies of scope with the amount of data indicates that dominant e-commerce platforms can enter new or adjacent markets with a competitive edge as compared to other rivals.⁶⁹ The quantity of users joining or enlarging the network of an e-commerce platform positively affects the value of the e-commerce platform to a user.⁷⁰ This leads to high data returns as the more users are on a platform and the more frequent the utilisation of these platforms, the more consumer data can be collected as leverage by platforms.

Considering the comparably strong network effects and low marginal and distribution costs (as compared to traditional markets), large incumbent platforms are in the position to offer a variety of higher quality products and services at lower costs compared to smaller rivals or nascent firms. There are apparent positive benefits which can arise when consumers can enjoy more benefits at lower costs. However, this could lead to increased market power which will consequently drive smaller rivals and nascent firms from entering the market.⁷¹ Consistently, Evans identified this as a cost advantage of incumbency which constitutes large entry barriers that discouraged new entrants, which do not have the luxury of scale and data, from entering the market.⁷² Further, reports suggest that left unregulated, large incumbent platforms entering new or adjacent markets with a competitive edge may also end up monopolising these markets as well.⁷³ With the combination of strong network effects and high economies of scale and scope together with high data returns and

⁶⁵ Lancieri and Sakowski (n 24), 16.

⁶⁶ OECD, 'Rethinking Antitrust Tools for Multi-sided Platforms', (2018) 10 <<http://www.oecd.org/competition/rethinking-antitrust-tools-for-multi-sided-platforms.htm>> accessed 23 March 2023.

⁶⁷ Farrell and Klemperer (n 64), 22.

⁶⁸ Stigler Report 2019 (n 4), 13–14.

⁶⁹ Lancieri and Sakowski (n 24), 16.

⁷⁰ Katz and Shapiro (n 39).

⁷¹ Lina M Khan, 'Amazon's Antitrust Paradox' (2017) 126 710 *The Yale Law Journal*, 786 <https://www.yalelawjournal.org/pdf/e.710.Khan.805_zuvfyeyh.pdf> accessed 23 March 2023 (Khan).

⁷² David Evans, 'The antitrust economics of multi-sided platform markets' (2003) 20:325 325 *Yale Journal on Regulation*, 373 <<http://hdl.handle.net/20.500.13051/8032>> accessed 23 March 2003.

⁷³ Lancieri and Sakowski (n 24), 31.

better insights of consumers' behavioural biases and preferences, this phenomenon is not impossible.

B. Platforms With Many Hats

One of the key characteristics of e-commerce platforms that leads to a market concentrated with dominant platforms is its ability to leverage the multi-faceted nature of the market with a diversified business model that extends beyond e-commerce to serve all users not limited to end-user customers. For example, Amazon which started in the 1990s has diversified its model aggressively to become a titan today in more than one area⁷⁴ as illustrated in Diagram 3 below.

Diagram 3: Amazon Business Model



Source: Lina M. Khan, *Amazon's Antitrust Paradox* (2017)⁷⁵

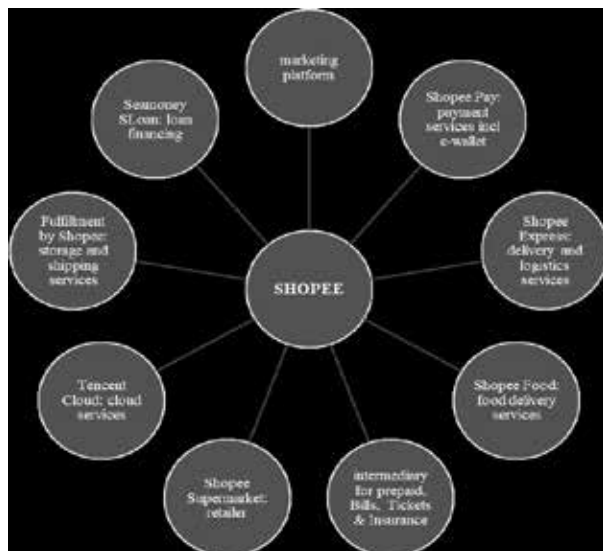
Based on Diagram 3, Amazon has diversified its business in multiple markets, in that it also operates in the delivery and logistics network, payment service, credit lender, auction home, book publisher, television and film producer, fashion designer industries and more. This is consistent with Gennaro Cuofano's analysis of Amazon's infrastructure in 2023, showing Amazon's business model supported by aggressive mergers and acquisitions of companies including Alexa Internet, AWS, Blink, Book Depository, IMDb, MGM

⁷⁴ Khan (n 71), 746-754.

⁷⁵ *ibid.*

Holdings, PillPack, Twitch Interactive, and recently Whole Foods Market⁷⁶. Despite this, Amazon's online stores remain the main source of revenue for the company, with \$220 billion of revenue in 2022, which, despite a slight fall in revenue projection between 2021 and 2022, remains leaps and bounds above Amazon's other revenue streams such as third-party seller services with revenue of \$117.71 billion and AWS with revenue of \$80 billion.⁷⁷ As for the leading local alternative for Malaysia and Southeast Asia, namely Shopee, Cuofano views Shopee's business model to be a typical marketplace revenue-based business model.⁷⁸ Starting as a C2C business model in 2015, Shopee established Shopee Mall for a B2C business model that has now pivoted to a B2B2C hybrid business model. From an analysis of Shopee's platform, it is noted that Shopee is involved in other businesses beyond e-commerce as well, with its involvement in amongst others, Shopee Pay, Shopee Express and recently, Tencent Cloud. Diagram 4 below illustrates Shopee's many hats in this regard based on the analysis of Shopee's function in the Malaysian market. Like Amazon, Shopee also wears more than one hat. Despite the many hats that Shopee wears, it has a different business model from Amazon, in that its revenue streams are primarily derived from the platform itself.

Diagram 4: Shopee Business Model



⁷⁶ *ibid.*

⁷⁷ *ibid.*

⁷⁸ Gennaro Cuofano, 'How Does Shopee Make Money? The Shopee Business Model in A Nutshell' (*FourWeekMBA*, 19 August 2021) <<https://fourweekmba.com/shopee-business-model/>> accessed 26 March 2023.

According to Cuofano, Shopee has a typical marketplace-revenue-based business model wherein it charges sellers a market place commission fee and a transaction fee for every sale made on the platform.⁷⁹ Other revenue streams that Shopee has created include delivery and restaurant commission fees for sellers using Shopee's food delivery services, Shopee Food, payment fees for sellers accepting payments via Shopee's digital wallet, Shopee Pay, extra fees for the use of Shopee's storage and shipping services via Fulfilment by Shopee and advertising fees for sellers opting to increase product visibility in Shopee's searches and news feed. Further, Shopee has a SeaMoney SLoan scheme in collaboration with SeaMoney in a loan financing scheme with an interest rate of 18% per annum (the interest rate of a typical unsecured money lending agreement with an interest rate of 18% per annum⁸⁰).⁸¹

It is pertinent to note that Shopee is merely a subsidiary of Sea Limited, which is a public company trading under the New York Stock Exchange (NYSE) and helming 2 other companies which are leading performers in their respective markets, namely Garena (its online games development and publishing arm) and SeaMoney (its digital payments and financial services arm). According to Sea Limited's Q4 2022 results, Shopee has a GAAP (Generally Accepted Accounting Principles) Revenue of \$2.1 billion with a projection of 42.3% increase of GAAP revenue year-on-year based on the constant currency assumptions and adjusted EBITDA (Earnings before interest, taxes, depreciation and amortization) of \$195.1 million, with Asia markets recorded adjusted EBITDA of US\$320.0 million and other markets recorded adjusted EBITDA at \$(123.9) million.⁸² This clearly shows Sea Limited's potential to further expand and cement its dominant position in the market, beyond Southeast Asia. Sea Limited's total GAAP Revenue of \$3.5 billion shows that Shopee is a significant revenue stream for the holding company only closely followed suit by Garena with a GAAP Revenue of \$948.9 million and SeaMoney while GAAP Revenue at only \$380.2 million has shown the progression of 92.5%.⁸³ Sea Limited still dwarfs in comparison to Amazon. However, considering Amazon's lower-margin and loss-leading strategies, Shopee may still be very well on its path to being the 'next Amazon'.

Another leading e-commerce platform that ought to be analysed is Lazada. Established in Singapore as well, Lazada was launched in 2012 to

⁷⁹ *ibid.*

⁸⁰ 'Moneylenders Act 1951', Act 400, s 45 (Malaysia).

⁸¹ 'SeaMoney SLoan Terms of Service ' (Shopee, 2022) <<https://help.shopee.com.my/portal/article/105073?previousPage=other%20articles>> accessed 28 March 2023.

⁸² 'Q4 2022 Earnings Update ' (Sea Limited Press Release, 2022) 2-3 <<https://www.sea.com/investor/home>> accessed 28 March 2023.

⁸³ *ibid.*, 2-3.

take advantage of Amazon's lack of presence in the Southeast Asia region. However, Lazada employs the hybrid B2B2C model in a typical marketplace revenue-based model.⁸⁴ When Southeast Asian consumers still preferred traditional brick-and-mortar markets, Lazada gained the support of Alibaba Group and continued its global expansion strategy. Lazada was the most popular e-commerce platform in Southeast Asia until dethroned by Shopee. Despite this, Lazada remains one of the top two leading e-commerce platforms in Southeast Asia. In Diagram 5 below, Lazada is also clearly involved in more than 1 business, including Lazada Wallet, Laz Global, Lazada Delivery and recently, Lazada Loans.

Diagram 5: Lazada Business Model



According to Cuofano (2022), Lazada has several revenue streams including via Lazada Marketplace (sales fee of approximately 1 – 4%), LazMall (transaction commission of up to 5%), Top Up & eStore, Grocery delivery services, Live Up membership program and Fintech.⁸⁵ Due to the many roles that Lazada plays, Cuofano in this regard indicates that Lazada's revenue streams come from a variety of means, including its fintech business with P2P lender funding societies, LiveUp exclusive membership programme, fees and

⁸⁴ Gennaro Cuofano, 'How Does Lazada Make Money? The Lazada Business Model in a Nutshell' (FourWeekMBA, 12 October 2022) <<https://fourweekmba.com/how-does-lazada-make-money/>> accessed 29 March 2023.

⁸⁵ *ibid.*

commissions from grocery delivery, 1-4% sales fees for transactions under Lazada Marketplace, transaction commissions up to 5% for transactions under LazMall and Top Up & eStore services.⁸⁶

The potential benefits that may arise from e-commerce are promising, however, it is prudent to take note of the consumer harms that have already arisen and that may potentially arise due to the competitive dynamic of the e-commerce platforms market. As identified by many world competition authorities' reports and as exemplified by the case of Amazon, the dominance of incumbent e-commerce platforms causes susceptibility to consumer harm due to the prevalence of deceptive pricing and non-pricing practices. For one, smaller or nascent entrants may employ perverse practices and incentives to be on the same level playing field as dominant incumbent players in the market. Consequently, consumers are harmed as a result. The extent of consumer harm arising in the e-commerce platforms market due to the competitive dynamic is explored in Part IV below.

IV. CONSUMER HARMS IN THE E-COMMERCE PLATFORMS MARKET

A. Concept of Consumer Harms In E-Commerce

This part of the article endeavours to synthesise the definitions and concepts of consumer harms or detriments arising from e-commerce. It is pertinent to note that this part seeks to only identify the consumer harms caused to individual end-user customers and is not inclusive of the other participating entities in the e-commerce platforms market ecosystem.

In theorising the consumer theories of harms, Siciliani et al define consumer harms as the economic harms caused to end users or buyers of e-commerce platforms categorised into primary economic harms caused by defective goods and services and unfair contract terms, and secondary harms such as time spent to seek refund or redress.⁸⁷ This is consistent with Huffman's definition of consumer harm as the breakdown in end-user consumer transactions such as unfair or deceptive trade practices.⁸⁸ Similarly, UNCTAD views harms suffered by consumers as arising from defective or damaged goods or services or goods

⁸⁶ *ibid.*

⁸⁷ Paolo Siciliani, Christine Riefa and Harriet Gamper, 'Consumer Theories of Harm: An Economic Approach to Consumer Law Enforcement and Policy Making' (Hart Publishing, 2019) 62 (Siciliani et al).

⁸⁸ Max Huffman, 'Bridging the Divide? Theories for Integrating Competition Law and Consumer Protection', Antitrust Marathon IV6 (1) European Competition Journal, 9 <<https://core.ac.uk/download/pdf/211077645.pdf>> accessed 23 March 2023 (Huffman).

or services that do not meet the advertised quality criteria or due to delivery problems.⁸⁹

In the context of competition law, Huffman defines consumer harms as decreased output, and increased prices⁹⁰ Similarly, the Stigler Report considered the economic harms to consumers as relating to price, quality, and innovation.⁹¹ Siciliani et al identify harms as high search, high switching costs and decreased price-quality ratio arising from unfair practices which raise price and/or reduce the quality of products.⁹² This is consistent with Gaudin and Weber's definition of consumer harm to final consumers from infringements that raise prices to final consumers (either directly or indirectly in the supply chain) as the overcharge effect, the phenomenon where final consumers made purchases at inflated prices and the lost consumption effect, where final consumers who refrained from.⁹³ Consistently, the OECD⁹⁴ defines consumer detriment as follows:-

“the harm or loss that consumers experience, when for example, i) they are misled by unfair market practices into making purchases of goods or services that they would not have otherwise made, ii) they pay more than what they would have, had they been better informed, iii) they suffer from unfair contract terms or iv) the goods and services that they purchase do not conform to their expectations concerning delivery or performance. This may occur, for example, when the goods or services that they have purchased do not conform to their reasonable expectations concerning quality, performance or conditions of delivery. This also may occur if the goods or services are not provided in a timely fashion, are defective or dangerous, do not meet operational expectations or are inconsistent with information provided to the consumer before the transaction. Consumer detriment can take many forms; it can be structural in nature (i.e., affecting all consumers) or personal apparent to consumers or hidden; and financial or non-financial. Consumer detriment may be apparent to consumers immediately, may take time to emerge, or remain hidden”

⁸⁹ UNCTAD, *Consumer Protection in Electronic Commerce*, (United Nations, 2017) 11.

⁹⁰ Huffman (n 88), 10.

⁹¹ Stigler Report 2019 (n 4), 34.

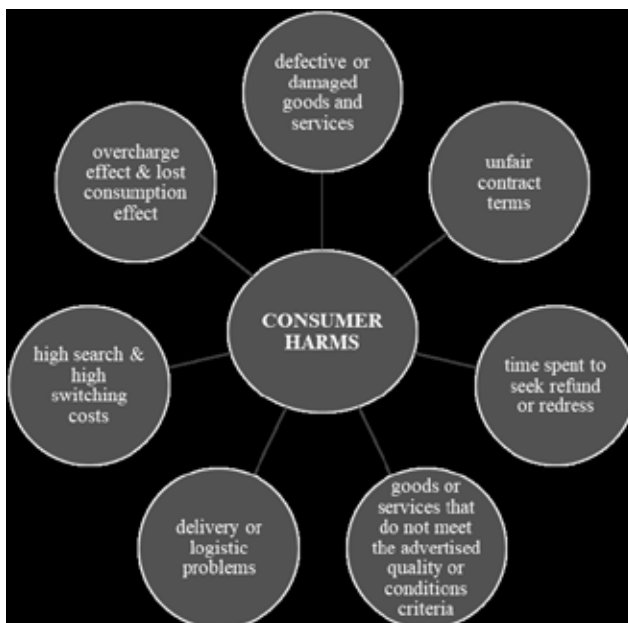
⁹² Siciliani et al (n 87), 37.

⁹³ Germain Gaudin and Franziska Weber, ‘Antitrust Damages, Consumer Harm, and Consumer Collective Redress’ (2021) *Journal of European Competition Law & Practice*, 1.

⁹⁴ OECD, *OECD Recommendation on Consumer Policy Decision Making* (OECD Committee on Consumer Policy, 2014) 3-4 <<https://www.oecd.org/sti/consumer/Toolkit-recommendation-booklet.pdf>> accessed 23 March 2023.

Notwithstanding, Shaik and Poojasree considered consumer harm beyond economic harm to include psychological harm caused to consumers.⁹⁵ This is consistent with the secondary harms which Siciliani et al also consider as the same.⁹⁶ Among others, consumer harms include defective or damaged goods and services, unfair contract terms, time spent to seek refund or redress, goods or services that do not meet the advertised quality or conditions, delivery or logistic problems, high search and high switching costs, overcharge effect, and lost consumption effect. The various consumer harms identified above are collated and presented in Diagram 6 below:

Diagram 6: Consumer Harms in E-commerce Platforms Market



Based on the foregoing, the concept of consumer harm in a competitive market is not new. While previous studies generally agreed that consumer harms are harms affecting individual end-user consumers, the list of consumer harms remains non-definitive and non-exhaustive. Considering the ever-evolving digital market of e-commerce, this is prudent to ensure that competition authorities are not confined to traditional concepts of consumer harm.

⁹⁵ Dilshad Shaik and V Poojasree, 'Consumer Protection in E-Commerce: A Legal and Compliance Framework in the Digital Market' (Proceedings of the 1st International Conference on Law and Human Rights 2020, Atlantic Press SARL, May 2021) 19. <<https://www.atlantis-press.com/proceedings/iclhr-20/125956181>> accessed 23 March 2023.

⁹⁶ Siciliani et al (n 87), 218.

B. Consumer Harms In The E-Commerce Platforms Market

As identified above, the digital market creates an unprecedented comparative advantage for large incumbent platforms. To gain a competitive advantage in the market, rival platforms and nascent entrants may sometimes resort to unfair and deceptive practices which cause various harms to the market and end-user consumers. In this regard, consumer harm arising from unfair or deceptive practices is not a new concept and is non-exhaustive. References will be made to notable examples employing pricing practices and non-pricing practices.

(a) *Non-Pricing Practices*

A notable example of unfair or deceptive non-pricing practices employed by a digital platform is the case of TripAdvisor.⁹⁷ TripAdvisor is a platform with a business model that focuses on reviews and review-based-rating of travel locations and sites. In 2014, TripAdvisor was penalised for the publication of misleading and false representations of reviews posted on its website.⁹⁸ Being a non-pricing practice, the effect of the practices does not directly cause economic harm to consumers. However, it directed visitors to the website to take decisions which they would not have taken without the false and misleading reviews and ratings published by TripAdvisor. Consequently, visitors of the websites which relied on the reviews and ratings system had to incur economic and psychological harm when realising that the reviews and ratings were far-fetched. When investigated, it was discovered that TripAdvisor did not verify the authenticity of reviews left on its website, thereby indicating that the rating system which is based on users' reviews is neither true nor accurate. Due to this, visitors of the website which relied on the publications of TripAdvisor with great trust and confidence face detriment from the misrepresentations.

An analysis of the TripAdvisor case suggests at first glance that the platform was not particularly directly responsible for the unfair or deceptive practices, as there were no positive actions to cause the unfair or deceptive practices. However, the Italian Competition Authority has appeared to consider the omission to review the authenticity and veracity of each review before publishing to be a factor in finding the platform liable for unfair commercial practices.

⁹⁷ The Italian Competition Authority delivered the decisions against Trip Advisor Media Group, i.e., Trip Advisor LLC which manages the group's website that published misleading reviews and TripAdvisor Italy S.r.l. It was found that the unfair practices of TripAdvisor are an infringement of arts 20, 21 and 22 of the Italian Consumer Code (Luca Biffaro, 'Unfair Commercial Practices and Online Consumer Reviews: the Italian Tripadvisor Case' (2015), 2 (1) Italian Antitrust Review 181-185 <<http://a-p-p-review.com/article/view/11387>> accessed 23 March 2023).

⁹⁸ *ibid.*

Certainly, the fact that the reviews and ratings published by TripAdvisor on its website are strong determinants in influencing customers' decisions was weighed into the deliberation. Consequently, the Italian Competition Authority issued a prohibitive decision against TripAdvisor.

Like the case of TripAdvisor, there have also been complaints of fake high ratings and reviews on e-commerce platforms which are being employed by firms as a marketing strategy.⁹⁹ According to the report by The Star, along with the rise of e-commerce platforms are the rise of the industry for paid fake reviews supplying inauthentic positive reviews for businesses or fictional businesses on relevant platforms. In fact, it has been reported that some people are being paid as much as RM 4,700 to write reviews that create a facade of the sellers' purported legitimacy and authenticity. Aside from that, the Ministry of Domestic Trade and Cost of Living (KPDN), previously known as the Ministry of Domestic Trade and Consumer Affairs (KPDNHEP), also reported that another strategy employed by sellers is misleading and fake discounts offered during platforms' sales period or special discount days, such as the 11.11 sales event.¹⁰⁰

Furthermore, Malaysia's National Consumer Complaints Centre reported that the most complaints it received were regarding scams in the e-commerce sector.¹⁰¹ This is also consistent with the e-commerce survey conducted by the Malaysian Communications and Multimedia Commission (MCMC) in 2018 which identifies that out of the 11.6% of respondent shoppers that experienced fraudulent activities on e-commerce platforms, 75.5% of respondent shoppers did not receive goods that they have purchased via e-commerce platforms and 32.2% have suffered financial frauds.¹⁰² Mordor Intelligence reported that the Malaysian Commercial Crime Investigation Department (CCID) recorded an increase in e-commerce fraud cases from 3,318 cases in 2018 (amounting to RM 22.39 million loss) to 8,162 cases (amounting to RM57.73 million loss) in October 2021.¹⁰³

⁹⁹ Editorial, 'Online Platforms Failing to Filter out Fake Reviews, says Consumer Group' *The Star* (Malaysia, 30 July 2022) <<https://www.thestar.com.my/tech/tech-news/2022/07/30/online-platforms-failing-to-filter-out-fake-reviews-says-consumer-group>> accessed 29 March 2023.

¹⁰⁰ Lydia Nathan, 'Complaints on Online Transactions Rise 112.5%' *The Malaysian Reserve* (Malaysia, 23 February 2021) <<https://themalaysianreserve.com/2021/02/23/complaints-on-online-transactions-rise-112-5/>> accessed 29 March 2023 (Nathan).

¹⁰¹ Suzanna Pillay, 'Online Shoppers in a Web of Scammers' *New Straits Times* (Malaysia, 4 June 2017) <<https://www.nst.com.my/news/exclusive/2017/06/245502/online-shoppers-web-scammers>> accessed 29 March 2023.

¹⁰² MCMC, *Chapter 6: Quality Assurance and Consumer Protection*, (2019), 35.

¹⁰³ 'Malaysia E-Commerce Market - Growth, Trends, Covid-19 Impact and Forecasts (2023-2028)' (Mordor Intelligence, 2023) <<https://www.mordorintelligence.com/industry-reports/malaysia-ecommerce-market>> accessed 29 March 2023.

(b) Pricing Practices

A notable example of unfair or deceptive pricing practices employed by a digital platform is the Amazon below-cost pricing e-books case. The case of Amazon's predatory pricing in an aim to drive rival competitors out of business has been extensively explored. Yet the problems arising in the case have yet to be rectified. When Amazon entered the e-book retail market in late 2007, it challenged competitors with significantly lower prices of bestseller e-books to the point that it effectively pushed other rivals out of the market when it finally dominated the e-book retail market in 2009. When anti-competitive conduct was alleged against Amazon, the United States competition authorities however adjudged that Amazon's strategy was loss-leading and not a violation of the antitrust law (competition law).¹⁰⁴ In hindsight, scholars have argued that the existing recoupment analysis carried out by authorities failed to identify that Amazon could easily recoup its losses through other business channels in the multi-sided e-commerce platforms market. Considering the features of the digital market of e-commerce platforms and how platforms often wear more than one hat, it is unfortunate that the competition authorities failed to appreciate that Amazon's unfair practice and its willingness to sustain losses have a much higher risk of leading to a monopoly.¹⁰⁵

While not entirely similar, e-commerce platforms in Malaysia also face abusive pricing practices, including predatory pricing practices which are aimed to drive competitors out of business.¹⁰⁶ In Malaysia, the predatory pricing strategies employed by local leading e-commerce platforms include amongst others, 'yo-yo pricing'¹⁰⁷ which is a tactical strategy where sellers artificially inflate the price of products for a period to confuse consumers' perceptions about the real value of products. This tactic is often employed by unscrupulous sellers before the sales period such as 11:11 sales like Black Friday sales in the West. Other financial incentives often employed to increase lock-in effects on consumers also includes discounts, cashback schemes, reward programmes, free shipping, voucher rebate and subscription-based benefits.¹⁰⁸ Considering Shopee's GAAP Revenue in Q4 2022 and the high expenses shouldered by the platform, there is a possibility that Shopee is currently employing a loss-leading price strategy to attract more customers and lock in current customers.

¹⁰⁴ Khan (n 71), 756–759.

¹⁰⁵ Stigler Report 2019 (n 4), 12.

¹⁰⁶ Nathan (n 100).

¹⁰⁷ Joel Prashant and Foo Jia Yi, 'Fake and Misleading Discounts from Online Shopping Platforms and Consumer Protection in Malaysia' (Lexology, December 2020) 1 <<https://www.lexology.com/library/detail.aspx?g=20ffd633-3f23-4e3e-b710-b13f2e62ea4e>> accessed 23 March 2023.

¹⁰⁸ CCCS, *E-commerce Platforms Market Study: Findings and Recommendations* (September 2020), 100.

However, this is one of the many pricing strategies used, since e-commerce platforms' sales strategies differ from one sale to another and given the dynamic and constantly evolving nature of these strategies, many other anti-competitive pricing strategies were used to lock in business users and consumers in the platforms which directly preclude competition and harm consumers.

V. CONCLUSION

The e-commerce platforms market in Malaysia and Southeast Asia is not entirely dissimilar to that of the United States or the European Union. Based on the foregoing discussion, it is apparent that there is a certain level of market concentration in the e-commerce platforms market by several large incumbent firms. Considering the rapid progression and aggressive expansion of these platforms in a short period, a rising concern that this will eventually lead to the tipping effect of the market. The figures reflected in the financial reports for these platforms in recent years have certainly been promising to indicate the market shares of these platforms in the market, although further research is necessary to substantiate the same.

Crucially, this paper seeks to identify the consumer harms arising from the competitive dynamic in the e-commerce platforms market. Previous studies on e-commerce platforms have identified and agreed on the unique feature of the digital markets which show a dynamic combination of characteristics which are usually found in isolation in the traditional markets. Some of the common denominators identified are the strong network effects, high economies of scale and economies of scope, all of which play a significant role in the rise of e-commerce platforms in the market. In the present competitive dynamic of the e-commerce platforms market in Malaysia, each platform will make all efforts to gain a competitive advantage in the market. Eventually, this leads to marketing strategies be it pricing strategies or non-pricing strategies which gives rise to various consumer harms. In fact, the increasing causes of complaints from e-commerce consumers in Malaysia, albeit considering the lack of better statistics and data to substantiate the same.

Based on the foregoing conclusions, it is certainly timely and prudent for the Malaysian competition authorities to recognise the dynamic nature and combination characteristics of the e-commerce platforms market to provide an analysis of the new consumer harms arising thereto, departing from the conventional competition law analysis. Armed with this knowledge, the effectiveness of the current legal framework in regulating the e-commerce platforms market should be reviewed to reflect the real nature and dynamic competition in the e-commerce platforms market to ensure healthy competition, encourages the entry of meritorious competitors, and unlock the full potential of the innovative e-commerce platforms and its benefit.