

# Merger Review Regimes in the ASEAN Region and Case Analysis of Grab-Uber Merger

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## I. Introduction

ASEAN Leaders adopted the ASEAN Economic Community (AEC) Blueprint 2025 in 2015, which guides the broad trajectories of ASEAN economic integration from 2016 to 2025. Grounded on the second initiative of the AEC Blueprint 2025, “A Competitive, Innovative, and Dynamic ASEAN,” ASEAN established the ASEAN Competition Action Plan (ACAP) 2025 via the ASEAN Experts Group on Competition (AEGC).<sup>1</sup> This plan elaborates strategic measures related to promoting harmonization of competition policy and law in the ASEAN region. As of August 2021, nine of the ten ASEAN Member States have introduced their national competition law regimes, with Cambodia still reviewing the draft. However, detailed competition laws of the member states are relatively diverse in their regimes while basic principles enforcing competition laws display similarities. The institutional differences considering each state’s enforcement environments are natural, but they could be

worked as hurdles in integrating the regional economy. This divergence could be more problematic in reviewing cross-border M&As (mergers and acquisitions) because if each competition authority in the region reaches a contradictory conclusion, investors targeting the integrated ASEAN market would be more reluctant to invest in the cross-border M&As.

In 2018, the largest yet cross-border M&A deal between digital platforms in Southeast Asia was reached, namely the Grab-Uber M&A case. The local digital platform Grab consolidated the regional operations of San Francisco, California-based Uber, a development which had significant effects on competition and consumer welfares in the SEA digital market. The competition authorities in the region independently initiated their investigation and started to deliberate the merger case to determine the anti-competitive effects on their domestic market, and to decide whether this tran-

<sup>1</sup> [https://asean-competition.org/file/post\\_image/ACAP](https://asean-competition.org/file/post_image/ACAP)

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saction should be restricted or approved. Even though the two merging and merged firms completed their transactions, each authority applied different logic and imposed different remedies in deciding the case. Authorities in some member states such as Singapore and the Philippines decided that the Grab-Uber merger was anti-competitive, while others such as Indonesia and Viet Nam considered the merger not anti-competitive.

We review the competition policies and laws of four major ASEAN countries – Indonesia, Singapore, Viet Nam, and the Philippines – from institutional and legal perspectives, focusing on M&A review regimes. Then, we briefly introduce how these competition authorities decided on the Grab-Uber merger case, also analyzing the competition effects of the case on the ride-hailing market in the countries. Based on the analysis results, we propose overseas competition policies for Korea.

## II. Merger Review Regimes in the ASEAN Region

While Indonesia was the first country to introduce a competition law in ASEAN in 1999, Singapore and the Philippines are equipped with relatively advanced forms of competition policy. Viet Nam started to accept global standards since the comprehensive amendment of its competition law in 2018.

Compared to the regulation of cartel conduct

and abuse of dominance, merger review regimes show significantly heterogeneous institutional characteristics. In regulating anti-cartel behaviors, all four countries' competition authorities commonly separate “per se illegal rule” and “rule of reason” when enforcing their laws. And, all four countries assume that a firm has a dominant position if the firm's market share is above a certain threshold and explicitly regulate the abuse of dominance.

The requirements for reporting mergers and acquisitions show a wide spectrum. Table 1 compares the institutional divergence among the four states. Singapore has a post-review process where competition law requires firms to report the M&As afterwards but they do not have to report consolidations in advance. However, Viet Nam and the Philippines have a mandatory pre-review process where merging firms are obligated to both report M&As to the authorities and obtain approval in advance. In between the two regimes, Indonesia runs voluntary pre-review and mandatory post-review regimes. Also, these countries have substantive differences in assessing the anti-competitive effects of mergers as well as procedural differences in the review periods and thresholds for notification.

These institutional differences can impose burden and cost on firms conducting cross-border M&As in the ASEAN region. That is, the divergence by states within ASEAN can disturb market integration by increasing competition law risks in the region.

**Table 1. Merger Review Regimes: Indonesia, Singapore, Viet Nam, and the Philippines**

	Indonesia	Singapore	Viet Nam	Philippines
Competition Law	Chapter 5, Law No. 5 /1999 Government Regulation No. 57/2010 KPPU Regulation No.3/ 2019	Competition Act (Chapter 50B) CCCS Guidelines on merger procedures 2012 CCCS Guidelines on the substantive assessment of mergers 2016	Law No. 23/2018/QH 14 Decree No. 35/2020/ND-CP Decree 75/2019/NC-CP	Philippines Competition Act Rules of Procedure of the Philippine Competition Commission Rules and Regulations to Implement the Provision of Republic Act No. 10667 Merger Review Guidelines
Notification Regime	Voluntary pre-merger consultation and Mandatory post-merger notification	Voluntary post-merger notification	Mandatory pre-merger notification	Mandatory pre-merger notification
Thresholds for Notification	Turnover-based threshold of IDR 5 trillion (approx. USD 340 million); or Asset-based threshold of IDR 2.5 trillion (approx. USD 170 million)	No compulsory threshold for pre-notification  However, firms are encouraged to notify if 40% of combined market share (MS) or more; or a 20–40% combined MS and 70% of CR <sub>3</sub> or more	Total domestic assets or sales-based threshold of VND 3 trillion (approx. USD 129 million); or Transaction value-based threshold of VND 1 trillion (approx. 43 million USD); or 20% of combined MS Financial sector-specific thresholds	Basically depending on nominal GDP  As of March 2020, Turnover or asset-based threshold of PHP 6 billion (approx. USD 120 million); or Transaction value-based threshold of PHP 2.4 billion (approx. USD 48 million)  *Due to Byanihan Act 2 to recover from COVID-19, transaction values below PHP 50 billion are exempted from compulsory notification for two years from 15 September 2020
Review Period	In voluntary pre-merger consultation, Phase I (preliminary) with maximum 30 working days and Phase II (comprehensive) with maximum 60 working days  In mandatory post-merger notification, only one Phase with no longer than 90 working days after complete document submission	Phase I with maximum 30 working days after complete document submission and Phase II with maximum 120 working days	Phase I with maximum 30 working days after complete document submission, Phase II with maximum 90 days, and extended Phase II with additional 60 days	Phase I with maximum 30 working days after complete document submission and Phase II with maximum 60 days

	Indonesia	Singapore	Viet Nam	Philippines
Substantive Assessment	Market concentration (HHI), entry barriers, possibility of anti-competitive behaviors post-merger, efficiency effects, failing firms (bankruptcy), etc.	Unilateral effects, co-ordinated effects and foreclosure effects analysis  Justification test with efficiency in demand and supply sides, and dynamic efficiency  Assumed not anti-competitive if combined MS is below 40%, or 20–40% with less than 70% CR <sub>3</sub>	The 2018 new competition law introduced global standards assessing the merger's anti-competitive effects  *Before 2018, mergers generating 50% MS were not allowed  Mergers related to national strategic industries, growth of SMEs, and promoting competitiveness of domestic firms are positively assessed to be approved	Unilateral effects, co-ordinated effects and foreclosure effects analysis  Justification test with efficiency effects
Remedy	Corrective orders with behavioral and structural remedies  IDR 1 billion of fines everyday (not exceeding IDR 25 billion) against failing to satisfy filing deadlines	Corrective orders with behavioral and structural (preferred) remedies  Interim measures  Financial penalty not exceeding 10% of annual domestic sales amount	Corrective orders with behavioral and structural remedies  Financial penalty not exceeding 5% of annual domestic sales amount	Corrective orders with behavioral and structural remedies  Financial penalty between 1–5% of transaction amount  Consent order

### III. Analysis on the Impacts of Grab-Uber M&A on Market Competition

#### 1. Competition authorities' decisions

We compare each of the four competition authorities' decisions on whether to approve a representative cross-border M&A case in the region in 2018 – the Grab-Uber M&A case. The competition authorities of Singapore and the Philippines both independently decided

that the Grab-Uber M&A was anti-competitive. They argued that the consolidated Grab's market power after the merger would be strengthened due to the elimination of its strong competitor, Uber. The merger had the effect of easing intense competition pressure in the digital platform market. Nonetheless, due to the institutional limitations of the voluntary post-review regime in the country, the merger was approved by Singapore's competition authority with certain behavioral remedies, such as restrictions against raising prices. The Philippines' competition authority approved the case as well, but chose a slightly

different method from Singapore's by finalizing it by way of consent order.

In Viet Nam, the Vietnam Competition and Consumer Authority (VCCA) delivered its initial opinion that the M&A should not be approved due to the potential competition restrictive effects. However the Vietnam Competition Council (VCC), as the final decision commission, chose not to accept the proposal and approved the merger without any conditions. The Indonesian competition authority did not apply the competition law, arguing that the merger did not show any changes of control rights regulated in the law and only was considered as sales of an asset.

## 2. Empirical Analysis

We empirically analyze the economic effects of the Grab-Uber M&A case on market competition using a data set provided by Allied Market Research. The data set includes information on the features of consumers and three ride-hailing applications, Grab, Uber, and Go-jek, from 2008 to 2019. The empirical results show that the anti-competitive effects from the merger are weaker in Indonesia where the consolidated Grab still has a strong competitor, Go-jek.

We utilize a structural econometric model to estimate the demand and supply function for the ride-hailing service following Berry, Levinsohn, and Pakes (1995). For the purpose of estimating the market demand function, we use four characteristics (diversity of services

provided by a specific platform, user ratings, the number of daily passengers for the plat-

form, and the average waiting time for the platform) in the estimation procedure. With these features of the platform, we combine a generalized method of moments (GMM) with instrumental variable (IV) estimation as the empirical methodology. The benchmark model of the demand estimation is the following.

$$u_{ijm} = -\alpha p_j + \xi_{jm} + \sum_{rc=1}^{RC} \sigma_{rc} x_{jm}^{rc} u_{i,rc} + \epsilon_{ijm}$$

where  $u_{ijm}$  represents a passenger  $i$ 's utility level obtained by utilizing a ride-hailing platform  $j$  in a market  $m$ ,  $\xi_{jm}$  describes unobservable characteristics of the platform  $j$  in the market  $m$ ,  $p_j$  indicates a price of the service provided by the platform  $j$  and  $x_{jm}^{rc}$  represents observed platform characteristics varying with distributions of unobserved consumer characteristics ( $u_{i,rc}$ ).  $\epsilon_{ijm}$  indicates an unobserved error term. Table 2 shows the empirical results. Price is negatively associated with the ride-hailing service demand in every column. In addition, the second and the third column show that the number of different types of platforms provided by an individual platform has positive impacts on consumer demand at the significance levels of 1% and 0.1%, respectively. As predicted above, except for the second column, user ratings have positive effects on consumer demand, but are not statistically significant. Lastly, we need to note that the effects of the average waiting time of ride-hailing platform users on demand is different

from our expectation. Previously, we predicted that consumer demand for the platform would decrease as users wait longer after hailing a vehicle. However, according to the second and third columns of Table 2, we find that the average waiting time has positive impacts on consumer demand, and the estimated coefficients are also statistically significant. As Go-jek established itself early in the Indonesian ride-hailing platform markets, it can be estimated that a lock-in effect has occurred for users who are accustomed to the Go-jek service.

We also calculate the own- and cross-demand elasticities in response to changes in characteristics of ride-hailing platforms. Using the estimated coefficient indicating the effect of the price of the ride-hailing platform service on the average utility of consumers, we can find the change in demand for a given platform (own-demand elasticities) and change in demand for a competitive platform (cross-demand elasticities), according to changes in the price of a specific platform service. Here, we use the change in market share of each platform as the proxy variable representing the change in quantity demanded for the platform following the existing literature. Table 3 shows the calculation results of the own- and cross-demand elasticities from 2013 to 2019 in the Indonesian ride-hailing platform markets. With the results, we can summarize some characteristics observed in the Indonesian ride-hailing platform markets. First, looking at

changes in market share due to changes in the price of specific platform services from 2013 to 2016, before Grab's acquisition of Uber's Southeast Asian business in 2018, Go-jek's market dominance is gradually weakening, after enjoying a monopolistic position in the existing market. For example, when Go-jek lowers its service price by 1%, the increase in Go-jek's market share is 0.530%p (2013), 0.513%p (2014), 0.455%p (2015), 0.441%p (2016), showing a decreasing trend. Regarding this result, we can conjecture as follows. Go-jek was the first to enter the Indonesian ride-hailing platform markets and held its position as a monopolist. However, as new competing platforms such as Uber and Grab entered, existing Go-jek users began to experience multi-homing or completely changing the platform being used. This is in line with the fact that Uber's own-demand elasticities have been increasing until 2016.

The second characteristic can be derived from the own-demand elasticities of Uber and Grab. In other words, when both companies lowered their service prices by 1%, Uber's market share growth showed a large increase up to 2016, while Grab's share decreased significantly from 2016 (2015: 0.402%p, 2016: 0.297%p). These results may have had an impact on the merger between the two platforms in order to stop competition in the same market and increase efficiency, such as combining customer information and sub-services provided by each platform.



Finally, after Grab's acquisition of Uber's Southeast Asian business, we find that the competition between Go-jek and Grab has been increasing. However, in a situation where Grab's market share is still lower than that of Go-jek, we find that the effect of the service price change on each platform on the market share change of both platforms is still asymmetrical. For example, when Grab lowered the price of its services by 1% in 2017, Go-jek's market share fell by 0.040%p. However, in 2018 and 2019, after Grab acquired Uber, the same rate of change in Grab's prices leads to decrease in Go-jek's market share by 0.063%p and 0.058%p, respectively. Also, when Go-jek lowered its service price by 1%, we find that Grab's market share in 2018 and 2019 also decreased by 0.278%p and 0.275%p. However, as pointed out above, the fact that there is a large difference in market share changes between the two platforms in response to changes in the service price of individual platforms is still a result of Go-jek's dominance in the Indonesian ride-hailing platform markets.

Now, let's look at the impact of Grab's acquisition of Uber's Southeast Asian business on competition in the Indonesian ride-hailing platform markets. To this end, we utilize a specific estimation method first assuming the competition model of the Indonesian ride-hailing platform markets, solving the profit maximization problem of individual platform companies to derive a new competitive equilibrium after the acquisition, and calculating the marginal cost for each platform. Here, we

need to show whether competition between platforms is increasing after Grab's takeover. Table 4 shows the marginal cost and markup calculated using the solution derived from the profit maximization problem of each ride-hailing platform. Some characteristics that can be drawn from the results are as follows. First, as shown in Figure 1, Uber's marginal cost has been increasing, while Grab's marginal cost has been decreasing. Moreover, Uber's markup, which increased until 2015, turned to a decreasing trend starting in 2016, while Grab's markup has steadily increased (see Figure 2). Based on this, it can be inferred that the deterioration of the business environment in the region due to the decrease in Uber's markup had an impact on Grab's acquisition of Uber's Southeast Asian business, which had a trend of increasing markup.

Second, we find that Go-jek, which had a high market share, continues to experience a rise in marginal cost and drop in markup in a situation where the platforms expand their market share after Uber and Grab enter the market. In addition, Go-jek's markup decreased less than before the acquisition of Grab's Uber business, but continues to decrease after the acquisition. On the other hand, we find that Grab is gradually increasing its markup after acquiring Uber. These results can be seen as evidence that Grab's acquisition did not adversely affect competition by forming an oligopoly, but rather promoted competition in the form of checking Go-jek, the existing dominant market operator.

**Table 2. Results of GMM-IV Estimation for Ride-hailing Service Demand**

Explanatory Variable		(1)	(2)	(3)
$\alpha$	Price	-5.750* (2.756)	-4.717* (1.720)	-4.749* (2.026)
	The number of Platforms provided by the same ride-hailing platform	-0.123 (0.347)	0.663** (0.256)	0.681*** (0.246)
$\sigma$	User ratings	0.034 (7.233)	-0.085 (4.109)	0.008 (2.827)
	The average number of daily passengers for a platform	0.002 (8.853)		0.017 (1.119)
	The average waiting time		0.433*** (0.107)	0.449† (0.246)
Platform dummy variable		○	○	○
Minimum value of GMM objective function		1.6014	1.0626	1.0512
Observations		19	19	19

Notes: 1) Standard errors are in parentheses.

2) Significance level: † p&lt;0.1, \* p&lt;0.05, \*\* p&lt;0.01, \*\*\* p&lt;0.001.

Source: Author's estimation based on AMR Database (2020).

**Table 3. Own- and Cross-Demand Elasticity of Ride-hailing Platform Service**

Year	Ride-hailing Platform	Uber	Grab	Go-jek
2013	Uber	0.154	-0.070	-0.145
	Grab	-0.056	0.400	-0.145
	Go-jek	-0.056	-0.070	0.530
2014	Uber	0.264	-0.066	-0.162
	Grab	-0.091	0.404	-0.162
	Go-jek	-0.091	-0.066	0.513
2015	Uber	0.291	-0.068	-0.220
	Grab	-0.064	0.402	-0.220
	Go-jek	-0.064	-0.068	0.455
2016	Uber	0.309	-0.048	-0.234
	Grab	-0.065	0.297	-0.234
	Go-jek	-0.065	-0.048	0.441
2017	Uber	0.300	-0.040	-0.232
	Grab	-0.075	0.305	-0.232
	Go-jek	-0.075	-0.040	0.443
Year	Ride-hailing Platform	Grab		Go-jek
2018	Grab	0.282		-0.278
	Go-jek	-0.063		0.397
2019	Grab	-0.214		-0.275
	Go-jek	-0.22		0.400

Source: Author's estimation based on AMR Database (2020).

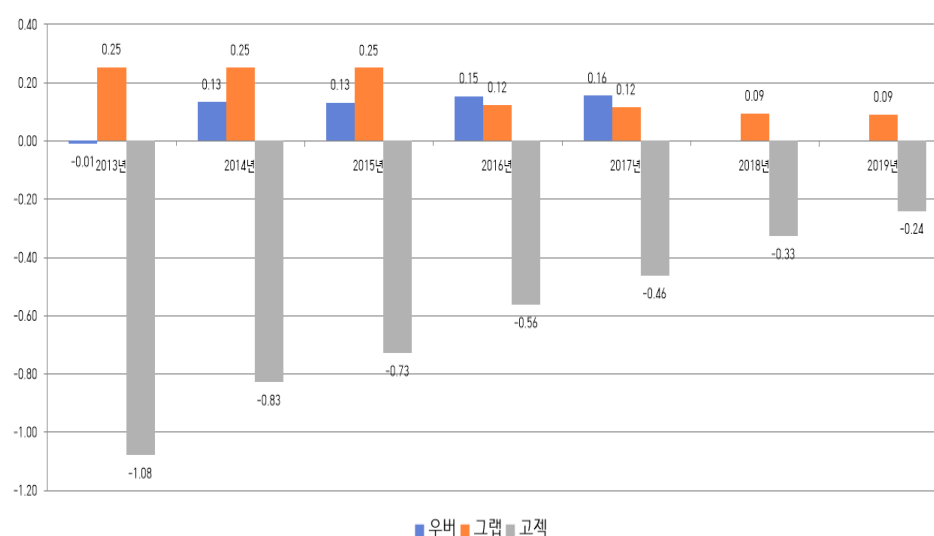


Table 4. Marginal Cost and Markup of Ride-hailing Platform Service

Year	Ride-hailing Platform	Marginal Cost	Pre-M&A Price	Mark-ups
2013	Uber	-0.01048399	0.210	0.2204840
	Grab	0.25403876	0.470	0.2159612
	Go-jek	-1.07968508	0.675	1.7546851
2014	Uber	0.13335557	0.355	0.2216444
	Grab	0.25180082	0.470	0.2181992
	Go-jek	-0.82901578	0.675	1.5040158
2015	Uber	0.13218285	0.355	0.2228172
	Grab	0.25066437	0.470	0.2193356
	Go-jek	-0.72874806	0.675	1.4037481
2016	Uber	0.15451601	0.375	0.2204840
	Grab	0.12335557	0.345	0.2216444
	Go-jek	-0.56360123	0.675	1.2386012
2017	Uber	0.15566437	0.375	0.2193356
	Grab	0.11612803	0.345	0.2288720
	Go-jek	-0.46317411	0.675	1.1381741
Year	Ride-hailing Platform	Marginal Cost	Post-M&A Price	Mark-ups
2018	Grab	0.09433070	0.345	0.2506693
	Go-jek	-0.32767719	0.675	1.0026772
2019	Grab	0.09131059	0.345	0.2536894
	Go-jek	-0.24048787	0.675	0.9154879

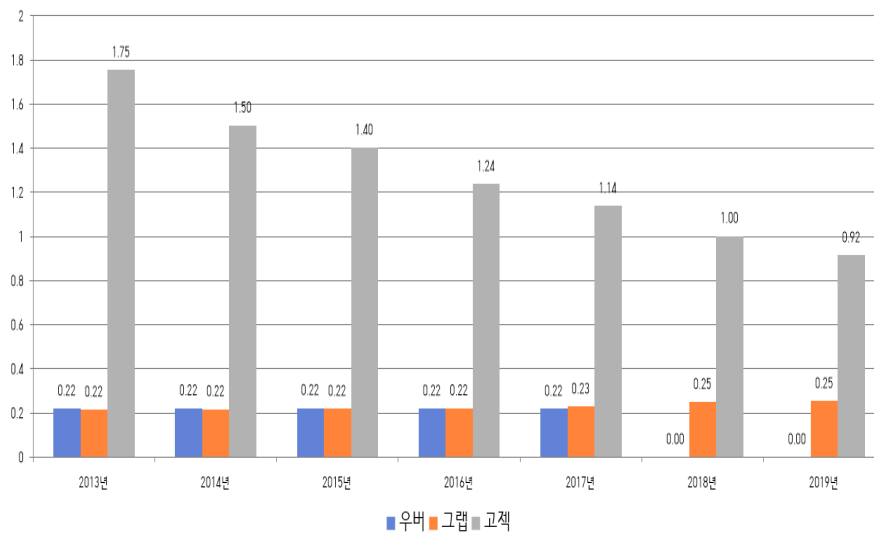
Source: Author's estimation based on AMR Database (2020).

Figure 1. Changes in Marginal Costs



Source: Author's estimation based on AMR Database (2020).

Figure 2. Changes in Markup



Source: Author's estimation based on AMR Database (2020)

## IV. Conclusion

Considering the legal and institutional gaps across countries and divide in their capacity to enforce competition laws, it is important to synchronize the ASEAN member state's regimes by reducing the heterogeneity in competition policy within the region. Also, capacity-building programs to enhance enforcement skills should be addressed. In particular, due to the complicated nature and convergence features of the digital economy, competition authorities in ASEAN should consider a new regulation paradigm in competition policy more suitable to the changing digital competition environments.

On this backdrop, we provide the Korea competition authority with four policy suggestions in the context of promoting international coopera-

tion with the ASEAN member states and minimizing competition law risks of Korean companies that are conducting or planning to do business in the region. First, in line with the New Southern Policy, which emphasizes multilateral cooperation with ASEAN, Korea's competition authority should build a multilateral cooperation channel with the ASEAN Experts Group on Competition as well as develop bilateral cooperation with an individual member state. Second, the authority should promote demand-based and customized collaborative projects in the areas of competition policy through joint investigation, research, and sharing best practices in the digital platform economy. This cooperation could include capacity-building programs on cultivating competition environments and enforcing competition laws. Third, Korea's competition authority should establish a cooperation network with the ASEAN Competition Enforcer's Network to

prepare for the increasing demand of cross-border competition law enforcement in the digital economy. Finally, considering the increasing trend of business opportunities in the ASEAN region, the Korean government should provide

Korean companies with more detailed information on the local competition law and the authorities' enforcement standards to minimize competition law risks by helping them avoid violating the local competition laws. **KIEP**

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