



UNIVERSITAS KATOLIK INDONESIA

ATMA JAYA

Governing Algorithm for Fair Competition in the Digital Market in Indonesia

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Problems?

Responsibilities?

Proof?

OECD (2017) on algorithms & tacit collusion

Roosendaal (2018) on scenarios of CL violation involving algorithms

Monitoring algorithms

Parallel algorithms

Implementing algorithms

Administrator algorithms

Signaling algorithms

Self-learning algorithms

Independent algorithms

'The trouble is, it's not easy to know exactly how those algorithms work. How they've decided what to show us, and what to hide. And yet the decisions they make affect us all.' (Margrethe Verstager, 'Algorithm and Competition, 2017)

Cases

Ongoing Cases in Commercial Air Transportation in Indonesia

- Price regulation (floor & ceiling price)
- Price cartel?
- AirAsia disappeared from OTA

Online Transportation Networks

- Indonesia: predatory pricing (abuse of dominance)
- Singapore: Grab-Uber merger (2018)

EU Google Shopping Case

- Leveraging market power (general search → comparison shopping)
- MSPs & network effects
- Indispensability

The EU Eturas Case (Case C-74/14 *Eturas and other v Lietuvos Respublikos Konkurencijos Taryba*, 2016)

Platform used by
Lithuanian travel agencies



Algorithms employed discount cap at 30%

Violation of Art. 101 TFEU?

Knowledge of the algorithms actions

ECJ: merely receiving the message does not constitute knowledge

- Case C-49/92 P Commission v Anic Partecipazioni [1992]: ‘the undertakings participating in concerting arrangements ... take account of the information exchanged with their competitors when determining their conduct on that market’
- The Eturas Case: ECJ listed a number of ways in which participating companies could distance themselves from alg. actions:
 - submitting a clear and express objection to the platform administrator
 - repeatedly attempting to offer a discount exceeding the capped amount of 3%
 - proving that the message was not received
 - or showing that the party involved only became aware of the content of the message after some time had passed

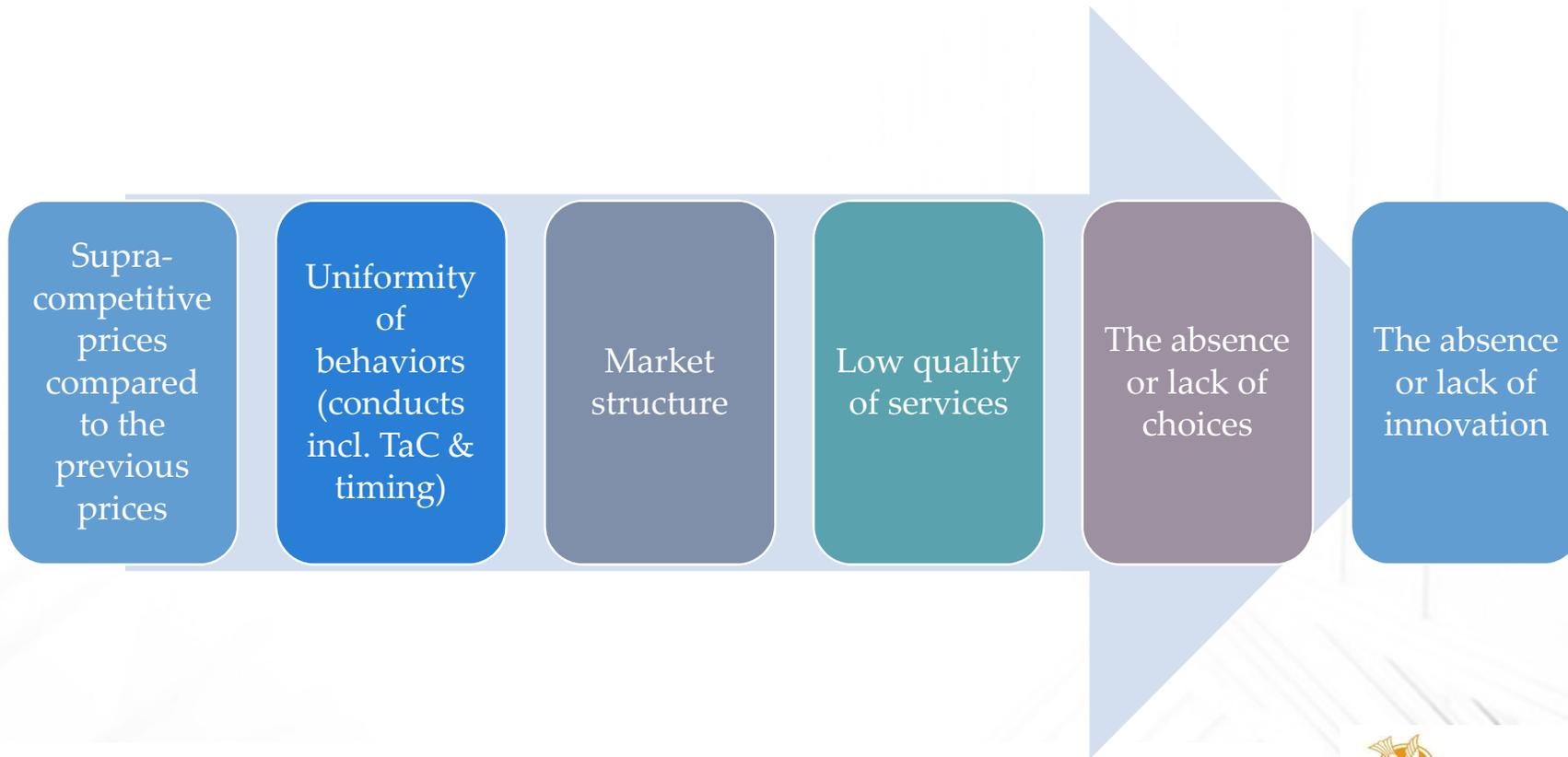
Research Questions

Which elements should be considered to detect the use of algorithms for anti-competitive behaviors?

Should and could we govern algorithm regulation to ensure fair competition in the digital market?

Which competition policy approach having been taken in Indonesia to tackle problems resulted from the use of algorithms in e-commerce?

Elements to be considered to indicate the use of algorithms for anti-competitive behaviors



Governing Algorithm

Governing algorithms to ensure fair competition in the digital market could lead to overly restricting regulations and thus, might deter innovation

However, competition law compliance by design should be thinkable

Competition Policy?

Current State

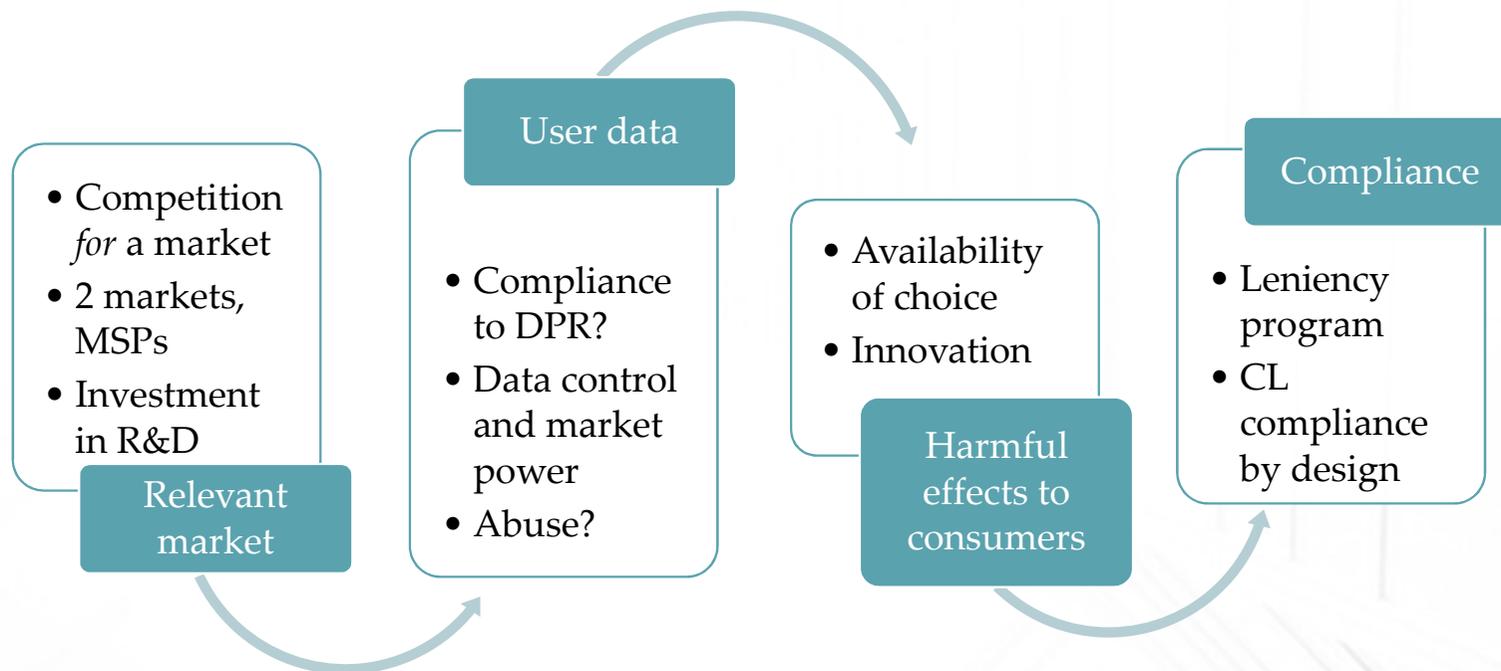
Currently, no particular competition policy in Indonesia to tackle the problem resulted from the use of algorithms; BUT ...

Proposal?

Proposal for Indonesian Competition Policy?

1. A comprehensive study on e-commerce and the challenges to competition law and policy in Indonesian market (example: Singapore)
2. Competition policy to provide guidelines on which important factors should be considered in the assessment of cases involving algorithms & the role of data
3. Learning from the EU: ...

Proposal for Indonesian Competition Policy?





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Thank You!

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