

Electronic Commerce and Consumer Protection in the ASEAN Region

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Abstract: The use of electronic commerce in the era of globalization and trade liberalization is seen to boost economic growth through technology transfer, productivity and international competitiveness. However in reality, it brings negative effect to consumers in Malaysia when it involves cross border transactions. In order to gain benefits from globalization and trade liberalization, Malaysia has to unite with other developing countries in the name of ASEAN. Being a member to ASEAN enable Malaysia to compete wisely in the global market. Based on doctrinal research and by adopting content analysis method, this study examines the consumer protection measures undertaken by ASEAN in the area of electronic commerce as a preparation for the establishment of ASEAN economic community by the year 2015. The study analyses the measures adopted by ASEAN in providing protection to consumers in relation to electronic commerce transactions.

Key words: Electronic commerce, consumer protection, ASEAN, ASEAN economic community, Malaysia

INTRODUCTION

The arrival of globalization directly affects the commercial sector in Malaysia. Globalization is seen as a tool used by the world's major power to open up the economy of the developing countries and dominate the market of these countries in the name of liberalization (Mahathir bin Mohamad and Makaruddin, 2002). A new form of trade introduced by the process of globalization is electronic commerce. Electronic commerce has changed the traditional concept of trade which is normally based on face to face to the new faceless concept. It becomes a field between consumers and traders to exchange information, goods and services regardless of time and geography. However if goods purchased from a trader are defective and the trader is outside the country, issue of civil liability of goods arises. This issue becomes one of the obstacles to the acceptance of electronic commerce in Malaysia. This era also illustrates the wake of economic competition between the developed and less developed countries in their area of specialization. Thus in order to survive, the developing countries should work together to cope with the problems created by the process of globalization and trade liberalization (Ali, 2000). This view is consistent with the opinion expressed by Yaacob (2003):

No country can stand alone in this age of globalisation. Therefore, regional and South-South cooperation could be used as an avenue for developing countries to forego common

positions and build their political and economic capacities. To achieve the aims, developing countries must adept in building coalitions among like minded countries

Realising this matter, Malaysia has become part of ASEAN, a body established by Southeast Asian countries. By becoming member of ASEAN, Malaysia will be more confident to compete in the global market.

ASEAN

ASEAN was established in Bangkok in 1967 (Charmonman, 2005). In the early 1970s, ASEAN membership consist of Malaysia, Brunei, Singapore, Thailand, Indonesia and the Philippines. Its objective at that time was to strengthen political cooperation. Later, ASEAN aimed to provide regional economic cooperation between the country members. Now, ASEAN members consist of Malaysia, Brunei, Singapore, Thailand, Indonesia, Philippines, Vietnam, Myanmar, Laos and Cambodia. ASEAN is in the process of establishing ASEAN Economic Community (AEC) by the year 2015. The effect of AEC is that goods, services, investment, labour and capital will move freely without restriction in the region. In future, ASEAN will become a single market which in turn will make SouthEast Asian countries more dynamic and competitive. ASEAN economic community was introduced on October 7, 2003 during the declaration of ASEAN Concord II in Bali. During the ASEAN Economic Ministers Meeting (AEM) which was held in

Kuala Lumpur in August, 2006, Malaysia agreed to produce ASEAN economic blueprint. The blueprint was then signed by the ASEAN leaders in Singapore on 20 November, 2007. Objective outlined in the ASEAN economic community blueprint is to make ASEAN a dynamic and competitive market.

Recognizing this matter, ASEAN leaders have tried to strengthen its network of information and cooperation concerning the protection of consumers in the region. This effort is accomplished by setting up consumer protection cooperation in ASEAN. The body was recognized when the ASEAN Coordinating Committee on Consumer Protection (ACCCP) was introduced during a conference attended by the ASEAN leaders in Kuala Lumpur on 28-29 November, 2005 followed by a conference in Bali on 5-7 November, 2006. Its objective was to protect consumers in the ASEAN region.

CONSUMER PROTECTION IN MALAYSIA

Importance of consumer protection in Malaysia can be seen with the emphasis placed on various aspects of consumerism in the Malaysian plan. The 7th Malaysian plan saw the enactment of Consumer Protection Act 1999 which makes the interest of consumers as its primary focus. By having this specific act, consumer interest will be more protected. Initiative taken by the government clearly shows that the government is moving towards enhancing consumer protection in Malaysia. However, problem arises as to the application of the act. Section 4 of the Consumer Protection Act 1999 provides that the act shall be supplemental in nature and without prejudice to any other law regulating commercial transactions. This provision clearly gives a second class treatment to the application of the act in Malaysia. Supposedly, the act should be dominant in providing protection to consumers in relation to electronic commerce. The act also does not provide absolute protection for consumers in Malaysia since section 4 provides that any other law is also applicable. Despite the problem, the Consumer Protection Act 1999 also is not enforceable for cross border transactions. This is a problem when it involves issue of foreign trader. The act is only enforceable if the foreign trader has an importer based in Malaysia as provided under Order 11 Rule 1 (1) (c) Rules of the High Court 1980. It provides that the courts in Malaysia have jurisdiction over traders who do not live in Malaysia provided that the trader has a place of business in Malaysia. The same issue will arise when it involves electronic commerce whereby the trader is outside the jurisdiction. Hence, it is vital for ASEAN to have a specific measures for consumer protection in preparing for

ASEAN Economic Community 2015 (AEC). Harmonization of the laws of ASEAN countries with regards to electronic commerce also should be considered as it will present a corpus of consumer protection laws that are more standardize and sustainable in order to strengthen the rights and interests of consumers in ASEAN, especially the Malaysian consumers in order to meet the challenges of globalization.

ELECTRIC COMMERCE IN ASEAN REGION

The usage of internet is increasingly common in this era of trade liberalization. Internet is also communication tools currently used for commercial purposes. Countries in the world are actively promoting the internet as a medium for developing economies including ASEAN. Table 1 listed the number of population and internet users in ASEAN countries as was reported in a study conducted by Andaya and Juban (2010). Among the ASEAN countries, Indonesia, Philippines and Vietnam are leading the way. The figure shows clear potential for active electric commerce activities in the ASEAN region. When talking about electric commerce, the study conducted by Andaya and Juban (2010) also revealed that the respondents are willing to purchase items/services online using site’s online payment system. The findings are listed in Table 2.

Besides the acceptance of electric commerce as listed in Table 2, there are barriers to electric commerce in the ASEAN region. According to Andaya and Juban (2010) trust related issues, such as trust in online vendor and

Table 1: ASEAN population and internet users

Countries	Population	Internet users
Indonesia	342,968,342	30,000,000
Philippines	99,900,177	29,700,000
Vietnam	89,571,130	24,269,083
Thailand	66,404,688	17,486,400
Malaysia	26,160,256	16,902,600
Singapore	4,701,069	3,658,400
Laos	6,993,767	527,400
Brunei	395,027	318,900
Cambodia	13,800,000	173,675
Myanmar	53,414,374	110,000

Table 2: Online purchasing using site’s online payment system

Countries	Percentage
Brunei	85
Cambodia	75
Indonesia	72
Laos	81
Malaysia	75
Myanmar	60
Philippines	80
Singapore	87
Thailand	78
Vietnam	59

credit card safety are the major barrier followed by lack of information and convenience as buying offline is said to be easy and hassle free. According to Nielson Company (2010), the most popular item purchased online are books, clothings and airline tickets. This is an indication that the region is ready for electric commerce. Thus, ASEAN need to regulate the use of internet in order to ensure good environment for electric commerce.

ASEAN was the first institution to create a body to regulate the use of the internet in the member countries. The aim is to ensure that ASEAN countries can compete with other countries in this era of trade liberalization. According to Severino (2000), the secretary general of ASEAN:

ASEAN countries must similarly embrace technology, its development and use if it is to remain competitive not even to catch up with the industrialized world but simply to stay in the running. This is a call not for ASEAN necessarily to undertake basic, pioneering scientific research but to adapt, develop and utilize science and technology to strengthen the region's economies and improve the lives of its people

Body established for this purpose is known as: e-ASEAN. Historically, e-ASEAN project was introduced at the meeting of the ASEAN Economic Ministers in September, 1999. Presentation of the project was implemented by the IT Private Sector Core Group on 28 November, 1999 in Manila. ASEAN leaders attending the session were interested in the motion proposed and agreed to adopt the e-ASEAN project. The presentation focused on the objective to provide a uniform framework in the arena of information and communications technology in the ASEAN region. For the purpose of this project, e-ASEAN task force was established to create an action plan related to infrastructure, economic, social, logistical, legal and physical. e-ASEAN task force consists of two representatives from each ASEAN country whereby one of whom is from the private sector while another one is from the public sector.

In order to achieve the objective of e-ASEAN, a framework has been introduced and has been agreed by ASEAN leaders during the ASEAN informal summit in Singapore in November, 2000. According to Quimbo (2005), the ASEAN members signed the framework agreement on e-ASEAN in order to achieve certain goals. e-ASEAN Task Force consists of several working groups to provide a uniform framework for ASEAN. One of these working groups are working groups which are responsible

for ensuring the use of electronic in the ASEAN region by adopting policies and international law. For this purpose, Singapore as the most advanced ASEAN country in area of electronic commerce has been appointed to head the working group with assistance from Malaysia and Brunei Darussalam. The working group was able to produce a legal framework for electric commerce in the year 2001 based on existing law in ASEAN countries, such as the Electronic Transactions Act 2003 (Singapore), Digital Signature Act 1998 (Malaysia), Electronic Commerce Act (Philippines), Electronic Transaction Order (Brunei Darussalam) and the Draft Electronic Transactions Bill (Thailand).

Apart from this, ASEAN also seek assistance from the outside of the organizations to overcome this problem, such as United Nations ESCAP, APEC and the Australian Agency for International Development (Aus. AID).

CONCLUSION

The future of electronic commerce in the ASEAN is quite promising. A lot of effort was put to ensure the widespread of electronic commerce usage in the ASEAN region. In spite of this ongoing effort, there are obstacles in creating electric commerce framework. Among the barriers identified are trust and convenience related issues. Differences in the specific laws relating to electronic commerce in the ASEAN countries is also a hindrance for electric commerce activities to flourish. Thus, ASEAN specific measures and legal framework for electric commerce should be established.

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