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Amazon Anti-Competition Law in the International Political Economy

Fajar Purnomo Adi*

International Relation Master Program, Universitas Indonesia, Depok, Indonesia *Corresponding author. Email: fpurnomoadi@gmail.com

ABSTRACT

In the last decade, information and communications technology (ICT) has grown very rapidly. One of the most notable developments in ICT is the emergence of online commerce. The online commerce scene has gotten very crowded, very rapidly, and thus raised the level of competition. In the midst of it all, Amazon has arisen as the titan of the industry. Many experts find the company's business practices to be odd and anti-competitive in nature. It has been accused of predatory pricing and elimination of product competitors. In 2017, Yale Law student Lina M. Khan published an article in the Yale Law Journal on the matter. Inspired by the article, this paper seeks to look into Amazon's anti-competition practices in international political economy settings. Adopting a nationalistic approach, this paper seeks to find answers to these two questions: (1) If Amazon's practices and values have always been the same since its inception, then why is it only recently that Amazon's anti-competition practices have drawn public attention? (2) Why do governments react only after anti-competition acts are conducted in their market instead of taking precautionary measures in advance? This paper asserts that the practice conducted by Amazon has surfaced and attracted the attention of the public due to the actions taken by certain governments to investigate. The precautionary measure is not taken by some governments due to the digital divide that exist between countries.

Keywords: Anti-Competition, Anti-Competition Law, Nationalistic Approach, Digital Divide

1. INTRODUCTION

In recent years, the internet has developed so rapidly that it has taken our community by surprise. Today, more than half of the world's population has an online existence. More than four billion people around the globe, out of the seven billion total world population, are using the internet, with no sign of slowing down. Africa bears the title of the region with the fastest internet users growth, growing 20% by January 2017 and only penetrating 34% of its 1,272 million total population (Kemp, 2018).

This rapid advancement of digital technologies will inevitably change the way people live in this era. One of the notable developments of digital technology is the emergence of digital commerce that has changed the way consumers procure their necessities and how businesses market their products. Digital commerce has emerged as a game changer in the global market, making competition more complex than ever.

Inspired by a scholarly law article written by Lina M. Khan entitled "Amazon's Antitrust Paradox," this

paper examines Amazon, arguably the titan of the twenty-first century, as a prime example of how fierce the competition in the e-commerce industry can be in an international and political economy.

It is now apparent that the market has become so saturated that businesses are taking the battlefield into crowded marketplaces. Despite Amazon's history of year-in and year-out losses, Amazon still has the investors on their side and makes their stocks the most loved stocks on Wall Street at the end of 2019 (Fitzgerald, 2019). Amazon owes this to a business tactic it employs. In the U.S., journalists have exposed Amazon's aggressive tactics. Joe Nocera (2014) in his commentary posted on The New York Times website explained how Amazon's tactic would disrupt competition, which is discussed in the third part of this article.

Departing from the elaboration above, this paper seeks to provide a preliminary answer to two complementary puzzles: (1) If Amazon's practices and values have always been the same since its inception, why is it only recently that Amazon's anti-competition



practices (Such as pricing controls and vertical ownership) are being noticed by the public? (2) Why do governments react only after anti-competition acts are conducted in their market instead of taking precautionary measures before a company like Amazon makes its entrance?

In order to answer to this question, this paper first looks at Amazon's business development and practices. It then explores its emerging patterns by mapping a number of legal challenges Amazon has brought against the prevailing competition laws and how those apply in the international political economy. In the end, using a nationalistic approach, this study addresses the two-part aforementioned puzzle. This study is preliminary and should serve as an introduction to the broader topic of ecommerce and anti-competition practices, as mentioned on the case with Amazon above, in international political economy settings.

2. DEVELOPMENT OF AMAZON IN THE GLOBAL MARKET

The advancement of internet and information technology is a factor in Amazon's success, but not the only one. Amazon also owes its success to the marketing strategies it employs and technical innovations that it implements. In this section, this paper will look into Amazon's business development and practices.

Amazon, a company that Jeff Bezos started in his home garage with \$25,000, has now grown into one of the biggest companies in the U.S. It crossed the trillion-dollar valuation in September 2018 (Salinas, 2018). The company started as an online bookstore, Cadabra. Referencing the largest river in the world, Bezos changed the name to Amazon with the launching tagline "Earth Biggest Bookstore." Today, it produces a wide variety of electronic products and provides cloud computing services, not to mention it also possesses an innovative and highly competitive delivery service.

Amazon owes its success to its persistent investment in technology enhancement and its innovative logistics management (GreyB, 2018). The company is extremely persistent in investing its capital in the aforementioned sectors, even willing to sustain enormous losses for the sake of market leadership. According to Lina M. Khan (2016), Amazon has established its dominance in the global market through consistent reinvestment and its willingness to sustain losses, even though it means reducing their profits and business line expansion.

Amazon's business priority, as it appears from statements made by Khan, and the technology research firm GreyB (2018), is to increase scale and solidify its leadership in the market through a tremendous amount of growth. Bezos realized that he needed to achieve it fast, and thus his aggressive investment comes into the

picture. Phil Wahba (2015) argues that the effort has proven to be fruitful. Wahba mentions that despite similar efforts to invest in e-commerce and online platforms by brick-and-mortar stores such as Walmart and Target, their market shares still lag far behind Amazon's.

As an effort to solidify its leadership, despite the slim profits, Amazon established Amazon Prime in 2005, which serves as an example of Amazon's aggressive investment. Amazon Prime offers subscribers unlimited two-day shipping for \$79 together with other bundled promotions such as book-renting and music or video streaming. Brad Stone, as cited in Khan (2016), has pointed out that Amazon Prime subscribers increase their purchases by about 150% as a result. He says that 47% of Amazon customers in the U.S. are Prime subscribers.

To create such dominance in the market is neither easy nor cheap. It is said that in 2011, a Prime subscriber would cost Amazon at least \$90 a year for all services it provides, according to a study by Stu Woo (2011). Woo (2011) also found that in 2011, Amazon was losing \$1 billion to \$2 billion to fulfill their commitment to Prime subscribers. This shows yet again Bezos' ambition to establish leadership, Greg Bensinger (2014) posted on the Wall Street Journal after Amazon decided to increase its Prime subscription price. According to a survey conducted by Consumer Intelligence Research Partners, LLC (CIRP) on 2016, 95% of survey respondents said that they would probably or definitely renew their membership. This shows market loyalty that keeps Amazon's customers on their side.

Based on the explanation above, it can be concluded that Amazon can achieve market dominance and customer loyalty through its willingness to sustain losses and invest aggressively to grow the scale of its business.

On Khan's second point, which is the expansion of the business line, Amazon has currently transformed into a one-for-all website that caters to both the market and businesses on the internet.

Establishing itself as an online marketplace where sellers can showcase their products, Amazon has proven its importance. By providing such media for suppliers and sellers, Amazon gains control over the environment. As stated above, Amazon produces and sells their products in the same marketplace, dominating and surpassing the competition. Amazon makes its competitors highly dependent on them. By making itself indispensable, Amazon enjoys business from rivals and further flexes its dominance as the online commerce titan. Issues surrounding Amazon's competition will be explained further in the next section.



3. ISSUES ON ANTI-COMPETITION PRACTICES SURROUNDING AMAZON AND THE PREVAILING LAW ON ANTI-COMPETITION PRACTICES

In this section, this paper will lay out issues that emerge in regards to anti-competition practices surrounding Amazon.

On the internet, freedom is always a critical discourse. From the early stages of its development, the idea of the internet has always been to provide equal opportunity for people and facilitate easier access to goods. Bright minds are given the same opportunity and chances to express their ideas and develop them into the next big businesses.

However, with the emergence of tech giants such as Google, Facebook, Amazon, Alibaba, and the like, chances are things will not always go well for startups. In the case of online commerce, according to Olivia LaVecchia and Stacy Mitchell (2016), on 2016 in America alone, people spent \$170 billion on online purchases, of which one-in-four of those dollars were spent on Amazon. By 2018, the Amazon e-commerce market share in the U.S. alone reached 49.1% and comprised 5% of the U.S. total retail share. While it is true that, internationally, Amazon has to share its dominance with Alibaba and its many online entities in Asia, Amazon is the leading e-commerce player in North America, Western Europe, and India (Alaimo, 2018). Making competition for startups a David vs. Goliath story. Furthermore, LaVecchia and Mitchell (2016) said that if the trend persists, in five years, as the largest sectors of our economy move to online platforms, Amazon will be able to capture more than one-fifth of all the goods we buy, from washing machines to groceries.

As mentioned in Section II, Bezos' vision for his company is always to establish dominance and market loyalty over profit and he always comes clean in front of his investors regarding his intent. In a public letter published in 1999 upon its going public, Bezos said that he would make investment decisions in light of long-term market leadership considerations rather than short term profitability (Bezos,1997). One of Amazon's most notable moves to achieve this vision was in the book business.

Amazon was in a pricing dispute with book publishers. Pricing disputes were indeed prevalent in the publishing industries, as for other industries as well, even without Amazon in the picture. Booksellers, such as Barnes & Nobles, fight constantly with publishers to get better prices and thus can offer better discounts (Nocera, 2014). However, Barnes & Noble does not possess the same power Amazon has to provide the market with lower prices. According to Nocera (2014), Amazon started to set up a standardized price of \$9.99

for all e-books, including best-sellers. Book publishers were quickly triggered by this move.

Summing up Nocera (2014), the publishers were concerned that their prices would solidify and drop to standard e-book prices, just like the \$0.99 songs on iTunes. In 2010, book publishers tried to push back against Amazon. Apple, Barnes & Noble, and other independent book stores, through a partnership with Kobo-a Canadian company which sells e-books, ereaders, and tablet computers-changed their e-book terms, putting pressure on Amazon's pricing. Shortly thereafter, the U.S. Department of Justice, driven by Amazon's appeal, sued the publishers for collusion and Amazon regained its dominance over the bookselling industry. The fierce competition in the online marketplace had claimed a victim. Borders, once a major bookseller, was forced into bankruptcy, and Barnes & Noble online has never recovered its former success.

Pricing disputes with book publishers was just the beginning of Amazon's anti-competition battles. LaVecchia et al. (2016) describes how Amazon uses its power to eliminate new competition. Two former competitors are Zappos and Quidsi. LaVecchia et al. (2016) pointed out that Zappos emerged as a strong competitor to Amazon in the shoe sector. Between 2004 and 2007, Zappos doubled its shoe sales. As Zappos' shoe sales increased, Amazon sought an opportunity to acquire the company, which Zappos declined. Amazon then started a shoe site to compete with Zappos and sold them at a far lower cost, with an overnight shipping service called Endless.com. Eyeing its ravenous competitor, Zappos took a defensive stance and started to offer its own customers express shipping. Soon enough, however, Zappos was losing money on every pair of shoes it sold. As it shrank, Zappos realized that it did not have the power to sustain the fight and was forced to its knees. In 2009, Zappos' board voted to sell. Around the same year, Quidsi, the company behind Diapers.com and Soap.com, emerged as another Amazon competitor. Long story short, Quidsi, too, was acquired by Amazon, using the same scheme. In the end, Amazon lost \$150 and \$100 million, respectively, but Bezos' spirit and vision for long-term dominance and market loyalty carried Amazon to victory.

An article posted on Slate by Chris Sagers (2017), argues that this kind of acquisition is a challenge for U.S. antitrust law since it prevents competition by startups that might pose a threat to Amazon's dominance in specific product categories.

This problem with Amazon seems to have appeared in Japan and Germany as well, and recently it caught the attention of the European Union's antitrust commissioner, such that he subsequently opened an investigation into Amazon's business practices.



In early 2018, The Japan Fair Trade Commission (FTC) raided Amazon Japan's office over antitrust concerns. The company is allegedly pushing suppliers to bear the costs incurred from selling their product at discounted prices. This is not the first time that the FTC has probed Amazon over antitrust issues. Back in 2016, the Commission investigated Amazon Japan over allegations that it was forcing suppliers to list their products at Amazon with lower prices than they advertised elsewhere (Gibbs, 2018).

Also in 2018, Amazon faced another investigation over the new reward points promotion they were in the process of organizing. The said reward was to be given to customers for every purchase made on the site. The problem emerged when Amazon was allegedly trying to pass the cost of the rewards point onto the suppliers. The FTC is investigating them to see whether or not the company will provide the supplier the chance to negotiate the terms, because failing to do so will be deemed as an abuse of its power, as reported in Japan Times. At the time the Japan Times report was published, the reward was to be given for purchases made exclusively for Amazon products. However, as Amazon Japan argues, the reward will be expanded for all products, regardless of the seller, so as to be fair. All in all, these cases have encouraged the FTC and Japan's respective governmental body to work on new rules to ensure transparent and fair transactions between companies and platformers (Kyodo, 2019).

In Germany, on November 2018, Hasan Chowdhury published an article reporting that the country's Federal Cartel Office had officially opened an investigation into Amazon for allegedly playing a dual role in the online commerce market. One, as the largest retailer, and two, as the biggest online marketplace host. The Federal Cartel Office sees this as a potential means to hinder another seller on the platform. While at the time of reporting, the investigation is just a precautionary measure taken by the German office, the UK government is closely monitoring Germany's progress, considering the possibility of taking the same measure. The investigation by the German Federal Cartel Office found a similar problem as Japan's FTC did. Amazon forced a supplier to sell cheaper on its platform than on its competitor's platform. This has resulted in Amazon dropping the practice in Europe. Just recently, in 2019, Makena Kelly from The Verge reported that Amazon has dropped the clause that requires supplier to sell cheaper on its platform entirely.

Other than the two aforementioned cases, France and Austria have also investigated the same allegation of unfair terms in the contract between Amazon and suppliers. In response to Amazon's practices, the most daring moves have been taken by India. On 26 December last year, through its Foreign Direct Investment policy, India announced a restriction on e-

commerce, which will hit Amazon badly by 2020 (Ghosh, 2019).

From the elaboration of the aforementioned cases, it can be seen that Amazon has been suspected of abusing its power to expand its domination in the online commerce industry. The emerging cases that have been found are: (1) elimination of competition in product categories through acquisition of startup competitors, as seen with Quidsi and Zappos in the U.S.; (2) passing the costs of discount and promotion onto suppliers, which has triggered the Japan FTC investigation; and (3) pushing suppliers to accept predatory pricing is the last and the one that can almost be found globally.

Concluding this section, this article argues that all the alleged aforementioned cases are rooted in Amazon's hybrid role in the online commerce industry as both retailer and marketplace provider. A big company such as Amazon, which plays around in their own platform, is at an advantage. With such abundant data of users who are at the same time their potential competitors, Amazon is able to study the market for the next big thing which can further strengthen their grip in the market. These questions and potential answers are the roots of the investigations we currently see conducted by several government bodies in some of Amazon's operating regions.

A recent development in these cases against Amazon on anti-competition practices has caught the attention of the European Union. Simon Van Dorpe (2019) recently wrote on Politico that the European Union competition authorities are studying Amazon's dual role as the seller of its product as well as marketplace provider for rivals. At the time of this paper's writing, the European Commission is finalizing its decision on the investigation.

4. AMAZON IN THE INTERNATIONAL POLITICAL ECONOMY

Based on the elaboration of the cases in the previous sections, in this section we will attempt to address the questions posed in the Introduction. There are two questions suggested at the beginning of this writing, namely: (1) If Amazon practices and values have been the same since its inception, then why only recently have Amazon's anti-competitive practices drawn public attention? (2) Why do governments react only after the anti-competitive actions are conducted in their market instead of taking precautionary measures before Amazon makes an entrance?

This paper found that the nationalistic approach is a suitable lens through which we can address these questions. The nationalistic approach seeks government, or in this case, an international organization to intervene with the economy. In this case, it is the electronic commerce environment. As seen from the previous



chapter, government and international organizations are investigating Amazon to find which form of intervention will be most effective to get Amazon to change its behavior.

4.1. Why only recently has Amazon's anticompetition practice drawn public attention?

The problems posed by Amazon business conduct are indeed unique. Amazon, with all of its curves and maneuverings, manages most effectively to sell products cheaper. To some extent, this is a regular practice. Of course, every business, no matter where they are and under what condition or circumstances, want to sell their products with competitive prices, and in an effective manner. However, the problem lies within Amazon's practices of acquiring startup businesses such as Quidsi and Zappos to avoid price competition in particular product categories. This action serves as a challenge to the U.S. antitrust law.

The question of whether or not the U.S. antitrust law can be utilized to bar Amazon's market power has been highlighted by Khan (2016). In her study, she found that the current interpretation of U.S. antitrust law is limited to the assessment of the impact of competition on the interest of the customer and not to the whole condition of the market. In the eye of the current U.S. anti-trust law, low prices indicate active competition and thus shows that the market condition still favors the consumer. If so, then life is good! However, that has not been the case in the broad scheme of Amazon's practices.

Before this matter was taken into light, consumers did not seem aware of the steps the e-commerce giant had taken to give them the low prices that they loved. On the internet, things move very fast in an extremely dynamic environment and everything was easily manipulated without anyone knowing, given the fast pace of the work settings. The consumer sees what they wanted to see, and sometimes this hides the bitter reality behind sweet lies.

According to microeconomic principles, a market should be free of any barriers when a player wants to enter and exit. There should not be a dominant player with the ability to manipulate market prices, although companies will, once having entered the market, operate at a loss for some time. It took Amazon to manipulate those three basic principles to provide the customer with low prices and confirm its dominance over competitions. As we all know, the internet allows the industry leaders to blur facts, and that is why the move made by Japan's FTC to develop a new policy that ensures transparency and fair transaction between businesses and platformers is essential.

To conclude, the fact that national (U.S. Department of Justice, Japan's FTC and German Federal Cartel

Office) and international governments, such as the EU, have started to actively intervene with Amazon business practices has helped to bring this case into the light and gain public attention.

4.2. Why do governments react only after anticompetitive actions are conducted in their market instead of taking precautionary measures prior to Amazon making an entrance?

For this question, this paper argues that one possible answer would be the knowledge gap in the digital environment. In other words, not every country's government has the same fluency with the nature of the internet, let alone its commercial activities. A simple search on Google for "countries internet knowledge gap" will reveal the term "digital divide" on the first page.

Digital divide is a term that refers to the uneven distribution and access to information and communications technologies, or in the case of this paper, the internet, whether on the individual, city, or country level (Rafferty & Schweitzer, 2014; OECD). Rafferty and Schweitzer (2014) provide a clear explanation of the definitions and stages of the "digital divide." Citing their article, this section will explain the term.

Digital divide, already defined above, comprises two levels of divide, according to Rafferty and Schweitzer (2014). The first-level divide is the gap in access to the internet, and the second-level is the gap in the use of the internet. The settings within which digital divide occurs can be in one of these three possibilities: (1) developed and developing countries (global divide), (2) between socioeconomic groups within one country, or (3) different kinds of individual depending on their political engagement on the internet (democratic divide). In the case of this paper, the digital divide that will be referred to is the first-level divide within the global divide settings.

Rafferty & Schweitzer (2014) continue their explanation by emphasizing the importance of addressing the digital divide. The reason is, they mention in the article, the digital divide fosters social inequalities and widens the gap between the internet knowhow of those who have access and actively use the internet ("haves") and those who have neither access nor are they active users ("have-nots").

The importance of addressing the digital divide is further emphasized in an article written by Mukhisa Kituyi (2018), the secretary general of the United Nations Conference on Trade and Development (UNCTAD) website. Kituyi (2018) begins her explanation by predicting that by the end of the next



decade, growth, productivity gains, and human development will be determined by levels of integration into the digital economy. The growth and inception of ecommerce are not as natural as what Kituyi mentioned in her paper, unlike what most of the other people believe. One of the obstacles is a logistic-related issue. In some areas of developed countries, people still live without postal addresses and have limited access to credit cards. Even if they have access to adequate internet facilities, the benefit of e-commerce will not be felt (Kituyi, 2018).

From the perspective of the establishment of ecommerce, the lack of knowledge will result in a lack of understanding of the required legal framework surrounding e-commerce that is possible to lead to any problem, one of which can be an antitrust violation. While the standard procedure of e-commerce activity remains the same across different countries, and the legal framework of one country can be implemented in another, sometimes their incentives, promotion campaigns, and marketing gimmicks can vary across cultures and behaviors of the society. Which may result in the requirement of a tailored legal framework to be put in place to anticipate violations. This can serve as one possible answer to the question of why some countries failed to anticipate such legal ramifications, as mentioned in the earlier sections of this paper.

5. CONCLUSION

The rapid development of information and communication technologies has taken most of our communities by surprise. This has left us unprepared for what is to come, given its dynamic nature. A decade ago, the emergence of a titan such as Amazon was believed to be unlikely and yet here we are. The government's ability to understand what happened and predict the course of the e-commerce growth is essential to avoid problems like what Amazon has brought to the table

The quest of this paper to answer two preliminary questions that surround the anti-competition practice by Amazon is completed. This paper found that people got to know only recently about the antitrust practices and that it creates such a buzz because the government starts noticing the practices and makes concrete moves to investigate what is happening. Some countries or governments were given a chance to observe the actual conduct of this e-commerce giant as others start to reveal bits and pieces and yet, when it is their turn to face the titan itself, they fall prey and plunge into the same hole. One possible answer that this paper offers is the digital divide. This happens because of the uneven distribution of internet knowledge due to the high cost of the technology that limits people's access which leads to a lack of education and ends up with resources that lack knowledge or information.

The factors of the digital divide seem selfexplanatory in terms of suitable solutions. The government can provide better internet access to the people by increasing the fund for internet and technology, thus making the technology cheaper. Educational institutions can go hand in hand with the governments' efforts by seeking funding from outside donors or partnering with companies.

To conclude, to provide the market with a level playing field is not only the job of the government but a joint effort with the people as well. By looking forward and opening our eyes to global development, we do our countries a favor. Maybe the answer to all of these digital challenges is not as complicated as raising funds or reallocating state budget. Maybe it is just a matter of raising awareness and combating ignorance.

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