eCommerce: An Overview

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Global B2C eCommerce sales of products and services are forecasted to reach $3.6 trillion in 2019 ($2.3 trillion in 2017), representing 13% of the share of total retail sales. In the U.S. alone, the eCommerce boom has flattened the profitability of traditional ‘bricks-and-mortar’ retailers, and particularly shopping malls, with eCommerce penetration there representing around 10.5% of retail sales. Comparatively, the percentage of online sales to total retail in the UAE is around 2.9%, which is where the U.S. was in 2005. There is likely to be a more material ‘up-tick’ in the adoption of technology and eCommerce in the UAE and wider region.

In the early 1990’s, retailers had local reach, were store-based, there was limited availability to real-time price comparison, cash-and-carry was the only sales option and retailers had limited scalable business models.

Today we see retailers with global reach, having extensive product range, price comparison options and credit card / card on delivery payment options with 0 – 14 days delivery the norm.

In the future we will see personalised products, real-time pricing, direct billing with at-home 3D printing and drone delivery.

Shopping malls have increasingly become attractions, where consumers can go to the cinema, the gym, look at an aquarium, etc.

7 key trends in eCommerce:

- eCommerce to mCommerce. In 2016 mCommerce already represented 40% of total eCommerce sales;
- Omnichannel for pure plays and brick & mortar. eBay buyers can now pick up their items at one of Argos’ 750 stores. Amazon opened its first physical Amazon Books in Seattle in late 2015;
- Fulfilment and delivery as a key differentiator. Amazon, Google and Zaapos launched ‘same-day-delivery’. Investment in fulfilment centres, click-and-collect retail and drones;
- Next generation visualisation techniques. Zappos evolving product visualisation from photo to video to virtual reality, i.e. virtual dressing rooms;
- Marketplace consolidates as the dominant model. Profitability and scalability as key drivers for the marketplace;
- Experience personalisation through advanced analytics. Siri, Cortana and GoogleNow become more sophisticated, applying the cognitive power of artificial intelligence to eCommerce; and
- IoT fuelling the growth of alternative product categories. Verticals such as groceries gaining more relevance with players like Amazon investing in smart homes, i.e. Dash Replenishment Service

These are being driven by:

- Millenials and Gen Z changing needs: instant access, tech savvy, low brand loyalty, 24/7 attention;
- Consolidation of tech advancements: automation, digital collaboration, cloud, analytics; and
- Proliferation of connected devices: connected things, ‘Smart Everything.

The success of eCommerce growth depends on both macro changes to the environment and micro changes to the value proposition of eCommerce.

- Macro drivers: increase in GDP, population increase and universal internet connectivity; and
- Micro drivers: user experience, efficiency in fulfilment and analytics and segmentation.

All of this bodes well for the regional eCommerce market but the eCommerce boom in MENA is still to come, with eCommerce penetration at only 1.2% (calculated as internet retailing divided by total retail)*.

That said the Middle Eastern eCommerce market is predicted to explode over the next few years with the UAE and KSA continuing to drive the regional market: UAE going from $8.1 billion in sales in 2017 to $14.3 billion in 2020; and KSA from $6.4 to $13.4 billion for the same period. Souk is 'killing-it' over the competition when it comes to website rankings and website visits in both UAE and KSA, but eCommerce in the Middle East is becoming increasingly competitive with a growing presence of global players, like Ebay, Amazon and Asos. Further, ME offline retailers are starting to make moves to diversify revenues and to hedge the risk of losing customers migrating online: Emaar Malls acquired a majority stake in Namshi; and Alabbar Enterprises acquired Jadapado.

eCommerce Laws in the UAE

Electronic communications and transactions in the UAE are primarily regulated by the following Federal legal instruments:

- Federal Law No. 1 of 2006 On Electronic Commerce and Transactions (eCommerce Law);
- Federal Law by Decree No. 5 of 2012 regarding Cyber Crimes (Cybercrime Law); and
- Federal Law No.3 of 1987 on the Issuance of the Penal Code (Penal Code).

Federal Law No. 15 of 1980 regarding Publications and Publishing (Publications Law) regulates the publishing of traditional, as well as digital content.

Various provisions of these laws set out obligations on companies that intend to do business online.

Restrictions that apply to online content are included in:

- Federal Law No.1 of 1980 on printing and publishing (Publications Law).
- President of the National Media Content Resolution No. 20/2010 on the criteria for Media Content (Media Content Resolution).
- Federal Decree – Law No. 5/2012 on Combatting Cyber Crimes (Cyber Crime Law).

All of the above laws create restrictions on the type of content which can be published, including content which is shared online. These restrictions are wide in nature and include any content which insults the UAE State or Islam, drugs or alcohol. Further, the Publications Law does not specifically deal with the ownership of liability of the publication of prohibited content, and as such, the provisions can be interpreted such that liability is owned by both a website owner and the user of a website.

There are also laws that deal with defamation in the UAE. Defamation in the UAE is treated differently than in other countries, particularly in the Western world. Any statement which "causes contempt or dishonour" to a person is a defamatory statement under the Penal Code irrespective of whether it is true. This is particularly important for all businesses given how digitalised the world has become and the ease of posting and sharing defamatory statements online.

There are also sector specific laws which impact digital businesses. For example, the UAE published the Regulatory Framework for Stored Values and Electronic Payment System (the EPS Regulations) in January 2017 which regulates businesses offering electronic payment services.

The primary regulatory body responsible for regulating electronic transactions and commerce in the UAE is the Telecommunications Regulatory Authority (TRA). From a content regulation standpoint, the primary regulatory body is the National Media Council (NMC) (see Law Update Article Electronic Media and the New NMC Licensing Regime for the UAE by Fiona Robertson).

It is worth mentioning that certain UAE free zone authorities may also pass rules and regulations that impact on the regulation of business conduct that are applicable to entities licensed and operating in the relevant free zone, and which may impact on those businesses in an online context.

The Department of Economic Development (DED) for each Emirate is also a primary regulatory body responsible for regulating electronic transactions in respect of consumer related commerce.

Setting up a business online in the UAE

Generally speaking, the typical steps that must be taken to set up a company that will conduct business electronically in the UAE are the same as the steps that would need to be taken in the context of any company that conducts business in the UAE.

Firstly, the company must assess and decide on the optimal place of establishment (whether mainland or free zone). Next, the company must decide what type of establishment is appropriate: for certain operations, a registered branch of a foreign company would be sufficient, for some operations, an entity needs to be incorporated.

Factors that would need to be taken into account in the above assessments include:

- The industry or sector in which the company operates;
- The scope of activities the company wishes to conduct in the UAE (for example, whether the operations involve the import of goods);
- Where the entities it intends to conduct business with are based;
- Whether it will be intending to conduct business with both private and public entities. (For example, contracting with entities in certain regulated sectors or with public bodies may not be available as an option to free zone companies, and may instead require a mainland presence.)

Other factors that many digital businesses take into account is whether they will seek investment from angel investors, venture capital firms or other investors (see Law Update Article Know your terms – the key terms of a venture capital deal by Kareem Zureikat).

Once a presence has been established in the applicable UAE jurisdiction and the relevant licences have been obtained, establishing an online presence will require the acquisition of a domain name (if the company does not already have one as part of its existing wider international operations) (see Law Update Article Domain name strategies by Stephen Jiew).

An online business in the UAE will typically then enter into such contracts with third parties as it may deem necessary to help establish its online presence, such as web developers or designers, hosting companies, search engine optimisation service providers, etc.

With regards ‘app’ development and distribution, the UAE does not currently address or set out any specific procedures or rules. The preliminary steps that a company would undertake to do so would initially be driven by internal objectives and any potentially wider-reaching legal concerns that may need to be taken into account if the app is also going to be distributed outside of the UAE.

Some local legal and regulatory concerns that a company must consider:

- **IP rights and ownership.** The company must ensure that rights in the app (and its entire constituent works) have been properly assigned under the development agreement.
- **Restricted/regulated products and services** in the UAE.
- **Content restrictions.** In general, the distribution of any content which is contrary to public order or national security or is offensive to morality, rulers or religion (or otherwise prohibited under UAE law) is not permitted in the UAE.

Electronic contracts

Federal Law No. 1 of 2006 Concerning Electronic Transactions & Commerce (eCommerce Law):

- recognises electronic contracts and, amongst other things, provides that if the law requires a signature on a document, this requirement is satisfied if a reliable electronic signature is used;
- is the primary law in the UAE governing contracting on the internet;
- Generally, the law does not set out any specific remedies unique to the breach of an electronic contract, therefore, remedial action sought in the event of a breach of an electronic contract would generally follow the same course as remedies that may be sought for breach of a non-electronic contract in the UAE.