

THE
JOHN H. JACKSON
MOOT COURT COMPETITION

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CASE

**Alabasta – Certain measures affecting
electronic goods and digital services**

**John H. Jackson Moot Court Competition
23rd edition - 2024/2025**



WORLD TRADE
ORGANIZATION

Alabasta – Certain measures affecting electronic goods and digital services

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I. Introduction

1. The global marketplace for electronic goods and digital services is a rapidly evolving domain. It brings economic opportunities but raises the potential for conflicts among members of the World Trade Organization (“**WTO**”). This moot court case focuses on a dispute between Alabasta and Wano involving trade in tablet computers and services supplied via video streaming platforms.
2. At the core of the case is Alabasta’s Digital Economy Law (“**DEL**”), which fosters local audiovisual content, regulates data flows, screens certain investments within its jurisdiction, and governs competition in the digital economy. The DEL establishes the Digital Markets Authority (“**DMA**”) as the entity in charge of enforcing its provisions.
3. Wano, a leading global player in electronic goods and digital services, alleges that certain sections of the DEL are inconsistent with the General Agreement on Trade in Services (“**GATS**”). Moreover, it alleges that the conduct of the DMA, together with a tariff increase in electronic goods, is inconsistent with the General Agreement on Tariffs and Trade (“**GATT 1994**”).
4. This case navigates the complex intersection of the domestic regulation of video streaming platforms and anti-competitive practices in the digital economy, on the one hand, and international trade obligations, on the other. By debating whether Alabasta’s actions constitute legitimate state regulation or contravene WTO law, participants will gain insight into the evolving landscape of digital trade regulations.

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II. Relevant entities, products and services

a. Relevant states

5. Wano is a large country with a high-income economy. It is a global leader in electronic goods and digital services, and a founding WTO member.
6. Alabasta is a large country with a middle-income economy. It boasts a robust entertainment sector, including a film-making industry with a strong regional presence in the peninsula of Maina, where it is located. Alabasta is also a founding WTO member.
7. Maina includes two more states, Allos and Karda, both of which are founding WTO members. The three Maina states have strong geopolitical ties, a shared culture and mutually intelligible languages.
8. The Maina states have not signed a Free Trade Agreement (“**FTA**”). However, they have signed bilateral Data Flow Memoranda of Understanding (“**MoUs**”) with each other. These contain commitments to refrain from restricting data flows and to align data protection laws with the OECD’s Declaration on Government Access to Personal Data Held by Private Sector Entities.³
9. Annex 2 sets out Alabasta’s schedule of specific commitments under the GATS (“**Schedule**”). The classification of sectors and sub-sectors in the Schedule is based on MTN.GNS/W/120. Alabasta and Wano have signed neither a Data Flow MoU nor an FTA among them.

b. Wegapunk’s products and services

10. Wegapunk is a company incorporated in Wano, with a focus on e-commerce, media streaming and electronic goods. Wegapunk is also a film production company, currently the fourth largest in the world.
11. WegaBasta is Wegapunk’s fully owned subsidiary in Alabasta, established in 2005. It is the official and exclusive importer, distributor and warrantor of Wegapunk’s products and services in Alabasta.

³ The one provision of the Alabasta – Allos Data Flow MoU relevant to this case is found in Annex 1. The Maina states have signed no such MoUs with third states yet; Alabasta started negotiating such MoUs with a few states in 2024; these negotiations are ongoing.

12. Wega-Flix is Wegapunk's subscription-based video streaming platform, and the world's second largest. It streams various types of movies, documentaries and series on demand, produced by well-known global studios, including Wegapunk. Wega-Flix's algorithm favours films and shows produced by Wegapunk.
13. Wega-Flix's customer support, marketing, local pricing, content determination and subscription management functions in Alabasta are performed by WegaBasta. When purchasing a Wega-Flix subscription, Alabastan users sign an e-contract with WegaBasta.
14. Wega-Spend is Wegapunk's e-commerce platform; it is the world's largest. It runs as an online marketplace in which various categories of products are sold internationally. Wega-Spend's algorithm favours Wegapunk's electronic goods.
15. Data generated by Wega-Flix's and Wega-Spend's worldwide users is used to understand user preferences and shape algorithmic suggestions. It is transferred to and stored in Wegapunk's servers in Wano.
16. Since 2015, Wegapunk has been producing tablet computers under the denomination "Wega-Pad". Wega-Flix is pre-installed on Wega-Pads, and Wega-Pad purchasers benefit from a free six-month Wega-Flix subscription.⁴

c. Relevant Alabastan and Allian entities

17. Alemachus is an Alabastan producer of smart TVs. Alemachus' TVs are popular in Maina but are not globally competitive.
18. ATV1 is Alabasta's largest television service provider. It operates a television channel, as well as a website which live-streams news and sports events. This website is neither subscription-based nor available as an app. Its content is not available on-demand and can be neither paused nor replayed.
19. Able1 is Alabasta's largest cable TV service provider. It operates a subscription-based cable TV platform which is not available as an app. Its content is not available on-demand and can be neither paused nor replayed.

⁴ The free Wega-Flix subscription is one of the main commercial appeals of the Wega-Pad; the price of a six-month subscription is equal to the price difference between Wega-Pads and other tablet computers produced by Wegapunk's competitors.

20. Achilles Films is Alabasta's largest film production studio. Achilles Films does not stream its content; it sells it to TV channels, cinemas and other interested parties.
21. Finally, Atlas is a subscription-based video streaming service provider based in Allos, offering mostly Mainan content. It stores the data generated in Alabasta within Allos.⁵

III. Factual background

a. 2005 to 2011: The CDTs and Prof. Buggy's election

22. Alabasta had seen consistently high levels of economic growth until the early 2000s. Its economy relied primarily on agricultural exports, commodities and tourism, as well as an entertainment sector with a strong regional presence in the Maina peninsula.
23. In 2003, however, Alabasta's economy entered a severe recession, finishing the year with an annual GDP growth rate of -1.2%. Alabasta exited this recession one year later, but projections by the International Monetary Fund ("IMF") showed an average growth rate of only 1% in the years to come. The IMF partially attributed this low rate to Alabasta's overreliance on "volatile" economic sectors and lack of "digital competitiveness".
24. In 2005, the Alabastan Ministry of Economy commissioned a strategic economic study on challenges and opportunities for the Alabastan economy in a digital world. The study was conducted by the state-owned Alabastan University ("AU") and led by the Head of the AU's Law Department, Prof. Mario Buggy. The final report, which was issued in 2009, advocated for state support to promote domestic production of electronic goods and digital services, as part of a Competitive Digital Transformation Strategy ("CDTS"). Annex 3 sets out the report's key recommendations.
25. In 2010, Prof. Buggy ran for parliament. In his campaign, he referred to the CDTs and promised to do "everything possible" to "make it a reality". In 2011, Prof. Buggy was elected and began serving on the parliament's "Tech Innovation Committee".

⁵ There is no law on government access to data in Allos. There are no known accusations against Allos concerning access to the data of non-residents without their consent.

b. 2011 to early 2018: Wega-Flix's dominance in Alabasta and the McEasy study

26. In 2011, Wega-Flix was launched in Alabasta; since then, Wega-Flix has dominated local viewership. According to official government metrics, 55% of local viewing time between 2011 and 2017 was spent on Wega-Flix, 25% was spent on television channels, 10% on cable TV, 5% on Blu-ray and DVD and 5% in cinemas.
27. Moreover, according to a study published in March 2018 by a global consulting company, McEasy, the yearly average viewing hours per household were as follows between 2011 and 2017:

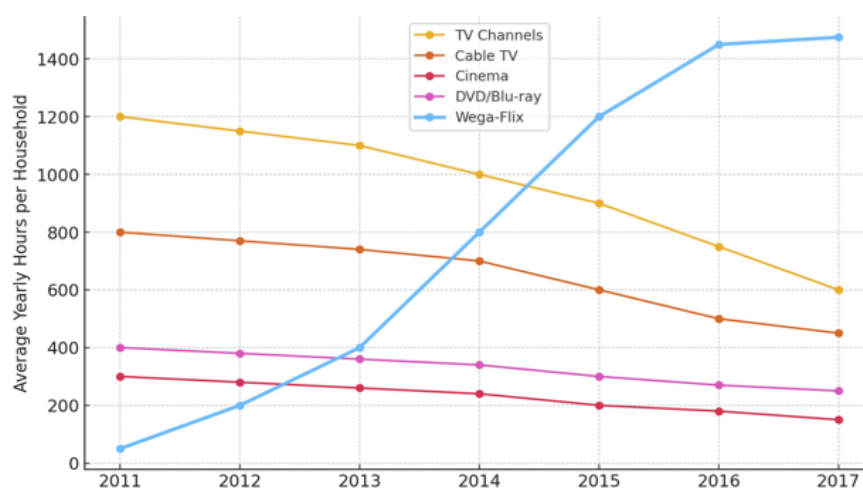


Figure 1: Alabasta Household Viewership Report. McEasy

28. According to the same study, Wega-Flix dominated the market during that period due to its on-demand nature, ability to algorithmically tailor its content to user preferences, availability as an app on various devices, and up-to-date content.⁶
29. Lastly, the study notes that over 60% of viewing time on Wega-Flix is spent on tablet computers,⁷ and mentions that no foreign streaming platform had plans at the time to penetrate the Alabastan market given Wega-Flix's established dominance.

⁶ Popular series and shows are available on ATV1 and Able 1 approximately two years after becoming available on Wega-Flix, on average.

⁷ Tablet computers are widely used in Alabasta. TV channels and cable TV services are not available on tablet computers; ATV1's website, however, can be accessed on tablet computers via browsers.

c. Mid-2018: Concerns about culture preservation in Alabasta

30. Wega-Flix's dominance has come with some concerns. The McEasy study notes that the percentage of local content made available to Alabastan users of the platform between 2011 and 2017 was 4%.⁸ By contrast, local content on cinemas, television channels and cable TV was at 60, 85 and 55% respectively in the same period.
31. In April 2018, an online poll conducted by an Alabastan news website suggested that 40 and 45% of Alabastan citizens agreed with the following statements, respectively: "not enough Alabastan culture is displayed on Wega-Flix" and "Alabastan culture is threatened if we keep being exposed to too much foreign content on Wega-Flix".
32. In light of these concerns, Wega-Flix's viewership share stagnated in 2018. The study also suggests that Alabastan viewers seemed to be settling in on the following pattern: Wega-Flix is used during different parts of the day, whereas TV, cinema, DVD/Blu-ray and cable services are used primarily at night or on Sundays, and mostly for local content or live sports.
33. In May 2018, a scandal broke when Wega-Flix released a series dealing with Mainan history, featuring no Mainan actors and no filming in Maina. Moreover, social media users across all four Maina states complained that the series were historically inaccurate. Wepunk's CEO, Sun Miski, posted the following response on social media: "welcome to the globalized world of streaming services; deal with it". This statement had a small impact on subscriptions in Alabasta. While some users cancelled their subscription, most of them reactivated it within a month.
34. In July 2018, Atlas launched its services in Alabasta. In a public speech, Prof. Buggy welcomed this development as an "important step in the preservation and dissemination of shared Mainan culture and the creation of Mainan tech know-how".

d. Late 2018: Concerns about disclosures of data without consent

35. Wano consistently ranks very low in data protection indexes. The Wanian government occasionally compels local tech companies to disclose various types of data generated by its users, including users who do not reside in Wano. The government routinely invokes

⁸ Local content, according to McEasy's definition, means content for which more than 50% of production costs have been incurred locally (in this case, in Alabasta).

section 3 of Wano's Government Access to Data Act ("GADA") when demanding such disclosures. Section 3 of the GADA is set out in Annex 4.

36. In October 2018, concerns grew in Alabasta that foreign tech companies operating in the country were sending user data to servers located in their home jurisdictions, and that some of these jurisdictions allowed law enforcement to demand the disclosure of such data without the consent of the Alabastan users.
37. These concerns were prompted by the news that a whistleblower working for WegaBasta had told Alabastan authorities that data generated by Alabastan residents on Wega-Spend and Wega-Flix had been disclosed without their consent to the Wanian government, upon the latter's request.
38. The incident was discussed in a bilateral meeting between the presidents of Alabasta and Wano. The Wanian president denied the incident and assured his counterpart that there had been extensive investigations about the alleged request and subsequent disclosure.
39. However, Alabastan citizens believed that the Wanian president was not being honest, as shown in social media polls. Members of the ruling party made statements on their official social media accounts accusing "big tech" of "being dishonest with consumers", "selling consumer data without consent" and "harming our culture".
40. Moreover, Prof. Buggy posted on social media that "big tech is out of control 🤨". He added: "Alabasta needs a strong digital economy law! We need to be technologically competitive while protecting ourselves from the social externalities of tech. Time to act".

e. Early to mid-2019: The adoption of the DEL and tariff hikes

41. In March 2019, Prof. Buggy was appointed Minister of Economy. Immediately, he introduced into parliament the DEL, based on a text which the Tech Innovation Committee had drafted from November 2018 to February 2019. When introducing the bill ahead of voting, he stated before the parliament that the DEL was meant to "guarantee fairness, sustainability and consumer protection in various technological sectors of the Alabastan economy". The DEL entered into force in April 2019. Annex 5 sets out its relevant provisions.

42. Section 2 of the DEL establishes the DMA, an entity to implement DEL's objectives and enforce its provisions. The DMA comprises five members nominated by the Minister of Economy and confirmed by the Parliament with the support of an absolute parliamentary majority voting. The Alabastan Minister of Economy can terminate the tenure of any of the members, in which case all pending proceedings shall be suspended until a new member is appointed.
43. Section 4 of the DEL regulates "providers of audiovisual content". Section 4.2 requires such providers to stream at least 30% local content. Local content is defined as content for which 50% or more of the cost of production has been incurred in Alabasta. Failure to meet this requirement triggers a fine equal to 7.5% of local annual turnovers. In relation to section 4.2, Prof. Buggy explained in a talk show: "This is nothing new. We are bringing back an old law and making it better".⁹
44. Section 4.3 of the DEL provides that the DMA is in charge of screening acquisitions of controlling interest in providers of audiovisual content. Buyers of such shares must notify a Letter of Intent ("LoI") to the DMA. In the LoI, the buyer must undertake a binding legal commitment to store personal information generated by its Alabastan users in Alabasta, and to refrain from transferring it outside Alabasta without approval by the DMA. If the buyer is incorporated in a country that has a Data Flow MoU with Alabasta, it does not need to undertake such a commitment.
45. Section 4.4 affords the DMA discretion to reject the purchase if the binding commitment is not undertaken, unless the Data Flow MoU exception applies.
46. Lastly, sections 5 to 9 introduce competition-related disciplines on digital service providers operating in the Alabastan market. These cover, among others, algorithmic advertisement "boosts" (Section 6), tying and bundling of services (Section 8), and anti-steering practices (Section 9).¹⁰
47. In August 2019, Alabasta decided to increase its tariffs on various electronic goods, including tablet computers, in order to cover the budget deficit related to the significant public investment made to establish the DMA and to update the software and hardware of the

⁹ There was previously a 1990 law that required minimum 30% airtime for local content for all TV channels, cable service providers and cinemas. Local content meant that 25% of costs were incurred domestically. This law was repealed in 2000.

¹⁰ For the detailed text of the sections, see Annex 5.

customs authorities in order to be able to enforce the DMA at the borders. For tablet computers, the applied tariff increased from 5% to 13%.¹¹

f. Late 2019 to late 2020: The DMA's blocking of Achilles Films' full takeover by Wegapunk, and the eventual acquisition by Atlas

48. In late 2019, Wegapunk notified an LoI to the DMA, whereby Wegapunk and Achilles Films had agreed that the former would fully take over the latter for a purchase price of USD 2 billion, a deal described by local media as “super profitable” for Achilles Films’ shareholders. The LoI offered no commitments on data storage.
49. The LoI expressly stipulated that Wegapunk’s intention was for Wega-Flix to become the exclusive platform where Achilles Films’ movies and series would be shown. During the negotiations, Wega-Flix expressed a desire to “modernize” Achilles Films’ content, but no information was shared about what this would concretely entail.
50. In early 2020, the DMA issued its decision on the LoI: it rejected the purchase on the ground that Wano does not have a Data Flow MoU with Alabasta. The DMA requested Wegapunk to file a new LoI reflecting an agreement on the purchase of a non-controlling interest, or offer a binding legal commitment that it would store all data generated by Alabastan residents in Alabasta and would not transfer it to Wano.
51. In mid-2020, Wegapunk rejected the request for an offer. The rejection was recorded in a letter to the DMA signed by Sun Miski. The letter explained that, without a controlling stake, Wegapunk “cannot revamp Achilles, integrate it into Wega-Flix and offer modern on-demand content to Alabastan consumers”.
52. The alternative of complying with the localization and non-transfer requirements, in turn, entailed “high and entirely unnecessary operational and legal costs, and [could] reduce the quality of the services”, while making it difficult to comply with potential requests by the Wanian government to access data. The letter is found in Annex 6.

¹¹ The bound rate for Tariff Item Numbers 8471.30 (“Portable automatic data processing machines, weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display”) and 8461.41 (“Other automatic data processing machines: Comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined”) in Alabasta’s WTO Schedule of Concessions is 18%. The applied rate for Tariff Item Numbers 8471.30 and 8461.41 was 5% until 2019.

53. In November 2020, the DMA issued a decision approving the full takeover of Achilles Films by Atlas for the price of USD 1.5 billion. Achilles Films remained incorporated in Alabasta and no changes were introduced to its business model, staff or management, other than the appointment of a new CEO.
54. Sun Miski tweeted that he was disappointed that the “market is being turned into a Mainan cartel. Atlas made a bad offer and got the deal. It will be able to meet the local content requirement, while we will have to pay a fine every year. This is bogus”.
55. In December 2020, Achilles Films’ content was integrated into the Atlas streaming platform, which is where it has been exclusively shown since then. A few days later, Atlas launched its app for Wega-Pad.

g. Early 2021 to mid-2023: Wepapunk’s troubles with the DMA

56. In January 2021, Prof. Buggy, in his role as Minister of Economy, submitted a complaint under the DEL against Wepapunk for:
 - a. Prohibited algorithmic boosting, in breach of section 6 of the DEL, in relation to the prioritization of Wega-Pads over other tablet computers on Wega-Spend’s search engines;
 - b. Prohibited tying of goods and services offered, in breach of section 8.2(a) of the DEL, in relation to the pre-installation of Wega-Flix on all Wega-Pads; and
 - c. Prohibited bundling of goods and services offered, in breach of section 8.2(b) of the DEL, in relation to the six-month free subscription of Wega-Flix offered with all Wega-Pad purchases.
57. In a press conference, Prof. Buggy stated: “Wepapunk will not tell us what to buy and what to watch. Big tech must play by fair rules”.
58. In February 2021, pursuant to section 2.10 of the DEL, the DMA imposed interim measures ordering Wepapunk to halt its promotional activities for the latest versions of Wega-Pad on Wega-Spend, as well as requesting temporary quotas on the sale of Wega-Pads containing a free subscription of Wega-Flix in large technology stores.

59. In June 2022, following significant delays,¹² the DMA dismissed the complaint and lifted the provisional measures.
60. However, only one month later, in July 2022, the DMA self-initiated proceedings citing anti-steering practices in the tablet computer market by Wegapunk, in breach of Section 9 of the DEL. During the proceedings, the DMA collected evidence of limited interoperability between the Atlas app and Wega-Pad's operating system due to the pre-installed preferences for Wega-Flix. This problem was confirmed by Wegapunk, which, however, refused to take immediate action, stating that the problem was "not a priority".
61. The DMA ordered interim measures in September 2022. The order required Wegapunk to start selling a stripped-down version of Wega-Pad, where Wega-Flix would not be pre-installed so as to avoid the technical problems identified, until the issuance of the final decision.
62. In October 2022, Wegapunk challenged the interim measures in local courts. The challenge was unsuccessful, and the main proceedings are still pending.
63. In November 2022, Sun Miski stated: "They are trying to turn local companies and their buddies in Allos into our direct competitors. I will go on the offensive".
64. In December 2022, Wegapunk filed a complaint before the DMA, alleging that Atlas was violating the prohibition on algorithmic boosting of its shows. However, in January 2023, Prof. Buggy terminated the tenure of one member of the DMA and the proceedings were automatically suspended. The member in question had publicly stated that he was an avid user of Wega-Flix, which he believed was "miles better" than Atlas.
65. In June 2023, a new DMA member was appointed and confirmed by parliament, and the proceedings resumed. Until today, there has been no decision, with the DMA suggesting its workload has dramatically increased since there were several complaints filed by the Minister of Economy, which take priority by law.

¹² The DMA requires all investigations to be concluded within twelve months with a possibility of a one-month extension. There is no remedy against the breach of this timeframe.

h. Mid to late 2023: New market trends and plans for a Mainan tablet computer

66. In July 2023, the government released viewing time statistics for the period of June 2018 to June 2023. ATV1, Able1 and Atlas saw positive trends in viewership, whereas Wega-Flix saw a negative trend:

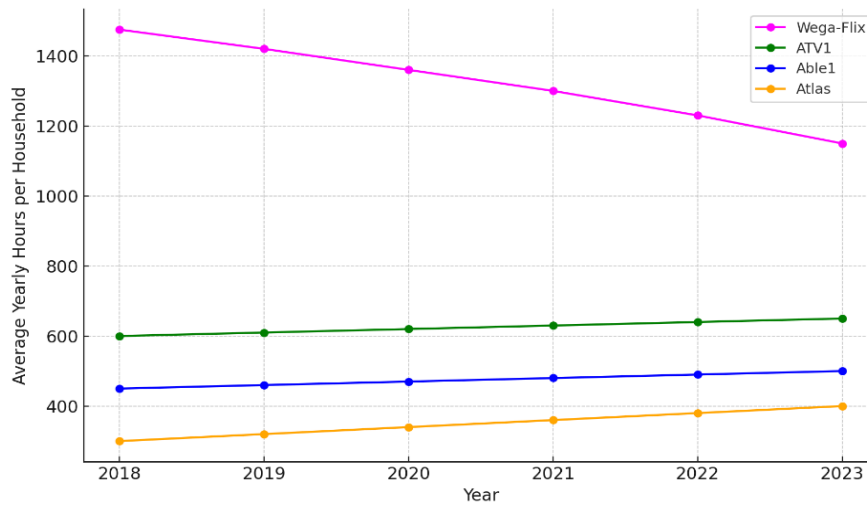


Figure 2: Media Consumption Trends (2018-2023). Ministry of Culture

67. In August 2023, the Ministry of Economy released market statistics for tablet computers for June 2018 to June 2023. Wega-Pad’s market share was relatively stable, starting at 42% in 2018 and ending at 42.4% in 2023 with some fluctuations:

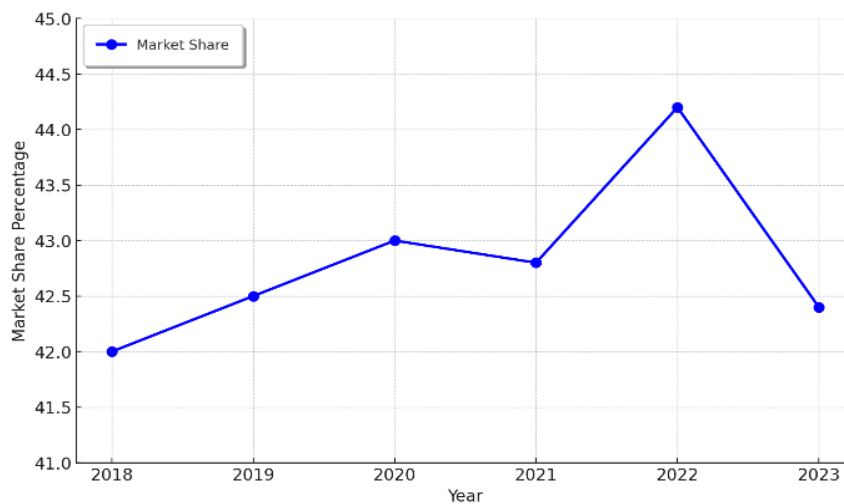


Figure 3. Wega-Pad's Market Shares in Alabasta (2018-2023). Ministry of Economy

68. The volume of overall imports of tablet computers steadily decreased during the same period. The decline in imports of Wega-Pads was slightly steeper than other tablet computers: from 440,000 units in 2018, imports decreased to 370,000 units in 2023.

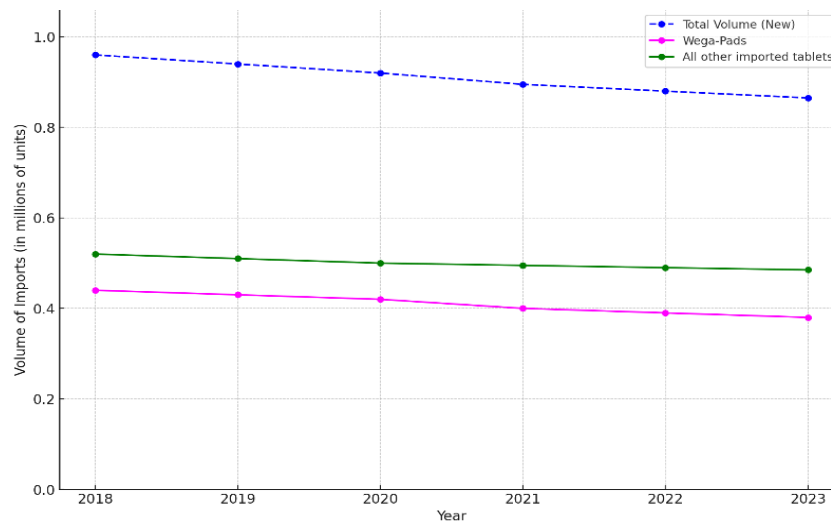


Figure 4: Volume of imports of tablet computers (2018-2023). Ministry of Economy

69. This decrease was in contrast to the global market for tablet computers in the same period, which saw a 20% growth in trade flows.
70. In September 2023, an Alabastan news website disclosed that ATV1 and Able1 had made record profits between June 2021 and June 2023, and had placed them in their Research and Development departments, exploring potential opportunities in the development of tablet computers optimized for video streaming.
71. In September 2023, a consortium of ATV1, Able 1, Atlas and Alemachus announced plans for the production of the first Mainan tablet computer, to be launched in 2026.

IV. WTO Consultations

72. In November 2023, Wano requested consultations with Alabasta pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (“DSU”), Article XXII of the GATS and Article XXIII of the GATT 1994.
73. During the consultations, Wano indicated, first, that section 4.2 of the DEL was inconsistent with Article XVII of the GATS. For Wano, section 4.2 aims to weaken Wega-Flix and any future foreign suppliers by making their content less global, and forcing them to compete more directly with the powerful local industry.
74. Second, Wano indicated that sections 4.3 and 4.4 of the DEL were inconsistent with Article II of the GATS. Wano stated that these sections’ aim was to ensure Achilles Films and any other studio in the future could only end up in Mainan hands.
75. Finally, Wano indicated that the ongoing conduct of the DMA and the tariff increase on tablet computers operated as a restriction on imports since they significantly hampered the imports of Wega-Pads, thereby being inconsistent with Article XI:1 of the GATT 1994. Specifically, Wano argued that the conduct of the DMA, along with the 2019 tariff increase in tablet computers, when viewed together with their objective of contributing to the realisation of the CDTS strategy, amounted to a single unwritten and overarching measure which systematically restricts the importation of Wega-Pads. In terms of the relevant ongoing conduct, Wano listed the following actions and inactions:
- a. The DMA’s blocking of Achilles Films acquisition by Wegapunk in 2020;
 - b. The DMA’s approval of the full takeover of Achilles Films by Atlas in 2020;
 - c. The DMA’s investigation and imposition of interim measures against Wegapunk in 2021;
 - d. The DMA’s investigation and imposition of interim measures against Wegapunk in 2022; and
 - e. Alabasta’s treatment of the 2022 complaint submitted by Wegapunk in relation to Atlas.

76. Alabasta strongly rejected these allegations. First, concerning section 4.2 of the DEL, Alabasta indicated that there is no inconsistency with Article XVII GATS. In any event, section 4.2 is a legitimate and effective means of responding to the citizens' calls for cultural and historical preservation, and is justified under Article XIV(a) of the GATS.
77. Second, concerning sections 4.3 and 4.4 of the DEL, Alabasta indicated that there is no inconsistency with Article II of the GATS. Specifically, Alabasta argued that (i) Atlas is not "like" Wegapunk; and (ii) Wegapunk's Wega-Flix services are not "like" the services offered by Atlas or that could be offered in the future by any companies incorporated in countries having a Data Flow MoU with Alabasta. By setting out a commitment to abide by international principles on data access, such MoUs provide important data protection guarantees which providers from non-MoU countries, such as Wano, cannot always offer. Alabasta concedes that, in case the services and suppliers in question are like, there is less favourable treatment; however, sections 4.3 and 4.4 of the DEL would still be justified under Article XIV(c)(ii) of the GATS.
78. Finally, Alabasta dismissed any allegation that an unwritten and overarching measure exists. Alabasta noted that the CDTS does not constitute an official governmental policy, but a mere theoretical endeavour prepared by academics in their independent capacity.
79. Alabasta added that all decisions taken by the impartial and independent authorities of Alabasta were necessary to protect their domestic consumers and fair competition, while the tariff increase had been planned for a long time and had nothing to do with the investigations. Alabasta, lastly, indicated that Wegapunk had engaged in unfair promotion practices for its products and services and corrective measures were necessary to offset the effects of these practices in the streaming services market, not the sale of tablet computers. The conduct in question would be justified under Article XX(d) of the GATT 1994.

V. Claims

80. As the consultations failed to settle the dispute, Wano submitted the following claims in a request for the establishment of a WTO Panel:
- (i) Section 4.2 of the DEL is inconsistent with Article XVII of the GATS;
 - (ii) Sections 4.3 and 4.4 of the DEL are inconsistent with Article II of the GATS; and
 - (iii) The ongoing conduct of the DMA, together with the 2019 tariff increase in tablet computers constitute an overarching measure that systematically restricts imports of tablet computers, contrary to Article XI:1 of the GATT 1994.
81. Alabasta denies all claims of inconsistency with WTO law and argues that, in any case:
- (i) The alleged inconsistency with Article XVII of the GATS is justified under Article XIV(a) of the GATS;
 - (ii) The alleged inconsistency with Article II of the GATS is justified under Article XIV(c)(ii) GATS; and
 - (iii) The alleged inconsistency with XI:1 of the GATT 1994 is justified under Article XX(d) of the GATT 1994.

Annexes

Annex 1: The relevant provision of the Alabasta-Allos Data Flow MoU

[...]

Article 5: Protection of personal data

1. Each Party shall endeavour to adopt measures that protect individuals, without discrimination based on grounds such as nationality or residence, from personal data protection violations occurring within its jurisdiction. In the development of its legal framework for the protection of personal data and privacy, each Party should take into account the principles and guidelines of relevant international bodies, such as the OECD Principles for Government Access to Personal Data held by Private Sector Entities.

[...]

Annex 2: Relevant sectors of Alabasta's GATS Schedule of Specific Commitments

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
II. SECTOR-SPECIFIC COMMITMENTS			
1.B. Computer and Related Services			
c. Data Processing Services (CPC 843)	1) Unbound 2) Unbound 3) Unbound 4) Unbound, except as indicated in the horizontal commitments	1) Unbound 2) Unbound 3) Unbound 4) Unbound, except as indicated in the horizontal commitments	
2.C. Telecommunications Services			
n. On-line Information and/or Data Processing (Incl. Transaction Processing) (CPC 843**)	1) Unbound 2) Unbound 3) Unbound 4) Unbound, except as indicated in the horizontal commitments	1) Unbound 2) Unbound 3) Unbound 4) Unbound, except as indicated in the horizontal commitments	

2.D. Audiovisual Services			
c. Radio and Television Services (CPC 9613)	1) Minimum 30% local content 2) None 3) None 4) Unbound, except as indicated in the horizontal commitments	1) Minimum 30% local content 2) None 3) None 4) Unbound	

Annex 3: Strategic Economic Study by the Department of Law and the Department of Economics of the Alabastan University on Challenges and Opportunities for Alabastan economy in a digital world

[...]

Key Conclusions:

The summary of the key conclusions as elaborated in the present report are:

- a. The digital economy will constitute a key factor in the development of Alabasta's economy;
- b. Trade in electronic goods and digital services in the Maina region shows great potential but the regional physical and financial infrastructure seems to be lacking;
- c. Domestic companies lack the size and the output to compete with international companies in the necessary Research and Development to develop innovative electronic goods and digital services;

[...]

- h. Alabasta has largely liberalized its market access conditions for imported electronic goods and foreign digital service suppliers, which could potentially threaten the establishment of a globally competitive domestic industry;

[...]

- k. Alabasta requires a digital competitive transformation strategy;

[...]

Key Recommendations:

[...]

As part of a national Digital Competitive Transformation Strategy, the Alabastan government should:

- i. Consider a targeted industrial policy to aid in developing the domestic digital industry, through subsidization and contingent protection;
- ii. Utilise flexibilities offered by the World Trade Organization to protect the domestic industry and promote international competitiveness of domestic electronic goods and digital services;
- iii. Avoid joining the Information Technology Agreement of the World Trade Organization in order to retain flexibility in imposing tariffs on electronic goods;
- iv. Reconsider priorities in competition law enforcement with regards to anti-competitive agreements in the electronic goods and digital services sector in order to encourage Alabastan innovation;
- v. Consider the fact that digital transformation may present significant socio-political challenges, which the strategy should aim to mitigate.

Annex 4: Relevant sections of Wano's Government Access to Data Act

Section 1:

[...]

Covered entity means any entity incorporated in Wano which provides digital services, whether as its main activity or partially. Such services include, but are not limited to, e-commerce, online streaming, social media and mobile applications of any type.

[...]

Section 3:

The President, the Minister of Justice and the Minister of Digital Governance may at any time request the disclosure by a covered entity of any data generated by its users in any territory on the grounds of public order. The covered entity shall comply with this request, which shall not be reviewable by courts.

[...]

Annex 5: Relevant sections of the Digital Economy Law

Part I: Institutions

[...]

Section 2 – The Digital Markets Authority

2.1 The Digital Markets Authority (DMA) is hereby established as an independent regulatory authority responsible for implementing the objectives and enforcing the provisions of the Digital Economy Law (DEL). The DMA shall operate without undue influence from any external entity, ensuring the integrity of its regulatory functions.

2.2 The DMA shall comprise five (5) Members, each of whom shall serve as rotating president on a yearly basis. The Members shall be nominated by the Minister of Economy and confirmed by the Parliament with the support of an absolute parliamentary majority voting. Each Member of the DMA shall serve a fixed term of five (5) years.

2.3 The Minister of Economy may at any time terminate the tenure of any of the Members of the DMA. All pending proceedings in such a case will be suspended until the appointment of a new member.

2.4 The DMA shall have the authority to investigate, enforce, and adjudicate matters related to competition in the digital economy, including but not limited to restrictive agreements, cartels, abuse of dominance, and concentrations. The DMA has the competence to review complaints submitted by individuals, companies and the Alabastan Minister of Economy (“Complaining Party”), as well as self-initiate investigations of restrictive agreements, cartels, and abuses of dominance related to enterprises in the digital economy. The DMA shall examine with priority complaints submitted by the Minister of Economy.

2.5 All decisions of the DMA shall be taken within twelve (12) months of the relevant complaint or the initiation of the investigation by the DMA on its own accord. In case of exceptional circumstances, the DMA shall extend this time-limit by up to one (1) month.

[...]

2.10 In cases of urgency due to the risk of serious and irreparable damage to competition, the DMA acting on its own initiative or pursuant to a request by the complaining party, may, on the

basis of a *prima facie* finding of infringement, order provisional measures. A provisional measures order shall apply for a specified period of time and may be renewed in so far this is necessary and appropriate.

Part II: Strategic sectors

[...]

Section 4 – Providers of Audiovisual Content

4.1 For the purposes of this section 4, “service providers” shall mean all enterprises supplying audiovisual content in Alabasta provided that they make at least 20% of their profits from the supply of audiovisual content.¹³

4.2 At least 30% of the content offered for viewership by a service provider shall be sourced in Alabasta. Content shall be deemed to be sourced in Alabasta when more than 50% of its production costs have been incurred in Alabasta. The DMA shall conduct yearly content reviews; if a service provider fails to meet any of these requirements, the DMA shall impose an administrative fine equivalent to 7.5% of the domestic revenue corresponding to the previous fiscal year.

4.3 All acquisitions of a controlling interest in service providers incorporated in Alabasta shall require approval by the DMA. To obtain approval, the acquiring enterprise must submit a Letter of Intent. This Letter of Intent shall:

(a) Set out the financial terms of the purchase in accordance with the Alabastan Investment Screening Act;¹⁴ and

(b) Indicate a binding legal commitment to store personal information generated by Alabastan users in Alabasta, and to refrain from transferring such information outside Alabasta without approval by the DMA. The commitment shall include the following text:

“[The acquiring enterprise] *hereby undertakes to ensure that the collection, recording, systematization, accumulation, storage, clarification and extraction of personal data of Alabastan residents is carried out using databases and servers located exclusively in the*

¹³ Note from the case authors: ATV1, Able 1, Achilles Films, Wegapunk and Atlas satisfy this definition.

¹⁴ Note from the case authors: Wegapunk and Atlas’ offers met this requirement.

territory of Alabasta. Personal data of Alabastan residents shall not be transferred abroad without prior written approval by the DMA. For the purposes of this commitment, personal data shall mean:

Basic identifiers, such as name, date of birth, address and any other contact information;

*Sensitive information, such as health, employment, financial or religious information;
and*

Digital information, such as IP addresses, device IDs, cookies, location data and any other data that can be reasonably linked to an individual or household”.

(c) All acquiring enterprises incorporated in countries which have a Data Flow MoU with Alabasta, are exempt from the requirement of Section 4.3(b).

4.4 If any of the requirements in Section 4.3(a) and 4.3(b) above are not met, the DMA shall have the discretion to reject the acquisition. Such a rejection does not preclude the acquiring enterprise from purchasing a non-controlling share in the company.

[...]

Part III: Competition in the Digital Economy

[...]

Section 5 – Definitions

For the purposes of Part II, “digital services” means any of the following:

- (a) online intermediation services;
- (b) streaming services;
- (c) online search engines;
- (d) online social networking services;
- (e) video-sharing platform services;

[..]

(j) cloud computing services;

[...]

“Enterprise” means an entity engaged in an economic activity, regardless of its legal status and the manner in which it is financed, including all linked or connected entities that form a group through the direct or indirect control of an entity by another.

“Dominant Enterprise” refers to an enterprise that holds a position of economic strength in a particular market, enabling it to prevent effective competition by behaving independently of its competitors, customers, and consumers.

[...]

Section 6 – Prohibition of Algorithmic Advertisement Boosts

6.1 For the purposes of Section 6, “Algorithmic Advertisement Boosts” shall mean the practice of using algorithms, artificial intelligence, machine learning, or similar automated systems to selectively enhance the visibility, reach, or prioritization of specific advertisements, content, or listings over others within a digital platform, marketplace, or advertising service, based on criteria that are not transparent to all users or that unfairly favour certain providers of digital goods and services over others.

6.2 It shall be prohibited for any digital platform, marketplace, or advertising service operating within the jurisdiction to engage in or facilitate Algorithmic Advertisement Boosts that result in an unfair competitive advantage or discriminatory outcomes, including but not limited to:

(a) Prioritizing advertisements, content, or listings of certain users, entities, or products based on undisclosed or opaque criteria;

(b) Offering paid options for enhanced algorithmic visibility that are not equally accessible to all users on fair and transparent terms;

(c) Engaging in practices that distort market competition by selectively amplifying or suppressing advertisements or content in a manner that cannot be objectively justified based on the content’s relevance, quality, or compliance with publicly disclosed criteria.

[...]

Section 8 – Regulation of Tying and Bundling by Dominant Digital Enterprises

8.1 Dominant enterprises shall not engage in tying or bundling digital products where such practices result, or are likely to result, in the foreclosure of competition or harm to consumer welfare.

8.2 For the purposes of this section 8:

(a) Tying refers to the practice where a dominant enterprise conditions the purchase of one digital service/good (the "tying product") on the mandatory purchase of another distinct digital service/good (the "tied product").

(b) Bundling refers to the practice where a dominant enterprise offers multiple digital services and goods together as a single package, typically at a discount, in a manner that restricts consumer choice or diminishes competition.

[...]

Section 9 – Prohibition of Anti-Steering Practices by Dominant Enterprises

9.1 For the purposes of this section, "anti-steering practices" shall mean any conduct, agreement, or arrangement by a dominant enterprise that directly or indirectly restricts, prevents, or penalizes consumers, agents, or third parties from:

(a) Suggesting or recommending alternative products or services from competing suppliers;

(b) Directing consumers to purchase or use competing products or services; or

(c) Providing information that facilitates a consumer's ability to make informed choices between competing products or services.

9.2 A dominant digital enterprise shall not engage in anti-steering practices that have the object or effect of restricting competition by limiting consumer choice, deterring market entry, or excluding competitors from the market.

[...]

Annex 6: Letter from Sun Miski to the DMA

Esteemed President of the Digital Markets Authority,

It is with great sadness that we find ourselves compelled to reject your request for a new purchase offer. For the reasons already discussed with the Authority, restricting our purchase to a non-controlling interest is pointless.

Our goal in purchasing Achilles has always been very clear: to revamp it, integrate it into Wega-Flix and offer modern on-demand content to Alabastan consumers, who are among the few consumer groups around the world that do not have access to high-quality movies and series. They are forced to watch primarily local, antiquated content; to watch new, international movies and series, they must spend significant amounts of money to buy new foreign content directly from producers, or just wait until it becomes available on cable and TV. We wanted to change this and were hoping for the government's cooperation.

With regard to the alternative of storing all personal data locally and being prohibited from transferring it to our servers in Wano, this is not something we can accept. Such measures would mean high and entirely unnecessary operational and legal costs, and can reduce the quality of the services. Indeed:

- We would be required to purchase servers and data storage facilities in Alabasta, incur maintenance costs and assume a series of legal expenses for compliance with various local laws;
- Our services are global. If part of the data we use is localized and cannot be processed outside Alabasta, we cannot compile it with global data. We cannot use it to better understand global and local user preferences, and we cannot offer the best level of customized content to local users;
- Localization and transfer bans impact several functionalities for local users;
- We risk being physically unable to comply with potential requests for access by the Wanian government. You can appreciate that it is extremely important for us to avoid legal troubles at home and maintain a good relationship with the Wanian government; and
- Having multiple storage locations increases the risk of cyber attacks.

We are not willing to assume these costs and risks. Having encountered no flexibility from your side, we are forced to reject the request for an offer and withdraw our interest in purchasing any stake in Achilles. Achilles' management has been separately informed about the failure of the deal.

Sincerely yours,

Sun Miski

Annex 7: Timeline of Main Events

Date	Event
01.05.2009	Publication of Strategic Economic Study by the Departments of Law and Economics of the Alabastan University
01.01.2011	Wegapunk launches Wega-Flix in Alabasta
01.07.2018	Atlas launches its streaming services in Alabasta
01.03.2019	Prof. Buggy is appointed Minister of Economy
20.03.2019	The DEL is approved by the Alabastan Parliament
15.04.2019	The DEL enters into force
01.08.2019	Tariffs on electronic goods, including tablet computers, increase to 13%
11.10.2019	Wegapunk submits to the DMA an LoI to take over Achilles Films
09.02.2020	The DMA issues a decision on the LoI submitted by Wegapunk
13.05.2020	Sun Miski sends a letter of complaint to the DMA
05.11.2020	The DMA approves the takeover of Achilles Films by Atlas
01.12.2020	Achilles Films' content is streamed by Atlas Platform for the first time
04.01.2021	Prof. Buggy submits a complaint to the DMA against Wegapunk
01.02.2021	The DMA imposes interim measures against Wegapunk (1 st interim measures decision)
17.06.2022	The DMA dismisses the complaint submitted by Prof. Buggy
05.07.2022	The DMA self-initiates proceedings against Wegapunk
22.09.2022	The DMA imposes interim measures against Wegapunk (2 nd interim measures decision)
03.10.2022	Wegapunk challenges the 2 nd interim measures decision in local courts
06.12.2022	Wegapunk submits a complaint to the DMA against Atlas
03.01.2023	Prof. Buggy terminates the tenure of one member of the DMA
01.06.2023	A new DMA member is appointed and confirmed by parliament
11.09.2023	The consortium of ATV1, Able 1, Atlas and Alemachus announces plans for the production of the first Mainan tablet computer
01.11.2023	Wano requests WTO consultations with Alabasta

Suggested readings

a. Illustrative List of GATT/WTO cases

GATT Panel Report, *Japan — Trade in Semi-conductors* (1987) BISD 35S/116

Panel Report, Japan — Measures Affecting Consumer Photographic Film and Paper WT/DS44/R

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Panel and Appellate Body Reports, Korea — Measures Affecting Imports of Fresh, Chilled and Frozen Beef, WT/DS161

Panel Report, Colombia — Indicative Prices and Restrictions on Ports of Entry, WT/DS366

Panel and Appellate Body Report, European Communities — Regime for the Importation, Sale and Distribution of Bananas, WT/DS27

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Panel Report, China — Certain Measures Affecting Electronic Payment Services, WT/DS413

Panel Report, China — Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products, WT/DS363

Panel and Appellate Body Reports, United States — Measures Affecting the Cross-Border Supply of Gambling and Betting Services, WT/DS285

Panel Report, Russia — Tariff Treatment of Certain Agricultural and Manufacturing Products, WT/DS485

Panel Report, European Union and its member States — Certain Measures Relating to the Energy Sector, WT/DS476

Panel Report, Mexico — Measures Affecting Telecommunications Services, WT/DS204

Panel and Appellate Body Reports, Russia — Measures affecting the importation of railway equipment and parts thereof, WT/DS499

Panel and Appellate Body Reports, Brazil – Measures Affecting Imports of Retreaded Tyres, WT/DS332/AB

b. Illustrative Bibliography

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H. Romero, F. Piérola, *Unwritten Measures: Reflections on the Panel Report in Argentina – Measures Affecting the Importation of Goods*, Global Trade and Customs Journal, Volume 10, Issue 1, (2015)

I. Van Damme, “Treaty Interpretation by the WTO Appellate Body”, Oxford University Press (2009)

R. Dlung, P. Morrison, M. Roy, W. Zhang, *FOG in GATS commitments – why WTO Members should care*, World Trade Review. Volume 12, Issue 1 (2013)

c. **Miscellanea**

OECD, Declaration Government Access to Personal Data Held by Private Sector Entities,
Available at:

<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0487#:~:text=WE%20REJECT%20any%20approach%20to,%2C%20unreasonable%2C%20arbitrary%20or%20disproportionate.>

MTN.GNS/W/120 (“W/120”), Available at:

https://www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc

OECD Handbook on Competition Policy in the Digital Age (2022), Available at:

<https://www.oecd.org/en/topics/competition-and-digital-economy.html>

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Centro de Asesoría Legal en Asuntos de la OMC

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