A reasonable compromise, or another solution in search of a problem?

Korean Legislative Proposals on Platform Transaction Fairness

Introduction and Summary

In parallel with broad-based proposals for a Korean-style version of the EU's Digital Markets Act (DMA), numerous bills have recently emerged in Korea proposing a an alternative approach, generally described as "platform transaction fairness." As pressure against an explicitly DMA-type bill continues, this alternative approach is now gaining wider attention. However, both approaches would result in *ex-ante* regulation of markets currently worth an estimated $109 billion, where U.S. firms have a significant presence.[1]

Like their predecessors, these interventions exclusively target online firms and will put these companies at a material disadvantage vis-à-vis incumbent firms in the highly-concentrated traditional sectors, dominated by *chaebols*. By undermining innovative alternatives, these approaches undermine the one of the few successful paths for penetrating what has long been considered a challenging market for exporters.

The goal of "fairness" bills is to regulate specific aspects of intermediation services that platforms offer business users who use platforms to reach their customers—ostensibly in response to complaints by Korean business users over terms and conditions imposed by platforms. The KFTC originally proposed a bill in 2020 called Act on Fair Intermediary Trade of Online Platforms and introduced it into the National Assembly in 2021, but this bill was not enacted into law.

One of the most recent versions, introduced by Kim Nam-geun on October 18, 2024 (who also authored a broader DMA-like platform regulation bill), has reportedly garnered support from the government and has been touted as a possible compromise alternative to the suite of broader bills that both U.S. industry and many Korean digital companies have opposed.

This latest bill adopts much of the same language as the original KFTC fairness bill, particularly regarding Art. 9 (prohibited behaviors of designated online platforms.

While narrower in some respects than the broader Platform Regulation bills, this alternative and its imitators include outright price regulation, which is generally anathema to a market economy outside of regulated utilities. Moreover, the requirement for covered platforms to negotiate with Business User Associations (BUAs) (Art. 14 and 15), essentially facilitates buyer-side cartel groups, a practice long

[1] https://x.com/ccianet/status/1947666086788292955

opposed by U.S. policymakers. The bill also incorporates burdensome obligations for platforms to give advance notice to any contractual modifications (Art. 7) and an unreasonably short 10-day payment processing window (Art. 10). (This requirement would limit companies' abilities to respond quickly to security risks, such as running fraud checks before processing payments.)

At the same time, these bills' suffer from the same defects of the broader platform regulation bills and will similarly impede U.S. firms ability to access the Korean market on reasonable terms:

- they proscribe vaguely-defined forms of conduct that can be common commercial practice and/or pro-competitive;
- key constraints apply only to firms designated as having "superior bargaining position" vis-à-vis businesses selling through a platform, a status defined vaguely and subject to significant regulatory discretion; and
- the overall effect is likely to impede the development of innovative services and business models, receptivity to which is a key strength of Korea's market and major opportunity for U.S. firms.

The fact that U.S. firms in the Korean market already face intense competition and heavy regulatory oversight means that any additional burden, particularly if only applicable to a narrow class of suppliers, will only undermine the attractiveness and viability of the Korean digital marketplace. Key elements of the Kim Nam-geun bill are identified below.

Key Elements of “Act to Fairly Regulate Platform Brokerage Transactions”

	Kim Nam-geun Bill (Bill **220-4777)**
Thresholds	● Brokerage fees charged to domestic business users of 100 billion KRW (about $72 million); or ● Domestic sales of products or services through the platform of 1 trillion KRW (about $720 million).
Services covered	Platforms for third-party sales (“brokerage”) of physical or digital products and services. ● Online retail (Coupang) ● App stores (Google Play, Apple App Store) ● Intermediating transport, delivery, lodging, etc. (Uber, Expedia, Airbnb) ● Pure search and pure social media appear excluded, but search-related advertising, or advertising within a marketplace, appears covered.
Cap on service fee	Covered platforms will have to ● Set their intermediary commission rate within the ceiling cap prescribed by the Presidential Decree; ● Unfair discrimination in commission rates is prohibited (with lack of clear guidance on what constitutes “unfair”); and ● Apply a preferential commission rate, as determined and publicly notified by the Fair Trade Commission, to small-scale online platform business users.
General obligations for all online platforms covered by these bills	● **One standard contract** executed through signature or method determined by Presidential Decree; ● **Advance notice** of contractual changes, including terminations, terms of service amendments, suspensions, restrictions, and others; and ● **Payment** to business users within 10 days for brokered goods & services, and an obligation to safeguard funds for payment through escrow or surety bonds. ● **Obligation to negotiate** with **business user associations** upon request regarding transaction terms.
Prohibited conduct for firms determined to have ‘superior bargaining position’	• **Coercion to purchase (tying/bundling)** (“requiring products or services the platform user [i.e., company using the platform] does not seek.”); • **Coercive extraction of benefits from business users** (prohibition on “forcing online stores to provide money, goods or services [to the benefit of the platform]”); • **Unfair transfer of losses** (charging for losses incurred during transactions); • **Imposing disadvantages** (through modification of terms and conditions–e.g. requiring specified delivery times); and • **Interference with business activities** of business users on the platform–e.g, pressure to lower prices, to not utilize competing platforms.

Fines	• **Double the value** of offending transaction, up to a maximum of KRW 1 billion ($720,000). • **Criminal penalties** up to **two years of imprisonment** or a fine up to KRW 150 million can be applied for (i) retaliating against business users for filing a complaint with the KFTC or cooperating with a KFTC investigation or (ii) refusing to comply with a KFTC corrective order.

Impact of *Ex-Ante* Restrictions on Competition and Innovation

Bills promoting "platform transaction fairness" that prohibit specified conduct by certain firms are primarily designed not to promote competition, but to safeguard smaller competitors who are not subject to similar restrictions, through the bifurcation of digital regulations.[2] First, these bills broadly designate online platforms with relatively modest transaction and monetary thresholds, subjecting them to a core set of general obligations. Second, the bills designate a subset of in-scope online platforms based on the highly discretionary "superior bargaining position" legal concept. Such firms, which are designated by Presidential Decree, are subject to additional prohibitions that do not apply to non-designated firms.

The concept of a superior bargaining position is based on the KFTC's assessment of several vague and circumstantial factors, including market status, business capacity, the characteristics of the goods or services sold, and the specific form of business conduct.[3] This vagueness increases the uncertainty and lack of predictability in the designation process and risks politicizing regulation, which in turn could make it so that it is arbitrarily applied against US companies—longstanding targets of KFTC and National Assembly actions. This would significantly hinder the ability of American companies to compete with Korean or other non-US companies that would not be subject to prescriptive constraints on conduct not *per se* harmful.

Online platforms provide services for many users and developers. Moreover, these companies make significant investments to ensure that new innovative products and services are made available to customers, and that users and developers receive the best service possible. Capping the amount that these companies can charge for their services to recoup their investment, re-invest in new innovations, or charge for services rendered would not only limit service offerings and valuable partnership arrangements and hinder innovation but would also put these companies at an unfair competitive disadvantage via-a-vis non-designated companies. While other companies might charge higher fees and recoup more of their investments, covered companies will be limited in the amounts they can charge, which would see their revenues significantly reduced. Moreover, allowing the formation of BUAs carries the risk of inadvertently creating cartels and an artificial power imbalance. This could lead to increased operational costs for platforms, which would ultimately be passed on to consumers,

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[2] Id.

[3] Youngsoog Na, "Is the Korea Fair Trade Commission Abusing the Provision for Abuse of Superior Trading Position?: A Critical Analysis of the Act on Fair Intermediary Trade of Online Platforms," De Gruyter Brill (Aug. 22, 2024), https://www.degruyterbrill.com/document/doi/10.1515/ajle-2023-0176/html?lang=en#articleAbstractView.

and ultimately put these companies at an unfair competitive disadvantage as to non-designated companies.

By creating a two-tier regulatory framework, *ex-ante* approaches to competition enforcement leave the government picking winners and losers in the marketplace, rather than encouraging innovation and promoting competitive market forces. With the threat of vaguely defined, but highly prescriptive regulation looming once a firm hits arbitrary thresholds, firms will be disincentivised to experiment with services, technologies, and business models that drive innovation. Just as both allies need to focus on countering Chinese digital expansion, these proposals interfere with innovative and dynamic digital markets, raising concerns over discriminatory treatment of and market access for American tech platforms.[4]

Conclusion

The leading platform fairness bill under consideration in the National Assembly suffers from major flaws:

- Price controls and collective bargaining.
- The presumption that conduct that is common in many industries represents an undue exercise of "superior bargaining position" when carried out by a firm of a certain size meeting vague additional criteria, in a selectively-defined market, is unjustified.
- The lack of any systemic, evidence-based harms or impact assessment justifying the proposed regulation. The fact that the designation will be subject to a separate set of standards provides little comfort, given the inevitable political pressure that will emerge to designate U.S. firms.

[4] Lilla Nóra Kiss and Hilal Aka, "Korea's New Fairness Act Risks Chilling Innovation and Derailing Trade Talks," Information Technology & Innovation Foundation (Jul. 24, 2025), https://itif.org/publications/2025/07/24/koreas-new-fairness-act-risks-chilling-innovation-and-derailing-trade-talks/.