

Proposal for a Trans-Tasman Digital Economy Agreement

The Australia New Zealand Leadership Forum proposes that Australia and New Zealand negotiate a Trans-Tasman Digital Economy Agreement (TTDEA). This would round out the Single Economic market to encompass the governance and enablement of the digital economy, help to future-proof a more seamless trans-Tasman regulatory environment, and equip the bilateral trade and economic relationship to more fully reflect 21st-century business models.

What

It is proposed that the TTDEA be a new standalone treaty-level agreement to govern digital economy issues between Australia and New Zealand. It would form part of the Single Economic Market (SEM) and would complement the existing suite of agreements, arrangements and collaborative workstreams, including ANZCERTA itself, the CER Services and Investment Protocols and the range of other cooperative activities on the SEM agenda.

The TTDEA would build on the binding digital commitments agreed by Australia and New Zealand in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Regional Comprehensive Economic Partnership (RCEP) and the ASEAN-Australia-New Zealand FTA (AANZFTA). However, it could go further to reflect and build upon the ambition and scope of other, more recent Australian and New Zealand digital agreements or FTA digital chapters, including the Digital Economy Partnership Agreement (DEPA) among New Zealand, Singapore and Chile (and potentially others), the Singapore-Australia Digital Economy Agreement (SADEA) and the digital economy chapters in the respective FTAs negotiated with the UK.

This would mean the TTDEA could include binding commitments in a range of areas, including those important for both commercial and policy/regulatory reasons such as data flows and data localisation, non-discrimination, personal information protection, a number of digital trade facilitation elements, and as many other topics for which it would be possible to negotiate specific commitments in the available timeframe.

In other areas, the TTDEA could establish fora and collaborative processes to develop shared trans-Tasman approaches. These could include areas of regulatory and physical infrastructure, such as data sharing mechanisms and principles, data sovereignty (including Indigenous data issues), digital standards and conformity assessment, and submarine cables; topics relating to frontier technologies and models, such as Open Government Data and a rich public realm, artificial intelligence, fintech and regtech, and quantum computing; and emerging policy areas including those relating to societal concerns such as inclusion in digital trade, capability-building and digital literacy, an open and secure internet, and competition in the digital economy.

In a number of areas, the TTDEA could wrap in and build on existing trans-Tasman workstreams including those relating to digital identities, the digital mutual recognition of business numbers, and e-invoicing. It could reflect domestic policy development being undertaken in parallel by each Party, such as work on consumer data rights/data portability and open banking; and it could seek to enable more innovative approaches in areas that are already well-established topics for trans-Tasman cooperation, such as Customs and supply-chain management and logistics (for example, by developing shared approaches to blockchain regulation and standards, the acceptance of e-certificates and e-signatures). It could also draw on established trans-Tasman regulatory cooperation in “non-digital” areas to develop fit-for-purpose approaches for the digital economy, such as consumer protection, competition policy, government procurement and financial services regulation, including anti-money laundering legislation and enforcement across the Tasman. It could potentially bring in new issues such as central bank digital currencies and greater use of distributed ledger technologies, as advocated for by ANZLF members in a meeting with the respective Trade Ministers in December 2021.

Why a Trans-Tasman Digital Economy Agreement?

The TTDEA could draw on the best of existing models to develop a truly ‘gold standard’, deep and broad seamless regulatory environment for the digital economy. It would complement the existing exceptional openness of trans-Tasman services trade through smoothing potential non-tariff barriers to digitally-delivered services and could further streamline existing institutional mechanisms such as the Trans-Tasman Mutual Recognition Arrangement, where interoperable digital identities could be used to facilitate the mutual recognition of occupational registration, for example.

The pandemic has served to accelerate what had already been a rapid digital transformation of economic and business models, and a digital reorientation of government services, consumer behaviour and all kinds of engagement. Businesses operating across the Tasman want and need to use digital channels, tools and models. In many cases, these have proved considerably more resilient than their non-digital counterparts through the disruptions of the pandemic. Digitalisation helps to boost trade (including non-digital trade), supports domestic productivity and competitiveness, and fosters innovation. It also holds real promise for greater economic inclusion of micro-, small and medium-sized enterprises, women entrepreneurs and Indigenous businesses.

However, the ability of businesses to realise the full potential of the digital economy depends in large part on a streamlined, predictable regulatory environment, and the extent to which digital technologies and systems are interoperable. Greater regulatory coherence could not only enhance the ability of the business community to do business in the other market, including by reducing compliance costs, but will also reduce the ‘regulatory noodle bowl’ impact for businesses operating in the wider region, and potentially provides a platform for even more creative thinking on outward engagement.

Put simply, it does not make sense for one of the most open, successful, and deep regional economic integration relationships in the world *not* to provide for explicit inclusion of digital economy issues – especially when the Parties have negotiated highly ambitious agreements with other economies in the digital sphere in recent years.

In fact, a stronger ‘Single Digital Economic Market’ would also support a stronger shared voice in other settings, such as the current Joint Initiative negotiations on e-commerce in the WTO (which Australia co-chairs), the current negotiations to upgrade the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA), the digital elements of the US-driven Indo-Pacific Economic Framework, the OECD Global Partnership on Artificial Intelligence, international standards-setting fora and the “Digital Nations”.

Prepared by Stephanie Honey
Honey Consulting Ltd
For the ANZLF
May 2022