

December 20, 2024

KFTC PUBLISHES MARKET RESEARCH REPORT: “GENERATIVE AI AND COMPETITION”

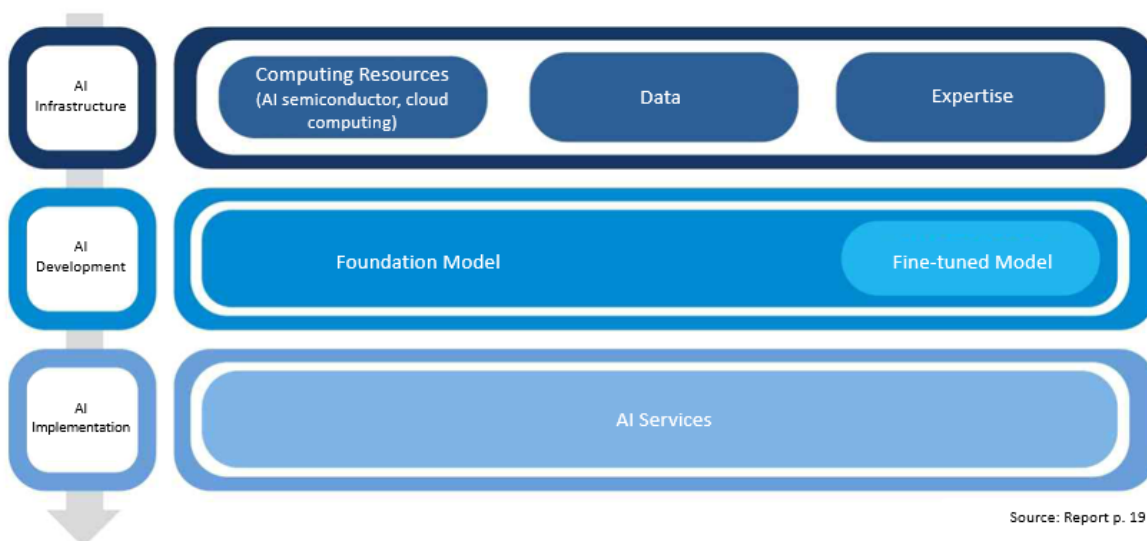
On December 17, 2024, the Korea Fair Trade Commission (“KFTC”) published its market research report titled “Generative AI and Competition” (“Report”). The KFTC explained that the Report aims to systematically analyze the structure and competitive dynamics of the generative AI market, identify potential competition and consumer issues, and propose future initiatives. To foster fair competition in the AI ecosystem, the KFTC plans to implement measures to proactively or retroactively monitor behaviors in the AI market.

The Report provides a comprehensive overview of the competitive dynamics in the generative AI market, which is still in its early stages and undergoing rapid changes, across the value chain. It examines competitive conditions in each segment of the value chain, along with structural and behavioral factors that may hinder competition or infringe on consumer rights. The KFTC clarified, however, that the concerns raised in the Report do not imply the detection of specific anti-competitive behavior in Korea’s AI market or necessitate immediate investigations.

Below, we discuss the key aspects of the Report in greater detail.

I. Current Landscape of the Generative AI Market

Generative AI progresses through three distinct stages. The first stage involves the establishment of the AI infrastructure, which relies on computing resources, data, and the expertise of professionals. In the next stage, foundation models are developed using such infrastructure. Finally, in the third stage, these models are utilized to deliver AI-driven services. Accordingly, the generative AI market can be categorized into three key phases: (i) AI infrastructure, (ii) AI development, and (iii) AI implementation.



<p>AI Infrastructure</p>	<p>Establishing the foundation for generative AI development and implementation, which involves AI semiconductors, cloud computing, data, and professional expertise.</p> <ul style="list-style-type: none"> • <u>AI semiconductor market</u>: The Report highlights the need to continuously monitor whether NVIDIA's market dominance will ease, potentially reshaping competitive dynamics. • <u>Cloud computing market</u>: Korean cloud service providers (“CSPs”) such as NAVER Cloud and KT Cloud are working to enhance their technological capabilities and market share, but global CSPs like Amazon Web Services, Microsoft, and Google currently dominate the market.
<p>AI Development</p>	<p>Building foundation models is essential for enabling AI capabilities or fine-tuning existing models from other providers. While competition is active, with numerous models being introduced, big tech companies maintain a strong market position due to their established infrastructure, giving international players a competitive advantage over Korean companies.</p>
<p>AI Implementation</p>	<p>Utilizing foundation models to deliver AI-driven services, such as text or image generation, to consumers. The Korean AI services market is highly competitive, with both large corporations and startups offering a diverse range of services.</p>

II. Competition and Consumer Issues in the Generative AI Market

A. Structural Factors Influencing Market Competition

The KFTC identified the following key structural factors shaping competition in the generative AI market:

- Capital- and technology-intensive nature of the industry: Developing and implementing generative AI requires significant financial investment and advanced technical expertise. Notably, obtaining AI semiconductors, data, and skilled professionals requires considerable time and resources, creating potential barriers to entry for new market players.
- Economies of scale and scope: Large companies benefit from economies of scale and scope in the generative AI ecosystem, allowing them to strengthen their competitiveness, which poses challenges for smaller or new entrants.
- First-mover advantage: Early market entrants that secure critical resources, such as data, customer bases, and technological capabilities, can dominate the market. These companies may raise entry barriers for latecomers through lock-in effects, further widening the technological gap and solidify their market position.

B. Anti-Competitive Concerns and Consumer Interests

The Report examines potential anti-competitive practices and consumer harm in the generative AI market, focusing on unilateral conduct, mergers, and consumer interests.

- Unilateral conduct: The Report identifies several concerns, including (1) preventing access to essential resources, (2) tying, (3) preventing customer departures or customer acquisition through unlawful means, (4) misappropriation of technology, (5) unlawfully inducing or preventing the departure of key human resources. One particular issue highlighted is the potential abuse of power by dominant players in essential resource markets, such as imposing unfair terms related to price, quantity, or other transactional conditions, or forcing tied purchases.
- Mergers and partnerships: In the current AI market, capital-rich and vertically integrated companies often make substantial investments in startups or form partnerships with other players. The Report raises concerns that such arrangements may result in abuse of market dominance. While these partnerships may not fall under the scope of traditional merger reviews, they can produce merger-like effects. Therefore, the Report emphasizes the need for policy measures to address these cooperative arrangements.
- Consumer interests: The Report highlights instances where AI companies collect and utilize data without obtaining meaningful consent. It stresses the importance of addressing such unfair trade practices through regulatory frameworks, including regulations on competition or standard terms and conditions, to protect consumer rights during data collection and utilization.

III. Takeaways

As the Report incorporates findings from similar studies on the AI market and competition issues previously published by the competition authorities of the UK, France, and Canada, and examines the latest developments in the rapidly evolving AI market, it offers valuable insights into the market's structural characteristics and competitive dynamics.

Notably absent from the Report, however, is the topic of algorithmic collusion. While this issue is discussed in reports by other competition authorities, the KFTC deliberately chose not to address it. They explained that existing algorithmic collusion cases generally involve the manipulation or agreed use of algorithms, which can be adequately handled within the current competition law framework and do not require new regulatory discussions specific to AI markets.

Looking ahead, the KFTC plans to review regulatory improvements to address consumer harm related to data collection and usage in AI markets. The KFTC's future reviews are expected to focus on whether the following constitute unfair terms and conditions: (i) clauses that permit user-generated content to be used for AI training without obtaining separate consent or mandate such use, (ii) clauses that fail to clearly specify whether user interactions with AI are utilized for training and improving models, and (iii) clauses that vaguely define the conditions under which access to AI services may be restricted (e.g., restricted access for excessive use).

In addition, as the Report also highlights the need for regulatory improvements to address new forms of mergers and partnerships that have similar effects to traditional mergers, the KFTC is expected to examine whether partnerships—such as those involving the hiring of a significant portion of a competitor’s employees—should be categorized as a type of merger subject to preemptive regulation, or addressed retroactively as unfair hiring practices.

The KFTC will continue to explore policy directions to promote fair competition in the Korean AI market, potentially through follow-up research, while also monitoring potential anti-competitive practices in the AI ecosystem. In light of these efforts, businesses are encouraged to remain aware of changes in AI competition policy and enhance their compliance measures accordingly.

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