



Asian Trade Centre

Working Paper

Auckland Round June 2016

E-Commerce and Digital Trade Proposals for RCEP

The 16 Asian countries negotiating RCEP are at the heart of the world's most mobile-focused region, with hundreds of thousands of developers and startups building apps and Internet platforms for an increasingly global market. Even the tiniest company can now sell a good or a service to a first customer located in another country.

The Internet has made global trade a reality for these developers and startups, and for millions of small businesses that depend upon the cloud, mobile computing, and Internet platforms to reach customers around the world.

The right trade policy environment will encourage further growth and development of e-commerce and digital trade in Asia. Critically important elements of an RCEP framework include rules that enable **information flows** and **prohibit data localization**, allow the **cross-border provision of services**, encourage the **growth of online businesses**, make it easy for SMEs and users to get online, and enable the usage of simple **online payment systems**.

RCEP negotiators have the opportunity to address these new issues and create rules that reflect the value that comes from e-commerce and the mobile and digital economies. The issues highlighted below can help RCEP parties set new global standards for e-commerce and drive innovation and global competitiveness for their domestic economies.

1. Information flows

RCEP parties should commit to avoid interfering with the movement of information across the Internet, including the free transfer or access to electronic information -- except where necessary to achieve a legitimate public policy objectives such as data protection.

Such a commitment would build upon concepts already recognized in the region, including through APEC. The 2008 APEC Digital Prosperity Checklist already included the following point: "Information Flows: The ability to use, transfer, and process information – the currency of the digital economy – while promoting privacy and a trusted Internet environment."

In addition, RCEP parties should commit to prohibiting any requirements to use or locate computing facilities within a country as a condition for doing business in that country.

Why information flows matter in RCEP

Companies from all industries -- including agriculture, retail, and banking -- use Internet technologies to store data globally, so that they can provide faster, more reliable services at lower cost.

However, local hosting requirements impede new and growing businesses that want to compete on a global stage, disadvantage traditional companies that rely on the Internet, and make the market less attractive for foreign companies due to increased barriers to entry. Data localization requirements also have the potential to result in significant GDP losses : estimated at -0.8% in India, -0.7% in Indonesia, and -1.1% in Korea. Such requirements could result in even more severe impact on domestic investments: -1.8% in China, -1.4% in India, -2.3% in Indonesia, -0.5% in Korea, and -3.1% in Vietnam.¹

A goal of RCEP parties should be to protect both the security and privacy of user data. Data localization rules are often promoted as a means to accomplish both objectives. However, data localization requirements can actually *increase* security and privacy risks by requiring storage of data in a single centralized location. This requirement can leave data more vulnerable to natural disaster or intrusions. As experts have found: "Requirements to localize data do nothing on their own to make data safer; in fact, they will only make it impossible for cloud service providers to take advantage of the Internet's distributed infrastructure and use sharding and obfuscation on a global scale."²

A requirement that data storage take place only (in whole or in part) locally will likely drive up costs for small companies who are least likely to be able to afford higher data and information costs. Small firms can now take advantage of whole new services like cloud-based platforms to reach consumers and suppliers that were completely unreachable just a short time ago. Using such services can also help smaller companies serve their clients with improved security and privacy over trying to satisfy these considerations on their own.

It is important to remember that protecting data privacy and enabling cross-border flows of information are consistent objectives. The APEC Cross Border Privacy Rules a good example of how companies can continue to transfer data across borders while agreeing to comply with core privacy protections.

Governments have the right, as in all trade agreements, to ensure national security, public health and order.

Proposed RCEP language

- No Party may prevent a service provider of another Party from transferring information outside the Party's territory, including personal information.

¹ *The Costs of Data Localization : Friendly Fire on Economic Recovery*, May 2014 by Erik van der Marel, Hosuk Lee-Makiyama, Matthias Bauer, ECIPE, <http://ecipe.org/publications/dataloc/>

² Patrick S. Ryan, Sarah Falvey, Ronak Merchant, "When the Cloud Goes Local: The Global Problem with Data Localization", *Computer*, vol.46, no. 12, pp. 54-59, Dec. 2013, doi:10.1109/MC.2013.402

2. Cross-border provision of digital products and services

RCEP parties should provide full market access and national treatment for the cross-border supply of all digital-related services. Specifically, RCEP should include a prohibition on requiring countries to have a local legal entity or other local presence in order to be able to provide digital services. In addition, RCEP parties should commit to treat foreign digital products in the same manner as domestic digital products.

Why cross-border provision of digital products and services matters in RCEP

For many small companies, the easiest way to access new markets, customers and suppliers and plug into larger supply chains is through providing services. Most of these services—like graphic design, accounting, after sales service of all types, maintenance of systems, construction support and the like—can be provided digitally. Given the way RCEP is currently negotiating services, officials need to be mindful of the opportunities for smaller companies to compete in broader services markets through e-commerce and ensure that such services options are kept open.

Future competitiveness of industries in RCEP countries requires access to state-of-the-art digital services and platforms from around the world. RCEP businesses should be able to access these services easily. Moreover, businesses and entrepreneurs within RCEP countries seeking to provide digital services should be able to do so throughout the region, without needing to replicate the pre-digital-era model of having to set up local presences in every country where they have users or customers.

Requiring companies to create a local presence is anti-trade, and presents an insurmountable barrier to small new providers in RCEP countries that are driving growth and offering new opportunities to consumers across the region.

Proposed language

- Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers, or to services and service suppliers of any other Party or a non-Party.
- RCEP parties should offer full coverage of Mode 1 and all other online services to all RCEP parties.
- No Party shall require a local presence for the provision of services.
- No Party shall accord less favourable treatment to digital products created, or first made available, in the territory of another Party than it accords to other like digital products.

3. Online payments

E-commerce only works for companies if, at the end of the day, firms can be paid for their goods and services. But currently in Asia, companies often struggle to receive cross-border payments in a cost-effective, efficient means. Without a working payment system, no amount of e-commerce frameworks will create new economic growth or job opportunities for firms in Asia.

RCEP parties should create a safe but efficient transaction environment that allows everyone to share in the economic growth of the region. In particular, parties should avoid burdensome regulatory barriers that will prohibit consumers and SMEs from playing a part in the digital economy.

RCEP parties should recognize the value and legitimacy of different online payment methods, regardless of the country of the consumer, merchant or intermediary.

Why online payments for e-commerce matters in RCEP

For goods and services to be traded online, online payment is required. The aim is to minimize transaction costs while still protecting consumers and merchants. RCEP should strive to increase transparency in licensing regimes and facilitate payments mechanisms.

In many parts of the region, there are more people with mobile phones than active bank accounts. Without online payments, millions of people will face financial exclusion through not being able to access goods, services or consumers for their products.

RCEP is a diverse economic area, with different online payment preferences. Many people find their credit cards are not accepted in foreign countries, with electronic bank transfers expensive and cumbersome. Millions in the region are now using services like AliPay, Apple Pay and Paypal. Parties should not harm local consumers or merchants by limiting their payment options. Such solutions are built on top of existing, regulated infrastructure.

Credit card companies currently stipulate different digital security compliance levels for companies depending on the volume or value of their transactions. This risk-based approach has proven to be effective in limiting fraud and theft, while still allowing SMEs to take part in the digital economy. Helping SMEs with compliance will increase innovation, investment and growth, and provide useful economic data to governments.

Proposed language

Each Party shall accord to payment service suppliers of another Party treatment no less favourable than it accords, in like circumstances, to its own payment service suppliers, or to payment service suppliers of any other Party.

Each Party shall apply equal enforcement of any rules pertaining to corporate governance, data privacy, data security or consumer protection to payment service suppliers of another Party, no more thoroughly than that it applies to its own payment service suppliers.

The value of online markets / growth of online services

RCEP parties should create an environment that promotes the growth of new online services and markets by refraining from imposing complex licensing requirements on these services, and by forbearing from the application of legacy telecom infrastructure regulations on online or “over-the-top” services.

RCEP governments need to provide an appropriate balance of regulatory objectives including ensuring that governmental, consumer and business interests are met. The rapid rise of digital trade has made achieving balanced objectives feel more challenging. Broad and sweeping regulatory requirements can make it difficult for even local providers of services to comply with new rules. Government certainly has the right to regulate in the interest of public health and safety. However, these regulations should not be unduly trade restrictive.

Why growing online trade matters for RCEP economies

This is an opportunity for RCEP parties to take a global leadership position. RCEP countries are emerging as global leaders on mobile adoption and usage. In Korea, Australia, and many other countries in the region, more than 50% of views of YouTube videos take place on mobile devices. In China, 64% of mobile users engage in online gaming, compared to just 20% of mobile users in Germany. Asia is emerging as the global leader in mobile adoption and usage -- in fact, Asia is the only region in the world where smartphone users outnumber desktop users.

Four out of 10 of the largest Internet companies by stock market value are based in Asia, and mobile apps like Lion, Yay, and WeChat have challenged or surpassed Western tech giants like Apple, Google, and Facebook. Many startups and SMEs across RCEP countries are mobile businesses that are growing rapidly. For example, FlipKart in India has a \$10 billion valuation. Hijup, the Muslim fashion and e-commerce site in Indonesia, recently received VC funding from a wide range of global investors. In Japan, the mobile app Line is more popular than Skype and Viber. Oxford Economics estimates that the mobile internet will generate an additional \$58.1 billion and 1 million new jobs across ASEAN by 2020.

Much of this growth has been driven by online services. SMEs that use the Internet are 50% more likely to sell outside their region. And companies from all industries -- including agriculture, retail, and banking -- use mobile technologies to store data globally, so that they can provide faster, more reliable services at lower cost.

As a result, there is a tremendous opportunity in RCEP to recognize the special role that mobile and online services have played -- and will continue to play -- in the economic growth of RCEP countries. Building rules to promote open online markets will make it simpler for entrepreneurs to launch online businesses, and will encourage SMEs to use Internet tools and online services to reach global markets.

Proposed language

Each party shall allow consumers in their territories to access and use services and applications of a consumer's choice available on the Internet, and to connect end-user devices of a consumer's choice to the Internet, provided that such devices do not harm the network.

Each party shall refrain from imposing unnecessary or legacy regulatory and licensing requirements on providers of online services and applications.

The Asian Trade Centre (ATC) is the premier regional thought leader, advocate and educator for trade in Asia. ATC works directly with both governments from around the world, companies, think tanks, foundations, non-governmental organizations, aid agencies and serves as the resource for trade-related activities in Asia.

Visit us at: asiantradecentre.org or email us at: info@asiantradecentre.org