Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2022 – Korea

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Looking back at 2022

Looking back, 2022 has been a turbulent year for competition law and policy in Korea. In terms of digital competition policy, the pendulum has swiftly swung away from regulation to competition enforcement. With the arrival of a new President and administration, the previous administration's platform regulation bill lost momentum. Instead, the new leadership of the Korea Fair Trade Commission ('KFTC'), Korea's competition watchdog, has put more energy into sharpening its enforcement power. The agency has been focusing on elaborating its draft platform review guidelines, issuing infringement decisions in various fields, and monitoring voluntary initiatives of businesses.

However, such changes by no means indicate that Korea's regulatory measures have become weaker than those in other jurisdictions. As is well known, the App Store Act (locally dubbed "Anti-Google Law" or "In-app Payment Prevention Act") took effect on September 14, 2021. The legislation is presided over by the Korea Communications Commission ('KCC'), which in August 2022 launched a sanctioning process against Google and Apple. Also, it is no secret that a recent outage of the locally dominant messaging app, Kakao Talk, has spurred the KFTC's increased vigilance in the digital platform economy.[1] The outage appears to have fueled the criminal authorities (*i.e.*, public prosecutors) to become further active and bolder in prosecuting violations of the Monopoly Regulation and Fair Trade Act ('MRFTA'), Korea's main competition law.

It is also worth noting that several regulators and authorities outside the areas of competition and communication have also shown great vigilance against tech companies' abusive practices. For example, in September, Korea's data protection authority sanctioned Meta (Facebook) for data exploitation (see my personal notes **here**). And the KFTC's consumer protection arm has redressed several unfair commercial practices using consumer protection law, such as hotel booking platforms' price parity clauses (see CPI report **here**) and unfair terms for software-subscription services, including Microsoft 365, Adobe Creative Cloud, Hancom Office and Docs (see mLex report **here**). And reportedly, 'dark pattern' tactics are on the radar of the Korean consumer protection authorities as well (see **here**).

I will not discuss every detail of these cases and legislation given the limitations of time and space. This post gives only a cursory review of the main developments of Korea's competition policy and law in 2022, centering on digital competition policy and rules. Further discussions on some

important cases or legislation may follow in future separate posts.

A Dramatic Change in the Direction of Digital Platform Competition Policy

Putting New Wine into New Wineskins?

It is not an exaggeration to say that Korea was at the vanguard of digital platform regulation in 2021. In particular, the bill for the 'App Store Act' was passed by the National Assembly (see my last year's Kluwer blog post **here**), and Korea garnered praise and drew positive attention from all over the world (see the Washington Post's report **here**). In addition, a Korean version of the digital platform regulation bill, titled "Act on Fair Intermediate Transactions on Online Platforms" ('Online Platform Act'), contained quite formalistic and strict legal obligations against the platform intermediaries and was proposed by the KFTC.[2] Up until then, few in the industry and academia expected that the digital platform regulation bill would fail to pass (see my previous post **here**).

However, in 2022 the bill for the Online Platform Act lost its momentum and Korea's stance quickly shifted away from "government-led regulation" to "self-regulation" through voluntary initiatives, with the arrival of a new President of Korea in May 2022, Suk-yeol Yoon, who advocates for the so-called "pro-market" approach. Furthermore, in September, the new President appointed a new head of the KFTC who, when chosen, was unfamiliar with Korea's competition law society (see **here**), and during the National Assembly's confirmation hearing, the new Chair of the agency promised to not push forward any unnecessary or onerous regulations, including the platform regulation bill, unless the self-regulatory initiatives prove to be ineffective and deemed a failure (for a relevant news report in Korean, see **here**).

It is against this backdrop that, on July 6, 2022, the Yoon administration established a cross-divisional organization called the "Platform Policy Council," reminiscent of Japan's Headquarters for Digital Market Competition (see their website **here**) and the UK's Digital Markets Unit (see a relevant Kluwer blog post **here**). The Council aims to set agendas and assist a private organization's self-regulation activities. It has been reported that under the Council's framework, stakeholders and enforcers are discussing and will continue to discuss various concerns and solutions related to digital market issues, such as power asymmetry between platform operators and users, concerns over unfair trading practices (e.g., foisting fees and advertising costs or hindering market access) stemming from the power asymmetry, the necessity of setting a standard contract (*i.e.*, best practices), and establishing a dispute resolution mechanism (see the government's press releases in Korean, **here** and **here**).

Yet, Commitments to More Robust Competition Law Enforcement in Digital Platform Markets

Meanwhile, the KFTC began to focus more on the enforcement power it already has rather than engaging in an uphill legislative struggle to enact the digital platform regulation bill.

KFTC's Platform Guidelines (draft)

Among other things, the KFTC has begun to hone in on the passage of the draft guidelines for reviewing platform-related practices (‘Platform Guidelines’) (see full text in Korean **here**). The draft was originally drafted and promulgated on 6 January (see **here**). As it was just one day after the Bundeskartellamt published its decision designating Google as a gatekeeper under Section 19a GWB (see **here**), it deserved to garner much attention from the public. However, it failed to attract many people’s interest in Korea, let alone the globe. The failure can be attributed to the Online Platform Act, which contained various and much stricter regulatory obligations, being proposed simultaneously, accompanied by the draft guidelines. Back then, the Online Platform Act and regulatory discussions dominated the “attention” of academia.

At any rate, after the sweeping change in the direction of the Korean digital competition policy thereof, the draft Platform Guidelines began to attract people’s attention. The Yoon administration’s conservative stance on regulations has led the KFTC to center on the robust enforcement of competition law, which is its original mandate. And it made the authority to strive to elaborate and effectuate the Platform Guidelines.

To speak based on the original version of the draft (see **here**) and the Chair’s statements (see **here**),[3] it can be said that the Platform Guidelines contain almost all insights and factors worth considering in the context of digital competition policy, such as tipping effects, the importance of data, the platform’s multi-side characteristics, the competitive bottleneck situation, self-preferencing, the most favored nation clauses (‘MFNs’) (namely, wide MFNs), and restricting multi-homing.

Among other things, it deserves particular attention that the draft Platform Guidelines explicitly state the importance of gatekeeping power and competitive bottlenecks in which multi-sided platforms can enjoy substantial power over business users who need and tend to multi-home.

The draft Platform Guidelines say that an ‘online platform operator serves as an intermediary between users (business users and consumer users), and may hold control over access to an important group of users’ and that ‘in the case where the use of a specific platform is necessary to access a certain group of users, the feasibility of alternatives (that users recognize as so) may be limited even if other online platform services exist in the market.’ Also, as already well pointed out in the European Commission’s platform regulation initiatives (see SWD(2018) 138 final **here**, pp.24-25, and SWD(2020) 363 final **here**, pp.24-25), the Korean guidelines state the same that ‘the more users on one side tend to single-home on a certain platform, the more gatekeeping power the platform operator will have.’[4]

Considering the above, it comes across as obvious that the proposed Platform Guidelines are influenced by the regulatory discussions and initiatives of the EU. In fact, it is not novel that the EU’s approach resonates with Korea’s competition law enforcement practices. A case in point is the KFTC’s *Naver* (2021), which accepted the “self-preferencing” theory of harm presented by the European Commission in *Google Shopping* (2017). For *Naver* (2021), see **here** (original text) and **here** (OECD report).

In the same vein, I expect that the future enforcement of the Digital Markets Act (‘DMA’) (see **here**; for more discussions, see Alba Ribera Martínez’s post **here**) and of some national equivalents, such as Section 19a of the German competition law (see **here**), will significantly affect the enforcement practices of the KFTC.

Also, according to the recent statement of the Chair of the KFTC, it seems that the agency is currently considering revising the Merger & Acquisition Review Guidelines "to prevent reckless business expansion through mergers of platforms" targeting the "killer-acquisitions" in digital sectors (no mention about health sectors) (see the presentation slides **here**).

Struggles to Inject Competition into the App Distribution Market(s)

Korea's App Store Act set to be enforced by the KCC

Although the KFTC's ambition to arm itself with an additional regulatory power (*e.g.*, digital platform regulation) has ended in failure at present, it does not mean that Korea is less equipped with regulatory measures compared to other jurisdictions.

Among others, it should be noted that the Korean App Store Act was successfully enacted with tremendous bipartisan support on September 14, 2021 (*i.e.*, 180 out of the 188 attending lawmakers voted in favor and passed the bill on August 31, 2021) (see Reuters' report **here**). The Act amended the Korean Telecommunication Business Act, adding Article 50(1)(9)[5] that proscribes app store operators from "unjustly using their bargaining position" to force app providers to use specific payment systems for transactions made while using the registered apps. Not to mention that, with this law, the legislature intended to prevent Google and Apple from taking the "30%" cut of app developers' sales by forcing them to use the app store operators' billing systems.

In contrast to the ambitious legislative intention, however, the new law remained ineffective until early 2022 because the wording as such was too amorphous for the regulator (KCC) to enforce it. The ambiguous expression became clear lately with the revision of the Enforcement Decree and the publication of the Notice on the assessment of relevant practices by app market operators, which took effect on March 15, 2022[6] (see the KCC's press release **here**; the Notice is available in Korean at **here**).

The specific types and standards of the prohibited practices under the Act have been set out in the annexed Table 4 prepared pursuant to Article 42(1) of the Enforcement Decree,[7] and they can be translated as follows:

(App store operators in a superior bargaining position over app providers are prohibited from forcing a specific payment method by means of, for example)[8]

1. Refusing, delaying, restricting, deleting, or blocking the registration, renewal, or inspection of mobile content, *et cetera*, provided by a mobile content provider that uses a payment method other than a specific payment method;
2. Refusing, delaying, suspending, or restricting a mobile content provider that uses a payment method other than a specific payment method from using the app market;
3. Restricting the use of a payment method other than a specific payment method through technical means;
4. Making access and/or use procedures for a payment method other than a specific method more difficult or inconvenient than that of the specific payment method;
5. Restricting a mobile content provider from setting use conditions differently in a manner within a reasonable scope according to payment method;
6. Imposing unreasonable or discriminatory conditions or restrictions through fees, exposure,

> search, advertisements, or other economic benefits to a mobile content provider that uses a payment method other than a specific payment method.

Based on the above clarifications, the Korean communication regulator (KCC) in April, embarked on its sanctioning process against Google and announced its preliminarily finding that the firm's app store policy (under which all apps that provide external links for payments were supposed to be removed from the Google Play Store from June 1, 2022) could violate the Korean App Store Act, *i.e.*, Article 50(1)(9) of the Telecommunications Business Act (see the KCC's press release **here**). But Google continued to push ahead its policy[9] and this triggered the communication regulator (KCC) to commence a "formal" investigation (the original expression can be directly translated as "fact-finding investigation") into the practice by Google on May 17, 2022 (the KCC's press release is available **here**). The regulatory action was (mainly) caused by Google, but Apple and a local app store (OneStore) operator have also been subject to the investigation.

As of the time of writing this post (on December 9, 2022), the outcome of the investigation is yet to come. It is reasonable that the sanctioning process takes longer than when the communication authority (KCC) usually exercises its regulatory power under the Telecommunication Business Act. Because, under the App Store Act, the regulator (KCC) must review and prove the targeted company's (relative and superior) market position, the 'coercive' nature of the accused conduct, and its 'unfairness,' as in the case of the KFTC enforcing competition rules, which is unfamiliar to the communication authority (KCC).

In other words, taking the risk of oversimplification, the communication authority (KCC) needs to figure out whether, for example, Google's app store policy amounts to "exploitative abuse of economic dependence" in the sense of competition law. In this regard, some precedents in other jurisdictions, such as the latest decision of the French Commercial Court against Google (n° 2018017655, see **here**), can now be a useful reference for the Korean regulator (KCC). Reportedly, the final decision of the KCC is supposed to be published within December 2022, but few in this industry expect that Google would accept the KCC's orders without appealing them (see a news report in Korean **here**).

Meanwhile, the KFTC…

Of course, the KFTC, as a competition watchdog, has also struggled to crack down on (allegedly) anti-competitive practices of a few global app store operators.

On September 26, the authority raided Apple Korea's headquarters for an allegation that it discriminated against app developers located in Korea by charging them higher commission rates by 3% than those normally imposed on app developers outside Korea. In other words, Apple foisted the value-added tax (VAT) on Korean app developers, so it collected 33%, not the nominal 30% (see a relevant blog post **here**). Thanks to the action, it is reported that Apple has recently changed its policy (see **here**).

Here, one may ask how the KFTC appraises the so-called "30% app store tax" as such.

In fact, before the App Store Act, the KFTC had already embarked on its enforcement procedure against Google in 2020. Back then, Google's unilateral decision to oblige all app developers to use exclusively Google's own billing system had raised serious concerns over the (allegedly) abnormal structure of the app distribution market in Korea. Against this backdrop, the KFTC had also

formalized the initiation of enforcement action against Google on October 8, 2020 (see the KFTC's press release **here**), which followed Epic's claim against Google and Apple in the US (see a relevant Kluwer blog post **here**) and the European Commission's opening of the formal investigation into Apple's App Store rules (see the Commission's press release **here** and Lena Hornkohl's report **here**).

However, with the enactment of the App Store Act, the KFTC became incapable of enforcing the MRFTA for the same conduct already sanctioned by the KCC under the App Store Act. The *ne bis in idem* principle is clearly set down in Article 54 of the Telecommunication Business Act (see **here**). For some, the stipulation may be reminiscent of the European Court of Justice's *bpost* (see the case **here** and some comments **here**, **here**, and **here**), although the direction of the court's decision appears to be the opposite of the Korean provision. Anyhow, due to the stipulation under the App Store Act, it is true that the KFTC's investigation into Google's practices has lost momentum. But, as Korea University professor Hwang Lee commented (see **here**), it remains to be seen which authority will make its final decision first (a news report to the same effect in Korean, see **here**).

Enforcement in 2022 Remained Vibrant and Vigorous, As Ever

Numbers

Notwithstanding the recent prudence of the new administration, Korea has never suffered from under-enforcement in terms of competition law and policy. If the Korean economy has suffered from anything, it may be the opposite. In 2022 as well, Korea's competition watchdog was very active and bold in flexing its enforcement power against violations of the Korean competition rules, including the prohibition of collusion, abuse, and unfair trading practices (historically originated from the "unfair methods of competition" under the US Federal Trade Commission ('FTC') Act Section 5).[10]

The following is a cursory overview of the (quantitative) intensity of the KFTC's enforcement action.

From January to October, it is observed that more than 70 infringement cases have been registered in the agency's database. To be more specific, the number of horizontal collusion cases amounts to 61[11] and meanwhile, 4 of abuse of superior bargaining position (a.k.a., economic dependence) (none of them with dominance), 3 resale price maintenance ('RPM'), 1 exclusive dealing (as a vertical restriction), and 2 unfair competition (i.e., unfair inducement and unfair refusal) cases are found to be registered.

These numbers only include antitrust cases under the primary competition law, MRFTA. They will be much higher if one includes the number of violations of sector-specific rules, such as the *Subcontracting Act* (**KR**), *Large Retail Business Act* (**KR**), the *Fair Agency Transactions Act* (**KR**), and the *Franchise Act* (**KR**), which are derived from the prohibition of abuse of superior bargaining position under the MRFTA. Also, as mentioned at the beginning of this post, it should be noted that the Korean enforcers and regulators have often relied on consumer protection rules, not competition rules, to redress competition- and consumer-related concerns in a relatively short time period.

Collusion Cases

Here will briefly introduce some of the major cases addressed in the field of collusion.

Car emission cartels & AstraZeneca's pay-for-delay agreement

From a comparative perspective, the first case that is noteworthy may be the Korean *Car Emissions* case, which is still in progress.

On January 28, 2022, it was reported that the KFTC sent a Statement of Objections to German carmakers, Daimler, BMW, and Volkswagen group (Volkswagen, Audi, and Porsche) regarding the emission technology cartel (see a Korean news article, **here**), which was first revealed and sanctioned by the European Commission in July 2021 (AT.40178. See **here**). As is now well-known, the car manufacturers agreed not to compete for the AdBlue tank sizes and ranges, and they reached a common understanding of the average estimated AdBlue consumption. If I am not mistaken, the KFTC's action is based on the same allegation,[12] but has not yet handed down its decision and is still deliberating on the illegality of the agreement under Korea's law (see a news report in Korean **here**). Given the anti-competitive nature of collusion, one might argue that Korea's process seems to be too protracted. However, for the KFTC, it is worth reviewing with sufficient time since the collusion is not necessarily bad for consumers, especially from a short-term pricing perspective, and its impact may not be appreciable in the Korean car manufacturing and selling market(s). To speak a little ambitiously, I find that it would be great if the KFTC would be bold and take this opportunity to express its own perception of how acceptable (if so, to what extent) the sustainability-related theory of harm can be in the enforcement of Korea's competition law. Of course, it is more reasonable to anticipate that the KFTC will take a normal approach without mentioning anything about sustainability.

Second, given the increased attention to the healthcare sector, the recent *AstraZeneca/Alvogen* is also worth introducing. This case was about a pay-for-delay agreement between AstraZeneca, an original pharmaceutical seller, and Alvogen, a generic medication distributor, which was accused of violating Korean competition law. On October 13, 2022, the KFTC issued a press release and announced that the two companies breached Article 40(1)(3) (then, Article 19(1)(3)) of the MRFTA (see **here**). According to the press release, the KFTC found that Alvogen received exclusive distribution rights for three anticancer drugs, including Zoladex, in Korea in return for delaying the launch of the generic version of Zoladex. Against this backdrop, the KFTC imposed pecuniary fines (circa 200 million euros) and remedial orders on them without making a criminal referral. Regarding the relatively low level of fines and the lack of criminal referral, the KFTC explained that it took into account that AstraZeneca's original drug patent had already expired at the time of the agreement and that Alvogen had not completed (actually, failed in) the development of the Zoladex generic.[13] One may find it interesting that the authority regarded the failure as only a gravity factor, not a mitigating factor of anti-competitiveness.

As mentioned above, in 2022, the KFTC was very active in enforcing competition rules in the horizontal context, and more than 60 cases have published by October. Although not covered in this post, some of them, such as *Chicken Cartels* (**here**), *International Shipping Cartels* (**here**), or *Ice Cream Cartel* (**here**), were reported globally and drew attention.

Vertical restrictions

In addition to these horizontal restriction cases, the fact that the KFTC has kept its vigilance against RPM and exclusivity dealing (*Iconsoft*) may also deserve attention from those interested in vertical restrictions.

In three RPM cases, under Article 46 (formerly Article 29) of the MRFTA, each pharma company was sanctioned for engaging in agreements with their customers (*i.e.*, pharmacies) to set the minimum level of online resale prices of dietary supplements (or medications) and maintain them effectively.

In *Iconsoft*, the KFTC sanctioned Iconsoft, an intermediary app operator that connects designated drivers (locally called "replacement drivers") and individuals (who cannot drive when they are inebriated) pursuant to Article 45(1)(7) (formerly, Article 23(1)(5)) of the MRFTA. The KFTC accused the company of restricting the driver-users from accessing rival apps by delaying calls from individual end-users and manipulating some device settings of multi-homing driver-users. Iconsoft was also accused of exploiting the drivers' consent to use their data to conduct system manipulation. According to the decision, Iconsoft's anti-competitive intention and the exclusive effect of its conduct were obvious and evident, with no justification (see **here**).

Unilateral Conduct Cases

Abuse of dominance

As to unilateral conduct, there was no case redressed under the provision of abuse of dominance, Article 5 (formerly Article 3-2) of the MRFTA, in 2022 (as of the time of writing this post, on December 9, 2022). It is only reported that the KFTC is finalizing an infringement decision against Kakao Mobility, a mobility arm of Kakao,[14] based on allegations that it has engaged in illegal "self-preferencing" abusing its dominance in the mobile ride-hailing market in Korea.

Kakao Mobility provides a ride-hailing service *via* Kakao T, a mobile app that connects taxi drivers and passengers in Korea (see mLex's report **here**). According to news reports, the KFTC seems to believe that Kakao Mobility holds an entrenched dominance in the mobile ride-hailing market and finds that the firm has leveraged that already solid market position to dominate the adjacent taxi franchise market by means of giving some advantages to taxi drivers subscribing to Kakao Blue, Kakao's taxi franchise, while discriminating non-subscribers when allocating ride-calls.

If that is the case, my guess is that the Korean authority's final conclusion and reasoning could be analogous to that of the Italian competition authority's recent decision against Amazon's self-preferential practices in the logistic service market(s) (see the last year's competition law developments in Italy **here**). And *Kakao Mobility* would be the second digital platform's self-preferencing case since *Naver* in Korea, unless the authority decides otherwise, for example, to close with commitments.

Abuse of superior bargaining position (a.k.a., economic dependence)

As to abuse control, apparently, the KFTC has counted more on the dependency rule, Article 45(1)(4) (formerly Article 23(1)(4)) of the MRFTA, in 2022.

As stated above, four non-dominant companies have been sanctioned from January until October, for abusing their superior power over customers in continued relations: *Posco Chemical* (July 10, 2022); *Froebel House* (July 10, 2022); *Siemens* (August 10, 2022) and *Shinsung E&G* (August 24, 2022). In the former two cases, companies were sanctioned for abruptly ceasing supply without negotiation or prior notification (see **here** and **here**). Meanwhile, in *Siemens*, the supplier's unilateral conduct foisting costs for repair and maintenance upon selected distributors without negotiation was prohibited as abuse of dependency (see **here**). Similarly, in *Shinsung E&G*, the perpetrators were also accused of shifting their entrepreneurial risks and costs to a trading partner by, *e.g.*, deliberately delaying payments (see **here**).

Although it has yet been decided (and is currently under the commitment procedure), the future result of *Broadcom* is also worth paying attention to. Since 2021, the KFTC has investigated Broadcom since and raised dependency-related concerns over the allegedly 'forced' long-term contract between Broadcom and Samsung Electronics, especially regarding the use of the radio-frequency front-end ('RFFE') chips. Broadcom recently proposed a list of voluntary remedies to appease the KFTC's concerns and has elicited the authority's decision to initiate negotiations for commitments. The decision was released on September 7, 2022 (see the KFTC's press release **here**). Although it remains to be seen whether the case can end up with effective remedies, its implications anyhow will be consequential across borders (for English reports, see **here** and **here**).

Criminalization of violations of competition law?

When it comes to the enforcement of Korea's competition law, no one can talk about it without mentioning the Korean criminal authority's ambition to become an antitrust watchdog like the Antitrust Division of the US Department of Justice ('DoJ').

It is no secret that the Korean criminal authority has strived to vitalize the criminal enforcement of the MRFTA, despite the repeated reaffirmation of the conservative position of the KFTC and courts. Although, as well understood by the Korean courts, the prohibition of anti-competitive business practices is not *mala in se* but *mala prohibita*, in modern times few would question that criminal authorities can also be empowered to sanction horizontal restrictions given the manifest (economic) harm of cartels or bid riggings. The recent enforcement actions of the US DoJ in labor markets are the best case in point (*e.g.*, see *Jindal* and *DaVita* **here**, and **here**. Also, see my notes on the DoJ's new Justice Manual **here**).

However, Korea's situation is very peculiar in that the criminal authority's efforts to sanction businesses are not confined to the case of horizontal restrictions but are gradually creeping in the realm of unilateral conduct as well. For instance, the authority recently raided the headquarters of *Naver*, a local dominant search platform, for abusing its dominance in the market for the provision of real estate sales information on line by hindering competitors from entering the market with exclusive dealing (see my notes **here**). Also, it has been reported that in *Kakao Mobility* the KFTC is considering a criminal referral, given the impact of the alleged violation (see mLex's report **here**). Although I am personally skeptical about the necessity, deterrence, and even the reality of the criminal enforcement of abuse law, at any rate, it remains to be seen whether and how the

criminalization efforts by the criminal authority can change Korea's competition law and policy in 2023.

Some Miscellaneous Developments and Looking Ahead to 2023

Although not covered by this post, there have been other various developments in Korean competition law and policy in 2022. One of them is Korea's merger control which was more exposed to the global environment than ever.

For instance, at the beginning of 2022, the deal between the two Korean cargo shipbuilding firms, Hyundai Heavy Industries (the 1st largest shipyard globally) and Daewoo Shipbuilding & Marine Engineering (the 2nd largest shipbuilding company globally), collapsed after the European Commission raised concerns over the deal's effects upon European shipping companies who regularly purchase vessels (*e.g.*, large LNG carriers) from the two companies (see my notes **here**).

Another big deal between the two largest Korean airlines has been subject to in-depth review not only in Korea but also in various jurisdictions, including China, the EU, Japan, and the US (see my follow-up notes **here**). From an external perspective, it is noteworthy that the KFTC is reviewing Microsoft's (proposed) acquisition of Activision Blizzard (presumably) in close cooperation with other jurisdictions (the KFTC's press release in Korean **here** and my personal notes **here**). Also, the KFTC's market study results on the cloud sector are worth looking forward to (see my notes **here**).

Surprisingly and sadly, for now, no serious discussions are observed regarding the sustainability consideration in Korea competition law (meanwhile, in Japan, the JFTC has recently installed a study group and has held three meetings dedicated to the topic of sustainable agreements and with the aim of making guidelines, as can be seen **here**). Also, as explored above, it is true that the DMA-like regulatory approach has lost its momentum in 2022 and is unlikely to be achieved within a predictable timeframe. Nevertheless, it is not impossible that another significant change to a different direction will take place inspired by other jurisdictions' experiences or discussions at the global level. In this regard, I expect that 2023 will be a more exciting year for competition law and policy in Korea.

I would like to gratefully acknowledge the invaluable comments and insightful criticisms of **Jinha Yoon** on my early draft. Any remaining errors and the views expressed here are my own.

[1] On October 15, 2022, KakaoTalk, which can be called the Korean equivalent of Facebook or WhatsApp, went down due to a fire outbreak at a data center. The accident sparked a severe backlash against digital tech companies in Korea, as the suspension of various services that Kakao offers, such as messaging, shopping, ride-hailing, booking, and banking, lasted for several days, not hours, from 15 to 20. Whether desirable or not, the Kakao outage now serves as an impetus for the KFTC to be bold in enforcing competition law to concerns around big platforms' abusive practices. For more details, see the Washington Post's report **here**.

[2] Korea's legislation and regulatory initiatives at the time were inspired by discussions on European platform regulations, namely the Regulation (EU) 2019/1150 ('P2B regulation') and 'new competition tools.' See my publication on this issue **here**.

[3] The draft Platform Guidelines are still under the consultation process and subject to some revisions, and it is supposed to be introduced within months, if not weeks.

[4] See the draft Platform Guidelines, II. General Principles 3. Considerations when assessing illegality 2. Dominant position (3) Influence as a gatekeeper.

[5] In addition to that, subparagraphs 10 (a provision to prevent app store operators from unjustly slowing down the app review process), and 11 (a provision to prevent them from unjust delisting, *e.g*., without justification or prior notice) were also introduced. For full text, see **here**.

[6] Meanwhile, on March 31, 2022, Apple announced that it launched a new policy (see **here** and **here**) to implement the settlement with the Japan Fair Trade Commission ('JFTC'). Under the new policy (globally applied), Apple decided to allow "reader" app developers (only when entitled) to use links to an external website where app operators can give users their own account creation and management functions, including alternative payment methods, as promised to the JFTC in Sep 2021 (see the JFTC's press release **here**).

[7] Original text is available **here**.

[8] The English translation in this blog post draws basically on the translation in the KCC's English press release, available **here**.

[9] Google really blocked the update of a local messenger app, Kakao Talk, for breaching the policy by steering users to its website for payments. See **here**.

[10] For the US's recent efforts to reinvigorate the FTC's enforcement actions against monopolies in their "incipiency" under Section 5, see **here**. For the structure and contents of the Korean and Japanese competition rules, see my comparative research results **here**.

[11] Including cases of bid rigging and decisions of associations.

[12] Based on the news report attached above, the KFTC seems to rely only on the fact that the car makers agreed upon restricting the development of their car emission technologies. No mention of price fixing or market allocation can be found in any news reports.

[13] Meanwhile, in the US, AstraZeneca was alleged to collude with generic firms, including Accord, to delay the launch of the generic version of Seroquel. Regarding the claim against Accord, however, a Delaware federal judge (US District Judge Colm Connolly) decided on July 8, 2022, that the financial benefit traded ($107 million) was not large enough to be seen as anti-competitive when viewed in the context of delaying generics. Also, the judge noted that the firm could not immediately launch its generic because it conceded in a patent lawsuit that it infringed a patent of AZ. See **here**.

[14] As explained earlier, Kakao is one of the largest tech companies in Korea.

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