

A comparative study of legal developments concerning platforms in the EU, Us, and Korea

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Impact Statement

1. What is the main objective of the research described in the thesis and what are the most important results and conclusions?

Multi-sided platforms are intermediaries that provide goods or services to several separate customer groups who rely on one another and rely on the platform to enable transactions among them. Google, Amazon, Meta (Formerly Facebook), Apple are well-known examples of multi-sided platforms connecting different sides of a market. In fact, many old industries, ranging from village matchmakers to advertising-supported newspapers, can be qualified as platforms. Thus, the term platform is not just for tech platforms like Google and Meta (formerly Facebook). However, due to the rapid market development based on the Internet and communication technology has put multi-sided platforms at the centre of modern business change.

The thesis addresses regulation of the abuse of a dominant position by multi-sided platforms and legislative actions for regulating gatekeeper platforms to create a level playing field in the EU, the US, and Korea. The objective of this thesis is to propose implications and recommendations on competition policy to policymakers, competition authorities, platforms, non-platform companies, and consumers, etc.

First, traditional competition law tools are not adequately capture and reflect the complexity of multi-sided platforms in regulating abuse of a dominant position. With regard to market definition for multi-sided platforms, conventional methods for market definition can be used. Bundling customer groups does not guarantee proper reflection of the characteristics of multi-sided platforms; instead it adds uncertainty concerning. It is important to reflect the unique characteristics of multi-sided platforms in assessing market dominant power. With regard to market-dominant power, existing assessment criteria for market-dominant power should be modified to properly mirror the new economic environment where multi-sided platforms operate. In addition, some alternative indicators need to be applied in assessing market dominance of multi-sided platforms. In other words, particular considerations relating to multi-sided platforms such as multi-homing and indirect network effect need to be considered when assessing the market-dominant power of multi-sided platforms. With regard to determining abuse of a dominant position, it is required to choose the best model to assess the illegality of the conduct at issue because the conduct triggers pro-competitive effects or anti-competitive effects, or both. In this regard, competition authorities and courts need to develop best models to judge the illegality relating to abuse of

a dominant position by multi-sided platforms reflecting particular features of multi-sided platforms.

Second, there are differences in terms of competition law enforcement regarding abuse of a dominant position by multi-sided platforms between the EU, the US and Korea. All the differences between the decisions of the competition authorities in each jurisdiction are derived from the goals these competition authorities and courts are pursuing. Thus, it is very hard to identify a similar stance of competition authorities and courts in the three jurisdictions without there being a consensus on competition policy for abuse of a dominant position by multi-sided platforms. However, in my view, it is appropriate and reasonable to propose common guidelines for the creation of a level playing field for competitors considering the situation where gatekeeper tech platforms are standardising people's lifestyle. Since big tech platforms have the same business model across borders, competition authorities around the world should introduce various international cooperation measures to overcome information asymmetry in the digital market. It may also be appropriate and reasonable to suggest common guidelines for each competition authority or conduct a joint fact-finding investigation to cope with global platform companies.

Third, there are limits to current competition laws in regulating abuse of market dominance by multi-sided platforms. It is not sufficient to cope with multi-sided platforms by controlling abuse of a dominant position. In this regard, the stakeholders in academia, industry and government should propose more effective measures in a particular platform ecosystem where big tech platforms are acting as gatekeepers to create a level playing field. It is highly encouraging and timely for competition authorities in each jurisdiction to introduce new legislative measures aimed at gatekeeper platforms, based on new regulatory strategy such as the Digital Markets Act in the EU and the three Online Platform Acts introduced by the KFTC in Korea. Therefore, competition authorities in each jurisdiction need to introduce additional legislative measures targeted at the platforms acting as gatekeepers to overcome the limitation of regulation of the abuse of a dominant position and ensure a level playing field.

Finally, I suggest a new three-phase model which competition authorities can apply in regulating multi-sided platforms. It should be different that regulatory methods that competition authorities can choose depending on the size and nature of the platform at issue. First, with respect to gatekeeper platforms, pre-regulatory legislative measures can be applied. For abuse of a dominant position by a gatekeeper platform, the regulations of abuse of a dominant position can

be applied. In the case of unfair trade practices which do not lead to abuse of a dominant position, regulation of unfair trade practices can be applied. Second, with regard to a multi-sided platform which is not a gatekeeper but in a dominant position, it is possible to apply the regulation of abuse of a market-dominant position. If the conduct at issue does not meet all the requirements of abuse of a dominant position, the regulation of unfair trade practices can be applicable. Third, for a general platform which is not in a market-dominant position, it may be possible to apply the regulations of unfair trade practices. In my view, the regulatory methods that competition authorities can choose should be different depending on the size and nature of the platform at issue.

2. What is the (potential) contribution of the results from this research to science, and, if applicable, to social sectors and social challenges?

First, this research provides practical help to competition authorities in how to modify existing tools in examining abuse of market dominant position by multi-sided platforms to derive reviewing results that reflect the characteristics of multi-sided platforms. Traditional competition law tools do not adequately capture and reflect the complexity of multi-sided platforms in regulating abuse of a dominant position by multi-sided platforms. Thus, it is important to consider the unique characteristics of multi-sided platforms.

This research has innovative aspects that have never been seen before in the following several aspects. For example, this study compares cases of abuse of market-dominant position by non-platform companies and cases of abuse of market dominant position by platforms, and examines each stage of defining the relevant market, assessing market power, and determining abuse of market-dominant position. For example, innovation and rapidity are extremely important considerations in assessing market power of multi-sided platforms. In addition, the references of users and reputation or trust of a community can be considered considerable factors of market power. As such there are a variety of challenges in reflecting multi-sidedness such as potential biases and uncertainty in measuring the market power of multi-sided platforms. That is why there should not only be quantitative approaches, but also qualitative approaches in practice. I looked closely at whether modifications were needed to reflect the unique characteristics of the platform. In addition, it was reviewed how the modification work was carried out during actual application by competition authorities at each stage.

Second, this research is the first to compare competition law enforcement in regulating abuse of market dominant positions by multi-sided platforms in the

EU, the US, and Korea from a comparative law perspective. These three jurisdictions are areas where multi-sided platforms are currently active, and cases and legislative activities are actively underway to regulate abuse of market dominant positions by multi-sided platforms. There are differences in competition law enforcement regarding abuse of a dominant position by multi-sided platforms between the EU, the US and Korea. All the differences in the decisions of the competition authorities in each jurisdiction are derived from the goals these competition authorities and courts are pursuing. Thus, it is very hard to identify a similar stance of competition authorities and courts in the three jurisdictions without there being a consensus on competition policy for abuse of a dominant position by multi-sided platforms. However, it would be appropriate and reasonable to propose common guidelines for the creation of a level playing field for competitors when gatekeeper platforms are standardising people's lifestyle. Gatekeeper platforms have the same business model across borders, competition authorities around the world should introduce various international cooperation measures to overcome information asymmetry in the digital market. In addition, multi-sided platforms are rapidly expanding their business areas by taking advantage of market-dominant power in one market for gaining market power in other markets. Thus, it may also be possible to suggest common guidelines for each competition authority or conduct a joint fact-finding investigation to cope with global platform companies.

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One peculiar thing is that each jurisdiction has adopted somewhat conflicting competition policies, but has recently shown a fairly consistent regulatory tendency in relation to the regulation of large platforms. Comparisons do not simply describe differences and similarities. Thus, it is also analysed how each country's competition policies directly affect each other. This approach has not been adopted in the existing literature. The research will have an important influence on establishing each country's platform policy in the future.

Third, this research is the first to compare legislative activities to regulate gatekeeper platforms in the EU, the US, and Korea from a comparative law perspective. Current competition laws have limitation in regulating gatekeeper platforms. It is very difficult to prove each requirement of abuse of a market-dominant position in each phase of abuse of dominance cases. With regard to gatekeeper platforms, ex-ante regulation should be considered as the DMA suggests. Competition authorities can be free of their obligation to prove the requirements of abuse of a dominant position. They can even reverse the burden of the proof to multi-sided platforms. Thus, competition authorities in each jurisdiction need to introduce additional legislative measures targeting at the

platforms acting as gatekeepers to overcome the limitation of regulation of the abuse of a dominant position and ensure a level playing field. Gatekeeper platforms have been distorting competition by manipulating exposure rankings and playing the role of a referee and a player at the same time. The problem of data collection by gatekeeper platforms can be serious when possession of consumer data determines winners and losers in the multi-sided platform market. Thus, strict law enforcement is necessary under the circumstance of uneven playing field where an innovation engine can be weakened.

The research will help policymakers in each country conduct legislative activities to promptly respond to sudden market changes occurring on multi-sided platforms. It will be possible to make policies by benchmarking platform-related laws that have been enacted or are in the process of being enacted in the EU, the US, and Korea. Trial and error can be reduced by reviewing in advance whether it is possible to introduce laws specifically enacted by preceding countries. For policymakers who are unable to understand what type of legislation should be implemented, the results of recent legislative activities by policymakers in the EU, the US, and Korea mentioned in this paper can serve as reference examples. We must not forget that the world transcends borders and is under the influence of gatekeeper platforms. The trials and errors of their legislative activities across the world, beyond national borders, will serve as a reference for legislation in other jurisdictions. From this perspective, examining the current regulatory trends of multi-sided platforms by analysing legislative activities in the EU, the US, and Korea to regulate gatekeeper platforms will be helpful in predicting the direction of future multi-sided platform regulation. In addition, Korea's 3 Platform Act and the Google's in-app payment law present quite specific regulatory methods, so I believe that they are worth considering with interest by policy enforcement agencies in each country as leading legislation in platform regulation.

Finally, I suggest a new three-phase model which competition authorities can apply in regulating multi-sided platforms. It should be different that regulatory methods that competition authorities can choose depending on the size and nature of the platform at issue. First, with respect to gatekeeper platforms, pre-regulatory legislative measures can be applied. For abuse of a dominant position by a gatekeeper platform, the regulations of abuse of a dominant position can be applied. In the case of unfair trade practices which do not lead to abuse of a dominant position, regulation of unfair trade practices can be applied. Second, with regard to a multi-sided platform which is not a gatekeeper but in a dominant position, it is possible to apply the regulation of abuse of a market-dominant position. If the conduct at issue does not meet all the requirements of abuse of

a dominant position, the regulation of unfair trade practices can be applicable. Third, for a general platform which is not in a market-dominant position, it may be possible to apply the regulations of unfair trade practices. In my view, the regulatory methods that competition authorities can choose should be different depending on the size and nature of the platform at issue. Applying different regulatory methods depending on the size and nature of the platform will help overcome the limitations of regulating abuse of market dominant position.

3. To whom are the research results interesting and/or relevant? And why?

First, these discussions can be helpful to platform-using businesses, consumers, and multi-sided platforms in competition that are active in the ecosystem of multi-sided platforms. They are directly under the influence of anticompetitive behaviours of multi-sided platforms. This paper will help platform-using business companies and users respond to abuse of the platform's market dominant position or coercion to conclude unfair terms and conditions through unfair transactions. In addition, it will be used as an efficient means to check whether multi-sided platforms misuse the information of platform users. Additionally, platform users will be able to identify the types of platform abuses in advance and obtain information to respond to abuses of multi-sided platforms. Multi-sided platforms in competition will also actively respond to abuses of market dominance by platforms in a market-dominant position, which will help control them from using their market power to unfairly expand their market power into adjacent markets. In addition, multi-sided platforms in competition can respond proactively to strategies of multi-sided platforms in a dominant position that block competitive activities of competing platforms in the bud by unfairly using the information of platform users and consumers in markets where they have market power.

Second, this research will help policymakers in each country conduct legislative activities to promptly respond to sudden market changes occurring on multi-sided platforms. It will be possible to make policies by benchmarking platform-related laws that have been enacted or are in the process of being enacted in the EU, the US, and Korea. Trial and error can be reduced by reviewing in advance whether it is possible to introduce laws specifically enacted by preceding countries. For policymakers who are unable to understand what type of legislation should be implemented, the results of recent legislative activities by policymakers in the EU, the US, and Korea mentioned in this paper can serve as reference examples. We must not forget that the world transcends borders and is under the influence of large platforms such as the gatekeeper platforms. I hope that the trials and

errors of their legislative activities across the world, beyond national borders, will serve as a reference for legislation in other jurisdictions.

Third, this research can be of practical help to competition authorities in each country. Competition law enforcement by competition authorities in each country shows many common aspects. Due to the spread of the Internet, the market dominance of large platforms extends across each country, and even if some jurisdictions are not directly under the influence of the platform at the moment, the global influence of the large platforms will soon lead to abuse of the platform's dominant market position. It is clear that it will soon be reached. Therefore, in order for each country's competition authorities to respond in a timely manner to current and future competition law issues, prior competition law enforcement cases will be of practical help.

Fourth, legal or economic advisors may use this research in consulting legal issues related to multi-sided platforms. In particular, Korea's competition law and competition law enforcement cases covered in this paper are difficult to access, so it will be of practical help in understanding and benchmarking Korea's competition law enforcement, which is leading the legislation and enforcement of competition laws such as the In-App Payment Prevention Act.

Finally, the current findings may also be of interest to the general public. Considering the significant influence of multi-sided platforms on our lives, it is undeniable that we are all subject to the common influence of big tech platforms in an information-oriented society. Platforms are so closely embedded in our lives. It is not easy to escape the influence of 24-hour platforms, and they are actually dominating and changing our lives without us knowing. Therefore, the reality is that it is difficult to spend even a day without the platform. In fact, we are receiving goods and services from all over the world through platforms, so the geographical market for goods is truly losing meaning. Accordingly, the legislation and cases presented in the above paper will also be helpful to the general public in order to deal with anti-competitive behavior by gatekeeper platforms, platforms in a market dominant position, and platforms that are not in a market dominant position but have great influence on us.

In conclusion, this work will be helpful to all those under the influence of platforms to understand how abuse of market power and unfair practices by platforms occur and how executive and legislative efforts are actually being made to prevent them.

4. In what way can these target groups be involved in and informed about the research results, so that the knowledge gained can be used in the future?

Copies of this thesis will be provided to stakeholders living in various platform ecosystems, including government agencies such as competition authorities in each country, research institutes and academia, platform business users, service providers, platform users, and companies in competition with gatekeeper platforms. It will therefore be open to academic as well as non-academic readers. In particular, detailed discussions on the three-phased regulation plan based on the size and influence of the platform will be held in the future. To this end, various opinions will be collected and differences in each country's platform policies will be compared and analysed. Furthermore, this paper should contribute to establishing joint guidelines, such as those of the OECD, so that competition authorities in each country can pursue an integrated, converged policy. A commercial version of this thesis is expected to be released in the near future.