ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION

Why South Korea Should Resist New Digital Platform Laws

LILLA NÓRA KISS I DECEMBER 2024

Policymakers in South Korea are weighing a raft of digital market provisions inspired by the EU's Digital Markets Act. Their goal is to rein in allegedly anticompetitive practices by Big Tech firms. But the proposed interventions are unwarranted and risk harming innovation, straining relations with the United States during uncertain times, and opening the door to China.

KEY TAKEAWAYS

- South Korea aims to protect small firms, but it does not need DMA-style provisions. Its thriving digital markets show no signs of failure, and the KFTC already enforces laws effectively to curb anticompetitive behavior.
- Policymakers argue practices such as self-preferencing, tying, multi-homing limits, and MFN clauses stifle competition and harm smaller rivals. But they often enhance efficiency, prevent free-riding, and deliver safe, high-quality services to consumers.
- Proposed reforms modeled after the EU-DMA's provisions could stifle innovation, raise costs, and reduce user benefits. Instead of driving competition, they risk harming consumers and undermining efficiency.
- South Korea's proposed reforms restricting common platform practices target large U.S. and South Korean firms, stifling innovation and exempting smaller rivals while inviting Chinese firms to fill the void.
- With U.S. elections over, South Korea risks a backlash from a new administration unlikely to tolerate policies that harm major U.S. businesses. DMA-like reforms also pose economic and security risks by giving Chinese firms a stronger foothold there.
- South Korea relies on U.S. support to be a leader in IT, telecom, semiconductors, and defense. Alienating America undermines its regional leadership and weakening its ability to counter growing security threats and economic competition from China.

CONTENTS

Key Takeaways 1
Introduction 3
Policy Background 3
Policymakers' Various Rationales for Platform Regulation 5
Concerns That Digital Markets Are Different, and Therefore Need New Rules 5
The Argument That Practices Unique to Platforms Are Unfair to Competitors 6
The Concern That Small Firms Should Be Protected 13
The Urge to Protect Competitors Instead of Consumers 14
Overall Problems With South Korean Digital Platform Laws 15
The Proposed Reforms Will Harm Consumers 15
The Proposed Reforms Will Chill Innovation 15
The Proposed Reforms Can Lead to Regulatory Capture 16
The Proposed Reforms Can Favor China 16
Regulations Can Have Negative Effects on U.S.-South Korean Relations 18
Recommendations for a Pro-innovation formula 19
Do Not Adopt DMA-Style Rules (Neither Ex Ante nor Ex Post) 19
Use Existing Laws to Solve Antitrust Cases and Use Other Sectoral Laws to Handle Noncompetition Issues 19
Amend Existing Laws—But Not in the Way Proposed 19
Conclusion 20
Appendix: Main South Korean Digital Competition Proposals 21
Endnotes 22

INTRODUCTION

In the last decade, policymakers, particularly those in the EU, have argued that a new type of business model—Internet platforms, often perceived as having winner-take-all characteristics—requires fundamentally new approaches to competition policy.[1] These large firms seem, at first, to policymakers as a new strange kind of species calling for a new kind of legislative and regulatory response. Neither claim is true.

Brussels led the way in framing the issue this way and crafting unprecedented (and unneeded) legislation. Through the Digital Markets Act (DMA)—a law setting strict, ex ante, rules for large online platforms ("gatekeepers")—the EU squarely focuses on large tech companies by establishing thresholds that align with the claimed market power of U.S. tech giants such as Google, Amazon, Apple, Facebook, and Microsoft.[2] Andreas Schwab, the European Parliament's rapporteur for the DMA, has stated that the regulation should focus on these top American companies rather than expanding to include European firms, for diplomatic appeasement.[3]

Through the "Brussels Effect," or the EU's global regulatory influence, South Korea (and several other countries) are rethinking their competition policy as it applies to digital markets. The DMA's ex ante provisions mark a shift in competition enforcement by proactively imposing measures on gatekeepers to prevent anticompetitive behavior before it occurs, moving away from the traditional ex post law enforcement approach, which reacts to violations only after they are detected. But even if these reforms were enacted through amendments to the existing competition rules, they are problematic because many of the behaviors of concern are pro-consumer and pro-innovation. The DMA is bad policy, and South Korea's emulation of it, even in its modified proposed ex post way, would also be bad policy.

This report focuses on South Korea's concerns motivating its desire for a new competition law for digital platforms. It evaluates the necessity of these interventions, analyzes potential unintended consequences for both domestic and international tech industries, and explores the geopolitical implications, especially regarding U.S.-South Korean relations and the increasing influence of Chinese firms in the region.

POLICY BACKGROUND

In January 2024, the National Policy Committee of the Korean National Assembly had 19 digital platform-focused bills on its legislative agenda, each of which had three common objectives:

1. Identify the "gatekeepers," known as "dominant operators"
2. Regulate their presumptively anticompetitive conduct
3. Enhance consumer protection by requiring platforms to provide clear advance notice of any significant changes to their services

As of this report, some of these ex ante bills have been dropped.

In addition to the ex ante reforms already pending before Parliament, on October 28, 2024, Rep. Min-kook Kang, along with 11 other representatives of the ruling People Power Party (PPP), introduced the Partial Amendment Bill to the Monopoly Regulation and Fair Trade Act (MRFTA) (Partial Amendment Bill 4947). It is based on the Korea Fair Trade Commission's (KFTC's) new plan revealed this past September to amend the existing (ex post) laws, namely, the MRFTA and

the Large Scale Retail Business Act (LSRBA).[4] The bill aims to strengthen competition laws, particularly as they apply to online platforms.[5] The MRFTA generally aims to prevent monopolistic practices, regulate anticompetitive behaviors, and ensure fair market competition. It tackles abuses of market dominance, unfair business practices, and mergers or acquisitions that could harm competitive conditions.[6] The Partial Amendment Bill, contrary to the original intentions of the KFTC, does not mention the modification of the LSRBA. This law is intended to protect smaller retailers and suppliers from purportedly unfair practices by large-scale retailers.[7]

Similarly to the EU's gatekeeper designation, the KFTC's amendment to the MRFTA aims to categorize platforms as "dominant online platform operators" based on detailed criteria. A platform operator will be presumed dominant if it has at least a 60 percent market share in a relevant service area and an average of 10 million monthly active users (MAU) over three years. Additionally, if the top three operators in a market hold a combined market share of 85 percent or more, any operator within this group with at least a 20 percent share and 20 million MAU will also be presumed dominant. However, operators are exempt from this presumption if their total sales from platform services and related goods are below KRW 3 trillion (~$2.16 billion). Designated dominant platforms are subject to strict regulations to prevent allegedly anticompetitive practices across six core service areas: intermediaries, search engines, social media, video streaming, operating systems, and advertising. The Partial Amendment Bill prohibits these platforms from engaging in several common practices:

- **Self-preferencing:** favoring their own products or services over those of competitors)
- **Tying/bundling:** requiring users to purchase additional products or services
- **Most-favored nation (MFN) clauses:** mandating equal or better terms than those offered on other platforms
- **Multi-homing restrictions:** preventing users from using competing platforms

Similarly to the EU's gatekeeper designation, the KFTC's amendment to the MRFTA aims to categorize platforms as "dominant online platform operators" based on detailed criteria.

Under the Partial Amendment Bill, the dominant online platform operators bear the burden of proof to provide pro-competitive justifications, such as by demonstrating consumer welfare gains or security requirements. Absent such proof, practices are presumed to be anticompetitive and ipso jure prohibited. This approach contrasts with the rule-of-reason approach in U.S. antitrust law, wherein authorities must first establish that conduct is anticompetitive before companies are required to offer pro-competitive justifications. The absence of such a requirement in South Korea is controversial, as it shifts the evidentiary burden onto platforms without requiring authorities to demonstrate harm to competition.

Although the Partial Amendment Bill seems like a compromise between ex ante and ex post approaches, it is not a significant departure from DMA-style (ex ante) regulations. The reason is that it retains problematic provisions of DMA-like laws, such as designating dominant operators and restricting their otherwise pro-competitive practices (e.g., self-preferencing, tying), and, as of November 2024, it appears to unfairly target U.S. and South Korean companies such as Google,

Apple, Kakao, Naver, and Baemin (based on excluding platforms with direct and indirect sales of less than KRW 3 trillion or ~$2.16 billion).

The Partial Amendment Bill is seemingly gaining support from the Yoon administration. Opposition parties, including the Democratic Party (DP) continue drafting their own ex ante bills. The concurrent proposals for both ex ante and ex post laws in South Korea, with the possibility of both passing through the National Assembly, reveal a lack of clear vision in the country's policy direction.

South Korea—by considering multiple ex ante bills—seemingly follows Europe's example by adopting strict provisions for digital platforms without considering alternatives to legislation. Singapore, Taiwan, and the United States, for example, have opted not to implement proactive, DMA-style regulations and instead rely on their existing antitrust laws and ex post enforcement of anticompetitive practices. The DMA is just one, and not the only, solution for tackling digital platforms.

Together, South Korea's 19 digital law proposals reveal a fragmented and unclear policy vision.

POLICYMAKERS' VARIOUS RATIONALES FOR PLATFORM REGULATION

The real rationale for South Korea's (and other jurisdictions') digital competition policy proposals varies, regardless of whether they are ex ante or ex post. The bills seem to target presumptively anticompetitive behavior, but in a slightly different way. Regardless of discussing ex ante reforms or ex post amendments for the digital competition policy, the provided rationale for such reforms lacks evidence-based justifications.

Concerns That Digital Markets Are Different, and Therefore Need New Rules

The push for stricter regulations in digital markets often arises from concerns that large platforms may monopolize a market due to strong network effects, wherein each additional user increases a platform's value; and there is a "winner-takes-all" phenomenon wherein the most popular platform captures nearly all users.[8] However, the assumption that digital markets are unique and therefore require distinct regulatory measures misrepresents their underlying dynamics. It incorrectly assumes that these differences from traditional markets justify new, sweeping regulatory measures. But digital markets are not inherently different in a way that requires distinct regulations, especially in the absence of demonstrated market failures. To the contrary:

- **Scale is a feature and not a flaw of digital markets.** Network effects should be seen as a natural part of digital competition, rather than as anticompetitive dominance.[9]
- **Digital markets are shaped by more than just scale; companies invest in better user experiences to attract and retain consumers, fostering innovation and choice.** The competition for user engagement and the transient nature of consumer preferences keeps digital markets dynamic. In South Korea, platforms such as Coupang and Naver have thrived precisely due to their ability to scale and capture consumer attention, driving growth and competitiveness.
- **Regardless of whether digital markets are different from traditional markets, new rules are not justified unless there is market failure.** In the absence of evidence of market failure,

jurisdictions should not adopt economic regulations. Market failure arises when a market repeatedly fails to allocate resources efficiently, resulting in inefficiencies and harming consumers. The time factor is highly relevant in assessing market failure, as such failures must reflect sustained or recurring inefficiencies rather than short-term disruptions or temporary imbalances. A market may experience brief periods of dominance or inefficiency, but these alone do not constitute market failure if competitive dynamics and innovation naturally resolve them over time. Indeed, true market failure requires persistent and systemic issues that continue to harm consumer welfare without correction by market forces.

However, South Korea's digital markets are thriving with remarkable growth, innovation, and competitiveness without excessive regulatory intervention. Key sectors such as e-commerce, semiconductors, and artificial intelligence (AI) continue to propel South Korea as a global leader in technology, with major firms such as Samsung, SK Hynix, and LG reinforcing its position as a tech powerhouse. Platforms such as Coupang, Naver, and Gmarket are also flourishing, with the information and communication technologies industry contributing nearly KRW 68 trillion (~$48.6 billion) to gross domestic product (GDP) in Q4 2023.[10] Currently, no signs of market failure threaten South Korea's efficient resource allocation.

- **Even in the case of market failure, South Korea should focus on targeted, specific interventions where necessary; policymakers should not impose blanket bans on certain practices.** Heavy-handed regulation is particularly harmful in digital markets because these markets are dynamic, fast evolving, and driven by rapid innovation cycles. Overly broad or restrictive measures can also stifle innovation by creating compliance burdens that divert resources away from research and development.[11] Additionally, such regulations often fail to account for the transient nature of market power in digital platforms, wherein firms frequently rise and fall due to competition and technological advancements.[12] Broad regulatory interventions are often ineffective in addressing specific market concerns, which can typically be resolved through existing laws or minor—more surgical—regulatory adjustments.
- **Finally, issues such as consumer protection, data privacy, and unfair trading practices could be managed within South Korea's current regulatory framework.** For instance, refining consumer protection laws to address particular incidents would be more appropriate than instituting broad bans or restrictions that discriminate based on the size of the platforms.

South Korea should first identify specific market issues and apply tailored legal remedies to avoid unintended consequences, such as overregulation. Therefore, new, expansive rules are unwarranted and potentially detrimental (regardless of being wrapped in ex ante or ex post legislative products), as there is insufficient evidence of market failure that would justify such an intervention.

The Argument That Practices Unique to Platforms Are Unfair to Competitors

EU competition officials have argued that certain practices of online platforms are inherently unfair to competitors and ,it should be noted, not as harmful to consumer welfare.[13] South Korean officials appear to be raising the same concerns.[14] Both the ex ante bills and the Partial Amendment Bill criticize self-preferencing, tying and bundling, most-favored-nation clauses, and

multi-homing restrictions. These practices are presumed to be anticompetitive in both the ex ante and ex post bills.

Self-Preferencing

Self-preferencing sounds nefarious, but it simply refers to consumer-facing companies prioritizing their own products or services, potentially offering consumers streamlined costs, improved service delivery, and an enhanced user experience. For example, a platform may promote its own products at the top in search results or offer exclusive services, often leading to better prices, faster delivery, and improved convenience for users. By enabling firms to innovate within their ecosystems, self-preferencing can often foster consumer choice and satisfaction.[15]

Self-preferencing is not new. Grocery stores often put their own store brands at the ideal height on their shelves where consumers are most likely to buy them. If this were anticonsumer, consumers would choose other stores. Thus, self-preferencing by platforms almost always is consumer welfare enhancing.

In South Korea, regulators have raised self-preferencing as a concern within proposed competition policy reforms. Their primary worry is that large platforms might use self-preferencing to limit competition, possibly disadvantaging smaller competitors and reducing market diversity.

But regulators should only be focused on self-preferencing if it excludes competitors and harms consumer welfare. For example, leading search companies might offer their own results at the top of search results. As long as this is clear to consumers, there is nothing unfair about it. At the same time, most search companies allow competitors to purchase space at the top of the page, again as labeled advertising. And finally, competitors' results may show up in "organic" searches that algorithms determine. As long as a search platform does not ban a competitor from advertising and does not intentionally degrade competitors' positions in organic searches, there should be no reason for regulators to be concerned.

Self-preferencing sounds nefarious, but it simply refers to consumer-facing companies prioritizing their own products or services, potentially offering consumers streamlined costs, improved service delivery, and an enhanced user experience.

While self-preferencing could, in some cases, disadvantage smaller players, the real issue is that it usually provides significant consumer benefits. Blanket prohibitions on self-preferencing, such as those proposed in South Korea's ex ante bills, risk stifling these advantages by treating all self-preferencing as inherently harmful. Such broad bans can result in "false positives," penalizing consumer-friendly practices alongside potentially anticompetitive ones.[16] By assuming that all self-preferencing inherently harms competition, these restrictions focus on protecting competitors instead of consumers and overlook cases where the conduct clearly serves consumer interests.

Moreover, a blanket prohibition of the ex ante bills could harm consumers, such as the restrictions set in the proposed ex post reform. Self-preferencing is often an efficient and competitively neutral strategy, especially in digital markets where strong network effects and rapid innovation cycles drive platforms to improve and customize services. Imposing strict

restrictions on self-preferencing could disrupt this balance of competition and innovation, discouraging platforms from investing in enhancements that could benefit users.

In light of these factors, regulations on self-preferencing should focus on evidence-based analysis rather than blanket prohibitions or restrictions that put the initial burden on companies to show pro-competitive justifications without requiring the authorities to show harm first. Regulators could distinguish between practices that genuinely harm competition and those that support consumer welfare, thus ensuring that the benefits of self-preferencing are not lost due to overregulation.[17]

Tying and Bundling

Tying and bundling refer to practices in which a platform links the sale of a primary product to additional goods or services. Tying (a practice wherein the purchase of one product is conditioned on the purchase of another distinct product) and bundling (the offering of two or more products together as a package, often at a discounted price) can often benefit consumers by providing convenience, reducing transaction costs, and sometimes lowering overall prices. For example, platforms might bundle complementary services—such as storage or customer support—with a core offering, which streamlines user experience and delivers additional value.[18] For instance, Apple's bundling of its proprietary hardware (e.g., iPhones) with iOS and other built-in applications has been successful because doing so enhances functionality, security, and the user experience.

Tying and bundling can often benefit consumers by providing convenience, reducing transaction costs, and sometimes lowering overall prices.

In South Korea, regulators have raised tying and bundling as a concern within the framework of digital market competition. Their primary worry is that dominant platforms might use these practices to leverage their position in one market to establish dominance in another, creating barriers to entry for competitors in adjacent markets. A prominent example is the series of antitrust cases against Microsoft in the European Union, which addressed different instances of bundling practices. In Case T-201/04, the European Commission ruled that Microsoft's bundling of Windows Media Player with its dominant Windows operating system harmed competition in the media player market by excluding rival products and limiting consumer choice.[19] Separately, in Case COMP/C-3/37.792 (notified under Case T-167/08), the commission found that Microsoft's tying of Internet Explorer with Windows stifled competition in the web browser market, depriving consumers of alternative browser options.[20]

While certain forms of these practices could reduce competition, tying and bundling frequently help consumers, often enhancing consumer welfare by creating efficient, integrated service options that consumers prefer. Strict restrictions on tying and bundling risk creating false positives, resulting in a regulatory approach that prioritizes competitor protection over consumer welfare, ignoring the practical efficiencies that many tying or bundling practices provide.[21] The digital economy thrives on rapid innovation and strong network effects; prohibiting integrated service solutions could discourage platforms from investing in valuable improvements, ultimately producing a chilling effect on innovation. As a result, consumers may lose access to efficient, high-quality services platforms could otherwise develop.

Given these factors, regulations on tying and bundling should focus on evidence-based analysis rather than blanket prohibitions enshrined in the ex ante bills or restrictions introduced to control the practices of large tech companies without requiring the authorities to establish harm first. Regulators should distinguish between practices that are genuinely anticompetitive and harm consumers versus those that enhance consumer welfare.

Most-Favored Nation Clauses

MFN clauses refer to agreements wherein a platform requires suppliers or sellers to provide it with terms as favorable as those offered to any other platform. These clauses can benefit consumers by ensuring that a platform's users get the best available terms. When platforms leverage MFN clauses, they can negotiate lower prices or secure exclusive deals, often resulting in lower costs, better quality offerings, and increased consumer choice.

In South Korea, regulators have raised MFN clauses as a concern, particularly regarding dominant platforms. Their concern is that large platforms might use MFN clauses to restrict competition by preventing suppliers from offering better terms to other platforms, thereby limiting opportunities for smaller players or new entrants to differentiate themselves.

However, this concern may be overstated. While MFN clauses can, in certain cases, restrict competition, they also provide significant consumer benefits. By negotiating the most favorable terms, platforms can pass on lower prices and enhanced value to consumers, which can drive competition in quality and pricing across the market. Blanket prohibitions on MFN clauses thus risk penalizing consumer-friendly practices, creating false positives wherein beneficial uses of MFNs are restricted alongside potentially anticompetitive ones. Such an approach assumes that MFN clauses are inherently harmful, overlooking scenarios in which they actually improve consumer welfare.

MFN clauses can benefit consumers by ensuring that a platform's users get the best available terms.

Prohibiting MFN clauses can be harmful to consumers. Without the ability to use MFN clauses, platforms may lose bargaining power, which could lead to higher prices, fewer choices, or lower-quality offerings for consumers. For instance, in the online booking market, when suppliers have greater bargaining power, MFN clauses can yield pro-competitive effects, enhancing efficiency and consumer welfare.[22] By preventing free-riding and ensuring consistent pricing across channels, MFN clauses allow platforms to negotiate better terms and pass these benefits on to consumers through improved pricing, choice, and service quality.[23] They also protect platforms that invest heavily in long-term consumer relationships from suppliers offering better terms exclusively to new entrants. This protection can be particularly important for maintaining competition on a level playing field, as it prevents suppliers from selectively advantaging certain platforms.

While MFN clauses can sometimes have anticompetitive effects, per se bans in ex ante proposals—and also with the restrictions in the Partial Amendment Bill amending the ex post framework—overlook the pro-consumer benefits that can result from their use. Regulators should distinguish between instances wherein MFNs genuinely harm competition and wherein they enhance consumer welfare and apply the rule of reason standards to evaluate these practices and examine the specific facts and circumstances of a case, weighing the pro-competitive benefits of

a practice against its anticompetitive effects, rather than deeming the practice inherently unlawful.

Multi-Homing Restrictions

Multi-homing restrictions refer to policies wherein platforms limit users or sellers to participating only on their platform, preventing them from using multiple competing platforms simultaneously. Such restrictions can often serve pro-competitive purposes by strengthening network effects, increasing user value, and incentivizing platforms to invest in platform-specific improvements that ultimately benefit consumers. For instance, by retaining both buyers and sellers, platforms can develop specialized features, improve transaction efficiency, and enhance long-term growth strategies that foster a better user experience.[24] For example, Apple's App Store policies require in-app purchases to be processed exclusively through its payment system, a practice that centralizes transactions, enhances platform security, and supports investment in ecosystem improvements.

In South Korea, regulators have raised concerns over multi-homing restrictions in their proposed competition policies, arguing that these restrictions could unfairly limit consumer choice and hinder smaller competitors' access to the market.

However, the regulators' concerns might be exaggerated. While multi-homing restrictions could theoretically limit market access, they also help platforms reduce free-riding by competitors that might otherwise benefit from a platform's investments without making similar commitments. This free-riding problem can discourage platforms from investing in innovation, as competitors could exploit the market share and value a platform has developed without contributing comparably.[25] By limiting multi-homing, platforms are better positioned to maintain high-quality, differentiated services that directly benefit users.[26]

Multi-homing restrictions can often serve pro-competitive purposes by strengthening network effects, increasing user value, and incentivizing platforms to invest in platform-specific improvements that ultimately benefit consumers.

Furthermore, broadly prohibiting multi-homing restrictions could harm consumers. Such restrictions support market differentiation by enabling platforms to concentrate on unique features rather than generic price competition, giving users a variety of specialized options that enhance consumer choice and satisfaction. Without multi-homing restrictions, dominant platforms may have reduced incentives to invest in tailored services, potentially resulting in fewer choices or lower-quality solutions for consumers.

Regulators should carefully assess the economic impact of multi-homing restrictions on a case-by-case basis instead of treating them all as presumptively unlawful. By distinguishing between genuinely anticompetitive practices and those that support innovation and consumer welfare, regulators can create a balanced approach that fosters market diversity without discouraging platforms from enhancing their services.[27]

Data-Usage Restrictions

Data usage restrictions are measures that prevent large platforms from sharing user data between their primary services and any other services they offer in competition with others who use their

platform. These restrictions aim to limit competitive advantages by preventing dominant platforms from leveraging non-public user data to bolster their secondary services, thereby maintaining a level playing field for competitors in the market. Additionally, they intend to protect consumers' privacy by reducing the potential misuse of data across a platform's ecosystem. For example, the European Commission recently fined Meta nearly €800 million (~$840.5 million) for allegedly using nonpublic advertising data from Facebook and Instagram to "unfairly advantage its classified-ads service, Marketplace," highlighting how data usage restrictions aim to curb perceived anticompetitive behavior while safeguarding user privacy.[28]

In South Korea, policymakers have raised data usage restrictions as a concern in proposed policies, viewing data-sharing practices by large platforms as potentially harmful to both competitors and consumer privacy. Their primary concern is that, without restrictions, platforms might use data collected from one service to gain an unfair advantage in another.

While data sharing could raise legitimate privacy issues if a company does so outside the organization or relies on individualized rather than aggregated data, such data usage restrictions can come at the expense of innovation and service improvement. Data sharing across services can enable platforms to enhance user experiences, tailor services more effectively, and introduce features that directly benefit consumers. For instance, platforms might use data insights to offer personalized recommendations, streamlined services, or enhanced security, which can add significant value for users.

While data-sharing could raise legitimate privacy issues if a company does so outside the organization or relies on individualized rather than aggregated data, restricting it can come at the expense of innovation and service improvement.

In practice, data-sharing restrictions often benefit competitors rather than consumers, raising questions about the true objectives of such policies. When consumers use a platform such as Facebook, they voluntarily share their data and attention with the platform. When this data is used internally, it does not fundamentally alter consumer privacy dynamics. Competition policy is not intended to preserve the market positions of incumbent players, but rather to foster a dynamic environment in which innovation and efficiency benefit consumers. Restricting data sharing may inadvertently prioritize protecting non-integrated competitors over delivering tangible consumer benefits. This approach risks distorting competition rather than enhancing it, focusing on competitor welfare rather than consumer welfare. Finally, if privacy concerns exist, they should be addressed through dedicated privacy and data protection laws rather than by using competition policy as a proxy. True consumer-centric competition policy should focus on driving innovation, increasing choice, and delivering better value, rather than artificially favoring certain competitors over others.

Antisteering Provisions

Antisteering rules are regulations that prohibit large platforms from restricting users or sellers from directing business to alternative platforms. These rules are intended to promote consumer choice by preventing dominant platforms from unfairly limiting users' ability to engage with competing services. For example, Apple's App Store policies limited app developers from directing users to alternative payment systems outside the App Store, arguing that these policies

ensure a secure and seamless user experience. While critics claim that they limit competition, such restrictions protect consumers from fraud and enhance the reliability of the platform, ultimately delivering higher user satisfaction and maintaining consumer trust.

In South Korea, regulators have identified antisteering as an issue in their efforts to enhance competition within digital markets. Their primary apprehension is that platforms with significant market power could use steering practices to limit consumer options and make it more difficult for alternative platforms to compete.

Yet, this concern may be overstated. While antisteering rules aim to expand consumer choice, platforms often use steering as a way to maintain a cohesive user experience and offer personalized services. Steering users within a platform can encourage them to access more relevant features, which can improve user satisfaction, streamline interactions, and enhance service quality. A key justification is often privacy and security—steering users to stay within a platform helps platforms ensure that sensitive user data is handled according to their established standards and minimizes risks associated with external systems. In many cases, steering can also enable platforms to develop and invest in innovative offerings that benefit consumers.[29]

Antisteering rules are intended to promote consumer choice by preventing dominant platforms from unfairly limiting users' ability to engage with competing services.

Restricting steering practices may inadvertently harm consumers by reducing platforms' flexibility to manage interactions with users and tailor services effectively. Limiting a platform's ability to guide users toward integrated services risks stifling innovation, as platforms may be less willing to invest in unique or personalized features if they cannot maintain an ecosystem that supports them.

Mandatory Interoperability

Mandatory interoperability requires platforms to ensure seamless communication between their services and those of other providers.

In South Korea, regulators have raised interoperability as a regulatory priority in their effort to foster a more open digital marketplace. They argue that requiring interoperability could prevent dominant platforms from locking users into their ecosystems, potentially making it easier for smaller or new competitors to attract users and compete.

However, this argument may overlook some key drawbacks. While interoperability can be beneficial, mandating it may inadvertently lock companies into current technology standards, thereby hindering the development of newer, more innovative solutions. Mandating technical standards can cement existing technologies, curbing the development of superior alternatives. This can lead to less competition and a loss of incentive for platforms to innovate if they are bound by rigid, predetermined technical standards that limit differentiation and market-driven advancements.[30] Moreover, the concerns about forced sharing extend beyond technical standards; requiring platforms to share proprietary technology or data can reduce their incentives to invest in innovation. It is also inherently unfair to compel companies to share their "secret sauce," undermining the competitive advantage they have earned through investment and research.

In light of this, mandatory interoperability should be approached carefully to avoid stifling innovation and limiting the competitive dynamics essential to a thriving digital marketplace.

The Concern That Small Firms Should Be Protected

At their heart, all the previously mentioned concerns are really just one concern: Some regulators do not believe large platforms should be able to have advantages based on size, scope, or scale. That, rather than the specific concerns and mechanics of certain practices, is really what is up for debate. And that overarching concern is based on a view that the goal of competition policy should be to spur competition to help competitors, including small firms, rather than to enable innovation to help consumers. However, the goal should be the latter.

Advocates for strict regulation argue that small firms need protection from large platforms, viewing these digital platforms as threats to competition. However, the primary goal of competition policy is to protect consumers and promote consumer welfare, not to shield individual competitors from competition. Focusing on the welfare of consumers means fostering competitive markets that drive innovation, efficiency, and lower prices, rather than protecting small businesses for the sake of perceived fairness. By aiming to protect smaller firms at the expense of innovation, regulators risk adopting a flawed approach that fails to advance consumer interests or total economic welfare.

At their heart, all these concerns are really just one concern: Some regulators do not believe large platforms should be able to have advantages based on size, scope or scale.

Large Platforms Help Small Businesses

In reality, large digital platforms often empower small businesses by providing them with access to broader markets, valuable tools for customer engagement, and reduced barriers to growth. Platforms such as Naver and Coupang, for instance, serve as important gateways for small and medium-sized enterprises (SMEs) to reach customers and leverage services that would be otherwise unattainable for small firms on their own. By connecting with millions of consumers, these platforms allow small businesses to scale more efficiently and compete more effectively in the digital economy.

South Korea Has Too Many Small Firms

South Korea's focus on protecting small and mid-sized firms overlooks a significant structural issue: The country has too many small, unproductive businesses. South Korea should recognize that the answers to its potential challenges could be found in its "dual economy"—developed as a result of decades of growth led by large chaebol (family-owned) firms. The dualism lies in efficient, globally competitive firms on one side, and stagnant, unproductive small businesses and services on the other. Despite their numbers, SMEs in South Korea remain far less productive than are large companies, with labor productivity in SMEs at about one-third of that in larger firms, and service sector productivity only 45 percent of manufacturing levels—significantly lower than in other Organization for Economic Cooperation and Development (OECD) nations.[31]

To address this economic dualism, South Korea must shift away from policies that subsidize and protect small businesses and instead focus on driving productivity gains across all sectors. Protecting inefficient SMEs limits overall growth and widens South Korea's productivity gap with

other advanced nations. Policies that create market distortions by propping up unproductive businesses hinder efficient firms from thriving. Rather than limiting large platforms, South Korea should encourage all businesses, including SMEs, to adopt information and communications technology (ICT) and innovate. Emphasizing digital transformation and reducing barriers to growth would allow for a more productive, competitive economy that fosters innovation without stifling growth or focusing solely on company size. By doing so, South Korea can prevent stagnation and ensure its economy remains competitive on a global scale.[32]

Large Tech Companies Are Often Transient and Drivers of Innovation

Misinterpreting the relationship between size and power and prioritizing protection for smaller players leads to the mistaken argument that regulatory interventions (whether ex ante or ex post) are necessary to shield South Korea's digital markets from large tech firms assumed to hold significant market power. However, this approach overlooks that in digital markets, such influence is often transient and can be a key driver of innovation.[33] Unlike with traditional industries, digital markets are dynamic. Competition frequently takes the form of the Schumpeterian "gales of creative destruction"—new technologies and innovations disrupt existing markets, industries, and economic structures, leading to economic growth but also displacing established businesses.[34] In this process, firms compete for dominance by introducing new, innovative products, only to be displaced by competitors that develop even more advanced solutions, creating "leapfrog competition."[35] In such dynamic markets, market power is often a feature—rather than a flaw—of healthy competition.[36]

The focus of competition policy should be on protecting consumers and fostering innovation, not shielding competitors or prioritizing abstract notions of fairness.

The Urge to Protect Competitors Instead of Consumers

Competition policy should focus on enhancing consumer welfare and fostering innovation, rather than protecting competitors or emphasizing abstract concepts such as "fairness." However, both ex ante bills and the Partial Amendment Bill mention promoting fairness in the digital markets as a goal of the intervention. One particular aspect of this rationale was described in the Partial Amendment Bill's proposal introduced in September by the KFTC, declaring that the intention is to "promote fair competition among platform businesses and prevent a repeat of the TMON-WMP situation."[37] The South Korean companies TMON and WeMakePrice (WMP) were supposedly collecting payments from customers for hotel bookings but failing to pay the hotels, leaving customers without the accommodations they paid for. According to the KFTC, this incident highlights the risks posed by powerful platforms that hold control over transactions. Yet, the KFTC emphasizes the need for stronger systems to address digital platform dominance and protect contract counterparts, arguing that dominant platforms often engage in anticompetitive behavior in order to block or eliminate competitors, which has led to concerns such as the one involving TMON and WMP. But this is not a competition issue; it is a consumer protection issue. According to the KFTC's logic, it would be OK for a TMON and WMP to fail to pay hotels as long as they were small platforms in a market with multiple players. This makes no sense. This kind of behavior is unfair and deceptive (and a breach of contract) and should be addressed separately from the competition policy. The KFTC's plan also seeks to use digital competition policy to protect "economically vulnerable groups"—such as onboarded merchants—on the platforms.[38]

This goes back to the dual approach of South Korea to SMEs mentioned in the previous section. It is a flawed approach, as digital competition regulation should be size neutral, focusing on bad behavior that harms consumers rather than competitors.

OVERALL PROBLEMS WITH SOUTH KOREAN DIGITAL PLATFORM LAWS

The Proposed Reforms Will Harm Consumers

The Korean Digital Platform Laws' (both the ex ante bills and the Partial Amendment Bill) approach to limiting the business practices of large platforms risks harming consumers by reducing their access to valuable services and information. Digital platforms compete fiercely for consumer attention, or "eyeballs," and this competition inherently drives them to innovate and offer better value. By focusing on providing valuable, innovative services, platforms attract users through variety and access to resources that consumers increasingly rely on, such as search engines, review sites, and social media. Consider platforms such as Google, which offers consumers access to extensive reviews and recommendations for local businesses. If regulatory policies restrict access to or limit the capabilities of such services, consumers could face reduced access to information that helps them make informed choices. The question thus becomes, Do policymakers genuinely wish to restrict access to these essential services? Limiting competition among platforms vying to deliver the best possible experience does not serve consumers, as it only curtails the very services they value and use daily.

The Proposed Reforms Will Chill Innovation

One of the most immediate risks of implementing DMA-like provisions in South Korea is that it is blind to its chilling effect on innovation. Both start-ups and established firms could be significantly impacted by the overburdensome restrictions on their pro-competitive business practices. A key issue is what Hayek called the "knowledge problem"—that regulators cannot fully grasp the dispersed and localized knowledge within an economy, making centralized regulatory interventions prone to unintended consequences.[39] It is particularly true in the fast-evolving digital market, making it difficult to anticipate the full effects of interventions.

This lack of insight becomes especially problematic in ex ante regulations, such as the proposed Platform Competition Promotion Act (PCPA), wherein regulators must set strict, forward-looking rules without fully grasping their implications for future innovation. For example, ex ante regulations for business practices such as self-preferencing could restrict companies' ability to differentiate their products and compete effectively. By experimenting with self-preferencing or bundling, companies uncover innovative strategies to meet consumer needs, which can ultimately benefit the market. Using regulation to police such practices risks stifling this discovery process and chilling legitimate pro-competitive behavior.[40]

Start-ups, in particular, often rely on innovative business models and flexible strategies to gain market entry. Broad restrictions risk creating false positives—situations where practices that are actually competitive and beneficial are (mis)classified as being anticompetitive. This could deter start-ups from adopting innovative approaches, making it harder for them to scale and compete, ultimately leading to fewer market entrants and reduced market dynamism.

Even larger firms, such as Google and Coupang, which drive much of South Korea's technological advancement, could face compliance burdens that could affect their ability to innovate. These firms also, of course, often engage in practices such as bundling and self-preferencing to deliver

integrated products and services that improve consumer experience and welfare. Overly restrictive regulations, coupled with the burden of proving pro-competitive benefits, could discourage these firms from pursuing strategies that are critical to both innovation and their competitiveness on a global stage. The same applies in ex post regimes where presumed anticompetitive practices, including self-preferencing, tying and bundling, multi-homing restrictions, and MFN clauses, are prohibited unless justified by pro-competitive benefits, creating similar barriers that chill innovation.

Rather than targeting actual market failures, such restrictions and prohibitions stifle the competition and innovation that are integral to digital markets, where "gales of creative destruction" allow firms to continuously evolve and challenge one another. Markets thrive when firms are free to adapt to changing conditions rather than constrained by one-size-fits-all regulatory frameworks that cannot account for the complexity of competitive behaviors.[41]

In addition, applying low thresholds set by such laws also serves to set rigid barriers to growth for companies—ultimately chilling their capacity to innovate. When specific regulations kick in based on thresholds, such as revenue, market share, or number of employees, firms are often discouraged from growing beyond these limits. A clear example is seen in France, where many companies deliberately keep their workforce at 49 employees to avoid surpassing the threshold of 50, which would subject them to more restrictive regulations.[42] This threshold effect can act as a "straightjacket" on growth, as companies may opt to restrict their own expansion rather than face additional regulatory burdens. In digital markets, where innovation and scalability are essential, such restrictions can hamper growth potential and stifle the development of companies that might otherwise contribute to a dynamic competitive environment.

The Proposed Reforms Can Lead to Regulatory Capture

Regulatory capture occurs when established firms influence regulatory bodies to create rules that benefit them, not only often at the expense of their competitors, but also causing significant harm to consumers, society, and the public interest. Indeed, regulatory capture is not unique to ex ante regulatory regimes. Ex post regimes can also be subject to similar risks, especially when enforcement relies on the discretionary powers of competition authorities. The substance, rather than the form, is what truly matters in such cases. Regulatory capture is not only a theoretical risk; it has already played out in other regions. For example, Spotify successfully lobbied the EU to impose strict rules on Apple, which ultimately harmed competition by favoring one company over another.[43] A similar situation could arise in South Korea, undermining the very purpose of the proposed regulations.

The Proposed Reforms Can Favor China

The debate regarding digital competition policy bills (ex ante and ex post) in South Korea may not only weaken bilateral relations between the United States and South Korea, but also unintentionally benefit China. By eroding the competitiveness of both U.S. and South Korean firms, Chinese companies can expand their influence in South Korea. At a time when the United States and South Korea need to coordinate their efforts to counter China's growing technological and economic dominance, bilateral engagement to resolve regulatory differences is paramount. China has been aggressive in its push to dominate global technology markets, and it has made significant strides in fields such as artificial intelligence, e-commerce, and digital infrastructure.

In this context, any regulatory framework that weakens U.S. and South Korean firms' competitiveness, or their existing partnerships, would be a win for China.[44]

Chinese firms such as Alibaba, Temu, and TikTok already have a growing presence in the South Korean market. As of 2024, AliExpress had around 8.18 million MAUd, while Temu has grown rapidly to 5.8 million MAU.[45] Although some South Korean companies, such as Coupang, still have 30.9 million MAU, the strict provisions the KFTC is pushing—such as bans on self-preferencing, data-sharing restrictions, and new transparency requirements—would primarily impact large firms with significant market share, such as American and South Korean companies, and allow Chinese competitors to fill the void they leave. For example, if a company such as Naver is prevented from leveraging self-preferencing to promote its own services, Chinese platforms could step in and fill the gap by offering integrated services that South Korean platforms are no longer allowed to provide as designated dominant operators. Similarly, if South Korean e-commerce platforms such as Coupang are hindered by new data-sharing rules (or other restrictions), Chinese firms such as Temu could attract users and sellers by offering more flexible terms. This would not only mean economic but also a strategic advantage for China.

The Risks of Undermining the United States

South Korea and the United States are allies. Targeting both U.S. and South Korean companies not only strains the bilateral relationship but also directly undermines America's position against its strategic rival: China. As Chinese tech firms gain a stronger foothold in the South Korean market, it could further weaken U.S. influence in one of its key regional allies at a time when technological dominance is becoming a critical component of global power dynamics. The United States and South Korea have a strong economic and strategic partnership, but regulatory policies that disadvantage American companies could strain these ties and give China more leverage.

The National Security Risks of Growing Chinese Influence in South Korea

The United States and South Korea, as close allies, share strategic interests in countering China's expanding influence and technological competition. Key concerns include China's intellectual property theft from U.S. and South Korean businesses, its Belt and Road Initiative (which extends telecommunications control in developing nations through loans, providing China dominance and deniability), the BRICS (Brazil, Russia, India, China, South Africa, Iran, Egypt, Ethiopia, and the United Arab Emirates), and its critical foothold in rare earth extraction and tech supply chains. China's advancements in military applications (e.g., AI, hypersonic, and connected vehicles) and control over electric vehicle battery production, cloud computing, and sensitive data pose security risks. Furthermore, its alignment with North Korea and assertive actions in the South China Sea, threatening Taiwan and the Philippines, amplify the urgency for a united U.S.-South Korean response to these growing challenges.

China's growing presence in South Korea's digital markets poses significant economic and national security risks, amplified by policies that disadvantage U.S. and South Korean firms.

The expansion of Chinese tech firms in South Korea could pose serious security risks for South Korea in critical sectors, including e-commerce, telecommunications, and digital platforms. For example, Chinese tech firms such as Alibaba and TikTok are not merely private enterprises; they are often viewed as extensions of the Chinese Communist Party (CCP). They could potentially

collect and access South Korean users' data that could be exploited for strategic purposes by the CCP.[46] For example, TikTok (owned by ByteDance) has already raised security concerns in the United States due to its ties to the CCP. If TikTok expands its influence in South Korea, it could raise similar concerns there. Additionally, the presence of Chinese e-commerce platforms such as Alibaba allows Beijing to gain insight into South Korean consumer behavior, market trends, and other critical data. Moreover, Alibaba's cloud services and digital payments infrastructure are increasingly being adopted across Asia, and their growing presence in South Korea could mean that more South Korean businesses and consumers rely on Chinese technology for critical services. This reliance could expose South Korea to risks such as data breaches or even espionage and cyberattacks, as Chinese companies often operate under laws that require them to share information with the CCP upon request. Similarly, platforms such as TikTok, which gathers vast amounts of user data including valuable profile information, could be leveraged to influence public opinion or manipulate information flows (or even elections) within South Korea.

Regulations Can Have Negative Effects on U.S.-South Korean Relations

South Korea relies on the United States for military protection, and its exports of semiconductors, electronics, and automobiles to the U.S. market have led to explosive economic growth. South Korea has become a vital investment hub in East Asia, with U.S. support fueling its growth in semiconductor and manufacturing sectors globally. However, this regulatory approach threatens friction with Washington right after the U.S. presidential elections. South Korea must consider how these new regulations might be received by the new U.S. administration—potentially with a more protectionist approach to U.S. businesses—which could degrade this currently strong bilateral relationship and invite mirrored economic reprisals. These regulations could unintentionally degrade joint U.S.-South Korean competitiveness to counter China's tech dominance.

One of the primary concerns arising from South Korea's intentions to regulate platforms is the perception of its own protectionism, particularly from the perspective of the United States. U.S. officials and businesses have voiced concerns that ex ante laws such as the PCPA unfairly target American tech giants such as Google, Apple, and Meta while providing advantages to domestic South Korean companies. This argument centers around the idea that these regulations disproportionately impact foreign firms by imposing additional burdens, thereby creating an uneven playing field in South Korea's digital markets.

With U.S. elections over, South Korea risks backlash from a new administration unlikely to tolerate policies that harm American tech giants.

In response to these concerns, Rep. Carol Miller (Republican, West Virginia) introduced a reactionary bill, the U.S.-Republic of Korea Digital Trade Enforcement Act of 2024.[47] This bill demonstrates the growing tension between the two countries over digital market regulations, reflecting the broader U.S. concerns about trade discrimination and protectionist policies that could negatively impact American firms operating in South Korea. The introduction of such legislation signals a potential escalation in regulatory disputes, which could strain the broader U.S.-South Korean partnership. Since trade relations between the two nations have historically been robust, potential retaliatory measures provide one more reason for South Korea to rethink its digital regulations.

RECOMMENDATIONS FOR A PRO-INNOVATION FORMULA

When considering the future of digital market regulation, it is essential to adopt a measured and cautious approach that prioritizes innovation, consumer welfare, and economic growth. South Korea's thriving digital economy does not exhibit signs of market failure, and introducing overly strict regulations could stifle innovation, affect user experience, harm competition, and weaken South Korea's global competitiveness. Below are key principles South Korea should follow to ensure a pro-innovation regulatory environment.

Do Not Adopt DMA-Style Rules (Neither Ex Ante nor Ex Post)

Instead of hastily adopting strict provisions applicable to digital platforms, South Korea should take a "wait and see" approach. The digital economy is constantly evolving, and premature intervention can lead to unintended consequences. South Korea should first monitor the market to see whether issues such as anticompetitive behavior of "dominant operators" actually arise. Platform regulation should be based on clear economic principles and evidence of market failure, not on vague concepts such as fairness or idealistic rationale such as protecting small businesses instead of consumers. Additionally, market forces often address these concerns, as tech firms innovate to meet consumer demands. By observing market developments and learning from other jurisdictions, South Korea can avoid regulations that may ultimately do more harm than good. Adapting regulatory approaches based on observed market dynamics rather than assumptions can help South Korea avoid imposing constraints that could hinder innovation, limit consumer choice, and ultimately harm consumer welfare.[48]

Use Existing Laws to Solve Antitrust Cases and Use Other Sectoral Laws to Handle Noncompetition Issues

Many issues policymakers aim to address with digital market provisions—such as fairness, data privacy, consumer protection, and transparency—are not directly competition related. Rather than implementing a broad new regulatory framework with ex ante laws or by introducing DMA-lite prohibitions and thresholds for "dominant operators," South Korea should use its existing laws and regulatory mechanisms that are tailored to these concerns. For example, depending on the subject matter in question, antitrust enforcement, consumer protection laws, and data privacy regulations can effectively tackle unfair practices—as already enforced by agencies such as the KFTC.[49] By leveraging these tools, South Korea can address specific digital market issues without overhauling its regulatory landscape, reducing risks of unintended consequences and supporting a thriving digital economy.[50]

South Korea should leverage existing antitrust laws and targeted interventions rather than adopt broad, unproven regulatory frameworks.

Amend Existing Laws—But Not in the Way Proposed

If regulation is justified based on market failure, South Korea should focus on refining existing laws rather than creating new frameworks. The Partial Amendment Bill to the Monopoly Regulation and Fair Trade Act could be a good starting point, in theory; however, the provisions are not narrowly tailored, but rather imitate an ex ante style regulation, wrapped in the existing laws. If changes are warranted, amendments should be targeted to address specific gaps or inefficiencies rather than broad rules being adopted.

CONCLUSION

South Korea should not rush into economic reforms out of regulatory fashion. The current state of South Korea's digital markets—thriving, competitive, and innovative—does not justify broad, preemptive regulatory intervention such as the DMA or a drastic reform of the ex post regime, updating it with similar restrictions as of the ex ante bills. Unwarranted regulation could do more harm than good. Generally, both ex ante and ex post provisions risk undermining the flexibility and dynamism that have been crucial to South Korea's digital success.

These reforms could also negatively impact South Korea's broader economic and trade interests, including its relationship with the United States and its role in East Asia's tech landscape. Moreover, amidst the U.S.-Chinese strategic competition, South Korea's approach to digital regulation holds significant geopolitical weight. By aligning more closely with restrictive regulatory models that harm both U.S. and South Korean tech companies, South Korea risks unintentionally tilting its digital market toward Chinese influence, undermining joint U.S.-South Korean efforts to counter China's growing tech dominance. A more measured regulatory approach would help maintain South Korea's strong economic ties with the United States while supporting a regional strategy to address China's expanding control over critical technologies and markets in East Asia.

APPENDIX: MAIN SOUTH KOREAN DIGITAL COMPETITION PROPOSALS

Proposal	Practices Covered	Type	Status
Partial Amendment Bill to the Monopoly Regulation and Fair Trade Act (MRFTA) (based on the KFTC's proposal, introduced to the Congress by Rep. Minkook Kang)	▪ Self-preferencing ▪ Tying and bundling ▪ MFN clauses ▪ Multi-homing	Ex post	South Korean Parliament wants to adopt it in 2024.
Online Platform Monopoly Regulation Act (proposed by assemblyman Nam-geun Kim, referred to as PCPA)	▪ Self-preferencing ▪ Tying and bundling ▪ Multi-homing ▪ MFN clauses ▪ Antisteering	Ex ante	South Korean Parliament considering it among other proposals during the 22nd National Assembly.
Online Platform Monopoly and Fair Transactions Act (proposed by assemblyman Joo-min Park)	▪ Self-preferencing ▪ Tying and bundling ▪ Antisteering	Ex ante	South Korean Parliament considering it among other proposals during the 22nd National Assembly.
Fair Online Platform Intermediary Transactions Act (proposed by assemblyman Nam-geun Kim)	▪ Self-preferencing ▪ Unfair contract terms ▪ Arbitrarily terminating or altering agreements ▪ Unfair pricing practices	Ex ante	South Korean Parliament considering it among other proposals during the 22nd National Assembly.
Fair Online Platform Intermediary Transactions Act (proposed by assemblyman Gi-hyoung Oh)	▪ Restrictions on data usage	Ex ante	South Korean Parliament considering it among other proposals during the 22nd National Assembly.
Fair Online Platform Intermediary Transactions Act (proposed by assemblyman Hyung-bae Min)	▪ Self-preferencing	Ex ante	South Korean Parliament considering it among other proposals during the 22nd National Assembly.

Acknowledgments

The author would like to thank Dr. Robert Atkinson and Joseph V. Coniglio for their assistance with this report.

About the Author

Lilla Nóra Kiss, PhD, is a senior policy analyst at the Schumpeter Project on Competition Policy. Her research focuses on international competition law and global tech policy, with a focus on innovation and digital platforms.

About ITIF

The Information Technology and Innovation Foundation (ITIF) is an independent 501(c)(3) nonprofit, nonpartisan research and educational institute that has been recognized repeatedly as the world's leading think tank for science and technology policy. Its mission is to formulate, evaluate, and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress. For more information, visit itif.org/about.

ENDNOTES

1. See: Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Digital Single Market Strategy for Europe, 6 May 2015, COM (2015) 192 final.; Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Online Platforms and the Digital Single Market, Opportunities and Challenges for Europe, 25 May 2016, COM (2016) 288 final.
2. Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AL%3A2022%3A265%3ATOC&uri=uriserv%3AOJ.L_.2022.265.01.0001.01.ENG.
3. See: Foo Yun Chee, "EU tech rules should only target dominant companies, EU lawmaker says," *Reuters*, June 1, 2021, https://www.reuters.com/technology/eu-tech-rules-should-only-target-dominant-companies-eu-lawmaker-says-2021-06-01/; Javier Espinoza and James Politi, "US warns EU against anti-American tech policy," *ARS Technica*, June 15, 2021, https://arstechnica.com/tech-policy/2021/06/us-warns-eu-against-anti-american-tech-policy/?comments=1.
4. Fair Trade Commission, "Legislative Approaches to Promote Competition in E-Commerce Platform Markets," Sept 9, 2024, https://www.ftc.go.kr/solution/skin/doc.html?fn=25922c592a80e1515f9d7526075bd338d184fa8cb3ea19f865dc47bb6a7b1473&rs=/fileupload/data/result/BBSMSTR_000000002402/.
5. Partial Amendment Bill to the Monopoly Regulation and Fair Trade Act, Bill No. 4947, introduced by Rep. Min-kook Kang on behalf of the Korea Fair Trade Commission (KFTC) and People Power Party (PPP), 28 October 2024, https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_Z2G4E1F0E1D6L1J5K3J3H0Q6O8N4O6.
6. See the English summary of the MRFTA abuse of dominance sections: https://www.ftc.go.kr/eng/contents.do?key=3075 and unfair trade practices section: Unfair Trade Practices - Fair Trade Commission, https://www.ftc.go.kr/eng/contents.do?key=3076.

7. Digital Policy Alert: Republic of Korea: Announced amendments to Fair Transactions in Large-scale Retail Business Act, Oct 18, 2024, https://digitalpolicyalert.org/event/23777-announced-amendments-to-the-fair-transactions-in-large-scale-retail-business-act-to-prevent-the-recurrence-of-non-settlement-incidents-and-to-restore-fairness-in-the-online-intermediary-market.
8. Giuseppe Colangelo, "Evaluating the Case for Regulation of Digital Platforms," Global Antitrust Institute: Report on the Digital Economy, Section III: Evidence-Based Antitrust, 2020, https://gaidigitalreport.com/2020/10/04/evaluating-the-case-for-ex-ante-regulation-of-digital-platforms/.
9. John M. Yun, "Overview of Network Effects & Platforms in Digital Markets," Global Antitrust Institute, Report on the Digital Economy, Section I: Foundations, 2020, https://gaidigitalreport.com/2020/08/25/economics-of-digital-platforms/.
10. KOSIS, "Information and Communication Technologies (seasonally adjusted, chained 2015 year prices, quarterly)," kosis.kr/statHtml/statHtml.do?orgId=301&tblId=DT_200Y057&vw_cd=MT_ETITLE&list_id=L_301_A_A05_1_100&scrId=&language=en&seqNo=&lang_mode=en&obj_var_id=&itm_id=&conn_path=MT_ETITLE&path=%252Feng%252FstatisticsList%252FstatisticsListIndex.do.
11. Philippe Aghion, Antonin Bergeaud, and John Van Reenen, "The Impact of Regulation on Innovation," National Bureau of Economic Research, Working Paper 28381, January 2021, DOI 10.3386/w28381, https://www.nber.org/papers/w28381.
12. Aurelien Portuese, "The Digital Markets Act: A Triumph of Regulation Over Innovation" (ITIF, August 24, 2022), https://itif.org/publications/2022/08/24/digital-markets-act-a-triumph-of-regulation-over-innovation/.
13. See the judgment in Case T-612/17, *Google and Alphabet v Commission (Google Shopping)*, ECLI:EU:T:2021:763, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A62017TJ0612, para 566 and 588 where the General Court argues that the practices at question are more likely to reduce consumer choice. In para 615, the General Court refers to the "Guidance on the Commission's enforcement priorities in applying Article [102 TFEU] to abusive exclusionary conduct by dominant undertakings, referring to numerous cases of the Court of Justice and the General Court (see in particular paragraph 52 et seq.)." In that guidance, the commission addresses, for example, tying or bundling by stating that these are common practices normally intended to provide customers with better products or offerings in more cost-effective ways. It explains, however, that, as regards an undertaking in a dominant position, such a practice can harm consumers if that type of sale forecloses the market and leads to anticompetitive foreclosure of competitors.
14. See: The KFTC's press release "Legislative Approaches to Promote Competition in E-commerce Platform Markets," 2024, the publication explaining the objectives of the Partial Amendment Bill based on the KFTC's proposal, https://ftc.go.kr/solution/skin/doc.html?fn=25922c592a80e1515f9d7526075bd338d184fa8cb3ea19f865dc47bb6a7b1473&rs=/fileupload/data/result/BBSMSTR_000000002402/; Read about the ex-ante platform bills' objectives here: Park So-Jeong (Sejong) and Lee Jung-soo, "S. Korea speeds up to regulate platform giants such as Google or Apple," *The Chosun Daily*, 2024, https://www.chosun.com/english/national-en/2024/02/04/MCCJQZTJ3ZC5JJ7NVDM46D6R2I/.
15. Emilie Feyler and Veronica Postal, "Can Self-Preferencing Algorithms Be Pro-Competitive?" *CPI Antitrust Chronicle*, June 2023, www.competitionpolicyinternational.com.
16. Joseph V. Coniglio and Viraj Mehrotra, "Comments to the European Commission Regarding Article 102 of the Treaty on the Functioning of the European Union" (ITIF, November 1, 2024), https://itif.org/publications/2024/11/01/comments-european-commission-article-102-treaty-functioning-european-union/.

17. Giuseppe Colangelo, "Antitrust Unchained: The EU's Case Against Self-Preferencing," Law Econ Center, 2022, https://laweconcenter.org/resources/antitrust-unchained-the-eus-case-against-self-preferencing/.
18. Michael A. Salinger and David S. Evans, "Why Do Firms Bundle and Tie? Evidence from Competitive Markets and Implications for Tying Law," *Yale Journal on Regulation*, https://ssrn.com/abstract=550884.
19. Case T-201/04, Judgment of the Court of First Instance (Grand Chamber) of 17 September 2007 in *Microsoft Corp. v Commission of the European Communities*, ECLI:EU:T:2007:289, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62004TJ0201; The official judgment for *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001), https://casetext.com/case/us-v-microsoft-corp-6.
20. See Commission decision of 24 May 2004, relating to a proceeding pursuant to Article 82 of the EC Treaty and Article 54 of the EEA Agreement against Microsoft Corporation, Case COMP/C-3/37.792 — Microsoft, (notified under document number C(2004) 900) COMP/C-3/37.792 – Microsoft); Case T-167/08, Judgment of the General Court (Second Chamber), 27 June 2012 in *Microsoft Corp. v Commission*, ECLI:EU:T:2012:323, https://curia.europa.eu/juris/document/document.jsf?text=&docid=124434&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7821193.
21. Coniglio and Mehrotra, "Comments to the European Commission Regarding Article 102 of the Treaty on the Functioning of the European Union."
22. Thomas Larrieu, "Most Favoured Nation Clauses on the Online Booking Market," Working Paper, 2019, https://www.researchgate.net/publication/333676317_Most_Favoured_Nation_Clauses_on_the_Online_Booking_Market.
23. Jonathan Baker and Judith A. Chevalier, "The Competitive Consequences of Most-Favored-Nation Provisions," Digital Commons, 2013, https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2144&context=facsch_lawrev.
24. M. Armstrong and Julian Wright, "Two-sided markets with multihoming and exclusive dealing," Semantic Scholar, 2004, https://www.semanticscholar.org/paper/Two-sided-markets-with-multihoming-and-exclusive-Armstrong-Wright/a8a106df002e2370c4924e4250594b778e77e3bc; Bruno Jullien and Wilfried Sand-Zantman, "The Economics of Platforms: A Theory Guide for Competition Policy," Information Economics and Policy, Volume 54, 2021, https://www.sciencedirect.com/science/article/pii/S0167624520301244.
25. G. F. Mathewson and R.A. Winter, "An Economic Theory of Vertical Restraints," The RAND Journal of Economics 15, no. 1, 1984, 27–38, https://doi.org/10.2307/3003667; B. Douglas Bernheim and Michael D. Whinston, "Exclusive Dealing," *Journal of Political Economy*, Volume 106, Number 1, The University of Chicago Press, 1998, 64-103, https://www.journals.uchicago.edu/doi/abs/10.1086/250003.
26. Daniel X. Valderrama and Bruce G. Cameron, "Customer loyalty in two sided markets: Rider multihoming in the United States rideshare market," Research in Transportation Business & Management, Volume 47, 2023, https://www.sciencedirect.com/science/article/pii/S2210539523000068.
27. Coniglio and Mehrotra, "Comments to the European Commission Regarding Article 102 of the Treaty on the Functioning of the European Union."
28. Fiona Jackson, "EU Fines Meta Nearly €800 Million for Facebook Marketplace Practices and Advertising Data Violations," Tech Republic, November 15, 2024, https://www.techrepublic.com/article/eu-fines-meta-facebook-marketplace/; European Commission, "Commission fines Meta €797.72 million over abusive practices benefitting Facebook Marketplace,"

Press Release, November 13, 2024, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5801.

29. Daniel Castro, "Ten Principles for Regulation That Does Not Harm AI Innovation" (ITIF, February 8, 2023), https://itif.org/publications/2023/02/08/ten-principles-for-regulation-that-does-not-harm-ai-innovation/.
30. Ibid.
31. Robert Atkinson, "The Real Korean Innovation Challenge: Services and Small Businesses" (KEIA, 2016), https://keia.org/publication/the-real-korean-innovation-challenge-services-and-small-businesses/.
32. Ibid.
33. Joseph V. Coniglio and Lilla Nóra Kiss, "Comments to Kenya's Competition Authority Regarding the Draft Competition (Amendment) Bill" (ITIF, June 11, 2024), https://itif.org/publications/2024/06/11/comments-to-kenyas-competition-authority-regarding-its-draft-competition-amendment/.
34. Joseph A. Schumpeter, *Capitalism, Socialism, and Democracy* (Harper & Brothers, 1942), 81.
35. Timothy J. Muris and Joseph V. Coniglio, *What Brooke Group Joined Let None Put Asunder: The Need for the Price-Cost and Recoupment Prongs in Analyzing Digital Predation*, The Global Antitrust Institute Report on the Digital Economy 1328–29 (November 11, 2020), http://dx.doi.org/10.2139/ssrn.3733758.
36. Jonathan Klick, "Is the Digital Economy Too Concentrated?" Global Antitrust Institute: Report on the Digital Economy, Section II: The State of Competition in the Digital Economy, 2020, https://gaidigitalreport.com/2020/08/25/is-the-digital-economy-too-concentrated/.
37. See the press release of the KFTC, September 9, 2024, Legislative direction to promote fair competition among platform businesses and prevent the repeat of the TMON-WMP situation.
38. Ibid.
39. Friedrich A. Hayek, "The Use of Knowledge in Society," The American Economic Review, Vol. 35, No. 4. (Sep., 1945), 519–530., https://german.yale.edu/sites/default/files/hayek_-_the_use_of_knowledge_in_society.pdf.
40. Friedrich A. Hayek, *The Meaning of Competition, In: Individualism and Economic Order* (Chicago, University of Chicago Press, 1948), 92–106., https://competitionandappropriation.econ.ucla.edu/wp-content/uploads/sites/95/2018/06/HayekMeaningOfCompetition.pdf.
41. Friedrich A. Hayek, *Law, Legislation and Liberty, Volume 1: Rules and Order* (Chicago: University of Chicago Press, 1973), https://press.uchicago.edu/ucp/books/book/chicago/L/bo26122880.html.
42. Luis Garicano, Claire Lelarge, and John Van Reenen, "Firm Size Distortions and the Productivity Distribution: Evidence from France," American Economic Review, vol. 106, no. 11, November 2016, 3439–79, https://www.aeaweb.org/articles?id=10.1257/aer.20130232.
43. European Commission, Remarks by Executive Vice-President Vestager on the adoption of an antitrust decision against Apple over abusive App store rules for music streaming providers, 2024, https://ec.europa.eu/commission/presscorner/detail/en/speech_24_1309; See also: Spotify Newsroom, "The European Commission Confirms, Apple's Anti-Competitive Behavior Is Illegal and Harms Consumers," 2024, https://newsroom.spotify.com/2024-03-04/the-european-commission-confirms-apples-anti-competitive-behavior-is-illegal-and-harms-consumers/.
44. Robert D. Atkinson, "Time for Korea-US cooperation to limit China's advanced tech gains," *Korea Times*, July 2023, https://www.koreatimes.co.kr/www/opinion/2023/07/784_355974.html.

45. John Lee, "How Chinese e-commerce giants are disrupting the South Korean market," Korea Pro, May 7, 2024, https://koreapro.org/2024/05/how-chinese-e-commerce-giants-are-disrupting-the-south-korean-market/.
46. Kara Frederick, "TikTok Generation: A CCP Official in Every Pocket," Heritage Foundation, 2023, https://www.heritage.org/technology/report/tiktok-generation-ccp-official-every-pocket.
47. US-Republic of Korea Digital Trade Enforcement Bill, 2024, https://miller.house.gov/media/press-releases/miller-introduces-us-republic-korea-digital-trade-enforcement-act.
48. Hadi Houalla, "EU Steering in Wrong Direction With DMA Investigations" (ITIF, May 1, 2024), https://itif.org/publications/2024/05/01/eu-steering-in-wrong-direction-with-dma-investigations/.
49. See some of the enforcement record (Digital & Tech):

    Kakao Mobility II (Oct 2024): Requiring sensitive real-time data from rival franchise taxi services and, if they failed to comply, blocking access to Kakao's taxi-hailing platform (Abusing dominance, UTPs - ASBP) (Orders, fines, and criminal referral).

    Coupang (Jun 2024): Manipulating search algorithms and reviews to favor its own private label products over rival products (UTPs - Deception) (Orders, fines, and criminal referral).

    Kakao/SM Entertainment (May 2024): Concerns over Kakao favoring its own music streaming platform, Melon, in distributing SM's music (Merger) (Cleared with behavioral remedies).

    Kakao Entertainment (Sep 2023): Contracting with creators (winners of a web novel competition) to grant Kakao exclusive rights to create derivative works (UTPs - ASBP) (Orders, fines) (Criminal referral under consideration by the SMEs Ministry, as of Feb 2024).

    Google Play Store (Apr 2023): Imposing exclusivity conditions on Korean game developers to release their titles only on Google Play (Abusing dominance, UTPs - exclusive dealing) (Orders, fines).

    Kakao Mobility I (Feb 2023): Favoring its own affiliated taxi drivers on its taxi-hailing platform by allocating more profitable calls to them (Abusing dominance, UTPs - Discrimination and ASBP) (Orders, fines, and criminal referral upon the request of the SMEs Ministry).
50. The KFTC cases listed above are not exhaustive. According to a report, over the past 10 years, it has handled 15 infringement cases against digital platform companies, including Google (2 cases), Naver (3 cases), Kakao (5 cases), Coupang (3 cases), and others (not named in the articles, possibly due to their smaller size). See Kim Se-hoon, "Platform Exploitation: 'An Average of 3 Years to Impose Sanctions'... Meanwhile, Market Dominance Soars," *Kyunghyang Shinmun*. (2024. 10. 7) https://www.khan.co.kr/economy/market-trend/article/202410071425001.