

...with Joh Sung-wook

Chairperson, Korea Fair Trade Commission (KFTC)



CPI Talks...

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In this edition of CPI Talks... we have the pleasure of speaking with Ms. Joh Sung-wook, Chairperson of the Korea Fair Trade Commission (“KFTC”).

Thank you, Ms. Joh Sung-wook, for sharing your time for this interview with CPI.

- 1. The KFTC recently celebrated its 40th anniversary. As such, the KFTC is one of the most mature enforcement agencies in Asia. What would you consider to be the KFTC’s most significant achievements in its first three decades of existence?**

Only a half century ago, Korea was one of the least developed countries in Asia with a GDP per capita of only USD 279 in 1970. KFTC helped Korea become a fair, competitive, market-oriented economy, which drove its rapid economic growth and transformed it into one of the world's most innovative economic powerhouses; Korea's economy has grown over 100 times to become the 10th largest economy in the world with a GDP per capita of USD 30,644 in 2020.

In the 1960s and 1970s, Korea lacked capital, so its government's state-led development strategy invested in target industries, such as steel, shipbuilding, and petroleum processing. These profitable industries quickly grew the economy but also created monopolies.

To tackle this issue, the government enacted the Monopoly Regulation and Fair Trade Act (“MRFTA”) in 1980, which established the Korea Fair Trade Commission in 1981. Under MRFTA, we promoted competition by being a fair umpire, monitoring cartels, investigating abuse of market dominance, and punishing abusers with fines or prosecution. Also, we enacted the Subcontracting Act in 1984 to protect SMEs and micro businesses with little bargaining power, thereby broadening our economy.

To strengthen consumer rights and welfare, we enacted the 1980 Frame Act on Consumers and the 2002 Act on the Consumer Protection in Electronic Commerce (the “E-commerce act”). To foster a fair market ecology, KFTC ensured fair transactions in the Korean economy to build and maintain consumer trust, thereby serving as an effective gardener that ensures fertile soil to birth and grow companies with new products and services.

In short, KFTC promotes competition, investigates abuse of market dominance, and protects smaller firms and consumers — thereby contributing to Korea's economic miracle.

- 2. Moving on from the KFTC’s 40th anniversary, what will be its priorities for its fourth decade and beyond? Specifically, what industries or sectors do you foresee will be of the greatest significance for the KFTC?**

The advancement of information and communications technology ICT has (a) increased contact-free and online transactions; and (b) accelerated digitization of the economy via platforms and big data. Hence, KFTC will focus on promoting fair transactions in the digital economy.

Thanks to the growth of the digital economy, businesses have greater access to more markets, and consumers can enjoy old and new products and services with low search costs. However, network effects and tipping points can drive large platform dominance. Such platform tech giants can abuse their monopoly power via unfair, anti-competitive business practices. For example, big platforms can unfairly extend their dominance in one market into adjacent markets and use their market power to extract concessions from online stores. These platforms can also exploit consumer information by selling or sharing it with business clients/associates or inadequately protecting it

from outsiders — all of which violates consumer privacy. In short, big platforms can abuse their power to harm both businesses and consumers.

Hence, KFTC will prioritize promoting fair transactions in the online platform sector. For example, online suppliers might restrict the online sales of distributors, so KFTC will prohibit this. We plan to implement policies that establish transparent and fair transaction relationships between large platforms and online stores. In addition, we also require for platforms to take appropriate responsibilities depending on their roles in online business transactions. By doing so, we extend our umpire and gardener roles into the digital realm, by (a) monitoring and investigating big platforms for abuse of their market dominance; and (b) nurturing a safe transaction environment for smaller businesses and consumers.

3. The KFTC is soon to set out its work plan for 2021. Among other things, its 2020 work plan set out plans to focus on issues relating to mobile platforms, online platforms, standard-essential patents, and the 5G semiconductor business. Will the 2021 plan differ substantially from the 2020 plan, particularly in light of the intervening COVID-19 pandemic?

COVID-19 accelerated the growth of the digital and contact-free economy. As platforms have become essential players in the digital economy, KFTC will focus on online platforms in two parallel lines: (a) legislation and institutionalization; and (b) investigation.

First, KFTC's deep understanding of the multi-faceted nature of transactions in the online platform sector (platform to platform [P2P], platform to businesses [P2B], and platform to consumers [P2C] relations) will inform systematic and comprehensive measures to foster competition, protect consumers, and grow the digital economy.

Specifically, KFTC proposed the Act on Fair Intermediate Transactions on Online Platforms

(the "Online Platform Act") to ensure a transparent and fair business environment for platforms and online businesses. Unfair contracts had unfavorable terms and conditions in over-the-top ("OTT") platforms, crowd funding, online learning and delivery app sectors. To tackle these problems, KFTC requires platforms to provide contracts with specific, essential components for their transactions with online businesses. To ensure that platforms fulfill their responsibility to protect consumers, we plan to amend the 2002 E-commerce Act. In addition, KFTC will revise guidelines for monopolistic conducts in the online platform sector. The new guidelines will specify criteria for market definition and market dominance that reflect the multi-faceted characteristics of the platform market, including criteria for assessing anti-competitiveness of practices by platforms.

Second, KFTC is improving its binoculars to detect unfair practices in the digital economy. Last year, we launched the ICT Task Force to monitor online platforms, mobile, intellectual property rights and semiconductor sectors for anti-competitive practices by its dominant firms. This year, we plan to add two more divisions to the ICT Task Force for app-marketplace and online-to-offline ("O2O") platforms. All of this will help KFTC see the digital economy more clearly.

As contact-free transactions grew, online deception also grew. Fake consumer reviews, dark nudges like pre-checked "Yes" boxes, and other online deception harm consumers, so KFTC will spotlight them to discourage them, inform consumers, determine appropriate regulations, and ultimately prevent them.

Lastly, we will help businesses, especially vulnerable small and micro ones, see their changing digital environment more clearly to make better business decisions. For example, off-line businesses must consider online competitors as well as off-line ones. To provide business with material information to gauge their competition more accurately, KFTC will encourage franchise headquarters to share online sales information with franchisees. When

firms see their digital environment more clearly, they can make better business decisions to survive, grow, and contribute to Korea's economy.

4. The KFTC's recent enforcement action against Naver, the leading search engine in Korea, regarding alleged search algorithm manipulation to give preference to its paid advertisement customers, bears remarkable parallels to similar actions against Google in Europe, the U.S., and elsewhere. What has the KFTC learned from these investigations? And what lessons does the KFTC's experience have to teach other enforcers worldwide?

As the digital economy grew, large platforms dominated their markets and become "gatekeepers" that allow or prevent transactions between businesses and consumers. For example, platforms decide how to display search results for goods and services, and can unfairly show their own/friendly vendors before rivals (self-preferencing).

Self-preferencing is the heart of both the *Naver* and *Google* cases. Both tech giants' self-preferencing extended their search market dominance to unfairly pursue online shopping market dominance. So, these two cases demonstrate the need for competition authorities to detect self-preferencing and other unfair practices by thoroughly monitoring gatekeepers acting as both intermediaries and sellers.

Naver exploited its dominance over search engines for unfair, anti-competitive actions in many markets, including online shopping, online real-estate brokerage, and online video platforms. As each market has different business tactics, technologies, and market structures, investigating all of them takes a lot of time, people, and resources, so relying on reactive, law enforcement alone to restore fair, competitive environments in all markets is slow and expensive. Therefore, all competition

authorities also need proactive measures for prevention and voluntary correction of unfair practices across markets; informing platforms, other firms, and consumers of fair and unfair practices activates stakeholders not only (a) to file earlier complaints with greater accuracy; but, especially, (b) to expect, demand, negotiate, and engage in fairer transactions and behaviors.

Specifically, KFTC proposed the Online Platform Act to encourage platforms to disclose information about their criteria for displaying ranked search results for products and services sold on their platforms, thereby hindering unfair self-preferencing while increasing predictability for platform users.

5. The KFTC has been active in promoting a new law for fair intermediate transaction on online platforms, which will apply to every business acting as an intermediary between a consumer and an online platform. Please outline the key aspects of this legislation. Has the KFTC learned from similar initiatives elsewhere? What aspects of this legislation could teach lessons to regulators worldwide?

KFTC is advocating for the Online Platform Act ("OPA") to increase the transparency and fairness of transactions between online platforms and online stores, thereby fostering a digital ecology with mutually beneficial relations.

First, OPA requires online platforms whose revenue exceed USD 90 million in 2020 to provide contracts with essential terms, such as a standard for charging service fees. Second, OPA requires platforms to notify their online stores in advance before changing the contract terms, restricting services, or terminating them. Third, OPA translates and details MRFTA's existing provisions on prohibition of abuse of market dominance to online platforms.

When drafting OPA, KFTC examined EU and Japan's corresponding regulations governing online platforms, which also tried to improve

transparency and fairness in transactions involving influential gatekeepers.

OPA reaffirms our strong commitment to enhancing transparency and fairness in online

platform transactions by taking a balanced regulatory approach for fostering and growing innovation in new industries.