CPI Columns
Asia

June 2024

Digital Markets: Regulation or Innovation in Asia-Pacific?

By Stephen Crosswell | Baker McKenzie

Edited by Elizabeth Xiao-Ru Wang & Kun Huang

Digital Markets: Regulation or Innovation in Asia-Pacific?

By Stephen Crosswell[1]

Introduction

Historians generally agree that the Industrial Revolution has been the single most important event in human history since the domestication of animals and plants. The stream of innovation that was triggered was exponential and its impact on societies around the world has been enormous.

However, it is often forgotten that, for at least 60 years, the Industrial Revolution was limited to England. It is even less well known that a debate had taken place at the time about the legal framework that should drive England's economy as it transitioned into the largest manufacturing and industrial center in the world, and the financial center for global trade. A conscious decision was taken to reject a legislated approach in favor of the slower, but more certain, process of developing principles case by case within England's common law framework.

Some places in the world are transitioning into the Technology Revolution, where we must reassess our relationship with social platforms, virtual reality and complex AI-driven, semi-autonomous systems. It will be even more important than the Industrial Revolution, with the potential to bring exponentially more benefits to humanity. England provided the engine for the Industrial Revolution. In the same way now, while billions of people are benefiting from the Technology Revolution, it is only a few places in the world that are driving the transition to this new stage in human development. The jurisdictions that are at the forefront have, at least to this point, provided an environment more supportive of invention, more accepting of experimentation and more willing to allow inventors freedom to succeed.

We are now witnessing attempts by the European Union and some other jurisdictions to impose *ex ante* legislation in digital markets and AI of a breadth and reach that has never been seen before. The EU is pushing for more jurisdictions, including common law jurisdictions around the world, to follow with their own legislated approach. In the Asia-Pacific region, Australia's competition regulator, the ACCC, is also pushing for *ex ante* powers which eschew the courts and common law protections such as the presumption of innocence and the burden of proving anticompetitive conduct before punishment is meted out.

This is one of the most important issues facing the world. As societies decide what legal framework(s) will regulate humanity's efforts to move into a digital society and to discover the technologies that will support us on that journey, it needs to be remembered that this transition is not inevitable and the leaders in the race will be those jurisdictions that have legal systems that continue to support innovation.

This article will examine:

1. the debate that took place on these issues in England during the Industrial Revolution;

2. the EU's new *ex ante* regulations and the debate taking place in Asia-Pacific on digital market regulation; and

3. the key question that policy-makers should be asking: if the common law (a case-by-case) approach was so successful in driving the Industrial Revolution, and if Asian economies want to be leaders in the Technology Revolution, what confidence can we have in a legislated approach of the sort now being pursued in Europe?

[1] Stephen Crosswell is the chair of Baker McKenzie's Asia-Pacific Antitrust & Competition Group and the head of our Greater China Antitrust & Competition team.

England's Debate: The Legal System That Drove the Industrial Revolution

The age of commerce created more complex societal relations than had been seen in the past, requiring significant developments in the law to support these changes. The common law was, at the time, being particularly tested. It had supported England as it went through the Agricultural Revolution but society in England was changing rapidly, both because of advances in commerce and with the extended empire. The question was, rightly, being asked whether a law built in another age could adapt. Adam Smith, Lord Mansfield (England's then Chief Justice), Lord Kames (Scotland's then Chief Justice), Sir William Blackstone, and other leading legal thinkers at the time dismissed legislation as incapable of resolving these challenges. They believed that the only effective solution lay in the development of common law.

In the legal field, the "*eighteenth century, according to the judgment of its current historians, was England's century of law … elevated during this century to a role more prominent than at any period of English history*".[2] Adam Smith maintained that in no other nation had law achieved such "*great exactness*" in execution.[3]

Blackstone, remembered now for his foundational work on the *Commentaries*, claimed that "*parliament could build only upon "the foundation of the common law," and there was no place in his legislative science for "any great legislative revolution*".[4] Lord Mansfield sat as Chief Justice in England, almost single-handedly developing the law merchant to bring the common law into an age of industrialization, commerce and global trade, with Lord Kames, Scotland's then Chief Justice, making similarly seismic shifts there.

As the Chief Justice in England at this critical time, Lord Mansfield played a central role in the debate. Lieberman tells us of

> "*[t]he Chief Justice's often critical attitude to parliamentary legislation"…"In his arguments in Omychund v Barker, the future Chief Justice insisted upon the superiority of common law over legislation as a mechanism for developing the rules, there presenting an argument that was later received as a classic pronouncement on the wisdom of the common law. On the bench Mansfield supplied further observations on the failures of parliamentary legislation. Many of these took the familiar form of complaints against the careless drafting and technical flaws in many acts of parliament. In a ruling of 1767, though, he returned to the broader issue of the rival claims of common law and statute, and again presented the record of the past as a clear demonstration of the superiority of common law.*"[5]

In Scotland, Lord Kames shared Lord Mansfield's views on the superiority of common law and the weaknesses inherent in legislation. Lord Kames, like his contemporaries, emphasized that the strength of the common law came from the process:

> *"Unlike the legislature, Kames explained, the courts only arrived at "a general rule" through the "induction of many cases," each "adapted to particular circumstances." Through such a steady and gradual process of legal growth, customary law achieved a standard of excellence unavailable in other forms of law-making. According to the frequently invoked formulas of English common lawyers, by such means England's unwritten law (in Mansfield's words)*

[2] Lieberman, D. (1989). The Province of Legislation Determined: Legal Theory in Eighteenth-Century Britain (Ideas in Context). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511558528 at p. 1.

[3] Lieberman at p. 1, quoting Adam Smith, Lectures on Jurisprudence, ed. R. L. Meek, D. D. Raphael, and P. G. Stein (Oxford, 1978), p. 275.

[4] Lieberman at p. 66.

[5] Lieberman at p 124.

"work[ed] itself pure" by refining rules "drawn from the fountain of justice." And the natural result was a body of common law "superior to an act of parliament."[6]

The results speak for themselves. England, under common law, developed by the end of the 18th century into the greatest manufacturing and commercial country in the world. While the start and end date are heavily debated, many would say the first Industrial Revolution took place from 1760-1840. It needs to be remembered that, until the 1820s, it was a singularly English phenomenon and many of the technological and architectural innovations were of English origin. As Paul Kennedy has observed: "*The root cause of these transformations, it is clear, lay in the staggering increases in productivity emanating from the Industrial Revolution. Between, say, the 1750s and the 1830s the mechanization of spinning in Britain had increased productivity in that sector alone by a factor of 300 to 400, so it is not surprising that the British share of total world manufacturing rose dramatically—and continued to rise as it turned itself into the "first industrial nation*". When other European nations and the United States followed the path to industrialization, their shares also rose steadily, as did their per capita levels of industrialization and their national wealth."[7]

Adam Smith famously said in the Wealth of Nations:

"*But though the profusion of government must undoubtedly have retarded the natural progress of England towards wealth and improvement, it has not been able to stop it. The annual produce of its land and labour is undoubtedly much greater at present than it was either at the Restoration or at the Revolution. The capital, therefore, annually employed in cultivating this land, and in maintaining this labour, must likewise be much greater. In the midst of all the exactions of government, this capital has been silently and gradually accumulated by the private frugality and good conduct of individuals, by their universal, continual, and uninterrupted effort to better their own condition. It is this effort, protected by law, and allowed by liberty to exert itself in the manner that is most advantageous, which has maintained the progress of England towards opulence and improvement in almost all former times, and which, it is to be hoped, will do so in all future times.*"

As the effects of the Industrial Revolution spread from its birthplace in England around the world, the results were dramatic. Economic historian Angus Maddison, at the University of Groningen, spent his life estimating gross domestic product ("GDP") figures for the world over the past two millennia. The conclusion is startling:

"*Between 1800 and 1900, GDP per person per year rose from $1,140 to $2,180. In other words, humanity made over twice as much progress in 100 years as it did in the previous 1,800 years. In 2008, the last year in Maddison's final estimates, average global income per person per year stood at $13,172. That means that the real standard of living rose by more than tenfold between 1800 and 2008.*"[8]

What is often overlooked is the corresponding impact that this had on poverty. Max Roser has mapped this. In his words,[9] the chart below

"*summarizes the global history of poverty. It focuses on the last two centuries when humanity left the stagnation of the past behind and achieved growth for the first time. The world made good progress - in*

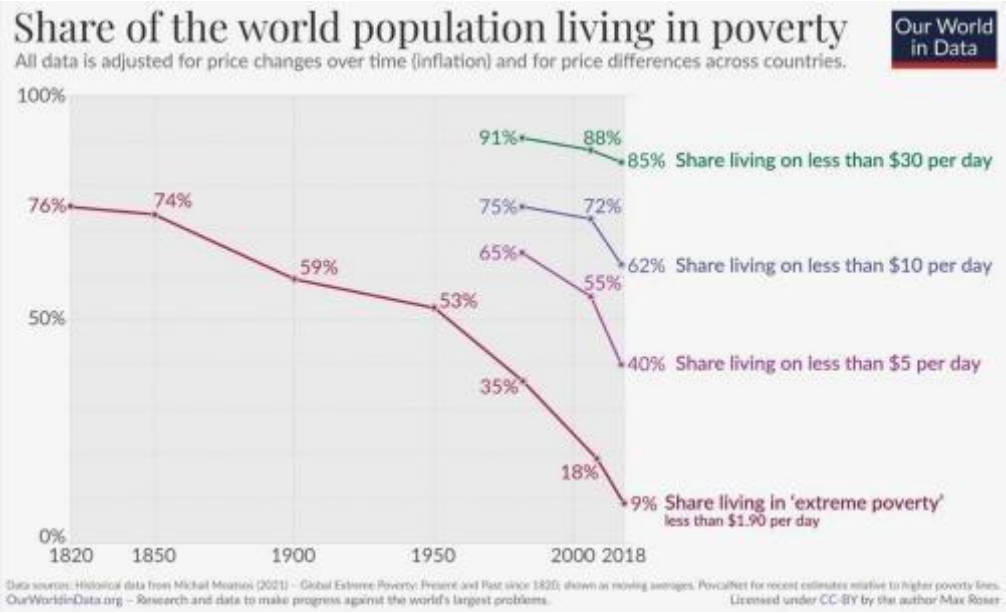
[6] Lieberman at p 162.

[7] Kennedy, Paul (1987). The Rise and Fall of the Great Powers. New York: Random House, 148.

[8] See Global Income Is Rising - Human Progress.

[9] Max Roser (2022) - "The history of the end of poverty has just begun" Published online at OurWorldInData.org. Retrieved from: 'https://ourworldindata.org/history-of-poverty-has-just-begun' [Online Resource].

the last decade the share that lives on less than $10 per day has declined by 10 percentage points - but the chart also shows that much progress is still needed. 62% live on less than $10 per day and 85% live on less than $30. The global data makes clear why the world needs much more growth to end poverty."



The Technology Revolution promises even more advances for humanity. The technology of the future has the potential to deliver more effective healthcare, treat diseases and disabilities that are beyond our current expertise, wean the world off fossil fuels, reverse environmental degradation, and solve many more of the pressing challenges the world faces.

However, as Elon Musk has observed, it is not inevitable that we will keep advancing. Invention and technological advancement are only possible "*if a lot of people work very hard to make it better*".[12] The challenge facing us, one which has been profoundly ignored since the Industrial Revolution, is what legal framework gives societies the freedom to do that. For Smith as he was writing the Wealth of Nations, for Blackstone as he wrote the Commentaries, for Lord Mansfield as he crafted the law merchant in the English courts, and Lord Kames similarly in Scotland, the answer was very clear: it is the common law.

Digital Markets Regulation in Europe

The European Union

In recent years, the EU has introduced swathes of regulation. However, some of the most dramatic interventions have been directed at digital markets and AI.

On November 1, 2022, the Digital Markets Act ("DMA")[13] entered into force, becoming effective on May 2, 2023. The affected companies were given until March 6, 2024 to comply with all of the provisions in the DMA. The DMA is a highly controversial piece of regulation that sets aside the *ex post* competition framework that has, for decades, been the accepted competition

[12] Musk, E, on Ted: "We're mistaken when we think that technology just automatically improves. It does not automatically improve. It only improves if a lot of people work very hard to make it better. And actually, it will, I think, it by itself degrade actually. We look at great civilizations like ancient Egypt and they were able to make the pyramids and they forgot how to do that. And the Romans they built these incredible aqueducts. They forgot how to do it." Available at https://electrek.co/2017/05/01/elon-musk-on-boring-company-semi-truck-mars-ted-talk-transcript/.

[13] Regulation (EU) 2022/1925.

framework for market economies. In its place are rules directing certain actions and prohibiting others by digital platforms that have been designated as "gatekeepers". The regulations are remarkable both in their breadth and in the apparent disregard for due process, including the presumption of innocence, that are central tenets of economies espousing the rule of law. Twenty-two services across six companies were designated as gatekeepers. Prohibitions have been brought in across numerous areas of business including on the combination of data collected from different services, self-preferencing, own-service preferencing, bundling, interoperability, and access to data. Penalties can reach up to 10% of worldwide turnover, with threats to break the companies up if authorities are not satisfied with their compliance.

The Digital Services Act ("DSA")[14] was approved on October 4, 2022, by the European Council. It was published in the Official Journal of the European Union on October 19, 2022. Affected service providers were given until January 1, 2024 to comply with its provisions. The stated objective of the DSA is to govern the content moderation practices of social media platforms and address illegal content.

In December 2023, the EU also unveiled sweeping proposed rules to regulate AI, with the European Parliament and the Council, on December 9, 2023, reaching agreement on the AI Act. The AI Act is due to come into force 20 days after its publication in the Official Journal and will impose sweeping rules requiring risk assessments and mitigation, high quality data sets, logging of activity to ensure traceability, human oversight, and more.[15]

In addition to these regulatory initiatives, the European Commission is also aggressively scrutinizing mergers in the tech sector. In February of 2024, the European Commission issued a revised Market Definition Notice,[16] bringing in changes focused on digital markets, stating that "*investigating potential effects on competition in innovation is a focus area for the Commission.*"

These developments have led a writer for the Wall Street Journal to remark that "*Europe Regulates its Way to Last Place*" as rules from "*mergers to AI, the EU's aggressive rule-making hampers its ability to compete with China and the U.S."*[17]

The United Kingdom

The heavily legislation-led approach in Europe is in stark contrast with the case-led (common law) approach that England took as it saw innovation driving the Industrial Revolution and the spread of global commerce. Nevertheless, the UK has not been immune to the EU's decision to regulate.

Once the home of innovation and the global engine for growth, the UK has, for decades now, been increasingly burdened by the regulation it inherited when it joined the European Union. The decision in 2016 to exit the Union was controversial. However, a key argument made in support of the move was that it would allow the UK to unshackle itself from the heavily regulated European approach and return to a less bureaucratic legal framework friendlier to innovation and growth.[18]

---

[14] Regulation (EU) 2022/2065.

[15] See AI Act | Shaping Europe's digital future (europa.eu).

[16] See Revised Market Definition Notice (europa.eu).

[17] See Europe Regulates Its Way to Last Place - WSJ.

[18] As Peter Foster, Public Policy Editor for the Financial Times put it recently, Brexit is not "*simply about narrow regulatory arbitrage — being nimbler than the EU, or exploiting post-Brexit legal freedoms — regardless of the Brexit cost-benefit analysis, it's about creating an investment environment that keeps pace with the best jurisdictions for innovation in the world.*" Available at: ep.ft.com/permalink/emails/eyJlbWFpbCI6ImRjNDUwNzkyNmFlYjQyYjliYTY3ZmI2NTgwN2QyNTQyZjVhODU1OGIwZTlkNGQ5YjU0M2Q5NDM2MTE2MjNkZTdlNTVlMDIiLCAidHJhbnNhY3Rpb25JZCI6IjIxNThiMTA2LWRlYzYtNGJjYi05Zjc4LWRjM2ViYWM5MTJkYyIsICJiYXRjaElkIjoiZDg4YjU0YWYtNzI3NS00NzYzLWI0NjctZjI1MDkxMDAwMTczIn0=

In a recent article commenting on the UK's break with the EU on AI regulation, it was observed that "*The United Kingdom — in contrast to its peer regulators in the European Union, who have unanimously endorsed the final text of the bloc's Artificial Intelligence Act — is taking a decidedly "pro-innovation" approach to the question of AI regulation.*"[19]

Despite the purported support for a less regulated approach, the UK House of Commons proposed the Digital Markets, Competition and Consumers Bill, to regulate, among other things, competition in digital markets. The Bill received Royal assent on May 24, 2024 and is expected to come into force later in 2024. It is proposed that a Digital Markets Unit will be created within the CMA with the power to set tailored rules for each designated tech firm on how they must treat consumers and other businesses in relation to their designated digital activities and also to design and impose targeted interventions to address the root causes of alleged competition issues in digital markets. Examples given have included requiring designated firms to allow greater interoperability or data access.[20]

Asia-Pacific

The reaction to these developments in the Asia-Pacific region has been mixed. Many jurisdictions look to Europe in shaping their competition laws and, to some degree, their broader economic policy. However, some policy-makers and regulators in Asia are also conscious of how innovation plays a key role in growth. They do not want to unwittingly take steps that will slow innovation or make investment into the digital sector in their markets less attractive.

Australia

Australia's ACCC has been one of the most vocal regulators in the region calling for sweeping *ex ante* regulation of digital markets. In a December 2023 press release,[21] it said that its recommendations set out in the ACCC's fifth Digital Platforms Services Inquiry report[22] have been agreed to in principle by the Australian Government. This includes:

- mandatory codes of conduct for certain digital platforms to prevent anti-competitive conduct; and
- requesting that digital platforms develop voluntary internal dispute resolution standards by July 2024 and doing further work to develop internal and external dispute resolution requirements for platforms.

This new regulatory regime would apparently work alongside Australia's existing competition laws and each code would introduce targeted obligations to address the types of (alleged) anti-competitive conduct most relevant to that service. The ACCC also proposed new obligations on all digital platforms to address scams, harmful apps and fake reviews.

Korea

Korea also appears to be closely considering a regulated approach. In late December 2023, Korea's competition regulator, the KFTC, proposed a DMA-style bill to regulate large platforms, the Platform Competition Promotion Act. The stated objective is to "rein in the power of large platforms." Conduct that would be regulated includes self-preferencing and exclusivity clauses. However, the KFTC has not yet released further details about the prohibited conducts or the designation process.

The KFTC proposes to consult with various government ministries and the National Assembly to gain approval for the bill. According

[19] PYMNTS 26 February 2024,available at: NCR Voyix: Digital Banking Growth Leads Software and Services Segment Higher (pymnts.com).

[20] See New pro-competition regime for digital markets - GOV.UK (www.gov.uk).

[21] See Consumers and small businesses to benefit from proposed new regulation of digital platforms | ACCC.

[22] See September 2022 interim report | ACCC.

to a GCR report on the proposal, "*Korea University professor Hwang Lee, who chaired the KFTC task force, said the group was sceptical about an ex ante regulatory regime, but the agency has decided to push for it anyway."*[23]

In February it was reported that "*the South Korean competition regulator has outlined a more cautious approach to the highly anticipated platform-specific legislation, hinting at a potential pivot in response to the contentious pre- designation system*" and that the "*strategy is being revisited in order to potentially lighten the industry's burden while still effectively regulating platforms.*"[24]

Japan

Japan may also be pushing forward with *ex ante* rules targeting mobile-ecosystem operators to open access to their app stores, limit self-preferencing in search engines, and make further disclosures of changes to their operating systems. Japan took a rather novel approach, experimenting with "co-regulating" against large platform operators through voluntary self-reporting by companies and government monitoring. It appears from recent announcements that the government may introduce a bill this parliamentary year. It remains to be seen what direction Japan goes in, but indications at this stage are that it may take a more reasonable and less broad-brush approach than the EU's DMA.

India

India's government has established a Committee on Digital Competition Law to study the new and unique challenges posed by digital markets. The Committee has conducted consultations and intends to use market studies to better understand the markets and potential competition concerns.

There is also a proposal to set up a Digital Markets and Data Unit within the competition regulator, the CCI, to develop expertise in digital markets. There appears to be an acknowledgement that digital markets are dynamic and that rapid technological advancements will raise new questions needing legal responses. The Digital Competition Law study may be released very soon. It remains to be seen how much the EU's DMA and the UK's DMCC bill influence any recommendations.

Thailand

In Thailand, its competition regulator, the TCCT, recently told the press that it will issue a specific guideline for e-commerce in the first quarter of 2024 for public hearing. The TCCT recently issued a guideline for food delivery platforms.

Consideration is also being given to a draft Platform Economy Act which proposes to give powers to the ETDA and TCCT to annually announce platforms which are considered gatekeepers and will be subject to *ex ante* regulations and substantial fines for non-compliance, daily up to 10 percent of turnover in Thailand.

The TCCT has said that it will also be scrutinizing mergers & acquisitions between digital platforms to prevent monopolies, noting that from 2019 to 2023, the total transaction value of digital platform M&A amounted to more than THB 4.27 trillion.

Indonesia

Indonesia's competition regulator, the KPPU has announced that the digital market is one of their key enforcement priorities. KPPU aims to review enforcement actions carried out by other competition authorities globally and assess whether similar conduct might be taking place in Indonesia and, if so, whether they are worthy of further investigation.

[23] See KFTC proposes DMA-style bill to regulate large platforms - Global Competition Review.

[24] See https://content.mlex.com/#/content/1541059/kftc-announces-further-discussions-on-platform-legislation-explores-alternatives-to-pre-designation-system.

The Indonesian government has also issued the Minister of Trade Regulation 31/2023 and the second amendment to Law No. 11 of 2008 on Electronic Information and Transactions, both aimed at regulating “fairness” in the digital sector. This is followed by Presidential Regulation No. 32 of 2024 on Responsibility of Digital Platform in Supporting Press Quality, which among others sets out the basis for press companies to enter a commercial arrangement with digital platforms. It was reported in January 2024 that Indonesia's Communication and Informatics Ministry (Kominfo) is studying the European Union's Digital Market Act (DMA) to prepare a government regulation on digital ecosystem creation.

Taiwan

In Taiwan, the digital market regulator, the National Communications Commission (“NCC”) attempted to introduce digital platform regulation but was met with strong push-back and controversy. The intensity of the debate forced the NCC to announce on December 8, 2022 that it was withdrawing the draft, saying that there was a need to reconsider the legislation.

There were a number of issues driving the debate in Taiwan, including the potential impact such regulation could have on free speech. The Taiwan experience highlights the complexity of attempts to regulate digital markets and is a salient reminder of the wisdom in England’s cautious and incremental approach to addressing the complex and significant shifts that were taking place in society as it moved into the Industrial Revolution.

Singapore

Singapore is another example of a jurisdiction taking a cautious approach. While the digital economy sector continues to be a focus in 2024, CCCS is undertaking a market study on digital advertising services in Singapore and seeking to position itself as a leader in competition policy in the SE Asia region.

In 2023, the CCCS led the development of the ASEAN Investigation Manual on Competition Policy and Law for the Digital Economy, which provides guidance for ASEAN competition authorities on how to investigate anticompetitive activity in the digital economy. Regional competition authorities are likely to confer with the CCCS when they are undertaking investigations in the digital economy sector.

Despite these developments, Singapore (perhaps mindful of the need to ensure innovation is not unwittingly stifled) has not been convinced to follow the EU’s dramatic decision to experiment with an *ex ante* regulated model.

Malaysia

Malaysia also appears to have decided to take time to study and reflect on the best way forward. The MyCC has recently launched its tender for a Market Review on the Digital Economy Ecosystem under the Competition Act 2010, with an 18-month duration. The objectives of the review are to:

- Identify anti-competitive behavior and reassess the effectiveness of MyCC’s enforcement tools, while also improving them to meet the upcoming challenges of the digital economy.
- Assist the Government by conducting an all-encompassing study of thedigital economy, which includes an analysis of the supply chain, a review of the current state of the digital economy market in Malaysia and an exploration of prospects in the digital economy sector.
- Assist the Government by comprehending policy, market, and competition issues in the digital economy and offering more comprehensive solutions to overcome the current challenges faced by the digital economy.

Serve as a detailed guide for the Government and industry players to continue strengthening Malaysia’s digital economy in alignment with international markets, thereby further enhancing its contribution to the country’s GDP.

Hong Kong

Although the HKCC, Hong Kong's competition regulator, has reportedly shifted enforcement focus to digital markets,[25] to this point Hong Kong has not suggested legislative amendments or a move away from its *ex post* enforcement model. It is, however, monitoring developments elsewhere. At an Enforcers Conference held in August 2023, the Secretary for Commerce and Economic Development said: "*With ... ongoing digitisation of various economic activities, competition enforcement work must also adapt, which is why attention of competition enforcement agencies worldwide is naturally turned to conduct that affects digital markets. I am pleased to learn that fellow academics and enforcers will discuss this issue...*"[26] It remains to be seen where the discussion takes policy development in Hong Kong.

Conclusion

It is no surprise that the European Union, a union of jurisdictions that has been predominantly legislation-led for centuries, decided on a legislative model, with its recent introduction of digital markets and AI regulation.

With the EU pushing for other jurisdictions, including common law jurisdictions around the world, to follow with their own legislated approach, policy-makers need to decide what legal framework they will choose to manage humanity's move into a digital economy that will unlock growth potential for future – which is particularly important for Asia as the next economic powerhouse – and the efforts to discover and invent the technologies that will support us on that journey.

There is a lot that can be gleaned from the jurisprudential debate that took place as England transitioned to a commercial society during the Industrial Revolution. England's experience suggests that the common law should be left to adapt the guiding principles in the same way that it successfully developed the mercantile law to support England's, and later the world's, move into the Industrial Revolution and global commerce.

We also have compelling evidence in mapping where we see innovation taking place now. In recent years, the U.S. has seen aggressive antitrust enforcement, including against tech companies, under the Biden administration. However, the U.S. has traditionally adopted an *ex post* case-led model for antitrust enforcement, building each case under a common law judicial enforcement framework. US corporations "*now account for nearly half of global stock market value ... the highest level of concentration in two decades.*"[24] It is worth reflecting that a large portion of the growth in the US share of global capital in recent years has been driven by the spectacular success of its tech companies. The US is also gaining an edge in AI, driving more US companies into the elite sphere of the most valuable global businesses.

[25] See Hong Kong enforcer shifts focus to digital economy - Global Competition Review.

[26] See Speech by SCED at Competition Enforcers and Academics Summit (English only) - Commerce and Economic Development Bureau (cedb.gov.hk).

World's most valuable listed companies

Rank	December 2020	February 2, 2024
1	Apple *$2.2 trillion*	Microsoft *$3tn*
2	Saudi Aramco *$1.8tn*	Apple *$2.8tn*
3	Microsoft *$1.6tn*	Saudi Aramco *$2tn*
4	Amazon *$1.6tn*	Alphabet *$1.7tn*
5	Alphabet *$1.1tn*	Amazon *$1.7tn*
6	Meta Platforms *$0.7tn*	Nvidia *$1.6tn*
7	Tencent *$0.6tn*	Meta Platforms *$1.2tn*
8	Tesla *$0.6tn*	Berkshire Hathaway *$0.8tn*
9	Alibaba *$0.6tn*	Eli Lilly *$0.6tn*
10	Berkshire Hathaway *$0.5tn*	Tesla *$0.5tn*

Source: QUICK FactSet

For jurisdictions that seek to position themselves as drivers of the world's leading technologies, fostering innovation and increasingly cutting-edge technology driven solutions, history suggests that the system most capable of delivering on these goals is the common law, not legislation. The debate and experiments with *ex ante*-regulated approaches is now starting to play out and Asia is a key region to watch as policymakers decide how they will try to best position their economies in the race.