

December 21, 2023

THE KFTC'S PROPOSED ACT ON PROMOTION OF PLATFORM COMPETITION

At the cabinet meeting chaired by President Suk Yeol Yoon on December 19, 2023, Ki-jeong Han, the Chairperson of the Korea Fair Trade Commission ("**KFTC**"), made a report on measures aimed at preventing platforms with a monopoly from disrupting the market order. This follows President Yoon's statement at the previous cabinet meeting held on November 28, 2023, where he instructed the KFTC to "prepare measures to reduce the harm caused by the monopoly of large platforms." According to Chairperson Han's report, the KFTC plans to propose the "(Tentatively titled) Act on Promotion of Platform Competition" (the "**Platform Act**") based on discussions among the task force for the improvement of anti-monopoly regulations and legislative examples from foreign jurisdictions.

The Platform Act will designate a small number of platforms with enough power to control the platform market as "market-dominant platform operators" and prohibit them from engaging in unfair practices that are said to be currently common in the platform market, such as self-preferencing and multi-homing restrictions. Corrective orders and administrative fines will be imposed for the violation of the Platform Act, unless the platform operators substantiate that they had a reasonable basis¹ for engaging in such prohibited conduct.

I. OTHER SIMILAR REGULATIONS

While the details of the Platform Act are not yet publicly available, we may draw insights from another currently proposed bill² which bears resemblance to the Platform Act. The key provisions of the proposed bill include the following:

A. Online Platform Operator's Reporting Obligation³

If an online platform operator (1) whose average market capitalization of issued shares or equivalent fair market value is at least KRW 30 trillion, provides an online platform service (2) with average annual revenue of at least KRW 3 trillion, and (3) at least 10 million average monthly number of users or at least 50,000 average monthly number of business users, such online platform service must be reported to the KFTC (Article 5).

B. Designation as the Market-Dominant Online Platform Operator

The KFTC designates an online platform operator when the online platform service it provides (1)

¹ For instance, if the conduct lacks anti-competitiveness or increases consumer benefits, or is deemed necessary for compliance with other regulations and is difficult to achieve through other means.

² A bill on the regulation of monopolies by online platforms, proposed by Joo-min Park and ten other members of the National Assembly on November 16, 2023.

³ Thresholds (2) and (3) are determined based on the average annual revenue and the average monthly number of users and business users of the three immediately preceding business years.

has been reported to the KFTC and satisfies all requirements of market dominant position⁴, or (2) is not subject to the reporting obligation but satisfies all requirements of market dominant position, as affirmed through the KFTC's market survey (Article 6).

C. Prohibited Conduct

Formally designated market-dominant online platform operators would be prohibited from engaging in abuse of market dominance, including self-preferencing, tying, restricting multi-homing, restricting access to and transfer of data, and requiring the most favored nation treatment (Articles 8 through 14).

D. Additional Requirements

Market-dominant online platform operators would also be required to disclose information necessary to protect the rights and interests of online platform users which relate to their market-dominant platform services, including the terms and conditions of using such platform services (Article 15). Market-dominant online platform operators are also required to annually prepare and submit a report to the KFTC, stating their business overview, complaint handling status, and information regarding their market-dominant platform services (Article 16).

E. Expansion of the KFTC's Authority: Market Survey

The KFTC would be authorized to conduct a market survey for the purpose of designating market-dominant online platform operators, identifying the actual status of online platform services, and improving related systems (Articles 17 through 19).

F. Sanctions

The KFTC may investigate and impose sanctions such as corrective orders, corrective recommendations, or fines (up to 10% of the revenues). The proposed bill also introduces a consent decree system for the corrective measures proposed by the relevant platform operator (Articles 20 through 26). Additionally, the KFTC may issue an order for temporary suspension of all or part of the market-dominant online platform service, if it is evident that the market-dominant online platform operator engaged in abuse of market dominance, and there is an urgent need to prevent further harm to online platform users (Article 27).

G. Remedies for Online Platform Users

If an online platform operator causes damage to its user in violation of this bill, the online platform operator will be liable for damages unless it proves that the damage was not caused by its intentional or negligent conduct (Article 30). In addition, the bill introduces the right to file for an injunction, allowing a person who suffers or is likely to suffer damage due to the market-dominant online platform operator's abuse of market dominance to request a court to prohibit or prevent such conduct (Article 29).

⁴ An online platform operator has a market-dominant position if (1) it has a significant presence in the Korean market, (2) it operates an online platform service that is the primary gateway through which online platform's business users can access consumers, and (3) it is continuously in a firm position, or is expected to be in such a position in the foreseeable future, where it is believed that businesses' access to consumers would be restricted if not for the online platform service it provides.

II. IMPLICATIONS

The Platform Act appears to have been significantly influenced by the European Union's Digital Markets Act, especially concerning the elements of establishing market dominance, the designation of market-dominant online platform operators, the rights of the competition authority to survey the market, and sanctions for violations. If the Platform Act comes into effect, reporting obligations will be imposed on online platforms meeting the necessary thresholds, and various additional requirements and prohibitions will apply if designated as a market-dominant online platform operator. Therefore, it would be advisable for online platform operators to closely monitor legislative developments in Korea.

* * *

For any inquiry or questions regarding the content of this newsletter, please contact us.

Related Professionals

Ryan IL Kang

Partner

T 82.2.3404.0689**E** il.kang@bkl.co.kr**Hyuna Kim**

Partner

T 82.2.3404.6519**E** hyuna.kim@bkl.co.kr**Kee Won Shin**

Senior Foreign Attorney

T 82.2.3404.0272**E** keewon.shin@bkl.co.kr