

CCIA Response to Korea's Proposed Rules Requiring Local Presence for E-Commerce Providers

Comments on Korea's Proposed Amendments to the Electronic Commerce Act

Introduction and Summary

The Computer & Communications Industry Association (CCIA) provides the following analysis of the trade implications of the Korean Fair Trade Commission's proposed amendments¹ to Korea's 2018 Electronic Commerce Act (**E-Commerce Act**).² The proposed amendments to the E-Commerce Act were passed by the cabinet on Aug. 19, 2024,³ and are now under consideration by the National Assembly.

CCIA understands and respects the efforts of the Korea Fair Trade Association (**KFTC**) to strengthen consumer protections in the online arena, and the challenges of effective enforcement when services are provided on a cross-border basis. However, by effectively mandating that in certain cases that a cross-border service supplier utilize a locally-established entity to address consumer complaints, this proposed legislation appears inconsistent with Korea's commitments under the Korea-United States Free Trade Agreement (KORUS).

Background

KFTC is proposing to amend several provisions of the E-Commerce Act governing consumer protection responsibilities relating to online sales. The key amendments are found in a proposed new Article 20–4, specifying local agent appointment requirements (**Proposed Amendments**).

The proposed requirement to appoint a local agent is not *per se* problematic, provided that companies operating on a cross-border basis, without a local presence in Korea, can implement the requirement in a flexible manner (e.g., where consumer complaint functions can continue to be handled by the foreign company that appointed the local agent, or be outsourced to a reputable third party, including one not resident in Korea).

What is problematic, however, is the requirement that where a foreign company already has a local subsidiary, the local subsidiary must be designated as the local agent of the foreign company, and must undertake the full gamut of dispute resolution responsibilities. The apparent intent of the proposed amendments is to ensure that foreign companies operating in Korea provide sufficient consumer care for local consumers. However, the requirement introduces wide ambiguity and inflexibility for how foreign companies—including those that are operating responsibly in the Korean market vis-à-vis relations with local consumers—are able

¹ <https://korea.kr/briefing/pressReleaseView.do?newsId=156646190&pWise=sub&pWiseSub=C4>.

² https://elaw.klri.re.kr/eng_service/lawView.do?hseq=62450&lang=ENG.

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https://kfcf-or-kr.translate.google.com/news/news/read.do?no=2806&x_tr_sl=ko&x_tr_tl=en&x_tr_hl=en&x_tr_pto=in_sc.

to operate. Further, although in pursuit of consumer relations, the proposed amendments would appear to violate Korea's trade commitments to the United States, enshrined in the U.S.-Korea Free Trade Agreement (KORUS).

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members invest heavily in the Korean economy and responsibly provide digital products and services to Korean consumers, bringing vast benefits to users and Korean businesses small and large alike that rely on digital platforms and other services.

The Obligations of the Proposed Amendments Are Excessively Broad

Specifically, the Proposed Amendments would require online retail and online retail brokerage suppliers (both direct e-commerce platforms and intermediaries, offering a marketplace for third parties) to appoint a domestic agent with an address or place of business in Korea who would be responsible for addressing consumer disputes and complying with orders issued by the KFTC. Further, if an online retail or online retail brokerage firm has already established a domestic affiliate, or is determined to have dominant influence over the composition of a domestic affiliate's operations, that domestic affiliate must be designated as the domestic agent of that foreign firm, as detailed at proposed new Article 20-4(2).

The Proposed Amendments Restrict Operational Choices

Although foreign companies with a operations in Korea may choose to implement consumer care and dispute resolution through their domestic affiliate, such an approach may not make sense for a company offering a range of services, not all of which are supported through a local affiliate and for whom a well-functioning dispute resolution process, centralized in another country and offered on a cross-border basis, is an effective mechanisms for addressing consumer complaints.

The Proposed Amendments Are Onerous on Local Agents

In addition to precluding such an option for a foreign company with a Korean affiliate, the specific obligations imposed on an agent, acting on behalf of a cross-border supplier, are not only ill-defined but also onerous, in that the agent is itself responsible for resolving disputes.

Similar Korean laws already addressing privacy complaints or disputes with telecommunications suppliers have included requirements for addressing consumer complaints, but those laws included clarifications that local agents did not themselves need to resolve complaints, but simply had to act as messengers for the ease of communication with the Korean government and consumers. However, the Proposed Amendment goes further and requires the local agents themselves to engage in the consumer resolution processes.

For foreign companies that may already have a local affiliate in Korea, and thus will be obliged to have the affiliate take on local agent functions, the expanded responsibilities of the agent function may constitute a significant burden for the affiliate, particularly when disputes are

already being satisfactorily addressed by the foreign company itself on a cross-border basis. Representatives of the local affiliate may not be responsible for specific lines of business nor specialized in the handling of consumer complaints and reports of deceptive practices. Those operations of the foreign company could be either partially or fully staffed from elsewhere around the world. As such, foreign companies that are already operating in Korea would have to invest in additional resources and rework their internal structures to comply with this regulation, even if the functions sought by the amendments—consumer service and relief—are already being adequately carried out.

More Reasonable Consumer Protection Measures Are Available

It is of course essential to ensure that customers of electronic commerce services are given recourse for questions, complaints, and instances of fraud. However, effectively mandating that this function be localized within Korea goes beyond what is reasonable, particularly for foreign companies operating in Korea that already have consumer complaint teams that are easily accessible and following best practices, but are not located domestically. The central question regarding consumer protection and safety is whether a company is providing appropriate care for consumers, and not where the consumer care function is located.

To support and encourage companies that are acting in good faith in the Korean market, a more reasonable route for the KFTC to pursue would be to:

- ❖ Target remediation towards the actual harms that consumers suffer, such as penalties for companies that violate consumer protection laws or otherwise engage in deceptive practices, instead of mandating local agents be put in place for such a purpose; and
- ❖ If it is still considered desirable to have a local agent for contact purposes, ensure that any legislation that stipulates the need for such local agent also clarify that the local agent need only serve as a point of contact and that foreign companies can choose to host substantive consumer care functions abroad or in Korea.

Such an approach would be consistent with international norms that address consumer harms, while avoiding unduly increasing the costs of doing business in Korea and, as detailed in the next section, potentially violating trade commitments with a key partner.

The Amendments Likely Violates Korea's Trade Commitments to the United States

The Proposed Amendments would likely contravene Korea's commitments to the United States to offer fair market access to U.S. companies that seek to access the Korean market on a cross-border basis. Specifically, the requirements pursued by the KFTC appear inconsistent with Article 12.5 of the Korea-US Free Trade Agreement (KORUS) on local presence, which states that:

“Neither Party may require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.”⁴

⁴ https://ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file315_12711.pdf.



By requiring U.S. service suppliers—in this case, online retail and online retail brokerage firms—to appoint local agents and have personnel and facilities in Korea, the Proposed Amendments would appear to be violating both the spirit and the letter of the KORUS commitment to not mandate local presence as a condition for access to the Korean market. This inconsistency with KORUS is most clear with respect to U.S. companies that have a local presence in Korea for certain functions and services, but who choose to offer other services entirely on a cross-border basis. For those services, such companies should be entitled to rely on the protections of KORUS against mandating a local presence—i.e., being guaranteed the flexibility to provide cross-border services to Korean consumers without needing to invest in Korea and bring staff onshore. By requiring companies to localize support staff for consumer care functions, Korea would be denying U.S. firms their right to have consumer care staff abroad.

Absent an explicit carve-out that allows U.S. firms to host consumer care teams abroad with a local representative that could be carried out by a law firm or other local entity, the proposed amendments could constitute a violation of KORUS.

Conclusion

CCIA appreciates the opportunity to provide feedback on the proposed amendments to the Electronic Commerce Act. The issue of consumer protection is of utmost importance to our members operating in Korea, and one that is worthy of pursuit. However, requiring localization of consumer care teams in Korea is inconsistent with Korea's trade commitments to the United States and undermines the strong practices that many U.S. companies operating in Korea already demonstrate with international teams. We respectfully recommend that narrow, targeted oversight of the tangible harms—failure to care for Korean consumers—be the focus of the KFTC, rather than seeking to onshore staff for compliance purposes.