

**Transcript:** Platform Futures: Ex Post and Ex Ante Tools in the Regulatory Toolkit

**Date:** July 21, 2022

**Featuring:**

Panelists

- James Meese, Senior Lecturer, RMIT University
- Haksoo Ko, Professor of Law, Seoul National University School of Law
- Karen Melchior, Member of European Parliament.
- Professor Haiqing Yu, RMIT University

Facilitators

- Malavika Jayaram, Executive Director, Digital Asia Hub
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**Length:** 1:27:05

**Synopsis:** As society becomes increasingly datafied and platformised, regulators the world over are keen to address unequal bargaining power, and to promote fairer, healthier digital spaces. Australia's News Media and Digital Platforms Mandatory Bargaining Code (NMBC) was one of the first attempts to query the fundamental business model of news media, and it inspired other governments to tackle gatekeepers and structural imbalances. Within the Asia-Pacific region, South Korea and China have launched antitrust investigations across industries. The European Union put forward the Digital Services Act (DSA) and Digital Markets Act (DMA), proposing ex ante regulatory tools that go beyond traditional (ex post) competition/antitrust law. This panel brings together experts from Australia, the European Commission, Korea and China to discuss diverse regulatory approaches, and their implications for innovation and consumer welfare, and the future of digital platforms.

**Video Link:** <https://www.youtube.com/watch?v=7ST7Mf3vVMo>

**Dev Lewis:** I think we'll start. Hello, everybody. Good afternoon. Thank you so much for joining. I know it's been a long couple of days, so many wonderful sessions that ADM+S has curated for us. And I applaud your stamina through this time, and I hope the coffee and tea and snacks have fueled you up for the end of the day and the end of the session.

Before I go on, I just want to thank our hosts here, the ADM+S center, and Julianne and the team for putting together this wonderful event. It's been a learning experience meeting people, getting so many ideas, and cross pollinating different disciplines. I think it's been wonderful. And I just want to acknowledge that.

My name is Dev, I work with the Digital Asia Hub. We're a think tank based in Hong Kong, but our mandate is regional. We really look at the growth of the internet and tech sector across Asia and its implications for society and for economies around the world. And we're really excited to be here together with my colleague Malavika, who you met yesterday. We started a program called the Platform Futures. And this initiative, we started in 2021, to convene a network of academics and experts to create a space for dialogue and opportunities and challenges around the governance of tech platforms in the Asia Pacific region. We're lucky to be joined by three of the experts of our network: two onstage, Haksoo and James, and also Julian, here with us. And we're really excited to sort of build out this program with them together.

We've curated a program of events, case studies, and multimedia looking at tech platforms in Asia. In 2021, we published a series called the Small Books for Big Platforms, curating critical insights into the multiplicity potentials and ramifications of a platform society. We invite you to visit our website, Platform Futures dot Asia, to browse through all this content, also to connect and follow us as we put out more content and events over the coming months.

So bringing it back to to this stage, and to this panel discussion, thinking that in the last couple of days through this ADM+S symposium, we've looked at automated decision making systems, we've looked at algorithmic cultures, recommendation algorithms, reputation scoring, so many different sort of decision making systems that exist. And I think it's, it's important to recognize that, you know, all of these interactions, these systems exist within these large platforms that we use every day. On a day-to-day basis, whether it's the news that we consume, the entertainment that we use to communicate with our friends, and of course collaboration, more and more today, as we juggle hybrid work, offline and online work mode. And platforms are really sort of a central space now where we interact not just with other humans, but also with algorithms and with these systems. Here in this initiative, we want to look at platforms

and spaces in the making. So we're interested in mapping the different actors, stakeholders, communities, and the users who make the platforms and create the conditions for their emergence and adoption. In this session, today, we're sort of zooming out slightly. So while we've had two days of really getting into the granular detail behind the data points and the algorithms and how they work, we're sort of zooming out to look at the sort of changing power dynamics and structures globally that are happening, looking at how governments in particular are training their attention to these platforms, and addressing what they see as an unequal bargaining power that has implications for our rights, for democracy, and for innovation. Regulators adopt various types of approaches in trying to think about these platforms. This morning, we heard from Karen on the AI act in Europe and how regulators are thinking about AI and of course she touched on several areas where they fall short. And I think today, we also expand more into the space of regulations, and how that's evolving. And one of the regulatory approaches that we sort of pointed out that we see going around is this ex ante and ex post form of regulations.

Before we go on, maybe it's good to get a show of hands. How many people here are familiar with this idea of ex ante ex post style regulations? Great, we got a few hands, but maybe for general framing, we can sort of lay a quick context for what the ex ante and ex post framing is.

**Malavika Jayaram:** I want to hear from all these folks, so I'm going to be really quick. You can think of it as before and after, very, very fundamentally. So for those who aren't aware, ex ante is usually when you're regulating in anticipation of harms that could occur, where ex post is where some kind of harm has already been evidenced where there's been a shift in the market where you can actually look at effects. It's an effects based enforcement action after the fact. So I think part of the concern that arises now is if you're anticipating things that haven't happened yet, and you're trying to set the ground rules, how are you actually balancing competing considerations? Is that regulation pitched at the right level? Is it too onerous? Can everyone comply? So I think that's where we're framing this panel in terms of looking at the benefits and cons of both types of approaches.

**Dev Lewis:** Thanks. I'm very excited to be joined by such an array of experts from around the world, including Karen Melchior, who's joining us online and zoom. And we'll introduce Karen, right after our first speaker. So I think we'll kick it off with someone who all of you in this room are certainly very familiar with: James Meese, who is a senior lecturer here at the RMIT, where he researches Media Law and Policy. James has done a lot of space and pioneering work, I would say, in looking at

Australia's work around the media bargaining code, which has been a hot topic here in Australia. And I think it's come up also in discussions over the last couple of days. So James is going to kick us off, I think, with looking at the bargaining code where it originated from, and taking us through a timeline of developments since then. And then yeah, and then sort of tying into the ex ante approaches and global developments. So with that, I'll turn over to James.

**James Meese:** Happy to! It's quite funny that the bargaining code has taken on a particular Australian flavor, because really, as many of the people in this room would be aware, the the debates are quite old that, you know, from the 2010s onwards, and even earlier, a number of countries in Europe, from Spain to Belgium, have been trying to get Google in particular to pay for news after Google News was set up. That model of aggregation raised questions about whether or not search engines in particular could take content from new sites and use it without payment. Now, that's kind of useful background, I think, because obviously, that didn't go anywhere. It seems that particularly in the market at the time, news organizations, which were very much focused on traffic, were more interested in getting that traffic from Google, rather than pressuring them into some sort of deal. And the argument could be said that the regulatory infrastructure wasn't there to secure any payments anyway.

Now, a few years later, I guess a decade later, Australia has a digital platforms inquiry, which, you know, kicked off in the late 2010s. We asked a lot of very big questions. You know, I like I think, remember when it started, it was almost like the Australian Competition and Consumer Commission was asking the question of... "the internet, money, how does this work?" I think that's really important to frame because, you know, there is a kind of presumption that the inquiry started off with the goal of securing money from platforms for news, but in actual fact, you know, that was clearly maybe on the radar, but it really wasn't a major policy sort of narrative. My colleague Jacob, he's not here today, has a wonderful detailed study of the submissions and the kind of policy process. And we really see that this idea doesn't come into the picture. Until after the completion of the UK Cairncross review, which was a similar, slightly more targeted inquiry, which was more focused on the sustainability of journalism in the United Kingdom. They floated the idea of a code of conduct. And then surprise, surprise, the HLC thinks it's a great idea. That idea starts to be floated in stakeholder consultations later on the review, and it emerges as a voluntary code of conduct.

Now, as part of that process, the HLC identifies, as you kind of suggested Dev, that there was a market imbalance between platforms and publishers, that this is unfair,

and that this power imbalance should somehow be remedied. Implicit in this analysis is the presumption that the press to some extent, are dependent on platforms for revenues, because platforms have such significant audience capacity, and that a significant funnel for traffic for news publishers is through platforms now. I think we can put that to one side for a moment.

But it's really interesting to think about whether the extent to which that's true now, and the kind of existing market conditions that may make that possible. Then COVID hit and as we saw, news organizations across the world lost lots of money, because when there's a recession, one of the first things to go is advertising. So the government steps in and says, "Well, this voluntary code is now mandatory."

As part of that process, I don't really want to get into the kind of detail of what happened next, because that's quite complicated. I'm really more interested in talking about the outcomes at this point. But through this process, we get to a point where, despite this complicated regulatory architecture, which requires things like forced arbitration, designation of platforms by the minister, and so on, none of that is actually realized, in the practice of implementing the legislation.

Because I've said so many times, is that the regulation functions like a sword of Damocles, because the threat of arbitration is so present to platforms, the government kind of came around and said, "Look, as long as you can do deals with publishers and give them some money, we won't use this much heavier form of regulatory enforcement." Now, I find that quite interesting. On one level, platforms were already giving money to certainly news organizations. So that's something to note.

We might now turn to the outcomes. Since this reform, we've had about roughly \$200 million per annum, given to Australian news organizations. Google's done 37 deals from some of Australia's largest multi platform news organizations to things like the Australian Chinese Daily, at least Australian Jewish News, Meta has done 14, and it's really notable that they've put a full stop at that 14, I think that's fair to say they're not willing to negotiate further. Whether the government will introduce designations or encourage them and essentially forced them to negotiate with more news organizations is open to consideration. This is old data when Google had done less deals. But the Public Interest Journalism Initiative estimates that about 61% of Australian news organizations are covered by these existing deals. A few other notes, the deals are secret, they're commercial in confidence. They're not publicly known. All of these numbers that I'm throwing around are based on rumors and hearsay. And we can think about things like \$30 million per annum or more for large companies, and

small regional outlets, we're looking at maybe \$31,000 to \$62,000 per year, it's not really clear how that money or that value proposition has come to be.

I can talk more, and I think we'll talk about this later. It's being exported to other countries now. So it's ironic that even though Europe and the UK maybe started this process, originally, whether that was in the early 2010s, or later on with the Cairncross review, it's only after Australia has implemented this form, that a number of countries in Europe, as well as the commission itself, Canada, and so on, are starting to look towards this model.

If I've got a bit more time, I do just want to add one more thing. And I think it's that there's a focus, I think internationally on the code. But I think that also ignores the wonderful work that the agency is doing in other areas, because what the digital platform inquiry really did was not just this quite basic value transfer, but essentially set up a watching brief on platforms.

So we have the digital platform services inquiry, which is open now looking at competition, market trends, consumer harm and international development. So they've done inquiries and online advertising services, online retail marketplaces, competition in an internet search and so on. So I think it's really interesting in a way that while the focus is on the code, I think there's been much less focus on a much richer regulatory analysis of platform economics. In association with that, Australia's Privacy Bill was also under review. And that's quite a dated legislative framework, and that also emerged from the digital platforms inquiry as well. We've got a misinformation inquiry as well. So I think there's, there's more that's come out of this digital platforms inquiry than just the code. And I think that kind of sets a broader agenda for Australia's platform regulation.

**Dev Lewis:** Excellent. Thank you, James. I think that was really important to bring us up to speed. And we'll definitely want to get into some of the global implications and connections which you touched on as it's being exported. Next, we want to look at what's happening in Europe. July has been a landmark month really, as we saw two big acts, the Digital Services Act, and the Digital Markets Act, passed just two weeks ago. And these are going to have what we expect quite significant implications for how large tech platforms operate in Europe and, and perhaps globally as well. And we're really lucky to be joined by Karen Melchior. She's a Danish Member of the European Parliament, where a lot of activities look at participating in consumer protection and internal market in the EU. And a lot of her work is focused on technology, AI regulation, consumer protection, which is a big part of her work in the European Parliament. And I think she's going to give us a really important view on the motivations and the

implications and the mood in the ground, joining us live from Brussels. So thank you so much, Karen, for joining us early in the morning. We're really grateful. And I'll turn over the mic to you.

**Karen Melchior:** Thank you very much, Dev, and thank you very much for inviting me. And I'm sorry to have missed the last couple of days that you've had, sounds like it's been a great conference.

The legislative package that we've just agreed to was passed by the European parliament where we have legislators from all of the member states of the European Union. And it's been a proposal that was made by the European Commission, which is selected by the governments. And we have been negotiating with the governments of each individual member state. So this is kind of a patchwork legislation that will apply to all of the European Union, but is sort of European in scale. That's why the European Parliament has been involved as a co-legislator with the Commission. And what the motivation has been, is the last 20 years, we've seen how the Internet has developed from being a quite even playing field with blogs and email lists, to being dominated by a few global players that have been using platforms which have changed the way that the internet works and how we we function in it. We've also seen developments of illegal activity going online, and legislators wanting to make sure that what is illegal offline should also be illegal online.

For me as a legislator, it is also important that we make sure that this does not mean that fundamental freedoms will be suppressed, and also that we don't use excessive tools in order to make sure what's illegal offline is illegal online. Because the tools that you use online have a very different effect, then when you do something for a newspaper, or what you can put on posters on the streets. And that is in the Digital Services Act where that is mainly being applied. The Digital Markets Act is trying to look at making sure that we have fair markets also when we're looking at digital markets, because what we've seen is that having competition online and digitally is very different than having competition if you are selling shoes or widgets or something that is physical that needs transport and needs production and stores. You have the network effect of if you have more users, then it will bring more users in, and that makes it very difficult for somebody that has a better service or a better product to actually compete with a very large platform or network, even if what you're proposing is better--just because of the size it's very difficult to compete.

And that's why we have the Digital Markets Act which has allowed for not waiting for the damage to be done but actually having a well-defined set of obligations and prohibitions for the very large businesses, "gatekeeper platforms" as they're called, so that we make sure that they don't destroy the competition before they even get off the ground. This is making sure that we have the possibility of companies that have the best ideas will actually be able to prosper. If we look at what is unique about the way we're doing it now is also that the European Commission will be the primary regulator for these very large online platforms, both regarding digital services, which is more the content on the platforms and also the competition on the platforms. And this is different from the Personal Data Protection Regulation that we've in the EU before the GDPR, where it was more delegated out to the individual member states and their regulators. I'm sure you've all seen the pictures of the data protection regulator in Ireland where a lot of the digital platforms are based, which was a small shop across

a supermarket, and that was trying to regulate everything in the European Union. Because large platforms were regulated there, we need to make sure that the European market is regulated and enforced at a European scale.

And that is what the Digital Markets Act brings in. For the Digital Services Act, it has also opened up the way that the platforms are working with reporting obligations to the European Commission, and making sure that we have transparency and accountability of what the platforms are doing: sort of responsibility by design, rather than moving on from the GDPR's privacy by design. We've also put in a ban on dark patterns, which is trying to manipulate users and consumers in making choices that they would not have made otherwise, sort of consumer protection online. Furthermore, we have made a "know your business customer" obligation for the platforms so that if you have a seller online, that you as a platform have an obligation to keep track of who the seller of illegal or dangerous goods is. But this is a contrast to having an obligation of everybody having their real-life identity, their identity cards being used to identify them when online. And for me, this has been one of the balances to be struck, to make sure that we protect both consumers and users and citizens online, while also protecting fundamental freedoms and rights. Because what the effect will be of the European legislation is that it will apply to everybody offering their services in Europe for the Digital Services Act. So even if you're based in Hong Kong, or if you're based in Australia, or in China, then you will be asked to apply this European legislation, and also to have legal representation in the EU.



So as a legislature in the European Union, it's been important for me to make sure that the legislation cannot be misused both by companies and also by authorities so that we have a balanced approach in the way that they're being applied. And it's important to underline that these are horizontal pieces of legislation that apply to all platforms, and all forms of platforms. So if you have short term rental, if you are selling products, or if you are sharing user created content online, this legislation will be applied. And that also says that it doesn't solve all the problems in one piece of legislation.

There will be a follow up with a Media Freedom Act in the fall, which will try and address some of the imbalances in the media market and also try and ensure diversity in the media providers in Europe. It's also being followed up by General Product Safety Regulation so that we make sure that the products that are being put on the market are safe. But there has been some frustration that the Digital Services Act and Digital Markets Act haven't solved all problems in the digital sphere yet. But these are first steps. And what is unique about them on a global scale is that it is actual legislation that will be able to be enforced. A lot of the codes of conduct that have been put forward in different parts of the world so far, have been codes of conduct, they have been voluntary.

What we see in the digital sphere, as well as in the physical, is that legislation and enforced legislation is much more effective than appealing to peoples' better conscience. And that's why I see the pieces of legislation that we've agreed to in Europe this summer are historic, and will have a better effect than the code of conducts that we've seen so far. I think that will be an introduction from Brussels, and I'm looking forward to listening to the rest of the speakers and the discussion later.

**Dev Lewis:** Thank you so much, Karen. I think there was a lot of themes that we want to dive deeper into, especially the gatekeepers and those roles, which we'll get into in the in the next stage of discussion. With that, I'm going to move to our third speaker today and moving to a country which, unlike Australia and maybe Europe, but similar to China and South Korea, both countries that have large platforms, domestic local platforms, which is a very different dynamic as far as regulation and jurisdiction is concerned. Haksoo is a professor of law at the Seoul National University School of Law in South Korea. He conducts a lot of research around data privacy and AI laws. And he's worked very closely with various stakeholders, including government, into how South Korea's internet and technology landscape is evolving. So we're really lucky to be joined by Haksoo coming in from Seoul. Please, over to you.

**Haksoo Ko:** Thank you. Thank you for the very nice introduction. Yeah, as mentioned, I'll talk about experiences in Korea and try to draw implications for other countries. As

mentioned, Korea has a few unique characteristics. And first, one would be that Korea has its own technology industry in large platforms. At the same time, global big tech companies are also very active in Korea. So there's this dimension of tension involving global big tech companies and also Korean big tech companies. And again, smaller startups. So if we emphasize Kusum, Politano, and global aspect, there will be some group of stakeholders who complain about not giving enough consideration of local aspects or localities and vice versa. The second characteristic that you can see in Korea, and perhaps in many other countries, is nowadays if there are proposals for new regulations or new statutes somewhere, then there are new proposals are introduced and translated, almost real time. In particular, the past several years: EU's effort, GDPR, and the last year or so, as mentioned, DSA, DMA, that kind of legal statutory proposals are mentioned constantly in Korea too, not just within the EU. In terms of regulating platforms, not just DMA and DSA, but also P2B regulation, which was enacted a couple of years ago within the EU, was mentioned a lot in Korea. All those of you who, who follows this sphere would know, after the P2B regulation was enacted, there was a guideline published which is called Trend Algorithmic Transparency Guideline. So that kind of guidelines was also referenced a lot in Korea.

Some of the government agencies or some of the members of national legislature, they looked up this kind of legislative campaign in other countries. And sometimes they try to emulate, and then obviously controversies arise. And the third aspect that I consider maybe unique about Korea, or maybe not, I don't know. But, you know, anything on platforms or anything on data or AI, these are very hotly debated. And at the same time, from the perspective of regulatory agencies, this is where the future lies. So that means they want to set their foot in this area. So there are bound to be some sort of turf battles among different regulatory agencies. So in the case of Korea's competition authority they showed keen interested in setting foot in this area, and the Korean Communication Commission, which regulates the media industry, in general, they proposed their own set of regulations. The Ministry of Science and ICT will try to show themselves as mediator among different stakeholders.

So one of the result of these various regulatory agencies showing interest is multiple proposals of legislation. And what we saw last year in Korea was just, you know, about five legislative proposals and different regulatory agencies. They were just adamant about their own proposals, and we're stuck. And then we had a presidential election a few months ago, and now, the newly elected president and the administration is saying that we'll start from scratch, basically. And we are looking to the possibilities of having some sort of self regulation, but no one knows for sure what self regulation means, in this context. So pretty much, many difficult and big questions are up in the air right

now. And, and more broadly, as to how to see the big tech or platform in general, still, we're kind of we have multiple questions that you can ask. But we're right now at the stage, we just are collecting and compiling questions rather than finding good solutions.

So a few implications that I myself am drawing from Korea's experiences would be the following maybe three or four items. First, as an extension of what Karen said this morning at the symposium, there's tension or difference between preparing a statute versus preparing guidelines. Statute, by definition, is explicit. Oftentimes, based on principles. Oftentimes, a statute contain vague notions. Guidelines, on the other hand, could be flexible, may be more practical, but the downside would be there may not be clear statutory legal mandate. So there are dynamics involving these two types, you know, having a statute and having a guideline. Stakeholders, depending on their interest, they have different interests as to you know, between the two, which would suit their needs better. But you know, it's difficult to have good sides from both.

The second lesson that I learned and if there is really big blur. You know, the media industry, that kind of boundary is becoming more kind of blurred than before, but not just within the media industry. But say, if you have platform service, now, some of the platform's database may begin offering shopping service, and then they may want to begin servicing payment. And then they may want to go into financial industry and have the whole banking service within their platform. So, in the past, relatively speaking, there's clear distinction among different industries. But nowadays, the distinction is becoming more blurry and hard to make distinctions. So, one of the natural outcomes would be, like each company, each big platform company kind of trying to step into other's territory. And then, from the regulatory perspective, tensions and turf battles among different agencies. And the third lesson that I learned was, there's all sorts of different levels of understanding as to how things work. If we talk about, for example, algorithms, some people, you know, have a very vague notion of what algorithm is, or some people just don't know what it is. On the other hand, some people know very, very well how it works. For example, in the recommender system, one big type of algorithm is called collaborative filtering. And some people know what it is how it works, some people just had no idea what it how it works. And, you know, with different levels of understanding, it's sometimes very difficult to engage in constructive dialogue.

And the final lesson that I learned is, it's very difficult to build trust. I mean, my view is trust is, after all, the crucial concept here, in partly because this is an emerging and also rapidly changing area. And, for example, when we talk about algorithmic

transparency, one concern would be that, from a defensive side, once we reveal some of the characteristics of the algorithm, then what's next? There would be a slippery slope, there would be kind of a concerned or defensive side. And if there's no trust, once you have that kind of anxiety, they don't see the end in sight. So once we begin showing what we have, from our algorithmic side, then we may after all have to show not just the principles or characteristics, but the raw source code, and that's something unimaginable. So, how to build trust that's a crucial concern, I think. To conclude, to get back to the title of the session of distinction between ex ante and ex post, I add one additional flavor, which is not about like beforehand after the fact of a kind of traditional distinction, but also having this distinction would give flavor as to what is taking place. We talk about the notion of context. In privacy or data AI, we often say context matters, and then the next question is what context? If we consider the ex post aspect we can have a more concrete situation so that could give you a flavor of what context means in this area? With that I conclude.

**Dev Lewis:** Thank you so much. Excellent. That's been many fresh points and important conclusions and understandings from Seoul. Finally, we want to move to another country known for very large platforms. China has been very busy in the last 16 months with a whole series of anti monopoly, algorithmic governance, and other regulations that are impacting the large platforms and big industries there. I'm really delighted to be joined by Haiqing, who can share a strong overview into what's happening in China and how this connects. Haiqing is, of course, another one familiar to all of you here, a professor for Media and Communication at RMIT, and researches the cultural impact of China's digital media and communication and the technology culture in China. So we're really lucky and delighted and Haiqing, over to you.

**Haiqing Yu:** Thanks. Thanks for the invitation to be on the panel. Yes, China, the big elephant in the room. I have to say I look at the platform regulating in the Chinese content, not because I'm a legal studies scholar, which I'm not. And I don't do any media law studies at all. I look at it from a platform governance perspective. And, you know, I try to draw reference to the other speakers, particularly in Korean and Australian context.

Platform regulation has been a global trend and lots of countries in the world have been, you know, trying to figure out how to regulate not just from the internet, but now more platform. But firstly, I'd like to see what is a platform, how a platform is understood in a Chinese context. Because you know, you can look at a platform as a business, as a market, you can look at it as technological infrastructure, you can look

at that, from the Chinese perspective, as a digital utility, public facility, and digital infrastructure. But also part and parcel of China's effort to innovate is governance. So therefore, when we look at platform governance, we don't just look at governance of platforms, and governance by platform, but in the Chinese context, there's also governance with platforms. But for today, because of the time limit, I'm going to just focus on governance off platforms. Okay.

China has been, in the past, focused on regulating access to the net within its borders by the Great Firewall, and the content censorship, using both AI and human censors. But since 2017, particularly in the last couple of years, the effort has increasingly moved from regulating content and access to regulating data, data flow across borders, and the data localization within the Chinese borders, and how recommendation systems can be used by platforms. And, and that, like the South Korean case, is part of the process of China watching and learning what's happening in the world, particularly Euro-American contact. So lots of the laws that I have gone through that recently have been issued by the Chinese government are actually modeled upon GDPR. And they also look at what the US government has been governing on platforms, which are global platforms, more global than the Chinese platforms.

Unlike the South Korea case where all the different ministries were a turf war in terms of regulation... Well that's the case actually, in the Chinese context more than 10 years ago, there was also a turf war among the ministries in terms of regulating, governing the different internet spaces. But now there is a big, super powerful agency called the Cyberspace Administration of China. It's headed directly by Xi Jinping himself. And that agency, called CAC, has issued quite a few laws and regulations, mainly in two major areas. One is anti-monopoly, the other is in data, data security and the personal information protection laws.

Okay, so, as I said before, I'm not a lawyer, not a legal studies scholar, so when I read the legal documents, I don't really understand lots of the jargon, in particular, when the jargons addressed in the socialist ideological terms, really difficult to read. So I read that to understand the context. Okay, so I already talked about China's reference to what's happening in the world. But mainly the context is in the last two years, the Sino-US tech Cold War. And that actually has woken up Chinese regulators, particularly in terms of cross border data flow. And in the use of digital technologies, platforms, and algorithms in social governance through systems such as the social credit system, or the health code system that has been implemented in the last two years. Okay, so firstly, let's look at the anti monopoly guidelines for platform

economies. That was issued firstly, actually quite a long time ago, in 2008. But in 2020, there are new guidelines on anti monopoly for platform economies. And then now there's a revised version of anti monopoly law, which will take effect on first of August this year, so that that law strengthens legal regulation of the platform economy, particularly in combating monopoly and unfair market competitions. It has levied fines against China's big tech giants, including Alibaba, Baidu, Tencent, and Bytedance for violating antitrust laws. It also restricts overseas listings by Chinese companies, such as in the last end of 2020. China personally intervened to stop the IPO in the US market. In July 2021 the Chinese regulators also levied anti monopoly fines against Didi, China's Uber, the New York Stock Market listing over data security. So in order to list private corporations in overseas market, particularly the US market, the state regulators have to approve. And that's why TikTok was not allowed to sell to any US company in 2020.

And then, in 2021, there were two more famous laws issued. One is the Data Security Law. The other is the Personal Information Protection Law. And both were built upon the 2017 cybersecurity law. The 2017 cybersecurity law mainly focuses on data localization, which is common practice around the world. It basically says a business operating in China will have to store Chinese citizens' data in China, not in the US or elsewhere. But this new Data Security Law and Personal Information Protection Law, expand upon those previous ones to expand the data localization and data transfersals to impose harsher penalties for violation and violations. Companies must ensure that all data gathered within China is stored within the country. And all data handlers are prohibited from providing any data stored in China to foreign government agencies without approval from the Chinese government authorities, regardless of data security level and where the data was originally collected. So that data security law has been viewed as a countermeasure to the US 2018 Cloud Act. The cloud means clarifying law for your overseas use of data, which gives US law enforcement agencies the legal right to demand access to electronic data, no matter which country the data is stored in. Basically, China will say it was saying, well, US you can do that. I can do that, too.

Okay, so the Personal Information Protection Law was modeled upon the EU's GDPR. It was China's first comprehensive data protection law covering personal data collection and transfer by public and private companies. And I had to read that law, because in the ethics approval process at RMIT, I had to address the issue how I could comply with the data security law and the China's new Personal Information Protection Law, and I had to make it clear that you know, I'm not a public company or a private company, I'm not transferring large quantity of Chinese citizen status to Australia for commercial purposes. So I read it, just to make sure that I'm all safe. I won't go into

more details. So I'm not to say, you know, the China has now joined the EU as a major economy with a comprehensive data governance framework. But how it is implemented and enforced is another question. And this is a question lots of lawyers have asked.

As in yesterday's panel, I mentioned the new Algorithm Regulation Law, which was issued in March 2022 this year. And then following that in April, the Chinese government also issued another algorithm regulation called 2022 algorithm comprehensive governance. It outlaws algorithmic discrimination, as part of what may be the world's most ambitious effort to regulate artificial intelligence. So alright, just very briefly, the new regulation addresses a range of issues involving algorithms from addiction or excessive consumption and synthetic or false news information to the protection of the elderly, and the gig workers. And under the rules, the companies will be prohibited from using personal information to offer different prices for the same product or service, they will be required to notify the users when algorithms are used to make recommendations and the users have the option to opt out.

So the enforcement is mainly on the company's self evaluation and self correction. So the corporate public responsibility has been emphasized here. But there are also, you know, other measures in terms of fines, stopping the companies from enrolling new users, having their business license pulled out, and having their website or apps shut down, etc. So those are part of the effort. But at its core, the regulation requires providers to uphold mainstream value and make sure that mainstream value orientations, and vigorously disseminate positive energy. So those are what I said about those socialist communist ideological terms, what does it mean, you know, mainstream value orientations and positive energies? Basically, they are just what the CCP says, Okay, what the party says, You have to uphold that, you can't question that.

What I want to summarize is just four takeaways. One, as I said before, tightening your platform regulation is a global trend as most countries have passed data protection laws, etc. There are laws that impact companies working in the global economy across borders. So basically, each company working in each nation state would have to hire local lawyers to make sure they comply with local laws in the Chinese context, makes it even harder for transnational corporations to operate there. Two, platform governance is increasingly focused on data security and data sovereignty, and both concern governing and regulating data and digital infrastructure. And data sovereignty is now promoted in the name of personal data protection to counter the so-called US data colonialism. I'm going to quote an article in The Global Times published this year not long ago, I quote, "Restricting data export is Beijing's only current means to fight

Washington's data hegemony, we must first protect our own data security so that we can have the strength to promote the establishment of a fair international order on data. In addition, China should work with the EU to break the monopoly of the US internet giants. We cannot let data to become a tool for the US to exploit other countries." End quote. So what's the impact of the China affect? China hasn't doesn't have a model yet, it is still exploring how to govern its platform. Because technologies are evolving so quickly, the governance regime has to keep up. But as China plays a bigger role in the global data market and the transnational data governance, the Chinese way of regulating platforms, data, and algorithms, is closely watched by most countries and maybe secretly copied by some particularly the authoritarian regimes. I'll stop. Thanks.

**Malavika Jayaram:** Thank you Haiqing. I would love to come back to your last point later on. about the influence of China in the region, as opposed to what China's copying from other countries, especially culturally, as you were saying the context in which the China model is seen as more appealing to certain governments and certain kinds of not-so democratic countries. But first, I want to go back to Karen, I'm sure you've never had to use the words positive energy in any kind of legislation that you've drafted, or helped with. But I think Haiqing talked a lot about enforcement, and I think that's one of the sort of big questions that's being asked after the DSA and DMA packages were passed. It's going to take a lot of resources to enforce something this ambitious, that's, you know, being touted as a landmark for all kinds of reasons. And, and I know Thierry Breton has written a piece recently trying to get ahead of that, but what you know, what the process is going to be, but I wonder if you could talk to us about likely enforcement options to give teeth to these new pieces of legislation.

**Karen Melchior:** The challenge really, also is that we don't only have the Digital Markets Act and the Digital Services Act, we also have an AI Act that we're negotiating at the moment, we will have a Data Act that will be negotiated in the fall. So we have a lot of different pieces of digital legislation that will need to be enforced. And with the sort of patchwork nature of the way that the European Union enforces legislation, it can become quite a challenge, if it's up to member states to to enforce the European legislation.

I think the oversight structure, which has the Commission, as a primary regulator for the various large online platforms is a good starting point to try and have a centralized body that will set out the the standards and the enforcement, especially for the large platforms, we also have a couple of EU agencies that do work on digital security. And



then we also have the data supervisor, that also gives out advice and oversees the General Data Protection Board.

One of the challenges will be having resources enough to hire the people that are needed to uphold the enforcement. We have already a fight for the competences, the people that know about regulation, and also how the algorithms works. As was also mentioned by one of the panelists, an understanding of how things work is crucial in order to actually enforce the legislation. And I think that is going to be one of the biggest challenges is making sure that we can attract the necessary talent. And also make sure that the decisions being made are enforced in similar ways across the European Union.

Listening to the Chinese experiences of turf wars and also in Korea...But everybody wants it to be the ones that had the pen in their hand on writing the legislation. And we're fighting about that. And I hope that we will, now that we've written that legislation that the enforcement will, there'll be less turf wars there, but there will be a war for resources. And part of the challenge is that a lot of the resources will have to come from the member states in order to make sure that we get it in the next seven year budget that will be negotiated in about two or three years. I hope that answered your questions.

**Malavika Jayaram:** Yes, yes. Thank you very much. Actually, you brought up this sort of very nice frame of the blurring between the agencies. On my flight over here I was watching the first episode of this series about Uber and Travis Kalanick called Super Pumped and there's a moment where they're trying to fight the sort of medallions and you know the turf war between people trying to regulate taxi cab jobs versus ride sharing. And that's the moment at which they come up with this ride sharing idea. And he says, oh, so we're not a taxi company any longer. And this new financial adviser says, You never were. And I think that kind of, you know, the sort of work arounds that you do to either fall within a regulatory bracket because that's more compelling or, you know, lower bar to comply with versus being regulated by a different authority that might also have jurisdiction and you know, where these overlaps have really weird effects. I think I would love to ask you a little more about that and connecting it to the sort of ex ante ex post thing. Are there particular circumstances or conditions for a market where one approach or other might be more useful? In Korea's example, or broadly in the region? Why would you go for an ex ante approach?

**Haksoo Ko:** Well, there are excellent questions or points. First of all, the Uber case that you mentioned, there was a big controversy in Korea, as well. And over ease of operation in Korea, but on a very small scale. And a few years ago, there were a lot of controversies involving, broadly speaking, mobility services. And obviously, there were, like, protests from traditional taxi businesses. And the controversy was so severe that at the time, the government, the ministry in charge, Minister of Transport, just sided with traditional taxi businesses. Then following after the COVID hit. Taxis, you know, drivers disappeared, pretty much. And this year, demand for taxi services exploded. And then well, there are just not many taxi cabs around. And now the government is saying that we try to induce more of, you know, sharing services, or Uber-like services.

So now the question is, a few years back, why didn't we consider this kind of possibilities? Why couldn't we be more proactive and prospective? And, you know, that's inherently about how we engage in dialogues among different stakeholders, and who would be accountable for what in you know, after all, this is social dialogue, and at the same time, political dialogue, and it's very challenging in this constantly changing environment, how, how to make a projection about what will happen in a few years of time. Taxi drivers, who used to be taxi driver, maybe three years ago, now, some of them are in the business of delivery, but not people, but more of delivery of overnight food items and that kind of deliveries and that. So for some people that has more kind of attraction.

And now with that more broader question that you raised, between ex ante and ex post, just general theory, ex ante discussion is oftentimes better than ex post because if ex ante, we can set principles and we can have dialogue based on the principles instead of going into interest. I mean, once stakeholders begin to shape and begin to have their own interests, it's hard to engage in dialogue and have, you know, like, have asked him to have some sort of sacrifice in return for some sort of gains for everyone else. So in that respect, ex ante is better. But in reality in this area of you know, changing environment, ex ante is very difficult because who knows, you know, as the Uber or mobility service case shows What's gonna happen when COVID could hit and then demand for mobility service would go up or platform service, whether some of the platform services, they want to provide trucking services, some of them may want to provide matching service for mobility or, you know, delivery service. Each platform has its own different business agenda and it's hard to make a prediction. And you know, having ex post discussion will give more concrete ideas and more concrete items for discussion and trade among stakeholders. So, if we consider that kind of uncertainty, ex post, this discussion could make some sense.

**Malavika Jayaram:** Thank you Haksoo. I'll come back to James. Now, I know that in the discourse, there's been a lot of talk about copy pasting, you know, those that Australia approach, but I wonder if my I might turn that around a little and say in your mind, like, what's missing from the discourse like this is a very binary copy Australia versus rejected. Others? Is there more nuance? Are there things we should be thinking of? And perhaps the other question is, where do you see the biggest gap between what companies' interests are and what consumers could benefit from? And how could we possibly even bring those together in some way?

**James Meese:** The second one is the big one. So we'll start with the first I think, I think in terms of copy pasting, I think the challenge is that you're very much to your point, I think the discourse, particularly I think, at the regulatory level has become quite stratified. And you've got a series of stakeholders, whether it's some regulators against big tech, in capital letters, whether it's platforms against publishers, and so on, and so forth. And, you know, I think I'm part of this moment, and I was like, you know, I could basically take notes from the book launch of everyday data cultures, because those people, some of them in the room now, set it so well. But I think it's really true that there's been an almost relevant and valid but almost an ideological response in this regulatory environment where governments welcomed platforms and the early heady days of web 2.0. And we were all making fun things, and it was all exciting. And then they went all No, this is no good at all. And they've, they've flipped the switch.

I think with that, I've kind of got three points here. One is that I think platforms are actually complex and unique businesses. And I think it's risky to put them all in one basket. And I think we've seen that with the news media, there was an expectation from regulators that platforms and news were sort of inexplicably tied together. In fact, what we're seeing is, Google has a very strong financial interest in securing news. And Facebook, maybe not that interested. The Wall Street Journal yesterday, has said, and obviously, these rumors have circulated for some time that Facebook is considering getting out of the news and truly, I'm increasingly starting to believe that's more and more the case. Suddenly, then you've got a regulatory situation which Australia's kind of set up and it's now everywhere in the world where the money coming to journalism, the expected bag of cash is actually only coming from one party, instead of two. So I think in that respect, I've always seen these kinds of interactions between platforms and publishers, for example, that much more dynamic, and setting up regulations. And I think, you know, Europe is a really good example of criteria-based regulation, that, you know, doesn't necessarily target actors. And even though the Australian legislation obviously doesn't name names, I think it was pretty evident from the policy discussion that Google and Facebook were in the crosshairs.

That being said, I think there's also a need, broadly, to take a focus. And I think that's true of scholars, as well as regulators to look at the actual empirical data around these interactions. And I think we'll find that a lot of these capital P platforms have a much more dynamic and diverse range of ways of engaging with markets. I've got a manuscript under review at the moment where I say platforms a lot in the book, I want to try and not say that word again. I'm sure I'll struggle with that. But I think the more specific we can get the better.

**Malavika Jayaram:** Thank you. I want to leave time for questions, but I wanted to throw a question out to the panel to think about while we take audience questions, which is if you could sort of wave a magic wand and say you would love to see research on a particular area where you feel there's a gap or where, you know, something empirical, some evidence-based data would be really helpful to move this discussion along. What's your sort of wish list? Maybe someone here in the audience, one of the PhD students, might take that up. So that's your wish list. And we'll take questions if people have any. There's one here. And if we have time, I want to come back to Haiqing about the influence of the China model in the region.

**Audience Member 1:** Hi, I'm Arjun, I'm a PhD student at QT. And as I listened to the speakers present their cases from specific countries, inevitably I thought of India and especially the case of Reliance Jio. So for those who may be unfamiliar: Reliance Jio started off as an Internet mobile service provider, which is also owned by India's richest person. Today, it's evolved to be much more than that it has 400 million subscribers and growing, India's largest internet service provider, but also has this super app, which, which perhaps, deals with everything from your groceries to entertainment streaming to sports. And it's especially curious because Reliance Jio is homegrown but it has investment from Facebook, Google, Microsoft, Intel. So it's almost like all the things rolled into one in India and so far, they've been able to navigate the regulatory space in India fairly easily. And because they aren't a traditional monopoly, but they are super monopolies. So I just wanted to ask the folks, especially at the Digital Asia Hub, if you've studied the case of Reliance Jio, and also if and also how regulatory agencies need to innovate, to tackle super monopolies, which might be more pernicious than your regular monopolies. So yeah, that's my question.

**Malavika Jayaram:** Thanks. Let's take a few more and then we can start responding to them.

**Audience Member 2:** Hi, Fiona, hence University of Melbourne. I have just a very simple question. Has there been any thought of using competitive neutrality principles in terms of funding the regulation? So, you know, it seems it's a concept from the

1980s. But you know, that companies are responsible for the cost of their own regulations, because the externalities are their fault, and therefore they should pay for the regulation, for controlling those externalities, and it was not successful in some areas, but quite successful in others. So I just wonder if it's just completely fallen off the radar or not.

**Malavika Jayaram:** Thank you. Any more? No. Okay. Do you want to take the competitive neutrality because Haksoo has a lot of economics background? So I hear the word externality, and I think okay, that's all yours.

**Haksoo Ko:** Yeah. It's a very interesting idea. And while in the case of Korea's traditional broadcasting industry, protesting companies are supposed to pay their dues for, generally speaking, public interest, so they pay quite some amount of money every year. And this money is used for, like general literacy or to, you know, set up antennas, for example, in remote areas for that kind of purposes. Well, whether it served its purposes, well, that itself is debatable. But the more difficult question nowadays is about being blurry in this area. So, for example, traditional broadcasting companies nowadays are making complaints, saying that they are making contributions for these public funds. And on the other hand, for example, Google, Microsoft, or Facebook, they're not making contributions or the Korean companies, NAVER or Kakao, they're not making contributions. So, how to delineate which company to make contributions for this self sustainable manner that itself is nowadays very difficult to make and come up with social consensus.

**Malavika Jayaram:** Thank you. Does anyone else want to weigh in on that question?

**Haiqing Yu:** Just yesterday I saw a report on ethics in AI, and how that can be implemented in the world. And the one line that caught my attention was the difficulty of applying AI ethics in our platform economies, because of the platform's ability to employ people who know how to dress up their so-called compliance with the regulation, so they can really talk to the government regulators. But I'm just thinking when you were talking about the third party, there has been a call in platform governance, say that, why don't we have a third party, neutral, non governmental, or non commercial organization as a regulatory body? So financing is one thing, where do you get money to finance but also another is that big corporations have so much money to employ really clever people to dress up their report to comply with all the policies, but in reality, do they? You know, from the report on AI ethics, I, you know, the picture is not that positive. I don't know.

**Malavika Jayaram:** I wonder also the second they start contributing whether people then say the regulation is captured, right. I mean, there's also that risk. Karen, I wonder if you want to jump in here also about this question and how you finance fixing the problems that the platform's have created.

**Karen Melchior:** I think the financing is, as mentioned at one point, but I think it's also important that we look at the regulation as more than just the commercial companies and the government's. If we look at a body, such as the Internet Governance Forum, which is linked to the UN, and is also a sort of multi stakeholder, I think this is part of the way to go. And one of the things that we've been advocating in the Digital Services Act, is transparency, because I mean, trust is sort of the end goal. But we can either have a sort of control based way of regulating, or a transparency based way of regulating, and I think, enforcing transparency on the way that data is used, the way that the algorithms are set up is a better way than then trying to control it. And I think allowing for transparency and openness towards regulators, but also that academics and journalists and civil society can have access is important for enforcement, because I don't think that the government agencies, regulators, and legislators will have the resources or understand tech in capital letters well enough to do this on their own.

**Malavika Jayaram:** Yeah, thank you. If we come back to the Jio question very quickly. I think what you're bringing up also raises the question of political will, to actually want to regulate and I think part of something like Jio highlights how this can play into larger, nationalistic, jingoistic ideas of saying, we have a historic sort of trade war or and we're just getting exacerbated. And there's the sort of India/China, we want to cooperate but we also want to be frenemies. What happens when there's a Super App phenomenon? China's really big, China's platforms are huge super apps, you know, sort of originated in China and have trickled through, maybe you want to leave space in the market for an Indian Super App to actually have enough traction without inhibiting it as part of your competitive advantage in, you know, the sort of geopolitical space. So I think that's one question of whether there's even a desire to regulate somebody like a Jio, which also has the years of the government and is very closely aligned with the ruling party. So it can have a lot of space in which to innovate before people come in and expect it to comply with regulations that they're imposing on Twitter or Google or everyone else. Maybe they have a little more runway. But I don't know if they have if you want to also jump in on that.

**Dev Lewis:** I think one point that I highlight is, you know, you mentioned Google and Facebook as investors. Now, look at the Chinese case where Alibaba, Tencent and

Baidu in the early days, all had investment from, you know, overseas investors. And I think sort of, again, they're just in a long list of platforms and the sort of transnational capital behind them. And I think, you know, definitely in India and going forward, you may see the idea that you know, as Jio gets bigger and bigger and if they do fulfill their ambitions, which are very large, and I think today, while they have a large base of users as far as users of their super app, or users of the software's, and are not that high yet.

But I think if they do sort of reach that level, they're probably taking the bet that just like the Chinese companies like Alibaba eventually bought Yahoo, sort of turn the road, reverse the roles completely. So I think they sort of see Jio, then could potentially, you know, as Malavika said, take advantage of the domestic rhetoric for localization, and then eventually, maybe even, you know, buy back or, you know, become more Indian and keep the Facebooks and the Googles out. Although India's different from China in that sense. I think those are the two points that come to me.

**Malavika Jayaram:** Yeah. I don't see any other questions. So maybe we'll just do a final round of comments from everyone, either your wish list for research in this space, or anything else that you wish you'd said earlier? And if you didn't this is your chance. We'll start with James and go down this way. And then we'll, we'll end with Karen, you can have the last word.

**James Meese:** There we go. I think, um, yeah. For me, I think really just more empirical data about the relationship between news media and platforms. I think despite the kind of regulatory activity that's occurring, and soon to occur, I think over the next year, we'll see more. Despite, you know, the HLC is a really wonderful regulator. And they've done some really excellent work. But I think there is a focus on the now and I think some more stories, not just of the long duration of this relationship, but also what happens next. I think there needs to be continued work on this relationship, because I'm not necessarily sure that what we're regulating now is going to be the case into the future.

**Malavika Jayaram:** Yeah, thank you.

**Haiqing Yu:** I think, Okay, well, it's I want to add some, you know, the Chinese regime of platform governance follows the so-called global trend. But at the same time, it signals what democratically democratic elected governments should not do. Because the Chinese regime of platform governance in the name of data security, and the Personal Information Protection strengthens the party's power. So as we see more centralized power, the super agency without any constraints, that is in contrast to the

value that the countries in the West, like Australia hold. So we would like to see when it comes to platform governance, a more decentralized approach, being aware of the danger of the centralized power of any particular agency or entity.

**Malavika Jayaram:** Yeah, that's really useful to remind us. Thank you. Haksoo?

**Haksoo Ko:** Yep. Well, from a regulatory perspective, one big research agenda item that's on the table would be how to regulate platforms, or superplatforms, for example. And what I'm referring to is again, coming back to this big blur phenomenon that we are encountering. So, traditionally, regulation has been done typically based on a kind of silo in the sense that boundaries among different industries are relatively clear, but nowadays, the boundaries are not as clear as before. And some people now talk about regulations based on functions. So if a platform provides payment service, then a financial regulator can come in. And now we can ask a question. Our company is basically a media based platform company. Now, we have to report to the media regulator and at the same time financial regulator. So from the company perspective, there could be multiple regulators out there, that's the natural direction you are headed, or we need to find a third way of finding this regulatory avenue or regulatory authority.

**Malavika Jayaram:** I think that's also useful because one of the things we're seeing with automation is not people being made redundant, but it's particular tasks that are being automated, so it's more granular. So I think what you're saying is look at the services rather than who they are. This is really important. Karen?

**Karen Melchior:** Thank you very much. I think having diversity and decentralization both in regulation and enforcement is really crucial. However, we also need to have the size and the clout in order to make sure that this is actually properly enforced. If I wanted to have a sort of wish list for research, it would be on the user experience and the sociology of interacting with digital solutions. Because you can have, for example, in AI, you can have human oversight. But if the human that is providing the oversight doesn't have the experience of feeling that they can say no, or yes, when the computer says otherwise, then it's a moot question to have human oversight if it's not actually effective. And also, if you have traditional media, interacting with social media platforms that tailor their content, in order for it to be more clickbaity and have more reach, then it's not really a difference whether you have sort of traditional media or social media, if they're all acting in the same way. And I think this is part of what we haven't really gotten our heads around both as media and as legislators is how the digital is different also in the way that we as people interact with it, and thank you very much for an enlightening discussion today.





Platform Futures: Ex Post and Ex Ante Tools in the Regulatory Toolkit

**Malavika Jayaram:** Thank you. So I will just thank all of our panelists, and I want to thank Dev as well for helping to put this together. And like we said, this is the first of five or six roundtables we're doing as part of our Platform Futures. The next one is on consumer welfare and rights with Consumers International on the 30th of August, but everything else is going to be on our website and thank you all for making it till the end and have a good evening. Bye.